

DERBYSHIRE COUNTY COUNCIL

CABINET

13 March 2012

**Joint Report of the Strategic Director for Children & Younger Adults and the
Director of Property**

**New Church Gresley Infant and Nursery School – Property Issues –
(Education)**

1. Purpose of Report

Approval is sought to exercise compulsory purchase powers, if necessary, to acquire land adjacent to the site of the proposed Church Gresley Infant and Nursery School to facilitate vehicular access to the site.

2. Information and Analysis

The final tranche of funding necessary to build the replacement Church Gresley Infant and Nursery School was approved by Cabinet in March 2011, although Section 106 funding is anticipated to reduce the net costs to the Authority.

An application has been submitted for planning permission for the construction of the proposed school which provides for access to the school to be taken from the school drive of the neighbouring Pennine Way Junior School. Planning Officers have responded positively to the proposal for access to be taken from the existing school drive, but the proposed route goes over land upon which a footpath is sited and it has not been possible, despite making extensive enquiries, to identify the owner of this land. It is proposed, therefore, to seek to exercise compulsory purchase powers to acquire the land. A temporary access can be secured to enable the building of the new school prior to finalising this permanent access.

3. Legal & Human Rights Considerations

Under Section 530 of the Education Act 1996 the Council is empowered to purchase compulsorily any land (whether within or outside its area) which is required for the purposes of any school or institution which is required for the purposes of any school or institution which is, or is to be, maintained by them or which they have power to assist. These powers are very wide ranging and the principal consideration for determining whether the use of compulsory purchase powers is justified is whether the public interest in implementing the development outweighs the detriment to the owners against whom the powers are being exercised.

Confirmation of the Order is undertaken by the Secretary of State for Education who will confirm the order if no relevant objection is made or any such objection is withdrawn. The confirmation process is set out in the Acquisition of Land Act 1981 which defines a relevant objection as an objection made by an owner or someone who has a compensatory interest in the land, such as a private right of way. An objection from a member of the public on the basis that they enjoyed public rights along the footpath would not count as a relevant objection. If a relevant objection is made the Secretary of State may cause a public inquiry to be held, the cost of which would have to be borne by the Council. Given that it has not been possible to trace the owner of the land, it is considered fairly unlikely that a relevant objection will be made, but it remains a possibility.

Attempts will continue to identify the owner of the footpath and if it is possible to trace them, to negotiate with them to either purchase the land or acquire sufficient legal rights to cross it to access the school site. Not only would it simplify the process, but in order to get the Compulsory Purchase Order confirmed the Council will need to demonstrate to the Secretary of State for Education that it has made all reasonable attempts to trace the owner and acquire the land by agreement.

4. Financial Considerations

The Authority will bear the costs involved in securing the making, confirmation and implementation of the Compulsory Purchase Order. If no public inquiry is held this will be dealt with exclusively in-house so there will be no external costs payable. If a public inquiry is held the Council will have to meet all of the costs associated with the inquiry, including the Inspector's fee, the cost of the venue and any advice or representation by counsel in relation to the inquiry. This is likely to range between £10,000.00 - £20,000.00

If the owner of the land can be traced or they come forward during the CPO process the Council will be liable for the payment of compensation to them. This will be equivalent to the value of the land, disregarding the scheme for which it has been acquired. The Council will seek to agree the value with the landowner based on the Council's valuation, if the landowner does not agree then they have the opportunity to go to the Lands Tribunal to have the value determined. The Director of Property has estimated the value of the land as nominal. The Council will also be liable for the payment of the reasonable legal costs and surveyors fees incurred by the owner in connection with the negotiation and payment of compensation. These are likely to be in the region of £2,500.00, which will be per owner if there is more than one owner. If the owner cannot be traced, no compensation will be payable. The Authority will bear the costs involved in pursuing a Compulsory Purchase Order.

5. Other Considerations

In preparing this report the relevance of the following factors has been considered:- prevention of crime & disorder, equality of opportunity, environmental, health, human resources, property and transport considerations.

6. Background Papers

Files are held in the CAYA Development Section and County Property Estates Section.

7. **Key Decision** No

8. **Strategic Directors' Recommendations**

That Cabinet approves:

- (a) The taking of all necessary steps to secure the making, confirmation and implementation of a Compulsory Purchase Order to acquire the footpath adjacent to the site of the new Church Gresley Infant and Nursery School, to enable access to the new school site, including the publication of all the notices and the presentation of the Authority's case at any public inquiry;
- (b) The taking of all reasonable steps to establish who owns the land and, if identified, negotiating with the owner(s) of the land to acquire the land by agreement in advance of confirmation of the Compulsory Purchase order, on the basis that no contractual commitment be made without the prior approval of the Cabinet Member for Finance and Management;
- (c) agreeing terms with objectors for the withdrawal of objections to the Order, including, where appropriate, seeking exclusion of land from the Order;
- (d) in the event that the Strategic Director for Children & Younger Adults or the Director of Property consider that any minor adjustments to the land to be acquired are necessary, the Compulsory Purchase Order and plan shall incorporate the necessary amendments;

Ian Thomas, Strategic Director for Children & Younger Adults

Jeremy Goacher, Director of Property