

WELWYN HATFIELD BOROUGH COUNCIL
CABINET – 14 JUNE 2016
REPORT OF THE DIRECTOR (FINANCE AND OPERATIONS)

HATFIELD TOWN CENTRE – STOPPING UP ORDERS

1 Executive Summary

- 1.1 The purpose of this report is to clarify the position affecting the public realm in Hatfield town centre. The Council (WHBC) has three options:
- A. It can regenerate the public realm but ownership remains with Hertfordshire County Council (HCC). WHBC can either negotiate to carry out the improvements for HCC or try to persuade HCC to carry out the works at WHBC's cost. Either way, HCC would then be entitled to a capital payment in return for them maintaining the area.
 - B. It can look to obtain a brand new stopping up order for the area it wishes to improve.
 - C. It can look to get the surface "Dedicated" to WHBC to go with the sub-soil the Council acquired through Compulsory Purchase Order in 2011. The works could then be carried out against a temporary traffic regulation order.

2 Recommendation(s)

- 2.1 That, Cabinet decides which of the three options, if any, it wishes to pursue. Officer's preference would be for Option C if possible but, if legal advice doesn't support this route then Option B for the control it gives to WHBC over this.

3 Explanation

- 3.1 As part of the town centre improvements being carried out in Hatfield by the Council, it is proposed to update the public realm. However, as the area may be still affected by highway rights, the responsibility for carrying out any works, would rest with HCC, though, if anything is to be done, the onus of funding the works would probably rest with the Borough. In that eventuality, WHBC would have little say over how the public realm is maintained into the future. If WHBC wish to retain control over how the improvements it has paid for are maintained in the future, this is probably not the best route to follow. This is **Option A.**
- 3.2 In the event that WHBC would like full control over the works to the public realm, securing a stopping up order to extinguish those highway rights is a pre-requisite of being able to deliver the improvements and to ensure that they are maintained to a required standard in the future. Securing an Order requires an existing planning consent; prior to such a consent an Order is designated as "Draft". Whilst the Stopping Up process is "free" (there are always costs) and theoretically only takes 13 weeks to secure, (once planning consent is in place) this doesn't hold good if the Order faces unresolved objections. In that

eventuality, the solution to the objections would be to have a public enquiry. These usually take 6-12 months to arrange and the Council would need to consider a budget of between £30 - £50,000. A plan showing the plan from a stopping up order from 2008 is attached as appendix 1. **This is Option B.**

- 3.3 Alternatively, WHBC could explore having the surface “Dedicated” to its ownership by HCC. This would leave the highway rights in place just that they would not rest with HCC. The works could then be carried out against a temporary traffic regulation order (TTRO). Usually, a “Dedication” is limited to sub-soil rights but it is believed it should be possible for HCC to Dedicate the surface rights to WHBC. At this point, with all rights vested in WHBC, the works could be carried out and a TTRO. This carries a fee payable to HCC but this is usually “not significant”. The detail for this option is being considered by Pinsent Mason. **This is Option C**
- 3.4 For Options B & C, in considering any likely revenue growth, discussions with Environmental Services have indicated that most contracts can be amended at no additional cost to the Council for taking a higher level of control over the town centre. This includes adding snow cover to our contracts to replace the provision currently made by HCC.
- 3.5 The exception to this is likely to be a new liability for existing street lights in part of the town centre. These street lights will require regular structural checks and there will be a consequential increase in our electricity costs. However, the structural costs will be minimised as most of the subject lights are due to be replaced as part of the improvement works and Officers will explore the use of LED bulbs as a cheaper alternative for running costs; though the initial purchase price may be slightly higher.

Implications

4 Legal Implication(s)

- 4.1 Securing a fresh stopping up order takes about 13 weeks but is usually issued in draft format until a planning permission is received. There is no charge for the order provided there are no unresolved objections. If there are, this could result in a public enquiry being required.
- 4.2 Securing a Dedication requires the agreement of HCC.

5 Financial Implication(s)

- 5.1 Should the Council pursue Option B, there is the possibility that objections may be received from affected parties. Most should be resolvable but in the event there are unresolved objections, the standard solution is a public enquiry that could add up to 12 months to the process and could cost in excess of £30k and form part of the public realm improvement costs.
- 5.2 For Option C, to provide a degree of comfort in the face of any challenge on future title, the Council could consider taking out Title Indemnity Insurance. This will require a modest premium for which quotes would be obtained.
- 5.3 For all options, by taking control of the highway area, WHBC would become responsible for any costs of maintenance. Environmental Services have indicated that any increase in work may be incorporated into the existing SERCO contract at low or no cost.

- 5.4 The exception, would be any street lights in the relevant area where WHBC would become responsible for maintenance and the electricity the lighting used. However, under the public realm improvements, it is likely that most of the existing lighting columns would be replaced and LED lighting could be specified. This could be met from existing budgets.

6 Risk Management Implications

- 6.1 The risks related to this proposal are:
- 6.2 That the revenue growth resulting from WHBC taking over this area may be more than is currently indicated. Likelihood low, impact medium.
- 6.3 That a new order results in unresolved objections. This could require a public enquiry that could cost in excess of £30,000 and take over a year to resolve as it requires the Planning Inspectorate to appoint an inspector. This could hold up the public realm and may have an effect on other applications in the town centre that require any changes to public realm. Likelihood medium, impact, high.
- 6.4 Whilst it is believed to be a valid way forwards, if Option C is followed, the Council may find itself facing title challenges. The risks here could probably be mitigated by Title Indemnity Insurance.

7 Security and Terrorism Implication(s)

- 7.1 None

8 Procurement Implication(s)

- 8.1 None

9 Climate Change Implication(s)

- 9.1 None

10 Link to Corporate Priorities

- 10.1 The subject of this report is linked to the Council's Corporate Priority, to help build a strong local economy, and the achievement to revitalise our town centres and other shopping areas.

11 Equality and Diversity

- 11.1 An Equality Impact Assessment (EIA) has not been carried out in connection with the proposals that are set out in this report.

Name of author *(Mike Storey 01707 357457)*
Title *(Corporate Property Manager)*
Date *(16 May 2016)*

Background papers to be listed (if applicable)

Appendices to be listed

1 – The area Affected by the 2008 Stopping Up Order Hatfield Town Centre East

Appendix 1 – The Area Of The Proposed Stopping Up Order

