

6 September 2019

Legal Opinion  
relating to  
delegation of powers under section 101 of the Local Government Act 1972  
and use of section 226(5) of the Town and Country Planning Act 1990

Watford Borough Council and Three Rivers District Council

## 1. INTRODUCTION

- 1.1 We have been instructed by Watford Borough Council to advise in relation to the compulsory acquisition of land under Section 226 of the Town and Country Planning Act 1990 (**TCPA**) for regeneration purposes. Watford Borough Council are the freehold owner of the land to be acquired (**Order Land**). However there are long term leases which have been granted in the past to tenants and the purpose of the Compulsory Purchase Order (**Order**) is to terminate these leases and return the land to the Council's control with vacant possession so it can redevelop the site as a gateway to Watford Business Park.
- 1.2 Part of the site on the western boundary falls within the administrative area of Three Rivers District Council and there are three plots within the Order Land which are therefore outside of Watford Borough Council's administrative area, but still in the freehold ownership of Watford Borough Council. The power in Section 226(1) alone does not permit Watford Borough Council to use its powers of acquisition outside of its administrative area.
- 1.3 Watford Borough Council made the Order on 29 August 2019 in advance of the relevant powers being delegated by Three Rivers District Council. The Order as drafted seeks to rely on section 226(5), which allows the Secretary of State to authorise the acquisition on behalf of another authority.
- 1.4 The purpose of this note is to set out: the procedure by which Three Rivers District Council may delegate their powers of compulsory acquisition within their administrative area to Watford Borough Council; and the power vested in the Secretary of State to authorise such an acquisition if Three Rivers District Council choose not to delegate its powers.

## 2. INTERESTS TO BE ACQUIRED

- 2.1 Plots 6, 7 and 17 of the Order Land, shown on the plan at Appendix 1, fall within the administrative area of Three Rivers District Council (the **TRDC Land**).
- 2.2 The interests sought to be acquired within the TRDC Land are set out in the table below. The interests consist of one leasehold interest and the interests of two occupiers.

Number on Map	Extent, Description and Situation of the Land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981 – Name and Address			
		Owners or Reputed Owners	Lessees or Reputed Lessees	Tenants or Reputed Tenants	Occupiers
06	All interests (except those owned by the Acquiring Authority) in 274 square metres of land being trees and shrubbery, west of Faraday Close and south of Hatters Lane, Watford.  <i>Freehold title HD63432.</i>	Watford Borough Council Town Hall Watford WD17 3EX	-	-	Watford Borough Council Town Hall Watford WD17 3EX  Thames Water Utilities Limited Clearwater Court Vastern Road Reading Berkshire RG1 8DB (in respect of apparatus)
07	All interests (except those owned by the Acquiring Authority) in 90 square metres of land being trees, shrubbery and hardstanding forming	Watford Borough Council	Linhay Limited	-	Abbots UK Limited Chira House

Number on Map	Extent, Description and Situation of the Land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981 – Name and Address			
		Owners or Reputed Owners	Lessees or Reputed Lessees	Tenants or Reputed Tenants	Occupiers
	part of commercial premises (Chira House, 3 Faraday Close, Watford), west of Faraday Close and south of Hatters Lane, Watford.  <i>Freehold title HD63432.</i> <i>Leasehold title HD319705.</i> <i>Leasehold title HD372443.</i>	Town Hall Watford WD17 3EX	Jubilee Buildings Victoria Street Douglas Isle of Man IM1 2SH  Elpeck Industries Limited 9 The Park London NW11 7ST		3 Faraday Close Watford Business Park Watford Hertfordshire WD18 8SA
17	All interests (except those owned by the Acquiring Authority) in 92 square metres of land being hardstanding, south of Faraday Close and west of Greenhill Crescent, Watford.  Freehold title HD475447.	Watford Borough Council Town Hall Watford WD17 3EX	-	-	Watford Borough Council Town Hall Watford WD17 3EX

### 3. DELEGATION OF POWERS

3.1 Section 101(1) of the Local Government Act 1972 (**LGA**) states

*1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions—*

*(a) by a committee, a sub-committee or an officer of the authority; or*

*(b) by any other local authority.*

3.2 This power permits Three Rivers District Council to delegate its function to acquire land compulsorily pursuant to Section 226(1) of the TCPA to Watford Borough Council.

3.3 Section 101 also expressly states that any arrangements made under that section do not prevent the local authority from also exercising those functions, so using Section 101 to delegate the power in Section 226(1) of the Town and Country Planning Act to Watford Borough Council will not preclude Three Rivers District Council from also exercising this power.

3.4 Article 2 of Three Rivers District Council's constitution refers to the following as a matter for Full Council "*the acceptance on behalf of another Authority of a function of that Authority*", so if Three Rivers District Council is content to use Section 101 and authorise Watford Borough Council to acquire the TRDC Land on its behalf, then this will need to be considered by the Full Council.

### 4. AGENCY AGREEMENT

4.1 Section 101 uses the term "may arrange" and in our opinion the best way to do this is by preparing a short agency agreement, signed by both local authorities.

4.2 The agency agreement will expressly delegate Three Rivers District Council's power of Compulsory Acquisition under Section 226(1) to Watford Borough Council in respect of the TRDC Land and Watford Borough Council will expressly accept that delegation.

- 4.3 The Agreement can include obligations placed on both parties Watford Borough Council may wish Three Rivers District Council to agree to support the case for the Order and any other stopping up orders required and to make any orders as are necessary to implement the scheme if these powers cannot be delegated. Three Rivers District Council may wish to place obligations on Watford Borough Council to secure any necessary Planning Permissions and to pursue the case for Compulsory Purchase as well as for Watford Borough Council to assume the liability for land acquisition compensation.
- 4.4 The Agreement will usually deal with expenses and who these are payable by. It is also possible to include conditions and restrictions affecting delegation. For example Three Rivers District Council may wish to restrict who can exercise the delegated functions and/or receive formal updates on the use of those powers on a regular basis

## **5. SECTION 226(5)**

- 5.1 To ensure the Secretary of State has authority to confirm the Order, Watford Borough Council has made the Order pursuant to both Section 226(1) and 226(5). The discretionary power in Section 226(5) allows the Secretary of State to substitute another authority as acquiring authority under the Order ie it allows the Secretary of State to authorise Watford Borough Council to acquire land within Three Rivers District Council's administrative area.
- 5.2 The Secretary of State must consult with Three Rivers District Council before authorising an acquisition under section 226(5) and any representations made by Three Rivers District Council in relation to the use of Section 226(5) and Watford Borough Council's acquisition of the TRDC Land will be taken into account by the Secretary of State.
- 5.3 However, this is a not a power exercisable by Three Rivers District Council and their consent to use this power is not required.
- 5.4 In our view, it is preferable for both parties to enter into an Agency Agreement under Section 101 of the LGA, which will need completing in advance of the Secretary of State confirming the Order
- 5.5 However if Three Rivers District Council is not content to delegate its function under section 226(1) to Watford Borough Council, it will fall to the Secretary of State to decide whether to authorise the acquisition of the TRDC Land by Watford Borough Council.

## **6. CONCLUSION**

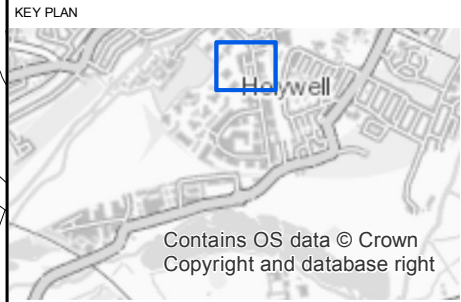
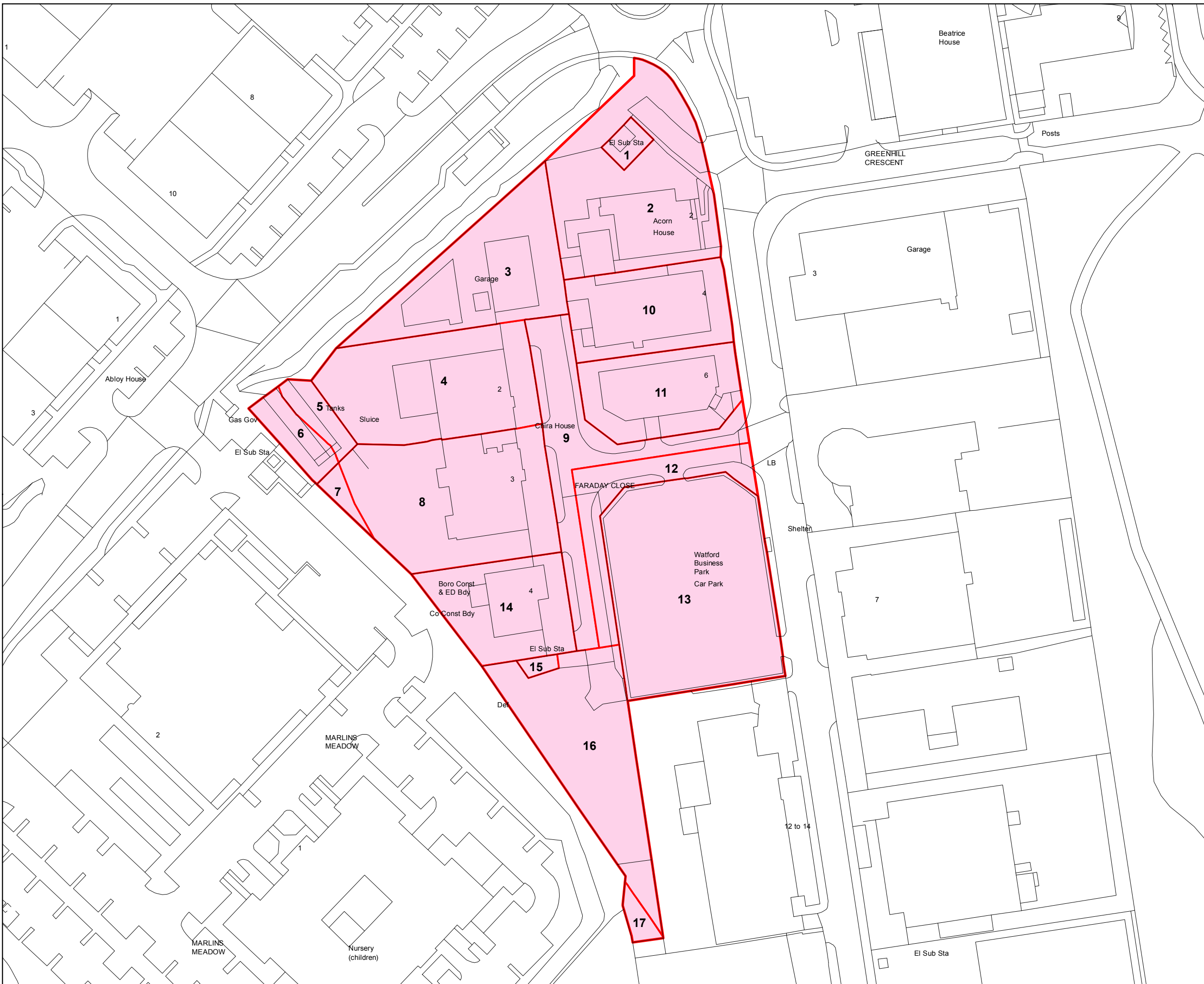
- 6.1 It is lawful for Three Rivers District Council on express approval from its Full Council to delegate its powers of compulsory acquisition under Section 226 of the TCPA to Watford Borough Council using Section 101 of the LGA and this can be facilitated through a simple agreement.
- 6.2 In the event that Three Rivers District Council chooses not to delegate its powers, it is within the Secretary of State's power to authorise Watford Borough Council to acquire land on behalf another Authority under Section 226(5) of the Town and Country Planning Act 1990. However, it is not guaranteed that it would authorise this.


**Womble Bond Dickinson (UK) LLP**

**6 September 2019**

## **APPENDIX 1**

### **Order Plan**



Key  
 Land to be Acquired

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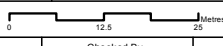
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Client  
**Watford Borough Council**



Project  
**The Gateway Site Watford Business Park**

Drawing Title  
**Map referred to in the Watford Borough Council  
 (The Gateway Site, Watford Business Park)  
 Compulsory Purchase Order 2019**

Status	<b>FINAL</b>	Revision	001
Date	21/08/2019	Date	21/08/2019
Scale	1:1,000 @ A3	Spatial Reference System	British National Grid
			
Drawn By	J.Simkute	Checked By	S.S.Sornal
Approved By	P.Gibbard		
Drawing reference	002_ARDG_WTFRD_BC_Land_Plan_rev1		

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