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| <b>TITLE</b>                | <b>Discretionary Land Acquisitions Policy</b>                 |
| <b>FOR CONSIDERATION BY</b> | The Executive on 30 March 2017                                |
| <b>WARD</b>                 | None specific   |
| <b>DIRECTORS</b>            | Josie Wragg, Interim Director of Environment                  |
| <b>LEAD MEMBER</b>          | Malcolm Richards, Executive Member for Highways and Transport |

**OUTCOME / BENEFITS TO THE COMMUNITY**

A number of new road schemes will be delivered across the Borough in the coming years. This policy will ensure that there is a clear, fair and consistent approach to considering requests to purchase property that is significantly impacted by these projects. This will avoid any significant hardship being faced by affected property owners as a result of major highways works.

**RECOMMENDATION**

That the Executive approve the Discretionary Land Acquisition Policy for Highways Works.

**SUMMARY OF REPORT**

Wokingham Borough Council's Core Strategy sets out the Council's ambitious growth plan, including a number of major transport schemes across the Borough. The Council will buy property that is needed for these projects, either by negotiation, compulsory purchase or following the acceptance of a "blight" notice. However, there may be occasions when a property will be affected by a road scheme, even though no part of it needs to be taken for the scheme (an "offline" property).

Under Part I of the Land Compensation Act 1973, a property owner is able to claim compensation from the Council as a result of certain "public works," such as highways projects. However, the claim cannot be submitted until one year after the opening of the new road. Section 246 of the Highways Act 1980 provides a discretionary power for local authorities to purchase property indirectly affected by proposed highways schemes to avoid significant hardship.

This policy therefore sets out the proposed approach by which Wokingham Borough Council will determine applications to purchase property under these discretionary powers to ensure this is fair, consistent and transparent. It closely follows guidance produced by Highways England in October 2016.

## Background

Wokingham Borough Council's Core Strategy (adopted in 2010) sets out a clear commitment to deliver over 13,000 new homes by 2026 and to ensure that the new development is carefully planned, well designed and has the appropriate infrastructure to deliver high quality places for people to live and work. In order to deliver development on this scale, a number of major transport schemes are planned across the Borough. Current projects to support delivery of the Strategic Development Locations (SDLs) include:

- Arborfield Cross Relief Road
- South Wokingham Distributor Road
- North Wokingham Distributor Road
- Nine Mile Ride Extension (South)
- Winnersh Relief Road

In order to deliver these projects, the Council will buy land and properties that are needed, either by negotiation, compulsory purchase or following the acceptance of a "blight" notice. However, there may be occasions when a property will be affected by a road scheme, even though no part of it needs to be taken for the scheme (an "offline" property). The Council is under no obligation to purchase a property affected in this way. However, the Council acknowledges that there may be exceptional circumstances whereby owners might have an urgent need to move but cannot sell their property except at a significant loss because of the effects of the scheme. Section 246 of the Highways Act 1980 provides a discretionary power for the Council to purchase such property. This policy therefore sets out the proposed approach by which Wokingham Borough Council will determine applications to purchase property under these discretionary powers to ensure this is fair, consistent and transparent.

## Analysis of Issues

Under Part I of the Land Compensation Act 1973, a property owner is able to claim compensation from the Council as a result of certain "public works," such as highways projects. However, the claim cannot be submitted until one year after the opening of the new road. Section 246 of the Highways Act 1980 provides a discretionary power for local authorities to purchase property indirectly affected by proposed highways schemes to avoid significant hardship. Section 246 covers three specific situations:

- Section 246(2A) – the discretion to buy land/property, which will be seriously affected by a future scheme, before construction works begin;
- Section 246(2)(a) – the discretion to buy land/property that is seriously affected by works during the period of construction; and
- Section 246(2)(b) – the discretion to buy land/property that is seriously affected during the first year after the new/improved road has opened.

Section 246 includes two important conditions which have to be met before a discretionary purchase can be considered. These are:

- The applicant must have a 'qualifying interest' in the land; and

- It is proposed to carry out work on land blighted by a road scheme.

Where these two pre-conditions have been met, the Council will consider applications for discretionary purchases of seriously affected property. The Council's approach closely follows guidance produced by Highways England in October 2016 as the highways authority for the strategic road network in England.

Under the proposed policy, the Council will consider applications in two stages. Firstly, the Council will consider whether the owner's enjoyment of their property will be seriously affected by either the construction of the road proposals or the use of the new road. The criteria set out in the policy relates to diminution of the property's value, noise and aggravation of medical conditions, resulting from the road scheme.

If the Council decides that there would be no serious effect, an application for a discretionary purchase under Section 246 will not be considered further. If the Council is satisfied that there would be a serious effect, it will then consider whether the owner's situation justifies offering to purchase their property. The policy proposes that this will be based on the following factors:

- 1) Foreknowledge - If the property was acquired after the publication of the preferred route or its safeguarding, the Council may consider that that purchase had been with 'foreknowledge'. The Council's discretion to purchase a property in these circumstances would not normally be exercised.
- 2) Efforts to sell the property – The owner must have made reasonable efforts to sell the affected property before the Council will consider an application for discretionary purchase.
- 3) Pressing need to sell - If it is concluded that the property would be seriously affected by a road scheme, that it was not purchased with foreknowledge and that genuine attempts have been made to sell it on the open market, the Council must then be satisfied that the owner has pressing reasons for selling and that severe hardship would occur if they were unable to do so. Reasons could include the need to relocate for a new job or to move to accommodate a growing family.

Where the Council decides to exercise its discretionary powers, it will be based on the principle of 'equivalence' (i.e. the applicant should not be placed in a worse or better position to that which existed before the road scheme was announced). In these circumstances, the Council will offer to buy the affected property at a price, assessed at the time of the offer, which disregards the scheme proposals (i.e. the unaffected market price).

If approved, the Council will assess any application made under Section 246 to purchase property affected by new roads based on the criteria set out in the policy.

## **FINANCIAL IMPLICATIONS OF THE RECOMMENDATION**

***The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.***

|                                   | How much will it Cost/ (Save) | Is there sufficient funding – if not quantify the Shortfall | Revenue or Capital? |
|-----------------------------------|-------------------------------|---|---------------------|
| Current Financial Year (Year 1)   | £0                            | Yes   | Capital             |
| Next Financial Year (Year 2)      | £0                            | Yes   | Capital             |
| Following Financial Year (Year 3) | £0                            | Yes   | Capital             |

**Other financial information relevant to the Recommendation/Decision**

The Council will be required to compensate owners under Part I of the Land Compensation Act 1973 and this is factored into the capital programme. This compensation will be payable 1 year after the road scheme opens. This policy will mean that the cost is incurred earlier in the project, but it is likely to be cost neutral.

**Cross-Council Implications**

This policy impacts on highways and planning services mostly, but there will also be implications for strategic assets.

**List of Background Papers**

Appendix 1 - Wokingham Borough Council - Discretionary Land Acquisition Policy for Highways Works (S.246, Highways Act 1980)

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| <b>Contacts</b> Louise Strongitharm | <b>Services</b> Environment   |
| <b>Telephone Nos.</b> 0118 974 6779 | <b>Emails</b><br><a href="mailto:louise.strongitharm@wokingham.gov.uk">louise.strongitharm@wokingham.gov.uk</a> |
| <b>Date</b> 9 February 2017         | <b>Version No.</b> 0.2  |

**WOKINGHAM BOROUGH COUNCIL - DISCRETIONARY LAND ACQUISITION  
POLICY FOR HIGHWAYS WORKS (S.246, HIGHWAYS ACT 1980)  
(DRAFT V0.3)**

## **1. Introduction**

Wokingham Borough Council's Core Strategy (adopted in 2010) sets out a clear commitment to deliver over 13,000 new homes by 2026 and to ensure that the new development is carefully planned, well designed and has the appropriate infrastructure to deliver high quality places for people to live and work. The Core Strategy identified four Strategic Development Locations (SDLs) within the Borough, representing a major and unprecedented opportunity to plan for new development in a comprehensive manner. The objective is not simply to meet housing targets, but to plan for the long-term delivery of sustainable communities. The four SDLs are:

- Arborfield Garrison – 3,500 homes;
- South of the M4 Motorway – 2,500 homes;
- South Wokingham – 2,500 homes; and
- North Wokingham – 1,500 homes.

In order to deliver development on this scale, a number of major transport schemes are planned across the Borough. Current projects to support delivery of the Strategic Development Locations (SDLs) include:

- Arborfield Cross Relief Road
- South Wokingham Distributor Road
- North Wokingham Distributor Road
- Nine Mile Ride Extension (South)
- Winnersh Relief Road

In order to deliver these projects, the Council will buy land and properties that are needed, either by negotiation, compulsory purchase or following the acceptance of a blight notice.

However, there may be occasions when a property will be affected by a road scheme, even though no part of it needs to be taken for the scheme (an "offline" property). The Council is under no obligation to purchase a property affected in this way. However, the Council acknowledges that there may be exceptional circumstances whereby owners might have an urgent need to move but cannot sell their property except at a significant loss because of the effects of the scheme. Section 246 of the Highways Act 1980 provides a discretionary power for the Council to purchase such property.

This policy sets out Wokingham Borough's Council approach to discretionary land acquisitions where property is impacted by proposed highways works.

## **2. Legislative Framework**

### *a. Statutory Provisions*

Under the Town and Country Planning Act 1990, properties which are required, or parts of which are required, for road schemes are said to be statutorily blighted, and the Council is empowered to purchase the property. The Council will usually seek to negotiate the acquisition of such properties, but will use Compulsory Purchase Orders (CPO) where necessary. Where a property is directly affected by a road scheme, the owner can serve a Blight Notice on the Council which obliges it to purchase their home at a valuation which did not take into account the diminution in value caused by the road scheme. Where a blight notice is accepted, the owner also receives a home loss payment, surveyors fees and removal costs.

Under Part 1 of the Land Compensation Act 1973, a person can claim compensation for the depreciation in value of their property caused by public works, including work on highways. Claims are only considered one year after the first opening of the highway to public traffic. There is no power under this Act to pay compensation to owners of affected properties before this date.

#### *b. Discretionary Provisions*

Section 246 of the Highways Act 1980 provides a discretionary power for local authorities to purchase property indirectly affected by proposed highways schemes. Section 246 covers three specific situations:

- Section 246(2A) – the discretion to buy land/property, which will be seriously affected by a future scheme, before construction works begin;
- Section 246(2)(a) – the discretion to buy land/property that is seriously affected by works during the period of construction; and
- Section 246(2)(b) – the discretion to buy land/property that is seriously affected during the first year after the new/improved road has opened.

Section 246 includes two important conditions which have to be met before a discretionary purchase can be considered. These are:

- The applicant must have a 'qualifying interest' in the land; and
- It is proposed to carry out work on land blighted by a road scheme.

These are defined in the section below.

### **3. Pre-Conditions for Discretionary Purchases**

In line with Section 246, the Council will only consider applications for discretionary land acquisitions where the pre-conditions of "qualifying interest" and "blighted" land have been met.

#### *a. The qualifying interest*

The definition of "qualifying interest" covers:

- a) owner-occupiers of private residential properties;

b) owner-occupiers of business premises with a net annual value that does not exceed the amount prescribed for the purposes of Section 149 (3)(a) of the Town and Planning Country Act 1990 by an order made by the Secretary of State (currently £34,800); and

c) owner-occupiers of agricultural units.

In addition, mortgagees with a right to sell a property who can give immediate vacant possession and personal representatives of a deceased person may also have a qualifying interest.

Owner-occupiers must either:

a) be living in the property on the date on which the purchase agreement is made and must have owned it and lived there for at least six months before that date; or

b) if the property is empty, have lived there during the six months prior to its becoming empty, so long as it has not been empty for more than 12 months.

If the affected property has been let out, the “qualifying interest” condition will not have been met and a discretionary purchase application will not be considered.

#### *b. Blighted land*

It is essential before a Section 246(2A) application can be considered that a proposal is in place to carry out work on land blighted by a road scheme. A proposal is considered to be in place when the Council has:

a) announced the “preferred route” for a road scheme;

b) resolved to take action to safeguard the “preferred route” for a road scheme; or

c) published, or made, compulsory purchase orders for the road scheme.

This pre-condition will already have been met for applications made under Section 246 (2)(a) and (2)(b).

#### **4. Wokingham Borough Council’s Discretionary Policy**

Wokingham Borough Council is under no obligation to purchase property affected by a road scheme, where no part of it is required for the scheme itself (an “offline” property). However, the Council acknowledges that there may be exceptional circumstances where this may cause owners significant hardship.

Where the two pre-conditions outlined above have been met, the Council will consider applications for discretionary purchases of seriously affected property. The Council’s approach closely follows guidance produced by Highways England in October 2016 as the highways authority for the strategic road network in England.

The Council will consider applications in two stages. Firstly, the Council will consider whether the owner's enjoyment of their property will be seriously affected by either the construction of the road proposals or the use of the new road. If the Council decides that there would be no serious effect, an application for a discretionary purchase under Section 246 will not be considered further. If, on the other hand, the Council is satisfied that there would be a serious effect, it will then consider whether the owner's situation justifies offering to purchase their property. The factors the Council will take into account when considering applications are set out below.

### Stage One - Assessment of Serious Effect

The four main effects are:

- 1) Diminution in value - This is the amount, either actual or predicted, by which the value of a property will have been reduced due to a road scheme. It is expressed as a percentage of the unaffected market value<sup>1</sup>. The Council will appoint an independent, contracted professional valuer (normally DVS) to assess the diminution (if any). Applicants may also submit any valuation advice they have obtained. As a guide, the Council will not consider diminution in value of less than 15% to have seriously affected enjoyment of the property.
- 2) Predicted noise from construction - If, over at least three months, the predicted noise levels at the affected property are well in excess of 70 dB(A) (12 hour Leq) for a substantial period of the day or it is considered that the property will be eligible for noise insulation, the Council will normally consider that the enjoyment of the property will have been seriously affected by construction noise. In assessing the predicted noise level, the Council will take into account the benefits of mitigation measures, such as fencing and earth mounds, which would lessen the effects of noise.
- 3) Predicted noise from the road in use - If predicted noise levels from the road in use rise by 1 dB(A) to a level of 68 dB(A) (18 hour L10) during the first year after opening, the Council will normally consider that the enjoyment of the property will have been seriously affected by noise. The Council will again take into account the benefits of mitigation measures, such as fencing and earth mounds, and, if measurable, quieter road surfaces, that would lessen the effects of noise.
- 4) Aggravation of a medical condition caused by physical effects - If the owners have a medical condition, which is likely to be 'severely aggravated' by the physical effects from either the construction of the road or its use, the Council is likely to consider that the enjoyment of the property will be severely affected. The medical conditions likely to be relevant include respiratory conditions and tinnitus. They do not normally include stress and anxiety. The physical effects would include dust, noise and pollution. This consideration can apply to a dependant of the owner living in the property. A case based on a medical condition should be supported by a statement from a GP or specialist.

The above list is not exhaustive and other factors or combinations of factors may also cause serious effect. If applicants consider that the enjoyment of their property is seriously affected by other factors (e.g. visual impact or artificial lighting), details should

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<sup>1</sup> 'Unaffected market value' means the value the property would have been given had the road scheme not been proposed.

be included with their application. The Council will then consider those factors, or combinations of factors, when considering any application.

A Glossary of Terms related to noise measurement is included in Appendix 1 to this policy.

### Stage Two - The Exercise of Discretion

Where the Council is satisfied that there would be a serious effect, it will then consider whether or not it should exercise its discretion to purchase the property.

Discretionary purchase is targeted at the most extreme situations where it has been clearly shown that a property cannot be sold at a reasonable price and where severe hardship will result if the property is not sold rapidly. The Council will not normally exercise its S.246(2A) discretionary purchase powers unless it is satisfied that the owner's enjoyment of their property will be seriously affected by **both** diminution in value **and** noise arising during construction or during the first year after opening. An exception is where the accepted reason for moving is based upon medical grounds as set out above. In those cases, as the reason is linked to the construction or use of the road, the Council will not normally offer to buy the property earlier than nine months in advance of the start of the road construction or the opening of the road (as applicable).

When deciding whether a property should be purchased, the Council will consider the following factors:

- 4) Foreknowledge - In respect of road schemes, statutory blight is normally triggered when the preferred route for the scheme has been published or the route has been safeguarded. If the property was acquired after the publication of the preferred route or its safeguarding, the Council may consider that that purchase had been with 'foreknowledge'. The Council's discretion to purchase a property in these circumstances would not be exercised if it considers that the amount of information available to the public about the scheme, at the time of purchase, was such, that a reasonable person could have foreseen its likely general effects on the owner's enjoyment of the property.
- 5) Efforts to sell the property – The owner must have made reasonable efforts to sell the affected property before the Council will consider an application for discretionary purchase. The owner must submit evidence that the property has been on the market for not less than three months at what is a realistic market price (- the Council will verify this with an independent, professional valuer). The sale should also have been advertised at least twice in the press, online or placed with an estate agent. The owner must also show that no offer within 15% of the unaffected market value has been received or, if one has been received, that it has been subsequently withdrawn due to the presence of the road scheme. The owner must submit with the application evidence of all offers received, together with an endorsement from an estate agent, if used.
- 6) Pressing need to sell - If it is concluded that the property would be seriously affected by a road scheme, that it was not purchased with foreknowledge and that genuine attempts have been made to sell it on the open market, the Council must then be satisfied that the owner has pressing reasons for selling and that severe hardship would occur if they were unable to do so. In most cases, the

reasons for selling must be unrelated to the road scheme. The only exception would be where serious effect is caused by a 'severe aggravation' of medical conditions arising from physical effects. As a guide, at least one of the following situations would be regarded as a pressing reason to sell:

- **Domestic** – There is a need to move to a larger or different house due to the need to accommodate a growing family;
- **Employment** – There is a need to relocate to take up a new or different job, outside reasonable commuting distance;
- **Financial** – There are external financial pressures that necessitate a sale, for example, the need to realise assets in conjunction with a divorce; to release capital in connection with a business, or to avoid threatened re-possession;
- **Medical condition unrelated to the road scheme** – Where the applicant, or a dependant living in the affected property, has developed a medical condition, which necessitates selling. Examples would include (i) a severe disability causing inability to negotiate stairs; (ii) loss of mobility due to arthritis; (iii) a requirement to go into sheltered accommodation or a long-term nursing home due to infirmity or ill health.

The following two circumstances are normally regarded as giving sufficient reason for an immediate sale: (i) the winding-up of the estate of a deceased person and (ii) a disposal by a mortgagee.

Where the Council decides to exercise its discretionary powers, it will be based on the principle of 'equivalence', which is in line with statute and case law (i.e. the applicant should not be placed in a worse or better position to that which existed before the road scheme was announced). In these circumstances, the Council will offer to buy the affected property at a price, assessed at the time of the offer, which disregards the scheme proposals (i.e. the unaffected market price). The acquisition price will be determined by the Council's appointed professional, independent valuer. If the owner disagrees with the valuation, and negotiation with the Council's appointed valuer cannot resolve the dispute, the Council would have no objection to the owner seeking independent arbitration from the Upper Tribunal (Lands Chamber), under Part 5 of The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.

When selling to the Council under discretionary purchase, the owner will have to pay their own surveyor's and legal fees, and moving expenses. Home Loss Payments will not be met by the Council. An exception to this would be if the reason for selling is related to the proposed scheme (i.e. the "severe aggravation" of an existing medical condition). In those circumstances, surveyor's and legal fees will be paid by the Council, along with payments for disturbance, but Home Loss Payments would not be made.

When exercising its discretionary powers, the Council may commission one of its trading companies to acquire the affected property on its behalf (where it deems this to be appropriate). Where this is the case, the application process and property acquisition will be dealt with in the same way as set out in this policy.

## 5. Application Process

Applications for S.246 Discretionary Purchases should be submitted in writing to the Council. The application should include the following details:

- Name, address and contact details of the applicant;
- The address, description and site plan of the affected property;
- Proof of qualifying interest in the affected property;
- Name of the road scheme affecting the property;
- Description, and supporting evidence, of the serious effect of the road scheme on the property;
- Evidence that the property has been on the market for not less than three months at what is a realistic market price and evidence of any offers received, together with an endorsement from an estate agent (if used).
- A statement, and any supporting evidence, setting out the circumstances necessitating an urgent sale of the affected property.
- Contact details for any external advisers acting for the Owner.
- Any other relevant information supporting the application.

The Council will aim to make a decision on properly completed applications within three months of receipt. Sometimes, however, a longer period may be needed in which to consider an application (for example, where a Committee resolution is required). If that happens, the Council will notify applicants of a revised timescale.

Offers to buy the affected property will be open for one month. They will be subject to agreement on price and exchange of contracts within six months of the date of the offer. If the owner does not meet these timescales, the offer to purchase may be withdrawn.

## APPENDIX 1

### Glossary of Terms related to Noise Measurement

dB(A):

dB, or decibel, is the unit used for the measurement of sound on a logarithmic scale. (A) is the weighting applied to the decibel unit to represent the frequency response of the human ear.

L10 (18 hour):

This is the arithmetic mean of the hourly L10 noise between 0600 and 2400 hours on a normal working day. L10 is the noise level exceeded for one tenth of a period of one hour.

Leq: This is the equivalent continuous sound level in dB(A). It is the sound level, which, if maintained continuously for a stated period, would give the equivalent amount of noise energy as the varying levels would over the same period.

### Typical Noise Levels

|            |   |
|------------|---|
| 0 dB(A)    | Threshold of hearing                              |
| 35 dB(A)   | Quiet Bedroom                                     |
| 40 dB(A)   | Library   |
| 50 dB(A)   | Ordinary Conversation                             |
| 60 dB(A)   | Office Environment                                |
| 62.5 dB(A) | Communication starts becoming difficult           |
| 70 dB(A)   | Passenger car (60 km/h at 7 metres distance)      |
| 81 dB(A)   | Modern Twin-engined Jet                           |
| 83 dB(A)   | Heavy diesel lorry (40 km/h at 7 metres distance) |
| 90 dB(A)   | Hazard to hearing from continuous exposure        |
| 95 dB(A)   | Pneumatic Drill (unsilenced) at 7 metres          |
| 120 dB(A)  | Threshold of Pain                                 |