

**Report of the Head of Planning and Local Development**

**Station Island North, Stanton Cross Compulsory Purchase Order**

**1 Purpose of report**

- 1.1. To propose a further compulsory purchase order (CPO) in relation to the Stanton Cross sustainable urban extension (SUE)

**2 Executive summary**

- 2.1 This report seeks authority to make the Borough Council of Wellingborough (Station Island North, Stanton Cross) Compulsory Purchase Order 2015 ("the Order") under Section 226 (1) (a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 and all other enabling powers.
- 2.2 The purpose of the Order is to facilitate acquisition of land and all required legal estates, rights and other interests in it shown on the draft Order map (see appendix one) , to enable early essential infrastructure of Stanton Cross to be built.
- 2.3 In 2014 the council aided the progression of phase one when it approved the use of its compulsory purchase powers to acquire the land required for route 4 (the bridge from Midland Road across the railway and river). In order for the development to proceed into its second phase, Bovis Homes Ltd has written to the council requesting support in acquiring the lease to enable them to deliver route 9 (a road from the railway station to Finedon Road).
- 2.4 The freehold estate in the CPO land held by Network Rail is to be excluded from the Order, as this is being acquired by agreement by Bovis Homes Ltd. It is, however, necessary to acquire all other estates and interests in the Order land and the Order is required to enable these to be secured compulsorily. The reasons for seeking such an order are set out in detail in section four of this report.

**3 Appendices**

Appendix One – Draft CPO Order map

**Proposed action:**

- 4. The Committee is invited to RECOMMEND on the basis of the reasons set out in Section 5 of this report as follows:**
- 4.1 Subject to Bovis Homes Ltd completing a Deed of Costs Indemnity Agreement with the Council, to make the Borough Council of Wellingborough (Station Island, Stanton Cross) Compulsory Purchase Order 2015 under Section 226 (1) (a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 and all other enabling powers, for the acquisition of all required legal estates and interests in the land (except those held by Network Rail) and the acquisition of rights within the areas shown coloured pink on the draft Order map produced as appendix one to this report for the purposes of facilitating the carrying out of development, redevelopment or improvement of the land for the provision of a new highway and mixed uses including residential, employment, leisure and retail units and other complementary uses together with associated public access and public realm, highway and other infrastructure, drainage, associated servicing and works.**
- 4.2 To note that the draft Order map (in appendix one) shows areas coloured pink where the intention is for the acquisition of all interests in the land other than those of Network Rail and the acquiring authority.**
- 4.3 Following confirmation of the Order by the Secretary of State, authorise the use of the General Vesting Declaration procedure and notice to treat, notice of entry and conveyance where necessary in accordance with the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965 to implement the Borough Council of Wellingborough (Station Island North, Stanton Cross) Compulsory Purchase Order 2015.**
- 4.4 To approve the acquisition and appropriation of the land required for the scheme for planning purposes under the provisions of section 122 of the Local Government Act 1972 and section 237 of the Town and Country Planning Act 1990 in conjunction with 4.3 above to enable the Council to over-ride private rights, easements and interests (including restrictive covenants etc.) affecting the land required for the scheme.**
- 4.5 To give delegated authority to the Head of Planning and Local Development in consultation with and the Chairman and Vice Chairman of Resources Committee to;**
  - 4.5.1 Take all necessary steps as soon as is reasonably practical to secure the making, submission, confirmation and implementation of the Order (and where appropriate amendments to the Order by way of exclusion of interests in land or the addition of interests in**

land) including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry and subsequent service of Notices to Treat and Notices of Entry or at their discretion the execution of General Vesting Declarations as the case may be if the Order is confirmed.

**4.5.2 Negotiate to acquire all interests in the land and new rights within the Order and rights and interests affected by the Order either by agreement or compulsorily including prior to the making of the Order and where appropriate to agree terms for relocation.**

**4.5.3 Approve agreements and undertakings with the owners of any interest in the Order and any objectors to the confirmation of the Order setting out the terms for the withdrawal of objections to the Order including, where appropriate, seeking inclusion in and/or exclusion from the Order of Land or new rights.**

**4.5.4 In the event that the question of compensation be referred to the Upper Tribunal (Lands Chamber), to take necessary steps in relation thereto including advising on the appropriate consultants if necessary to assist and advise in this regard.**

## **5. Background**

5.1 The council is responsible through its Local Plan for ensuring the delivery and efficient planning of future housing and employment growth within the borough. Wellingborough East is the town's initial major urban extension through the plan period to 2021 and beyond.

5.2 Bovis Homes Ltd, the main developers for Stanton Cross known also as Wellingborough East (WEAST), submitted an outline planning application to the council on 9 August 2004, which confirms the main accesses for the Stanton Cross development. This was granted planning permission in January 2008.

5.3 The development of the access routes in this permission is split into two phases and this council aided the progression of phase one last year when it approved the use of its compulsory purchase powers to facilitate negotiations for land required for route 4 (the bridge from Midland Road across the railway and river).

5.4 In order for the development to proceed into its second phase, Bovis Homes Ltd has written to the council requesting further support in acquiring vacant possession of a building owned by Network Rail which has a head lease granted to a company called Keyarea Enterprises Limited.

## **6 Discussion**

6.1 Keyarea Enterprises building footprint sits on the alignment of route 9 (a road

from the railway station to Finedon Road), which links the development to the surrounding road network. Even if route 9 was to be re-aligned in order to miss the building, the rights of the head lessee regarding access to the building could not be maintained. As route 9 is to serve the development and provides essential infrastructure the council can utilise its compulsory purchase powers under the Town and Country Planning Act 1990.

- 6.2 Bovis Homes Ltd is to acquire the freehold estate in the order land from Network Rail. Network Rail's interest is to be excepted out of the Order but the order is required to enable all other estates and interests to be acquired.
- 6.3 Discussions have taken place since 2013 between Bovis Homes and the owner of Keyarea Enterprises but an agreement is yet to be reached.
- 6.4 The developer has confirmed that the route, which facilitates the redevelopment of the mixed use Station Island area within the Stanton Cross development, is a high priority to be achieved preferably through agreement with the lessee and Network Rail. This has not happened to date. In the absence of such an agreement and in order to assist bringing the development forward, it is considered that it is now necessary for the council to approve the use of its compulsory purchase powers to secure the land and estates and interests required.
- 6.5 The Committee at its meeting on 4 February 2015 approved an urgent action which agreed in principle to recommend using the council's CPO powers which was subsequently approved by council on 24 February 2015. Following the committee meeting and in line with the recommendations in the guidance that acquiring authorities should try to acquire land by agreement wherever practicable, the council has met with the owner of Keyarea Enterprises and Bovis Homes Ltd to try to facilitate an agreement between the two parties thus preventing the need for the council to use its CPO powers.
- 6.6 Discussions have so far been unsuccessful and therefore bearing in mind the time the CPO process can take, the committee is being asked to approve the making of a CPO in parallel with continued efforts to acquire by agreement. This has the extra advantage of, in the words of the guidance "making the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."
- 6.7 All costs incurred by the council relating to a CPO, including compensation payments and the administrative costs of processing the order, would be funded by the developer by way of Deed of Costs Indemnity with the council.
- 6.8 Any CPO will not be made until an appropriate Deed of Costs Indemnity Agreement has been entered into in respect of each proposed acquisition. Bovis Homes Ltd has given a written assurance to provide this indemnity.
- 6.9 Members will be updated by way of a Members Briefing Note if a public inquiry becomes necessary.

## 7 Legal powers

- 7.1 **Section 226(1)(a) Town and Planning Act 1990 (as amended)** enables the compulsory acquisition of land. These powers provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. Under these powers, an acquiring authority can acquire land compulsorily for the purposes of development, redevelopment or improvement if it considers that the acquisition will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, that land; and the development, redevelopment or improvement will contribute to the economic, social or environmental well-being of their area. This is clearly the purpose behind the proposed CPO for Stanton Cross also known as "WEAST".
- 7.2 The use of the words "on, or in relation to" means that the scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme.
- 7.3 The Guidance advises that before making an Order, the acquiring authority should be satisfied, so far as is possible, that the proposed scheme would not be blocked by any impediments to implementation:  
*"In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or licence"*
- 7.4 Whilst there is clear benefit when seeking to exercise powers of compulsory purchase in having the certainty of extant, implementable planning permission this is not always possible. This situation is explicitly acknowledged in the Guidance which recognises 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.
- 7.5 The Guidance advises that evidence to establish the financial viability of the scheme CPO powers being used to support will need to be provided in those cases where it is an issue. This does not mean, though, that the acquiring authority will be required as a matter of routine to submit a full financial approval of the proposed scheme in justification for its compulsory purchase proposal.
- 7.6 Given the developer's financial standing, the financial viability and funding is not considered likely to be an issue in this case.

- 7.7 CPOs made by a local authority under section 226 must be confirmed by the Secretary of State. If the owner of the land which is the subject of a CPO objects to the order, the Secretary of State will appoint an independent inspector to conduct a public inquiry. The inspector's report and recommendation will be considered by the Secretary of State when a decision whether or not to confirm the CPO is taken.
- 7.8 **Section 233 Town and Planning Act 1990 (as amended)** provides that where a council disposes of land that has been acquired or appropriated for planning purposes, it must secure the best use of the land for the 'proper planning of the area' and ensure that the consideration for any disposal is not 'less than the best that can reasonably be obtained'. All disposals at less than best consideration must receive a specific consent from the Secretary of State.
- 7.9 The council is entitled to enter into contractual or other arrangements with another party for the procuring of a development and to dispose of a freehold or leasehold interest in land acquired pursuant to a CPO to that party.
- 7.10 There is no need for the council to carry out a full marketing exercise before it can enter into such a back-to-back arrangement with Bovis Homes Ltd to acquire the land acquired by the council through use of its CPO powers. A "back-to-back" arrangement (under which the acquiring local authority makes neither a commercial loss nor a commercial gain from its participation, using section 226 powers, in a scheme) is standard practice.
- 7.11 **The Human Rights Act 1998:** The council is obliged to act in a way which is compatible with the European Convention on Human Rights. The Convention Rights relevant to compulsory acquisition are as follows:-
- (a) Article 1 (of the First Protocol)  
This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.
  - (b) Article 6 (of the Convention)  
This provides that in determining civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
  - (c) Article 8 (of the Convention)  
This protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in a democratic society in the interests of various matters including public safety, prevention of crime and disorder, the protection of health and the protection of the rights and freedoms of others.
  - (d) Article 14 (of the Convention)

This protects the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion or national or a social origin.

- 7.12 These rights are qualified rights and may be interfered with provided such interference is prescribed by law, is pursuant to a legitimate aim, is necessary in a democratic society and is proportionate. In this case, compulsory purchase of land is permitted under the terms of the Housing Act 1985 and is subject to a statutory procedure (giving rights to consultation and to be heard at a Public Inquiry) which is being followed. In addition, compensation is payable making the action fair and proportionate. Furthermore, in relation to Article 14, everyone is treated equally in the context of the policy covering the relevant issues and is subject to the same process/procedure.
- 7.13 The opportunity has been given to landowners to make representations regarding the council's planning policies which underpin the scheme for which the council is considering use of its CPO powers. Further representations can be made in the context of the compulsory purchase process which allows objections to be made which may be considered by the Secretary of State if not resolved. Also, those directly affected by the Order will be entitled to compensation proportionate to the loss which they incur as a result of the acquisition.
- 7.14 It is considered that there is a compelling case in the public interest for the compulsory acquisition of the required legal estates, rights and interests considering the benefits it will bring to the borough, which would not be achieved by agreement and which outweigh any detriment that may be suffered by the current landowners. The proposed CPO is therefore considered to be compatible with the Convention.

## **8 Financial and value for money implications**

- 8.1 There are numerous cost implications arising out of the use of CPO powers including administrative costs, legal costs, compensation costs and inquiry costs.
- 8.2 All costs incurred by the council relating to a CPO, including compensation payments and the administrative costs of processing the order, would be funded by the developer(s) by way of Deed of Costs Indemnity with the council.
- 8.3 Any CPO will not be made until an appropriate Deed of Costs indemnity agreement has been entered into in respect of each proposed acquisition. Bovis Homes Ltd has given a written assurance to provide this indemnity.

## **9 Risk analysis**

- 9.1 There is a significant risk that the Stanton Cross development could not proceed as proposed if the landowners cannot agree a mechanism to release

parcels of land required for access. The development could be stymied for a considerable time if these access issues are not resolved.

<b>Nature of risk</b>	<b>Consequences if realised</b>	<b>Likelihood of occurrence</b>	<b>Control measures</b>
Land is not acquired.	The Stanton Cross development could not proceed as proposed.	High	Move forward with the CPO process to purchase the said land.
Land not acquired	The area will be exposed to development requests for other parts of the borough	High	Agree to the CPO process to purchase the said land.
Land not acquired through CPO	There could be significant delays to the delivery of the Stanton Cross development which would result in the housing and employment needs of the borough not being met	High	Move forward with the CPO process to purchase the said land.

## **10 Implications for resources**

A Deed of Costs Indemnity has been drafted by the council's legal advisors. This indemnity ensures that all costs incurred by the council in relation to the CPO, including compensation payments and the administrative costs of processing the order, will be funded by the developer (s). Bovis Homes Ltd has given a written assurance to sign this indemnity. A CPO will not be made until this agreement has been signed.

## **11 Implications for stronger and safer communities**

This action will help facilitate Stanton Cross which is being planned as a national exemplar of sustainable development.

## **12 Implications for equalities**

An equalities impact assessment has been completed for the Stanton Cross development.



**13 Author and contact officer**

Julie Thomas – Head of Planning and Local Development

**14 Consultees**

John Campbell – Chief Executive.

Bridget Lawrence - Head of Resources

Liz Elliott – Head of Finance

Victoria Phillipson – Principal Planning Policy and Regeneration Manager

Sue Bateman – Senior Planning Officer

Jennifer Bell – Project Co-ordinator

Richard Foster – Pinsent Masons (Council's Legal Advisor - CPO)

**15 Background papers**

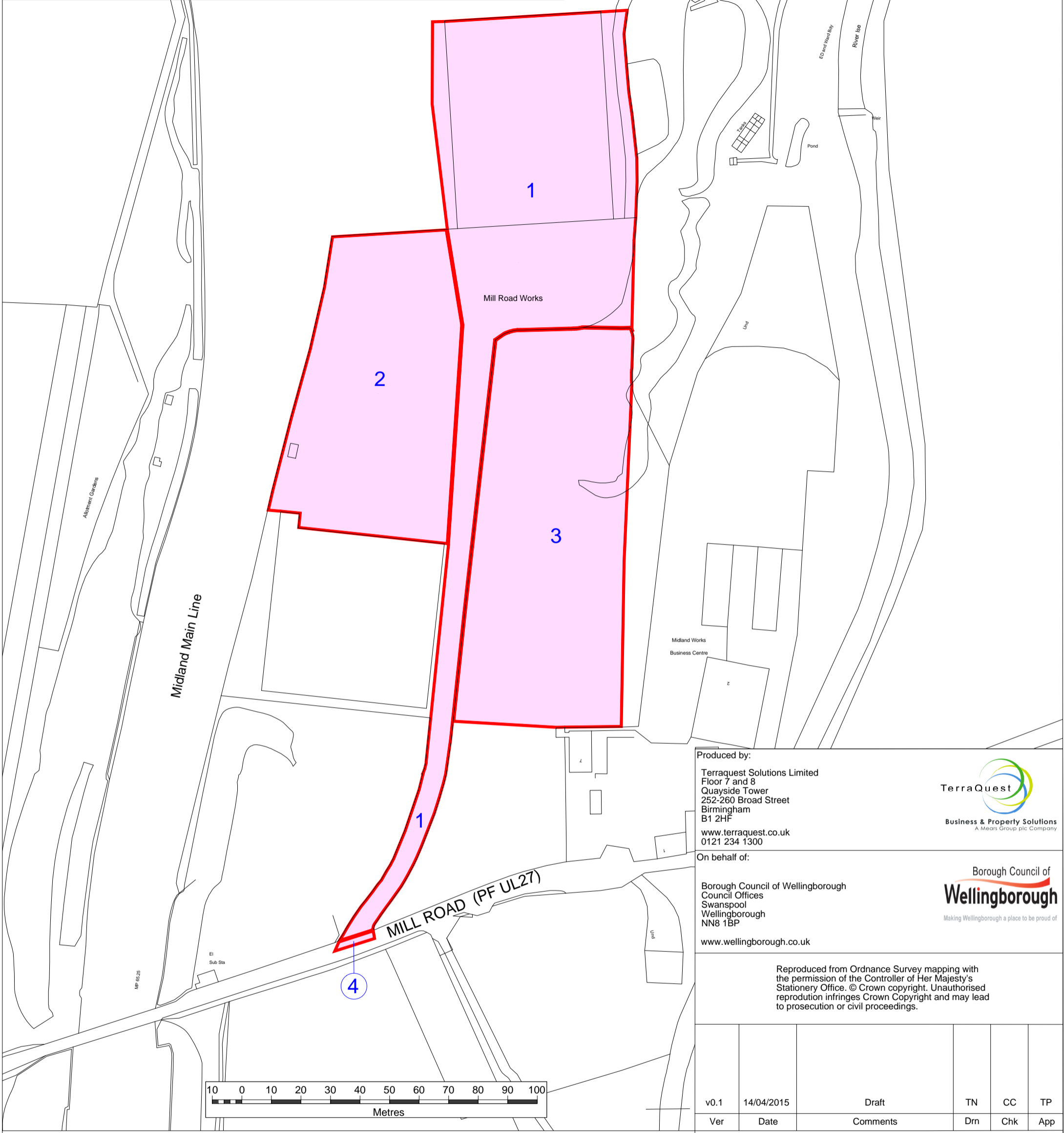
Borough of Wellingborough Local Plan- adopted April 1999, altered 2004

North Northamptonshire Core Spatial Strategy – adopted June 2008

Wellingborough Town Centre Area Action Plan – adopted July 2009

Wellingborough East Masterplan revised 2006

Map referred to in the Borough Council of Wellingborough  
 (Station Island North, Stanton Cross)  
 Compulsory Purchase Order 2015



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


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Key plan:  
 Land to be Acquired



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Delivery			Draft		
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THE COMMON SEAL of  
 the Borough Council of  
 Wellingborough was hereunto affixed  
 In the presence of:-

.....  
 Mayor

.....  
 Authorised Signatory

Dated May 2015

**DRAFT**