

Decision maker:	Cabinet
Decision date:	11 February 2015
Title of report:	Option Appraisal for 16 – 18 High Town, Hereford (burnt out shops adjacent to old house)
Report by:	Head of development management and environmental health

Classification

Open

Key Decision

This is a Key Decision because, it is likely to be significant in terms of its effect on communities living or working in an area comprising of one or more wards in the county.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012.

Wards Affected

Central

Purpose

To approve the purchase and making of a compulsory purchase order (CPO) if and when necessary.

Recommendation(s)

THAT:

- a) Subject to the conditions outlined at paragraph 17, the listed building premises known as 16-18 High Town (shown edged in red on the location plan attached to this report) are purchased and a compulsory purchase order be approved if necessary; and,**

- b) Authority is delegated to the director for economy communities and corporate, following consultation with the relevant cabinet member and director of finance, to approve the business case and take all necessary steps to effect the purchase within the financial parameters set out within the report.**

Alternative options

- 1 Not to take action, as recommended above, and to continue to entrust the current owner/receiver, with ensuring the fire damaged premises are repaired, which will be dependent on what such receiver deems to be favourable market forces, which therefore may mean that these premises could remain derelict for a further indeterminate period of time.
- 2 The council could serve a new Section 215 Town and Country Planning Act 1990 notice.

Key considerations

- 3 Following a serious fire, in October 2010, the properties known as 16 – 18 High Town, Hereford were extensively damaged. No lives were lost but, at the time, it was reported as being one of the most severe fires known to have occurred in modern day Herefordshire.
- 4 The property now comprises the extensively fire damaged remnants of a three to four storey terraced grade II listed building, formerly arranged as two separate retail units. The properties front High Town and have a rear boundary off East Street. There are retail units housed adjacent to the property and it also adjoins the grade II* listed Booth Hall Public House (“the Booth”).
- 5 The former buildings are believed to have comprised of a 16th Century framed section to the rear, and a mid 19th Century classical three storey façade, with pillars, although much of this has been lost.
- 6 The public walkway beside the Booth has been closed since the fire and the inaccessibility of the public house from High Town has been reported in the media to be the reason for the Booth ceasing trading.
- 7 A planning application was granted consent, in 2011, to rebuild and refurbish it. The permission was implemented it therefore remains extant. However, the estimated cost in delivering this consent has not rendered it marketable to date and the buildings remain in their dilapidated state.
- 8 After a period of 4 years, and increasing pressure from the public and media, it became clear that market forces alone, were not going to resolve the problem. Therefore, in October 2014, a Section 215 Town and Country Planning Act 1990 notice was served on the then owners of the premises (Omaha Properties Ltd) requiring that the building be internally stabilised and supported, including the erection of boarding to make the site secure, and applying a pictorial representation on the northern elevation. The notice was effective from 2nd

December 2014, and required compliance within 80 days (ie by 20th February 2015). As was well reported at the time, the council were then informed that the said owners had gone into liquidation and the receivers made it clear that they were not in a position to broker a satisfactory resolution, and were therefore unable to comply with the steps required under the section 215 notice. Taking enforcement action against an insolvent company would not have resolved the situation and so the council did not proceed with a prosecution. As a gesture the expired notice was withdrawn in October 2015 given the concern that the notice on the property may make it unattractive to interested buyers. If similar enforcement action were to be considered then a 015 and a new notice would now be required.

- 9 In March of 2015 the existing scaffold was reclad to a height of 4.8m. However, the footprint was left as before, taking much of the immediately adjoining High Town pedestrianised area out of use. As a gesture, the owners did agree to a local artist painting a commemorative mural of the First World War Gallipoli battle. The council made no objection to this alternative proposal as it was arguably better than the initial hoarding proposals and may, to some extent, have lessened some of the public feeling, in the short term regarding this sensitive site.
- 10 In addition, for safety reasons, the highways scaffolding licence, required to retain the supporting structure of the fire damaged buildings, has continued to be renewed, at least until September 2016, by Balfour Beatty Living Places, (“BBLP”), acting on behalf of the council, as highway authority. It is very likely that a further closure extension will need to be applied for.
- 11 On 1 October 2015, council officers met with the receivers, following correspondence from Historic England (formerly English Heritage) confirming that they would relax many of the listed building constraint conditions, in relation to any planning consent that they had previously insisted upon.
- 12 As an outcome of this meeting, the receivers instructed a firm of local architects, Hook Mason, to recommence pre-application planning discussions with the council so that a different, and less onerous planning application could be agreed, to enable market forces to support such a venture.
- 13 In December 2015 a meeting was held with Historic England to discuss the extent to which the surviving façade of the building should be safeguarded. It was agreed that, subject to the appropriate permissions, as well as the relaxation of many of the listed building constraints, the façade could be dismantled and rebuilt, so long as it incorporated as much historic fabric as possible. This further increased the viability of the property being re-marketed.
- 14 It was therefore confirmed to the architects in December 2015 that the pre-application proposals were acceptable and pre-application discussions are well underway. As a result, it is hoped that the ownership of the property will shortly be transferred from the receivers and that there will be visible works on site by autumn 2016.

- 15 However, it is still not clear if or when the site will be purchased and should it be purchased there is no guarantee that it will be developed.
- 16 It is vital that this key High Town frontage is redeveloped in order to underpin the viability and vitality of this important part of the urban historic core and in order to provide commercial confidence and help enhance High Town footfall. To that end it is considered prudent for the council to have a “fall back” position so that CPO procedures could be implemented as soon as possible, should they be required.
- 17 This report is therefore seeking authority for the purchase of the site (detailed on the attached location plan) and making of a compulsory purchase order if necessary, provided that there is a sound business case, supported by the cabinet member and the director of resources, if:

by 31st July 2016:

- there is no evidence of a clear timetable for redevelopment of the site in place; or,
- where there is a redevelopment timetable in place, there is no evidence that it is being delivered within a reasonable timescale.

Community impact

- 18 The present state of these dilapidated commercial buildings severely impacts upon the amenity of High Town for both the local community who reside in the central ward and the larger community who shop in and frequent this area. The site, in its current state, will also have a negative impact upon out-of-county visitors who choose to shop or visit Hereford.

Equality duty

- 19 The council is of the view that, in pursuing a CPO, it has carefully considered the balance to be struck between individual rights and the wider public interest. Any interference with convention rights, if there is any, is considered to be justified in order to secure the repair of the listed building in a sensitive historic town centre site. Appropriate compensation will be available to the current owners of the premises, by agreement, or under the relevant statutory CPO provisions.

Financial implications

- 20 Herefordshire Council is aware of the current value of 16 – 18 High Town, following an independent valuer’s report it commissioned, in April 2015. This report values the properties as they currently stand and as a finished development as per the 2011 consent. The council is also aware of the estimated monthly outgoings for maintaining the site. The report and maintenance information are attached as a background papers, for the Cabinet, but are exempt from publication because they contain information relating to the financial affairs of a particular person and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 21 The acquisition will follow the approval of a business case by the director of resources which demonstrates how the potential future capital receipt and/or rental

payments will finance the costs incurred. also details the estimated monthly outgoings for maintaining the site.

- 23 Should an appropriate business case be made then the purchase figure for the site could be found from the council's capital programme.

Legal implications

- 24 Should a CPO be contemplated, as mentioned in the recommendation, because the premises are listed, it is necessary firstly to serve on the owners of the premises, a listed building repairs notice under the provisions of section 48 of the 1990 Act. This notice would set out the repair works that the council's historic building officer determines are reasonably necessary for the preservation of the listed building premises.
- 25 Section 47 of the 1990 Act gives the Council powers to acquire listed buildings in need of repair. This compulsory acquisition is a reserve power, after service of a repairs notice, under section 48, subsequent to it's non-compliance, and is designed to secure longer term preservation of listed buildings.
- 26 As this relates to listed buildings, if a CPO is made the owner served with a notice of the making of a CPO may, within 28 days, appeal to the Magistrates Court for an order to stop any further proceedings. This would be granted by the Court if it is satisfied that reasonable steps are being taken by the applicant to properly preserve the building. There is a further right of appeal from the Magistrates Court to the Crown Court.
- 27 The test the Secretary of State (SofS) applies in deciding whether a CPO should be confirmed is whether there is a compelling case in the public interest. He must also be satisfied that:-
- reasonable steps are not being taken to preserve the building and;
 - that it is expedient that the building should be preserved and;
 - that it should be compulsorily purchased to ensure its preservation.
- 28 In other words the council must be seen, at the time of confirmation of the CPO by the SofS, to have a credible plan in place to secure the building's future. That plan obviously must include financial measures and may include a proposal to immediately transfer the property to a third party funder to carry out the repairs. In this regard, the council would endeavour to identify a private individual or body which has access to funds to carry out the necessary repairs and to which the building will be sold on as quickly as possible. Therefore, in such circumstances, a "back to back" or cost indemnity agreement, with a third party would be required to ensure that the Council's expenses relating to the acquisition of the land, through the CPO proceedings and subsequent disposal to the third party, will be recovered. This would include the compensation payable to the owner.
- 29 If the CPO is confirmed and implemented, compensation will be payable to the owner based upon the market value of the land with the listed building on it. This would include its development value. The amount of compensation will either be agreed between the council and the owner or, failing this, determined by the Upper Tribunal (previously called the Lands Tribunal).

- 30 In exceptional cases, where the listed building has been deliberately allowed to fall into disrepair for the purpose of justifying demolition and/or redevelopment, only minimum compensation is payable (i.e. market value as it stands without any prospect of development value). Officers do not, however, believe this applies in this case as the premises were severely damaged by fire and it has been the cost of the repair works, and market forces that is preventing its renovation.
- 31 It should be noted that the amount of compensation is not required to be agreed prior to the land transferring to the council under the CPO.
- 32 Whilst the human rights of the respective owners of the listed buildings are engaged in the compulsory purchase order process, this is considered to be a legitimate interference for the reasons set out in this report.
- 33 This process is likely to take.

Risk management

- 34 If the recommendation of this report is agreed, the main risk to the Council is that the CPO is not confirmed by the Secretary of State. The implications of this are that there would be no certainty on the development of this site. This risk will be mitigated by negotiations with landowners and other parties affected by the orders and continuing with suitable professional guidance and advice.
- 35 It should be noted that, if this recommendation is approved, there may be a risk of the owner or receiver serving a statutory “blight notice” on the council. To the effect that they are unable to now sell the premises. An assessment of the potential risk of this happening is currently considered to be low.
- 36 Should the council acquire the site there is a risk that they would be unable to sell to a developer and would need to cover the costs of maintaining and then developing the site.

Consultees

- 37 Historic England is aware of the council’s deliberations and have been fully consulted upon this. The local member has been consulted and is supportive of the proposals in the report.

Appendices

Location plan

Background papers

DVS Valuation Report – April 2015.

Maintenance information from Deloitte.

The report and Maintenance information is exempt from publication as it contains Information relating to the financial or business affairs of any particular person (including the authority holding that information).