

EAST AYRSHIRE COUNCIL

CABINET – 10 MARCH 2010

CUMNOCK TOWN CENTRE REGENERATION PROJECT

GREENHOLM ROAD, CUMNOCK COMPULSORY PURCHASE ORDER 2010

Report by the Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

To request that Cabinet make a formal resolution to promote the Greenholm Road, Cumnock, Compulsory Purchase Order 2010, in exercise of the powers conferred by sub-section (1) (a) and (1) (b) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1(1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 in respect of the acquisition of an area of ground extending in total to 2631 square metres or thereby to the south of Greenholm Road Cumnock shown outlined on the attached plan for the purpose of the carrying out of development of the area which is the subject of this Report, such development comprising the office development phase of the project and in the interests of the proper planning of the wider area of land in which the area which is the subject of this Report is situated and to authorise the Solicitor to the Council to implement all subsequent statutory requirements and to apply for confirmation of the said Order by the Scottish Government.

2. BACKGROUND

- 2.1 At its meeting of 18th July 2005 the Emergency Powers Committee approved a regeneration project for Cumnock town centre one of the principal elements of which is the development of office accommodation within the town centre for the relocation of Council Services and other appropriate partner organisations.
- 2.2 To facilitate delivery of the Town Centre Regeneration Project the Council's Emergency Powers Committee of 5th July 2007 agreed inter alia (i) to approve the location of the office development at Greenholm Road, Cumnock; (ii) to authorise the Executive Head of Finance and Asset Management in consultation with the Solicitor to the Council to enter into negotiations and to acquire the necessary heritable interests to facilitate the Cumnock Town Centre Regeneration Project, subject to approval by Council or otherwise as provided for in terms of the Council's Scheme of Delegation; and (iii) to authorise the Solicitor to the Council to promote Compulsory Purchase powers to facilitate the acquisitions should it become necessary to do so.

- 2.3 In pursuance of the authorisation/resolution of the meeting of the Emergency Powers Committee of 5 July 2007 the Council either following direct negotiation or following negotiations carried out by the District Valuer Service has successfully acquired all necessary heritable interests required to facilitate the office development phase of the Town Centre Regeneration Project with the exception of the area of ground which forms the subject of this Report
- 2.4 Following the breakdown of initial negotiations in respect of the area which forms the subject of this Report the Solicitor to the Council again in pursuance of the authorisation/resolution of the meeting of the Emergency Powers Committee of 5 July 2007 and in exercise of the powers conferred by sub-section (1) (a) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1(1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on 8 September 2008 promoted the Cumnock Town Centre Redevelopment Compulsory Purchase Order No1 2008 .However, as reported to Cabinet on 20th May 2009 that Order was subsequently withdrawn on the basis of advice provided by the Scottish Government following objections from the site owners that its promotion had been premature in that a number of fundamental issues including the lack of a grant of planning consent for the office development had not been addressed prior to the granting of Committee Authority and promotion of the Order.
- 2.5 Cabinet thereafter at its meeting of 20th May 2009 having been advised of the steps taken to regularise the issues identified by the Scottish Government agreed inter alia (i) to approve the promotion of a Compulsory Purchase Order in respect of the acquisition of an area of ground extending in total to 2631 square metres or thereby to the south of Greenholm Road Cumnock, as detailed on the plan submitted with the Report to facilitate the office development phase of the approved Cumnock Town Centre Regeneration Project and (ii) authorised the Solicitor to the Council to formally promote the Order and thereafter to comply with all necessary statutory requirements and take all necessary steps deemed necessary by the Solicitor to the Council to protect the interests of the Council to facilitate confirmation of the Order by the Scottish Government.

3. CURRENT POSITION

- 3.1 Following the grant of Cabinet Authority on 20th May 2009 and the further breakdown of negotiations with the owners of the site the Solicitor to the Council in pursuance of the authorisation/resolution of the meeting of Cabinet of 20th May 2009 and in exercise of the powers conferred by sub-section (1) (a) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1(1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on 16th July 2009 promoted the Cumnock Town Centre Redevelopment Compulsory Purchase Order No1 2009. Following objections submitted by the site owners the Scottish Government indicated in correspondence of 11th November 2009 that the Order did not adequately identify the site to which it related and was accordingly fundamentally flawed. As a result of that advice the Order was withdrawn.

- 3.2 The Solicitor to the Council thereafter taking into consideration the concerns raised about the lack of specification in the Cumnock Town Centre Redevelopment Compulsory Purchase Order No 1 2009 and the details of the objections received to that Order again in pursuance of the authorisation/resolution of the meeting of Cabinet of 20th May 2009 and ,given that the development is considered to be in the interests of the proper planning of the area, in exercise of the powers conferred by sub-section (1) (a) and 1 (b) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1(1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on 23rd November 2009 promoted the Greenholm Road, Cumnock Compulsory Purchase Order 2009 .
- 3.3 Following objections submitted by the site owners a number of concerns were identified in respect of the adequacy of the Cabinet Authority of 20th May 2009 to allow for the promotion of the Greenholm Road ,Cumnock Compulsory Purchase Order 2009 .

In specific terms, whilst the Greenholm Road, Cumnock Compulsory Purchase Order 2009 had been promoted in exercise of the powers conferred by sub-section (1) (a) and 1 (b) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1(1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 there is no specific reference within the Cabinet report of 20th May 2009 to subsection 1(b) of section 189 of the 1997 Act. In particular the Cabinet approval of 20th May 2009 contained the following provisions in respect of legal implications namely that:-

*“The Council in its use of its Compulsory Purchase Powers **in terms of subsection 1 (a) of section 189** of the Town and Country Planning (Scotland) Act 1997 and section 1(1)and Schedule 1 of the Acquisition of Land (Authorisation Procedure)(Scotland) Act 1947 requires to ensure compliance with the statutory procedures for the promotion of a Compulsory Purchase Order to allow subsequent confirmation by the Scottish Government”*

The recommendations within the report of 20th May 2009 also make no reference to any specific statutory provision to promote the Compulsory Purchase Order as is reflected in the Cabinet Authorisation granted as detailed in section 2.5 of this report. Again as detailed in sections 2.4 and 3.1 of this report both the Cumnock Town Centre Redevelopment Compulsory Purchase Order No1 2008 and the Cumnock Town Centre Redevelopment Compulsory Purchase Order No1 2009 had been promoted in exercise of the powers conferred by sub-section (1) (a) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1(1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 with there being no previous reference in either of the Orders promoted to section 189(1)(b) of the Town and Country Planning (Scotland) Act 1997.

Against this factual background there were concerns that the absence of any reference to section 189(1)(b) in the Cabinet approval could potentially result

in a successful argument by the objectors at Public Local inquiry that the Greenholm Road, Cumnock Compulsory Purchase Order 2009 had not been validly made.

- 3.4 Given the concerns detailed in 3.3 above advice was sought from the Scottish Government as to the validity of the Greenholm Road, Cumnock Compulsory Purchase Order 2009. The Scottish Government have confirmed that they consider that notwithstanding the issues detailed in 3.3 above the Order has been validly made at least for the purposes of proceeding to a Public Local Inquiry (PLI). However, they have also acknowledged the Council's concerns as to the likely risk of challenge by judicial review following conclusion of the proposed PLI. Given the existence of that element of risk combined with the possibility of the process being further delayed as a consequence thereof it is considered by the Solicitor to the Council, in order to best protect the best interests of the Council, that the Greenholm Road, Cumnock Compulsory Purchase Order 2009 should be withdrawn and a further Order should be promoted on the basis of a Cabinet Resolution to promote a fresh Order with a specific expression of the statutory powers to be used and the purposes of the Order. It is also considered that there is no further prospect of a negotiated settlement and that the promotion of a fresh Compulsory Purchase Order is necessary to facilitate delivery of the office development component of the Cumnock Town Centre Regeneration Strategy.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising out of a decision to promote a Compulsory Purchase Order. Should the Order subsequently be confirmed by the Scottish Government the Council will require as in the case of all acquisitions to pay the site owners the market value of the area of ground which forms the subject of this Report which market value in the absence of agreement will be determined by the Lands Tribunal. Whilst specific detail of the finalised acquisition costs cannot be provided at this stage it is estimated on the basis of current valuation information that the acquisition costs could be anywhere in the region of £37,500 to £400,000. Should the Order not be confirmed the Council will be required to meet the expenses incurred by any objectors to the Order. In addition the Council may be required to meet the expenses of the objectors in respect of the earlier Orders promoted.

5. LEGAL IMPLICATIONS

- 5.1 The successful promotion and confirmation of a Compulsory Purchase Order will allow the Council to take title to the site and complete the proposed Office Development. Should the Order not be confirmed the Council, in the absence of a voluntary acquisition, will be unable to complete the development thus preventing the successful completion of the approved Cumnock Town Centre Regeneration Project .

- 5.2 The Council in its use of its Compulsory Purchase Powers in terms of sub-section 1 (a) and (b) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1 (1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 requires to ensure compliance with the statutory procedures for the promotion of a Compulsory Purchase Order to allow subsequent confirmation by the Scottish Government.

6. POLICY/COMMUNITY PLANNING IMPLICATIONS

- 6.1 Whilst there are no specific policy/ community planning implications arising out of the promotion of a Compulsory Purchase Order should the order be confirmed the subsequent acquisition of the area of ground forming the subject of the report is critical to the subsequent implementation of the Town Centre Regeneration Project. The implementation of that Project will contribute significantly to achieving targets contained in the “Improving the Environment” and “Improving opportunities” Action Plans of the East Ayrshire Community Plan.

7 ASSET MANAGEMENT IMPLICATIONS

- 7.1 Again whilst there are no specific asset management implications arising out of the promotion of a Compulsory Purchase Order should the Order be confirmed the subsequent acquisition will meet the Council’s policy objectives in respect of Asset Management and will, as indicated in paragraph 5.1 and 6.1 of this Report allow the Council to progress its Cumnock Town Centre Regeneration Project.

8. RECOMMENDATIONS

- 8.1 It is recommended that Cabinet -
- i) Make a specific resolution to promote the Greenholm Road ,Cumnock, Compulsory Purchase Order 2010 in terms of the attached draft in exercise of the powers conferred by sub-section (1) (a) and (1) (b) of section 189 of the Town and Country Planning (Scotland) Act 1997 and section 1(1) and Schedule 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 in respect of the acquisition of an area of ground extending in total to 2631 square metres or thereby to the south of Greenholm Road Cumnock shown outlined on the attached plan for the purpose of the carrying out of development of the area of ground which is the subject of this Report, such development comprising the office development phase of the Cumnock Town Centre Regeneration Project and in the interests of the proper planning of the wider area of land in which the area of ground which is the subject of this Report is situated;

- (ii) authorise the Solicitor to the Council to formally promote the Order and thereafter to comply with all statutory requirements and to take all steps deemed necessary by the Solicitor to the Council to protect the interests of the Council and to apply for confirmation of the Order by the Scottish Government; and
- (iii) otherwise note the contents of this report .

**Elizabeth Morton,
Depute Chief Executive and Director of Corporate Resources**

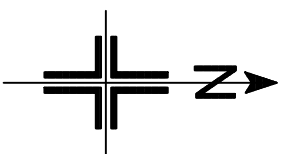
BACKGROUND PAPERS

Emergency Powers Report of 18th July 2005
Emergency Powers Report of 5th July 2007
Cabinet Report of 20th May 2009

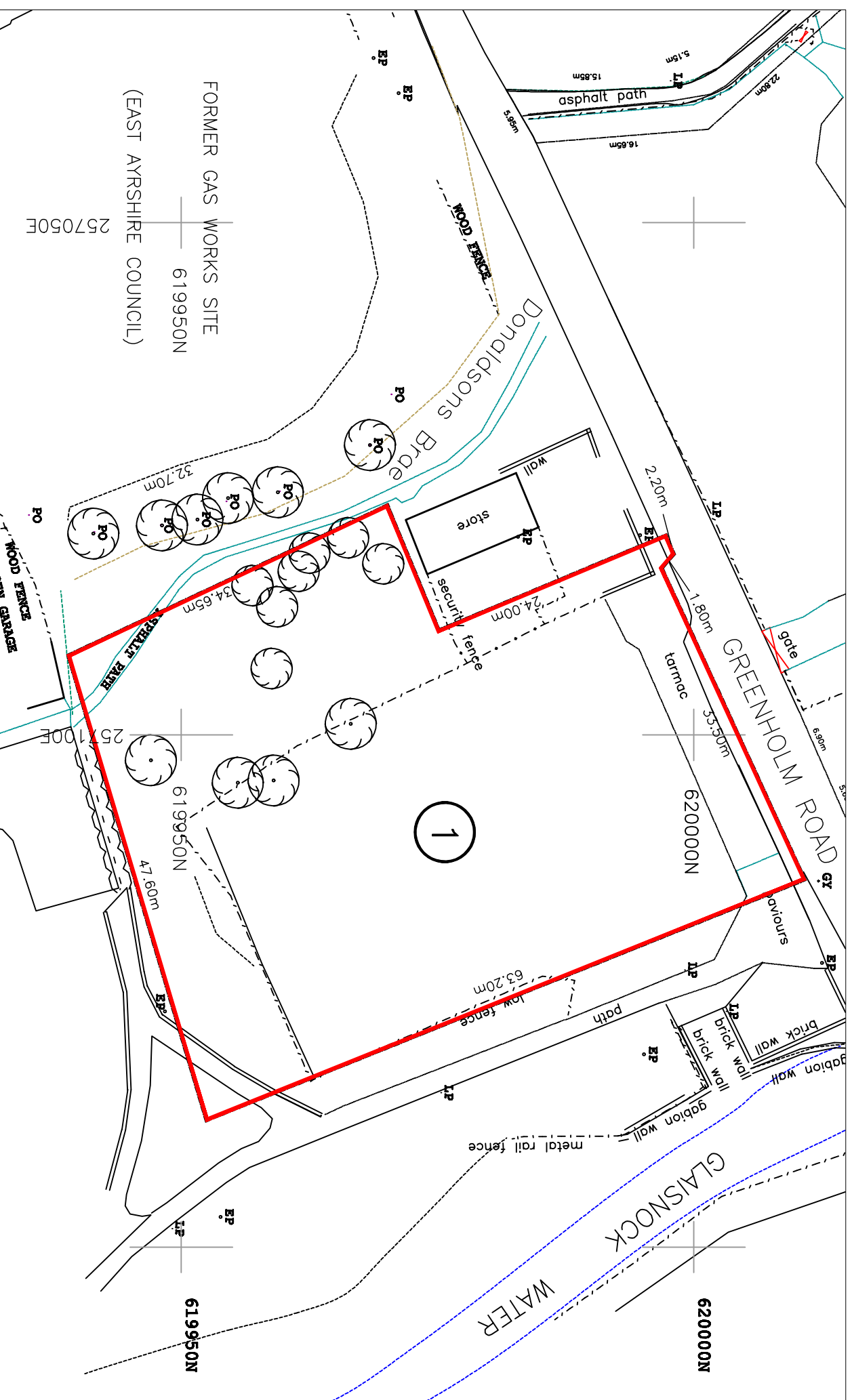
Any person wishing information about this report please contact David Mitchell
Solicitor to the Council (on telephone extension 576061

Implementation Officer; David Mitchell

The Town Planning (Scotland) Act 1997 and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947
 Map referred to in the Greenholm Road, Cumnock Compulsory Purchase Order 2009.



Number on Map	Plot Area	Owner	Schedule
(1)	2631 square metres	CPD Developments LLP	



The source mapping is by a land survey using total station surveyed onto National grid coordinates

Rev.	Date	Revision	Initials
A	3.9.2008	REMOVE PLOT 2 FROM PLAN	JL

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East Ayrshire Council
LAND SURVEY
 Alexander McPhee ACMA
 Head of Finance and
 Asset Management

TITLE
 GROUND AT
 GREENHOLM ROAD
 CUMNOCK

PROJECT
 COMPULSORY PURCHASE ORDER OF
 GROUND FOR CUMNOCK TOWN CENTRE
 REGENERATION SCHEME BY EAST
 AYRSHIRE COUNCIL

Legal Title Packet Nos.
 OS Grid Ref: E257101, N619977
 Legal File No.

File No.
 Parish
 CUMNOCK

Surveyed by JL
 OS Sheet NS5719

Drafted by JL
 Date 17/7/2009

Checked by JL
 Dwg. Type CPO
 Rev. C

Sheet of 1
 Drawing No. 13573

Scale 1:500