

**The County of Herefordshire District Council**

**The County of Herefordshire District Council**

**(Yazor Brook Flood Alleviation Scheme)**

**Compulsory Purchase Order 2010**

**S226(1)(a) The Town and Country Planning Act 1990 and s13**

**The Local Government (Miscellaneous Provisions) Act 1976**

**and The Acquisition of Land Act 1981**

**Statement of Case for Making the Order**

**21 May 2010**

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1. **INTRODUCTION**

1.1 The County of Herefordshire District Council (the "Council") has made the County of Herefordshire District Council (Yazor Brook Flood Alleviation Scheme) Compulsory Purchase Order 2010 (the "Order") under s226(1)(a) of the Town and Country Planning Act 1990, section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981.

1.2 If confirmed by the Secretary of State for Communities and Local Government the Order will enable the Council to acquire compulsorily the land and new rights included in the Order ("the Order Land").

1.3 The Order Land is needed for proposed flood alleviation works comprising a culvert to divert flood waters from the Yazor Brook at Credenhill to the west of Hereford direct to the River Wye, thereby relieving flooding downstream, within Hereford and specifically in the ESG Area ("Flood Alleviation Works").

2. **LOCATION AND DESCRIPTION OF THE ORDER LAND**

2.1 The Order Land comprises approximately 11.22 hectares in nine plots, and is situated at Credenhill, Herefordshire.

2.2 Plots 1, 2 and 3 of the Order Land include part of the agricultural land known as Mill Farm and footpath and waterway, currently used as a paddock; part of the amenity land and waterway bank to the north of Credenhill Community Centre; part of the access road and car park to the north and east of the Credenhill Community Centre; a portacabin, currently used as changing accommodation by local football teams, and amenity land to the east. Part of the Community Centre building is leased to the Credenhill Social and Sports Club, with the remainder of the building used for a range of community activities. A further building, occupied by the Credenhill Playschool which operates a pre-school playgroup, lies adjacent to plot 3. With the exception of the portacabin, the community buildings are not included within the Order.

2.3 Plots 4, 5 and 6 of the Order Land comprise part of the land to the east of Magna Castra Farm and south of Credenhill Community Centre; part of the public footpath known as Roman Road situated east of Magna Castra Farm, and agricultural land situated to the west of Brockhall Gravel Pit and north of the A438/King's Acre Road. This land is used for grazing purposes as part of the dairy farm business operated from Magna Castra Farm.

2.4 Plots 7, 8 and 9 of the Order Land comprise agricultural land and footpath situated to the south west of Brockhall Gravel Pit and north of the A438/King's Acre Road;

part of the public adopted highway known as the A438/King's Acre Road situated to the south of Sugwas Pool and north of the River Wye and agricultural land to the north and west of Weir Cliff and part of the property known as The Old Weir, situated to the north of the River Wye and south of the A438/King's Acre Road and half width of the River Wye. This land is used for grazing purposes and in part is subject to management under the Countryside Stewardship Scheme.

### **3. EXPLANATION OF THE USE OF THE ENABLING POWERS**

3.1 The Council has made the Order pursuant to its powers under section 226(1)(a) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976.

3.2 Section 226(1)(a) of the Town and Country Planning Act 1990 enables the compulsory acquisition of land where an acquiring authority thinks the acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to the Order Land and where the acquiring authority thinks the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic and/or, social, and/or environmental well-being of the authority's area. Circular 06/2004 provides guidance to acquiring authorities on the use of compulsory purchase powers and the Council has taken full account of this guidance in making this Order. The Council is utilising its powers under section 226 (1)(a) because it has not been possible to acquire by agreement all interests that are required for the Flood Alleviation Works and it is not certain it will be able to acquire the remaining land by agreement. The purpose in seeking to acquire the land and utilising section 226(1)(a) is set out in detail in section 4 below.

3.3 Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council to purchase such rights ("New Rights") which are not in existence when the Order is made and are specified in the Order. The new rights to be acquired and created are reasonably required to enable the construction, inspection, repair, maintenance, improvement, renewal and replacement of the flood alleviation scheme, including the off-take, culvert, outfall and any associated works including the storage of equipment, plant and machinery.

### **4. THE COUNCIL'S PURPOSE IN MAKING THE ORDER**

4.1 The Order Land is needed to facilitate the regeneration of parts of the Edgar Street Grid Area ("ESG Area"); this comprises some 43 hectares of land immediately to the north of Hereford city centre, and is the subject of a regeneration project known as the ESG Scheme ("ESG Scheme"). Through this, it is intended that the ESG Area

will be brought back into beneficial use in a way which promotes the economic, social and environmental wellbeing of the area.

- 4.2 The objective of the ESG Scheme is to achieve the comprehensive redevelopment and renaissance of the ESG Area, which is in need of comprehensive regeneration, creating a vital and viable extension to the city centre and securing major new residential provision (including affordable housing) in the form of an Urban Village within a highly sustainable, brownfield setting. The ESG Scheme is needed as Hereford's traditional role as a pre-eminent centre in the sub-region is showing signs of failure, evidenced in such trends as the leakage of retail spend to other competing towns and cities and the loss of young people to pursue educational and career opportunities elsewhere. The ESG Scheme aims to stem this decline by undertaking the following:
- 4.2.1 creating new shopping, leisure, tourism, employment, housing, educational and other opportunities;
  - 4.2.2 responding positively to the Growth Point status awarded to Hereford by Government for the delivery of sustainable housing and other growth; and
  - 4.2.3 promoting sustainable development which is sympathetically integrated into the historic fabric of Hereford.
- 4.3 A significant proportion of the ESG Area is subject to flooding from the Widemarsh Brook, which originates at a bifurcation of the Yazor Brook upstream. The areas at greatest risk fall within the Brook's functional floodplain, i.e. within Flood Zone 3b as defined in Planning Policy Statement 25: Development and Flood Risk, where residential development should not be permitted. To enable the regeneration plans to be realised it will be necessary to reduce significantly the extent and level of flood risk within the ESG Area.
- 4.4 The proposed Flood Alleviation Works represent one element of a two-part approach to the reduction of flood risk to acceptable limits. This strategy comprises a strategic flood-mitigation measure upstream of Hereford, together with secondary measures within the ESG Area itself.
- 4.5 The significantly larger measures identified upstream of Hereford comprising the Flood Alleviation Works have been designated as the strategic measures due to their magnitude in comparison with those identified within the ESG Area, and in recognition of the fact that any such scheme will additionally benefit other parts of Hereford and environs in terms of reduced flood risk. The Flood Alleviation Works

have been designed to divert a significant proportion of the upstream floodwater direct to the River Wye, with the balance together with the residual catchment surface water being managed under a number of planned measures to be undertaken within the ESG Area as part of the development of the Urban Village.

- 4.6 Paragraph 2 of Appendix A of Circular 06/04 explains that the s226 TCPA powers are intended to provide a positive tool to help acquiring authorities to assemble land where necessary to implement the proposals in their Local Development Documents. The Circular states that the powers are expressed in wide terms and can therefore be used by the authorities to assemble land for regeneration for other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate. The underlying purpose for acquiring the Order Land is to facilitate a planning purpose; the Flood Alleviation Works are needed strategically to facilitate the regeneration of the ESG Area.

## 5. **JUSTIFICATION FOR THE USE OF COMPULSORY PURCHASE POWERS**

- 5.1 The Council considers that there is a compelling case in the public interest for confirmation of the Order and that the Order, if confirmed, would strike an appropriate balance between public and private interests. The rights of owners of interests in the Order Land under the Human Rights Act 1998, in particular the right contained in Article 1 of the First Protocol, have been taken into account by the Council when considering whether to make the Order and when considering the extent of the interests to be comprised in the Order. In addition, having regard to the provisions of the Town and Country Planning Act 1990 and the guidance set out in Circular 06/2004, the Council considers that acquisition of the Order Land will facilitate the carrying out of development, redevelopment and improvement and will make a positive contribution to the promotion or achievement of the economic, social and environmental well being of its area for the reasons explained below.

- 5.2 In deciding whether to proceed with making the Order, the Council had regard to a number of factors including the economic, social and environmental benefits of the Flood Alleviation Works and the provisions of section 226(1)(a) of the Town and Country Planning Act 1990. It considered that the benefits of the Flood Alleviation Works will include:

- 5.2.1 Alleviating the risks of flooding within Hereford and adjacent areas to public infrastructure and public and private property within the existing Yazor/Widemarsh Brook floodplains downstream of the scheme, with commensurate savings in repairs to property; and

- 5.2.2 Facilitating the implementation of proposals for the regeneration of the ESG Area, as provided for with the development plan, including the delivery of significant housing provision in line with the Regional Spatial Strategy.
- 5.3 A number of options have been considered for providing the strategic flood alleviation works needed. These are set out within the Options Appraisal Report included within the Environmental Statement as its Annex GEN.05. They are as follows:
- 5.3.1 Option A - the diversion of floodwaters from Credenhill to the River Wye.
  - 5.3.2 Option B - the storage of flood water in the Quarry near Stretton Sugwas;
  - 5.3.3 Option C - the construction of a flood storage pond at the new Livestock Market, on Roman Road;
  - 5.3.4 Option D - the adoption of an adaptive approach, whereby flood management solutions would be delivered in a staged manner as the understanding of flooding and data collection improves;
  - 5.3.5 Option E -the use of the Herefordshire and Gloucestershire Canal for flood storage, following the completion of restoration proposals forming part of the overall ESG scheme; and
  - 5.3.6 Option F – the construction of flood storage areas in upstream areas of the Brook catchment.
- 5.4 The Options Appraisal Report concludes that Option A be taken forward as the chosen strategic flood mitigation option on the basis that the diversion of flood waters over land from Credenhill to the River Wye is the most viable and effective option for the flood alleviation works for both cost and technical reasons. A key aspect of the decision making for that is the high level of operational surety the preferred scheme has in dealing with successive number of flooding events than the other options, which favour storage rather than diversion. In summary, the other options were discounted from further consideration for the following reasons:
- 5.4.1 Option B (Quarry) – unacceptable uncertainties in the quarry design water level, influence of an adjoin landfill site and the potential for leachate, environmental impact, slope stability and hydrogeology;

- 5.4.2 Option C (Livestock Market flood storage) – site unable to deliver the required volume of flood storage;
  - 5.4.3 Option D (Adaptive approach) – difficulty in agreeing the approach with statutory bodies, non-conformity with government guidance and liabilities were insufficient mitigation to be achieved in the future;
  - 5.4.4 Option E (Offtake to Canal) – option unable to deliver the required level of strategic flood mitigation; and
  - 5.4.5 Option F (Upstream flood storage) – option unable to provide the required level of strategic flood mitigation without significant impact upon adjacent properties, environmental and landscape impact through the requirement for substantial structures to hold water, opposition from the Ministry of Defence, delivery and surety of operation.
- 5.5 Following the selection of option A (the diversion of floodwaters from Credenhill to the River Wye) as the preferred option, a number of route alignment and other design options were considered in respect of the proposed off take, culvert and outfall into the River Wye. These alternatives are reported on in the Environmental Statement (pages 24-30).
- 5.6 Negotiations have been pursued with those affected by the Flood Alleviation Scheme. To date it has not been possible to secure the acquisition of all interests that are required for the Flood Alleviation Works by agreement. Following Government guidance in paragraph 24 of Circular 06/2004, the Council is using its compulsory purchase powers in parallel with these negotiations. Meetings with affected parties have been on-going since Autumn 2007, and negotiations are continuing.
- 5.7 Although reasonable efforts have been made, and will continue to be made, to acquire the necessary land and rights by private treaty in order to carry out the Flood Alleviation Works, the Order is required to ensure there is sufficient certainty that the Flood Alleviation Works can be provided within a reasonable time period or at all. Compulsory acquisition will enable the redevelopment to take place in a timely fashion which will facilitate the delivery of the wider public benefits of the regeneration of the ESG Area and flood alleviation to other parts of Hereford and environs. It is therefore considered that compulsory acquisition is both necessary and justifiable in the public interest.
- 5.8 Planning Permission was granted for the Flood Alleviation Works in November 2009 and there are no planning obstacles which would prevent implementation if the

Order is confirmed. The Flood Alleviation Works are described in Section 6, below. The Development Plan and all relevant material considerations were taken into account in determining the planning application. The Council considers the Flood Alleviation Works to be capable of implementation.

- 5.9 The Council considers the use of its CPO powers to acquire all outstanding interests in the Order Land and the New Rights to be justified as it has not been possible to achieve this by agreement and there is no certainty that it will be able to do so within an acceptable timescale. The scheme cannot proceed unless these interests are acquired. The Council is satisfied that the acquisition of these interests will lead to economic, social and environmental improvements to the area.

## 6. **DESCRIPTION OF THE SCHEME**

- 6.1 The proposed Flood Alleviation Works comprise a culvert to divert flood waters from the Yazor Brook at Credenhill to the west of Hereford direct to the River Wye, thereby relieving flooding downstream, within Hereford and specifically in the ESG Area.

- 6.2 The development is described in detail in the submitted planning application documents, drawings, and visualisations. The submitted documentation includes an Environmental Statement.

- 6.3 In summary, the development comprises the construction of an approximately 1.4 km long flood alleviation culvert to carry peak river flood flows from the Yazor Brook to the River Wye. The general arrangement is shown on planning drawing number CS029394-YBF-001. The development begins adjacent to the Community Centre at Credenhill, immediately downstream of Station Road, where an offtake from the Yazor Brook will be constructed in the form of a side weir. Flood waters passing over the weir will flow within a 2m diameter culvert in a southerly direction towards the River Wye. At the end of this culverted section, flows will discharge into an underground spillway on the approach to an energy dissipation chamber. From here, flood waters will enter a short section of culvert before being discharged onto the Wye flood plain. They will then disperse across the flood plain and drain into the river.

- 6.4 Works for the offtake will extend from the existing downstream face of the twin arch culvert under Station Road to where the Brook turns away from the raised right bank (facing downstream). Along this section the bank will be formalised into a stone-clad wall to match and extend from the existing culvert wall. Approximately 30m downstream of the present culvert exit, the side weir structure itself will begin and extend for 20m.

- 6.5 The new wall between the Brook and the existing car park will create additional usable space, which will be landscaped, providing additional amenity and a measure of protection to the new wall. The top of the chamber behind the side weir structure will be constructed level with the car park, which will be resurfaced on completion of the works. The existing portacabin will be removed, with discussions underway with Credenhill Parish Council to agree a suitable specification and location for a replacement facility.
- 6.6 Downstream of the side weir, the wall will continue for approximately another 20m towards a flume control structure constructed to regulate and control the flow of the brook, providing greater surety of operation.
- 6.7 On the opposite bank, facing the new side-wall, a fish refuge area will be formed as an ecological enhancement. This feature will be connected to the Brook through an open channel and will be graded in order to ensure a permanent water volume to avoid fish becoming stranded.
- 6.8 In operation, flood flows will pass over the side weir through a trash screen and drop into the offtake. The crest level of the weir will be able to be adjusted by the removal and addition of stop boards. The weir will remove as much water from the Yazor Brook as practical during a flood event with an annual exceedence probability (AEP) of 5% (1 in 20 years) including an allowance for climate change, while minimising the frequency of operation and the impact to spate flows. The scheme will only begin to operate when flows in the brook exceed a channel depth of approximately 400mm and flow of 0.5m<sup>3</sup>/s. It is estimated that the scheme will operate on average twice a year. In operation, it will reduce Brook flows immediately downstream of the offtake to the following:
- 6.8.1 5% AEP (1 in 20 year): from 6.0 m<sup>3</sup>/s (baseline) reduced to 1.7 m<sup>3</sup>/s
  - 6.8.2 1% AEP (1 in 100 year): from 7.8 m<sup>3</sup>/s to 2.0 m<sup>3</sup>/s
  - 6.8.3 0.1% AEP (1 in 1000 year): from 13.3 m<sup>3</sup>/s to 6.5 m<sup>3</sup>/s
- 6.9 Flood flows downstream of the offtake will be reduced by over 70% in the case of the 5% and 1% events, and by 50% in the case of the 0.1% event.
- 6.10 Prior to discharging from the offtake structure into the main culvert section, flood flows will be regulated by a penstock located on the upstream face of the culvert. This will provide greater surety of the maximum flow that can enter the culvert, and also provide a cut-off to allow maintenance to be completed without any risk of flows entering the system. A maintenance compound will be constructed above the downstream end of the side weir to provide a secure area for maintenance access into the offtake structure, operation of the penstock and for housing of water-level

monitoring equipment. Water levels both within the Brook and within the structure will be monitored. A second access hatch with securely bolted steel covers will be located at the upstream end of the offtake structure. The general arrangement of the offtake is shown on drawing number CS029394-YBF-002.

- 6.11 From the offtake, flood flows will be contained within a 2m-diameter plastic culvert aligned to follow the natural contours of the landscape and minimise the depth of excavation required. The culvert will be fitted with access hatches for inspection and maintenance purposes. The route runs in a southerly direction across open countryside, predominantly improved grassland. In doing so it crosses a bridleway, a public footpath and the A438 Hereford to Brecon Road, west of Sugwas Pool. Fields and hedgerows will be reinstated following construction.
- 6.12 South of the A438, as the route approaches the River Wye, flood flows will leave the circular culvert and enter a 4m wide underground concrete spillway structure, aligned to reflect land topography and the need to reduce the impact on mature trees of significance in the locality.
- 6.13 Flows in the spillway will descend approximately 13.5m at a gradient of 1 in 5. At the foot of this descent, flows enter an energy-dissipation chamber which serves to reduce velocities. Water flowing down the spillway will encounter retained water within the chamber, creating a standing wave or hydraulic jump which will serve to dissipate flow energy and so reduce velocities. The level of the chamber has been kept as low as possible in order to minimise its visual impact.
- 6.14 Water will exit the chamber by a short section of culvert, before being discharged across the Wye flood plain. Here, gentle ridge and furrow landscaping will direct flood flows towards the river. The details of this landscaping treatment are to be agreed with the landowner and tenant farmer in order to avoid compromising farming requirements. The riverbank will be reinforced with additional planting.
- 6.15 The general arrangement of the outfall is shown on drawing number CS029394-YBF-003.
- 6.16 Construction of the scheme will require the use of land as site compounds, haul roads, and turning areas, together with provision of a main site access from the A438. Further detail of the proposed construction arrangements is set out within the Environmental Statement. Detailed methods of working will be formulated by the appointed contractor.

## 7. **PLANNING POLICY**

7.1 The redevelopment proposed is in line with National, Regional and Local Planning Policies.

7.2 **National Planning Policies** – The proposed Flood Alleviation Works are in accordance with the principles for the delivery of sustainable development and economic growth set out in PPS1 and PPS4. The scheme also contributes to reducing and managing flood risk so that the regeneration of the ESG Area can take place in accordance with the requirements of PPS25.

7.3 **Regional Planning Policies** - The West Midlands Regional Spatial Strategy 2008, which is currently undergoing a partial review, identifies Hereford as one of the five sub-regional foci, where newer development is to be concentrated outside the main conurbations. The regeneration of the ESG Area, which the Flood Alleviation Works will help facilitate, will in turn deliver the emphasis in RSS on supporting the sub-regional role of Hereford within its rural hinterland, with the city centre acting as a strategic focus for major retail, leisure and office developments, as well as helping to achieve both overall and affordable housing requirements and targets for the re-use of previously developed land targets. Proposed amendments to RSS serve to increase the levels of housing and other growth for Hereford, emphasising the role of the ESG Scheme in delivering elements of that growth within a sustainable location adjacent to an expanded city centre.

7.4 **Local Planning Policies** - Herefordshire Unitary Development Plan (UDP, adopted March 2007)

7.4.1 The UDP supports a comprehensive approach to the regeneration of the ESG Area in order to develop an under-utilised area of land, strengthen the role of Hereford as a shopping centre and ensure that the city plays a full role in the wider rural economy.

7.4.2 The Plan was prepared under the 1999 Development Plan Regulations (SI 1999 No. 3280) and followed the two-stage deposit process. A Public Inquiry was held in 2005.

7.4.3 The UDP's proposals take forward a Regeneration Framework for the ESG Area, prepared for the Council and Advantage West Midlands in 2004. This sets a long term regeneration programme which aims to integrate the ESG Area within the city centre, stimulate a new civic and cultural presence, enhance Hereford's retail, leisure and tourism offer,

and facilitate city living through the establishment of a vibrant and high quality location.

7.4.4 The UDP contains inter-linked planning policies which provide the framework for the progression of the ESG Scheme. The following policies make specific proposals for land within the ESG Area and set out the key provisions:

- (a) **TCR1, Central Shopping and Commercial Areas**, which extends the city centre boundary as defined for planning purposes to the north, to Blackfriars Street and Coningsby Street, to include the Livestock Market and other land within the ESG Area; and states that the central shopping and commercial area of Hereford will be retained as the prime focus for retail, leisure and commercial activity to ensure the continued vitality and viability of the city centre.
- (b) **TCR19, Hereford Livestock Market - relocation**, sets out the criteria by which proposals for a relocated Hereford Livestock Market are to be judged. The relocation of the Livestock Market away from the ESG Area will allow the redevelopment of the site as the Retail Quarter.
- (c) **TCR20, Eign Gate regeneration area**, identifies land on the western side of the city centre for Class A1 retail development, and recognises that this provides a major opportunity for development to support the vitality and viability of the city centre. The Livestock Market site forms a key component of this area, where a comprehensive scheme based on these uses is preferred. Securing effective pedestrian linkages to the existing city centre to the south is identified as a priority.
- (d) **TCR21, Canal basin and historic core**, identifies land in the north east of the ESG area for mixed-use development incorporating high density housing and other uses including a Canal basin and wharfage. The policy also identifies the need for the provision of a flood alleviation scheme for the ESG Scheme.
- (e) **TCR22, Hereford United Football Club /Merton Meadow**, providing for development for mixed uses, including cultural and leisure, office and residential development.

- (f) **TCR23, Civic quarter**, providing for development for a range of city centre uses. All development proposals must ensure that safe, effective and attractive pedestrian links are provided to the city centre and the remainder of the ESG Area.
- (g) **T7, Cycling**, providing for a new cycling route between the Courtyard Centre for the Arts and the railway station as part of the ESG Scheme.
- (h) **T10 – Safeguarding of Road Schemes** - this policy applies, inter alia, to the Link Road, safeguarding its route from development which would be likely to prejudice its implementation.

7.4.5 These policies have all been 'saved' by virtue of direction of the Secretary of State in February 2010.

7.4.6 The UDP's proposals for the regeneration of the ESG Area are now being incorporated within the emerging Local Development Framework. The most recent Place Shaping Paper, produced for consultation in January 2010, explains that in this regard the Core Strategy will draw upon existing commitments within the UDP and the ESG Masterplan (see below).

## 7.5 **Edgar Street Grid Design Framework Supplementary Planning Document (SPD, adopted November 2007)**

7.5.1 The SPD provides further detail in respect of the UDP policies for the ESG Area, particularly in respect of the design challenges and opportunities arising. The SPD was prepared in accordance with Herefordshire Council's policy of how it consults people on planning matters as set out in the Statement of Community Involvement.

7.5.2 The SPD also provides more detail on the approach to planning obligations, recognising that the ESG Scheme proposals for comprehensive regeneration of the area are likely to involve significant elements of inherent self-mitigation in the form of major infrastructure provision.

## 7.6 **ESG Masterplan (July 2008)**

7.6.1 The many elements of the ESG Scheme have been drawn together in the ESG Masterplan. This document was commissioned by ESG Herefordshire Ltd to take forward the original Regeneration Framework

which underpinned the UDP provisions. The Masterplan sets out the full range of proposals for the ESG Area, including the key retail, leisure and residential elements, as well as incorporating more detailed proposals for uses such as higher education.

7.6.2 In September 2008, the Council endorsed the Masterplan as a basis for the ongoing development of the ESG Area and as a material consideration in the determination of planning applications both within and outside the ESG Area.

## 7.7 **ESG Site Wide Strategy (October 2009)**

7.7.1 A Site Wide Strategy has been prepared by ESG Herefordshire Ltd to provide a context for the delivery of the ESG Scheme through the planning process. The Strategy confirms the scope and constituent elements of the ESG Scheme and describes the proposed planning approach to planning applications, environmental impact assessment and land assembly, including the use of compulsory purchase powers. The Strategy has been endorsed by the Council, Advantage West Midlands and development partners.

## 8. **PLANNING PERMISSION**

8.1 Full planning permission for the Flood Alleviation Works was granted on 11th November 2009 (under ref: DECCE0009/1595/F).

8.2 The application relates to land between the Yazor Brook, adjacent to Credenhill Community Centre, and the north bank of the River Wye south of Old Weir Farm. The proposed development comprises of a flood-relief culvert from the Yazor Brook at Credenhill to the River Wye, including an off-take weir adjacent to Credenhill Community Centre and an energy-dissipation chamber and outfall to the River Wye on land at Old Weir Farm.

## 9. **SPECIAL CONSIDERATIONS AFFECTING THE ORDER SITE**

9.1 The Order Land is not affected by any scheduled ancient monument, listed building or conservation area. The River Wye SSSI and Special Area of Conservation is within the southern extent of the Order Land. In addition, positive survey results have been obtained for a number of protected species including kingfisher, bats, otters and great crested newts. The Roman town of Magnis a scheduled ancient monument, lies 150m to the west of the northern end of the Order Land.

9.2 The Order Land includes land owned by the National Trust. The Council understands that the land is held inalienably by the National Trust.

9.3 Land held inalienably by the National Trust is afforded special protection against compulsory acquisitions pursuant to Section 18 and Schedule 3 (paragraph 5) of the Acquisitions of Land Act 1981. If the National Trust does object to any CPO affecting inalienable land, and that objection is not withdrawn, the confirmation of that CPO is subject to special parliamentary procedure.

10. **IMPLEMENTATION OF THE SCHEME**

10.1 The Council is satisfied that there are no foreseeable barriers to implementation and that funding is secured for the Scheme.

11. **HUMAN RIGHTS ACT 1998**

11.1 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("Convention") and some of its Protocols including the First Protocol. The Convention includes provision in the form of Articles, the aim of which is to protect the rights of the individual.

11.2 Section 6 of the Human Rights Act prohibits public authorities from acting in ways which are incompatible with the Convention. Various Convention rights may be engaged in the process of making and considering a compulsory purchase order, notably Article 1 of the First Protocol protects the rights of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

11.3 The European Court of Human Rights has recognised in the context of Article 1 that regard must be had to the fair balance which has to be struck between the competing interests of the individual and of the community as a whole. In this case the Council as the acquiring authority considers that any interference with Convention rights is justified in the interest of the community as a whole.

11.4 In pursuing a compulsory purchase order, the Council as the acquiring authority has to consider carefully the balance to be struck between individual rights and the wider public interest having regard to the availability of compensation for compulsory purchase. The Council is aware of the right in law for those affected by expropriation or dispossession to claim compensation under principles established by law. Further, it is conscious that the guiding principle of such compensation is that of equivalence, namely that the owner shall be paid neither less than nor more than his loss.

11.5 The opportunity has been given to landowners to make representations regarding planning policies that underpin the Order and in relation to the planning application.

Extensive consultation has taken place on the scheme prior to the making of the Order with the opportunity being given for interested parties to make representations regarding the proposals. Objections can also be made to the Order, which (in the case of objections from persons whose land is directly affected) will be considered by an Inspector at a public inquiry. The Inspector's report will then be considered by the Secretary of State before he or she decides whether or not to confirm the Order. Should the Order be confirmed a person aggrieved may apply to the High Court for an order quashing the CPO if they consider the grounds for doing so are made out. As to compensation disputes, affected persons have the right to present their case at the Lands Chamber of the Upper Tribunal (formerly the Lands Tribunal), which is an independent judicial body, established by law under the Lands Tribunal Act 1949 as read with the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009.

- 11.6 For all the above reasons the Council as acquiring authority, in balancing the competing interests, has concluded that the Order will not result in any unlawful interference with Convention rights, and accordingly, that it would be appropriate and proportionate to make the Order.

12. **COUNCIL'S RESPONSE TO THE OBJECTIONS MADE TO THE ORDER**

<b>Objector</b>	<b>Summary of Objection</b>	<b>Response</b>
<b>National Trust</b> <b>(plots 7,8 and 9)</b>  Agent: Burges Salmon LLP Narrow Quay House Narrow Quay Bristol BS1 4AH	The terms of the easement are not sufficiently specific in the draft Order.	<b>The published Order provides appropriate details of the extent, description and situation of each respective plot concerned together with the necessary rights required.</b>
	It is not clear whether the riparian land owner's liability for flooding has been properly considered.	<b>The scheme has been subject to a Flood Risk Assessment which fully assesses the impact of the scheme on flooding from all sources.</b>
	There is insufficient information regarding the functioning of the scheme	<b>The scheme is fully described in the planning</b>

	and the scheme design to ascertain whether the land and rights to be acquired are excessive or sufficient. .	<b>application documentation. The land and rights to be acquired are those needed to construct, inspect, repair, maintain, improve, renew and replace flood water relief works including offtake, culvert, outfall and associated works, as specified in the Order Schedule.</b>
	There is insufficient information to justify the scheme in terms of the downstream flooding impact on the regeneration land of the Edgar Street Grid and to enable the facilitating relationship between the scheme and parts thereof and the Regeneration works to be adequately justified.	<b>The scheme is in the public interest and the Order is justified. The scheme is particularly required to enable regeneration of the ESG Area.</b>
	It is not clear whether the implications of climate change have been considered.	<b>The implications of climate change are considered in the Flood Risk Assessment.</b>
	There is insufficient information to confirm the acquiring authority's assessment of the preference of the Scheme over the alternatives considered. It is not possible to ascertain in the assessment of the alternatives whether the acquiring authority has followed the Economic Appraisal Flood and Coast Defence Project Appraisal Guidance.  In the absence of this it is not possible to confirm that this is the most viable	<b>The alternatives considered are detailed within the Environmental Statement.</b>  <b>The appraisal of alternatives has been informed as appropriate by DEFRA Flood and Coastal Defence Project Appraisal Guidance and Treasury Green Book guidelines.</b>

	option for the protection of the East Street Grid (sic).	
	It is not clear whether the acquiring authority has taken the general purposes of the National Trust into account in assessing whether there is a compelling case for the scheme or in assessing and rejecting alternative scheme designs.	<b>The scheme is compatible with the purposes of the National Trust.</b>
	The scheme has not taken into consideration or properly mitigated against unacceptable impacts to National Trust property.	<b>The impacts of the scheme on property have been considered and mitigated against where required through the design and planning processes, taking account where possible of discussions with affected parties such as the National Trust and others. Planning permission was granted on 11 November 2009.</b>
	<p>The design of the scheme is not accepted in matters of detail including:</p> <p>(a) the functional operation of the off-take weir</p> <p>(b) the future maintenance of the culvert, including potential for blockage</p> <p>(c) the design and functional operation of the outfall into the River Wye</p> <p>(d) the design life of the scheme</p> <p>(e) the ability of the scheme to meet the relief needed to facilitate the regeneration</p> <p>(f) the details of maintenance</p>	<p><b>(a) – (e) The scheme as proposed, including the offtake and outfall, will operate to deliver effective flood alleviation to the Yazor and Widemarsh Brooks within the design life of the scheme and so facilitate the regeneration of the ESG Area.</b></p> <p><b>(f) The Environment Agency have advised that, subject to demonstration of best value, they would accept the proposal for Herefordshire Council to be</b></p>

	installations for the culvert	<b>responsible for the future maintenance of the works on their behalf. In accordance with Condition 20 of the planning permission for this scheme, a manual will be developed for approval by the planning authority detailing post construction operation and maintenance requirements, and confirming authority / agency with responsibility for future operation and maintenance. The offtake structure screens water entering the system thus preventing blockage of the culvert. The scheme will include access hatches at the structures and along the line of the culvert. Future access will be gained along the line of the culvert and within the areas covered by the CPO.</b>
<b>Mr Price (plots 4,5 and 6)</b>  Agent: Lambe Corner Solicitors	There is doubt that the Order has been drawn correctly and is based on appropriate and sufficient information.	<b>The Order has been made in accordance with all relevant powers.</b>
	Appropriate consideration has not been given to alternatives to the proposed Order.	<b>A number of options are addressed within the Environmental Statement. It is considered that appropriate consideration has been given to</b>

		<b>alternatives in developing the scheme.</b>
	The significance of the impact on production at the intensive commercial dairy farm has not been given sufficient consideration.	<b>The scheme will have no impact once operational. During construction, every effort will be made to minimise disruption in consultation with the landowner.</b>
	Any compensation likely to be offered, especially relevant to the financial gain of others, is unlikely to be equitable or sufficient.	<b>Negotiations with the objector are continuing, with a formal offer having been made which reflects a professional assessment of any possible diminution in value attributable to the scheme. There is no requirement to offer compensation in respect of the financial gain of others.</b>
	The impact of the diverted watercourse on other areas has not been fully appraised and there are potentially negative consequences to areas subject to existing flood risk as a consequence of substantially larger volumes of water entering the River Wye at an earlier point.	<b>The scheme has been subject to a Flood Risk Assessment which fully assesses the impact of the scheme on flooding from all sources. The Scheme delivers significant benefit to communities within Hereford through a reduction in flood risk. Operation of the scheme will not increase flood risk associated with the River</b>

		Wye between the outfall and the natural brook confluences.
	Objection to the diversion of a natural watercourse and the consequential affects on the environment.	Yazor Brook is not being diverted. Flows in the Brook will continue as normal, save for flood events when a proportion of floodwater will be directed through the culvert direct to the River Wye. Maintaining Brook flows downstream of the offtake will protect environmental interests, including ecology. The scheme design has been informed by an Environmental Impact Assessment. The Assessment concludes that all likely environmental effects can be suitably mitigated, including by adherence to current accepted best practice and implementation of the required Environmental Management Plan and Construction Traffic Management Plan.
<b>Credenhill Parish Council (plot 2)</b>	The scheme is unnecessary purely to prevent flooding of the Yazor Brook.	<b>The scheme is necessary to alleviate flooding arising from the Yazor/Widemarsh Brook system within the ESG Area, so facilitating the</b>

		<p><b>proposed regeneration of the ESG Area, and will also reduce flood risk to public and private infrastructure and property more generally with Hereford and environs.</b></p>
	<p>There has been no consideration of alternative routes to the proposed route for the flood diversion.</p>	<p><b>A number of options are addressed within the Environmental Statement. It is considered that appropriate consideration has been given to alternatives in developing the scheme.</b></p>
	<p>The location of the proposed water take-off will adversely affect the structure of the Parish Council's premises, and create increased risk and problems for the adjacent children's nursery.</p>	<p><b>The offtake and adjacent structures will be designed and constructed so as not to adversely affect the structure of the Parish Council freehold premises. Similarly the structures will be designed and constructed so as not to create any additional risk to users of the community centre and nursery school.</b></p>
	<p>There are issues with the design of the scheme:</p> <p>(i) There would be an increased risk of subsidence or settlement of the access to the Parish Council premises</p>	<p><b>(i) A structural survey of the existing culvert will be undertaken prior to construction. It is not considered that the scheme will cause any settlement or subsidence to the existing</b></p>

	<p>(ii) Effect on the bearing capacity of the adjacent ground on which the foundations of the Parish Council Community Centre rests.</p> <p>(iii) The proposed pipe prevents further expansion of the premises and the changing room for the local football club will have to be relocated.</p>	<p><b>access to the community centre.</b></p> <p><b>(ii) the culvert will be positioned and constructed such that there is no subsidence or settlement to the adjacent buildings. A structural survey of the community centre will be carried out before and after the works.</b></p> <p><b>(iii) changing facilities will be made available during the construction period. There is further open land within the site in Parish Council ownership which could be used for any such development.</b></p>
	<p>Outstanding concerns as regards the planning application:</p> <p>(i) It would appear that the area available for car parking would be reduced.</p> <p>(ii) The possibility of long term damage to the culverts under the approach road to the community site during the construction process.</p> <p>(iii) The proposed easement will reduce possible development of the site in the future.</p> <p>(iv) Potential for damage to the footpath on the left hand side of the approach to the site.</p>	<p><b>(i) Any loss of car parking will be limited to the land required for the off take maintenance compound, with the potential of land for replacement or additional parking to become available through the formalisation of the Brook bank. The car park will be resurfaced on completion of the works.</b></p> <p><b>(ii) and (iv): To be addressed through construction method statements. Any construction damage will be made good by the</b></p>

	(v) suitable alternative football changing facilities must be provided.	<p><b>contractor.</b></p> <p><b>(iii) Agreed. However there is further open land within the site in Parish Council ownership which could be used for any such development.</b></p> <p><b>(v) Agreed. A scheme for replacement of these facilities is being discussed with the Parish Council.</b></p>
	Failure to negotiate with the Parish Council.	<b>Project Meetings with the Parish Council have been on-going since Autumn 2007. A formal offer was made in Autumn 2009 and negotiations are continuing.</b>
	The pooling of water adjacent to the Parish Council will undermine the car park.	<b>This will be prevented by the design of the scheme, including the construction of a stone clad wall along the Brook.</b>
	Potential for the non purpose built bund to become a focal point for youths and youngsters to congregate.	<b>This will be addressed if required through scheme management and maintenance.</b>
	Concern regarding the safety of young children who use the playschool during the construction phase.	<b>Appropriate measures will be put in place by the construction contractor to ensure that the health and safety of children using the nursery school is not compromised during the works.</b>

	<p>Concern that the proposed outfall onto river meadows in the Countryside Stewardship Scheme will have an adverse effect on local fauna and flora and the River Wye SSSI.</p>	<p><b>The scheme design has been informed by an Environmental Impact Assessment which considers, inter alia, terrestrial and aquatic ecology. The assessment concludes that all likely environmental effects can be suitably mitigated, including by adherence to current accepted best practice and implementation of the required Environmental Management Plan and Construction Traffic Management Plan, such that they are no longer of concern. The scheme has been subject to an appropriate assessment in terms of likely significant effects on European sites (River Wye SSSI/Special Area of Conservation). This concludes that the proposed development will not have a significant effect upon the conservation interests of the River Wye, considered either on its own or in combination with other proposed development.</b></p>
	<p>The ground is close to an existing</p>	<p><b>The scheme design has</b></p>

	Roman roadway.	been informed by an Environmental Impact Assessment which considers, inter alia, archaeology. No significant impacts are expected after mitigation. Archaeology was also taken into account during determination of the planning application.
	A ridge and furrow feature is inappropriate in this location	The re-profiling of the floodplain at the outfall was considered and granted planning permission as part of the scheme. It is considered any landscape impact will be negligible. The detailed design will be agreed with the landowner and tenant farmer to avoid compromising farming requirements.
<b>Mrs Eileen M Hewer (plots 7 and 9)</b> Agent: Sunderlands & Thompsons LLP Off House St Peters Square Hereford HR1 1PQ	The scheme is unnecessary for flood alleviation and is only being promoted to enable development of Council owned land.	<b>The scheme is necessary to alleviate flooding arising from the Yazor/Widemarsh Brook system within the ESG area, so facilitating the proposed regeneration, and will also reduce flood risk to public and private infrastructure and property more generally with Hereford and environs.</b>

	<p>There has been no consideration of alternative routes for the diversion of the Yazor Brook.</p>	<p><b>A number of options are addressed within the Environmental Statement. It is considered that appropriate consideration has been given to alternatives in developing the scheme.</b></p>
	<p>It is inappropriate that the water take off is between a nursery school and village hall, and there is concern regarding health and safety issues at Credenhill by the Social Club, Community Hall and Children's Playschool.</p>	<p><b>The offtake location provides the most effective relief of flooding, together with ready construction and maintenance access. It has been arrived at following the consideration of alternatives. Health and safety requirements will be addressed through detailed scheme design, construction method statements, management and maintenance.</b></p>
	<p>Concerns regarding the design of the scheme, such as:</p> <p>(i) The proposal is to take flood water via a concrete pipe which over time will deteriorate, and the pressure that builds up in the pipe itself will create problems.</p> <p>(ii) A ridge and furrow feature is inappropriate in this location and is in breach of planning policy.</p> <p>(iii) There are archaeological features on</p>	<p><b>(i) The proposal is for a plastic pipe. The engineering and maintenance specifications for the scheme will deliver surety of operation over the design life.</b></p> <p><b>(ii) The re-profiling of the floodplain at the outfall was considered and granted planning permission as part of the scheme. The</b></p>

	<p>the river meadows of Old Weir Farm</p> <p>(iv) Concern regarding the deposition of silt from the flood alleviation scheme and the harmful impact on the River Wye SSSI adjacent to the river</p> <p>(v) The river meadows are under a Countryside Stewardship Scheme grassland Option and the Scheme would be harmful to the high value pasture land. In addition there would be risk of flooding from alternative sources.</p> <p>(vi) ESG has not made proper attempts to negotiate.</p> <p>(vii) Health and Safety concerns in relation to the Social Club, Community Hall and children's playschool.</p> <p>(viii) The Scheme will have an adverse effect on local fauna and flora.</p>	<p><b>proposal does not conflict with planning policies and any landscape impact will be negligible. The detail design will be agreed with the landowner and this objector to avoid compromising farming requirements.</b></p> <p><b>(iii) The scheme design has been informed by an Environmental Impact Assessment which considers' inter alia' archaeology'. No significant impacts are expected after mitigation. Archaeology in this area was also taken into account during determination of the planning application.</b></p> <p><b>(iv) Any deposition of silt will be addressed through scheme management and maintenance, provided for within the planning permission (Condition 20). The scheme has been subject to an Appropriate Assessment in terms of likely significant effects on European sites (River Wye SSSI/Special Area of Conservation). This concludes that the proposed development will not have a significant effect upon the conservation interests of the River Wye,</b></p>
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		<p>considered either on its own or in combination with other proposed development.</p> <p>(v) The scheme will only operate on average twice a year and any impacts will be addressed through scheme management and maintenance. Due to catchment differences set out in the Flood Risk Assessment it is improbable that the Wye will be in flood at the same time as the Yazor, hence a coincidence of flooding from these two sources is unlikely.</p> <p>vi) Negotiations are continuing with Mrs Hewer's agent</p> <p>vii) Measures will be put in place by the construction contractor to ensure that the health and safety of users of the Social Club, Community Hall and children's playschool is not compromised during works.</p> <p>(viii) The scheme design has been informed by an Environmental Impact Assessment which considers, inter alia, terrestrial and aquatic ecology. The Assessment</p>
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		concludes that all likely environmental effects can be suitably mitigated, including by adherence to current accepted best practice and implementation of the required Environmental Management Plan and Construction Traffic Management Plan, such that they are no longer of concern.
<b>Credenhill Pre-school Playgroup (plots 2 and 3)</b>	Duty of care to the children who attend playschool and are careful to ensure all health and safety requirements are fully met to standards imposed by Ofsted and concerned about the arrangements during the construction phase.	<b>Appropriate measures will be put in place by the construction contractor to ensure that the health and safety of children using the nursery school is not compromised during the works.</b>

#### **OTHER RELEVANT INFORMATION**

12.1 Those parties affected by the Order who wish to discuss matters with a representative of the Council should contact :

**Mairead Lane  
Acting Construction Manager  
Herefordshire Council  
Unit 3, Thorn Business Park  
Rotherwas  
Hereford  
HR2 6JT**

**Telephone: 01432 260944**

- 12.2 Alternatively, those parties affected by the Order who wish to discuss legal matters should contact the Council's legal adviser:

**Anna Cartledge  
Pinsent Masons  
3 Colmore Circus  
Birmingham  
B4 6BH**

**Telephone: 0121 200 1050**

- 12.3 The Royal Institution of Chartered Surveyors (RICS) operates a Compulsory Purchase helpline which provides initial free advice. Those parties wishing to make use of that service should contact the RICS on 0870 333 1600 or via its website: [www.rics.org](http://www.rics.org).

13. **INSPECTION OF THE ORDER**

Copies of the Order and Order map and this Statement of Case and the documents referred to in the list below can be inspected at **The Hereford Centre, Customer Services, Herefordshire Council, Garrick House, Widemarsh Street, Hereford, HR4 9EU between the following hours, excluding bank holidays: (Mon to Thurs, 8.45 – 17.15), (Fri 8.45 – 16.45), (Sat 9.00 – 13.00) and are available for inspection on the Council's website ([www.herefordshire.gov.uk](http://www.herefordshire.gov.uk)).**

14. **INQUIRIES PROCEDURE RULES**

- 14.1 This Statement of Case is in discharge of the Council's obligations in accordance with Rule 7 of the Compulsory Purchase (Inquiries Procedure) Rules 2007.

15. **DOCUMENTS TO BE REFERRED TO OR PUT IN EVIDENCE IN THE EVENT OF AN INQUIRY**

**National Planning Policy**

1. Planning Policy Statement 1 – Delivering Sustainable Development and Climate Change Supplement
2. Planning Policy Statement 4 - Planning for Sustainable Economic Growth
3. Planning Policy Statement 25 - Development and Flood Risk (December 2006)
4. Planning Policy Statement 25 - Development and Flood Risk (March 2010)
5. Growth Point Prospectus

**Regional Planning Policy**

6. Regional Spatial Strategy Jan 2008
7. RSS Phase Two Revision and Panel Report

#### **Development Plan/Local Briefs**

8. Herefordshire Unitary Development Plan March 2007, including extract of Proposals Map for Credenhill, Hereford Town Centre and inset map, together with the letter from the Secretary of State saving policies
9. LDF Place Shaping Paper
10. Edgar Street Grid Design Framework SPD Nov 2007
11. ESG Regeneration Framework (2004)
12. ESG Masterplan 2008
13. ESG Site Wide Strategy Nov 2008 and Cabinet decision notice

#### **Relevant Planning Application Documentation**

14. Planning Permission ref: DCCE0009/1595/F
15. Planning Statement including Statement of Community Involvement
16. Flood Risk Assessment July 2009
17. Environmental Statement
18. Design and Access Statement
19. Materials Management Strategy
20. Drawing Ref: CS029394-YBF-001.
21. Drawing Ref: CS029394-YBF-002.
22. Drawing Ref: CS029394-YBF-003.
23. Habitats Regulations Assessment, Screening/scoping form (September 2009)

**Dated 21 May 2010**

**Pinsent Masons LLP**

**Solicitors to The County of Herefordshire District Council**

**Reference 633992/07006**

**Anna Cartledge**

**3 Colmore Circus**

**Birmingham B4 6BH**