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<u>Item</u>
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LAND AT SHREWSBURY FLAXMILL (ROAD FRONTAGE) COMPULSORY PURCHASE ORDER

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1. Synopsis

This report is seeking approval to make a Compulsory Purchase Order (hereafter CPO), and, subject to the confirmation of the Order by the Secretary of State for Levelling Up, Housing and Communities, to subsequently transfer the land acquired (hereafter the Order Land) to Historic England, to enable the delivery of a mixed-use development comprising residential accommodation, together with commercial, business and service uses (the Scheme), being a key element of the wider regeneration of Shrewsbury Flaxmill Maltings (the Flaxmill).

2. Executive Summary

- 2.1 The Flaxmill is an internationally important site that reflects a time when Shropshire led the way in engineering innovation. It comprises 8 listed buildings, including the Main Mill (listed at Grade I), which was built in 1797 and, as the world's first iron framed building, is the forerunner of the modern skyscraper. The site operated as a flaxmill from 1797 – 1897, and then as a maltings until its closure in 1987. The whole of the site was of great local significance as the economic and social driver for the northward expansion of Shrewsbury, facilitated by the Shrewsbury and Newport Canal.
- 2.2 From 1987 – 2004 there were various failed attempts to regenerate the Flaxmill. However, continued vandalism and neglect resulted in it being placed on the Heritage at Risk Register. The former Shrewsbury and Atcham Borough Council served enforcement planning notices on the owner in 2004, thereby forcing a resolution. A Masterplan Study (2004) also identified the opportunity to greatly improve the presentation and viability of the Flaxmill by acquiring neighbouring sites and re-developing them in a sympathetic manner.

- 2.3 Historic England (then English Heritage) acquired the freehold of the Flaxmill site in 2005 in order to halt its further decline. In 2010, The Friends of the Flaxmill Maltings was formed to support the renovation and regeneration of the Flaxmill while actively engaging the local and wider communities in its objectives. Subsequent to this, Historic England devised a four stage 'rescue operation' for the Flaxmill which has provided a framework for and governed Historic England's approach towards the site's resurgence.
- 2.4 The first stage of the redevelopment project for the site was completed at the end of 2015 with the opening of an interactive visitor experience and education facility, delivered using £1.9 million of funding secured via the European Regional Development Fund.
- 2.5 Planning permission and listed building consent for the second stage of works at the Flaxmill was obtained by Historic England in November 2016. The second stage works concern the repair and restoration of the Main Mill and Kiln; in particular, the reopening of windows to all floors of the Main Mill, the creation of a ground floor interpretation, learning space and cafe managed by the Friends, and the restoration of the four upper floors of the Main Mill to create a commercial workspace. These works are now at an advanced stage and are on track to be completed by the end of May 2022.
- 2.6 The Scheme constitutes the third stage of development at the Flaxmill, for which outline planning permission was obtained by Historic England on 10 May 2021 (ref. 20/05065/OUT), and comprises residential development, together with commercial, business and service uses. Change of use of the ground floor of no. 1 and no. 15 Haughmond Square to a mixed use has also been authorised, as well as change of use of the Apprentice House, on the main site itself, to residential use.
- 2.7 It is envisaged that the Scheme will be undertaken by a private sector development partner whom Historic England will appoint following a competitive tendering exercise. Assembly of the Order Land (see at paragraphs 2.10 and Section 11 below for further details) is of critical importance and a pre-requisite to Historic England being able to 'go to market' and invite tender responses in respect of this unique development opportunity.
- 2.8 The Scheme is vital to ensuring the overall success of the Flaxmill site's regeneration. In particular, it will facilitate the fourth stage and final phase of the Flaxmill redevelopment, which will see reinvestment of a pre-agreed proportion of the profit generated by the delivery of the Scheme into the ongoing maintenance, repair and preservation of the complex of historic buildings comprised within the Flaxmill. In order to realise the plethora of public benefits which the Flaxmill Maltings project has the potential to deliver, it is

essential that this final stage of development is reached, implemented and completed. Moreover, it will secure the site's long-term and sustainable future in order that its legacy may be safeguarded and continue for the benefit of all, including the local and wider communities and visitors to the town of Shrewsbury. The Scheme is therefore vital to ensuring the overall success of the Flaxmill's regeneration, and without which fourth stage, and the full delivery of the Flaxmill project and associated public benefits, is in jeopardy.

- 2.9 In order to facilitate the full delivery of this development, Historic England is currently making every effort to acquire the third party interests which exist in the Order Land by private agreement. However, in the event that these negotiations fail, Historic England has requested that the Council uses its CPO powers under section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) to assemble the Order Land and, subject to the confirmation of the CPO by the Secretary of State, to transfer the Order Land to them (see **Appendix 1**).
- 2.10 The Order Land is made up of thirteen land parcels, as described in the draft CPO Schedule and shown on the draft CPO Map (see **Appendix 2 and Appendix 3** respectively). It includes two unlisted 19th century properties – no. 1 and no. 15 Haughmond Square, situated along the St Michaels Street road frontage - that are currently being used as hot food takeaway premises with residential flats above. Both properties are in third party ownership.
- 2.11 The Government's Guidance on compulsory purchase process and the Crichel Down Rules (July 2019) (hereafter the CPO Guidance) makes it clear that it is the Secretary of State's policy to only authorise the use of this power in circumstances where a compelling case can be demonstrated. However, Officers consider that, in order to deliver the substantial public benefits that the comprehensive redevelopment of the Flaxmill will bring, the use of the Council's powers of compulsory acquisition can be justified in accordance with the terms set out in the CPO Guidance. A draft of the Statement of Reasons which sets out the case for compulsory acquisition is at **Appendix 4**. CPO powers are rarely used by the Council which reinforces the importance of the Flaxmill and the imperative to securing its successful regeneration.
- 2.12 This report seeks approval to use the Council's CPO powers to assemble the Order Land, via the acquisition of all third party interests therein, and, subject to the CPO being confirmed by the Secretary of State, to subsequently transfer ownership of the Order Land to Historic England.

3. Recommendations

- 3.1. To resolve, subject to consideration of the matters set out in this report and the prior completion of a CPO Indemnity Agreement (CPOIA), to make a compulsory purchase order pursuant to the Council's powers under section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) in order to deliver the Scheme and to facilitate the comprehensive redevelopment and regeneration of the Shrewsbury Flaxmill Maltings, which in turn will contribute to the promotion or improvement of the economic, social and environmental well-being of the Council's area.
- 3.2 To authorise
- (1) the Assistant Director – Legal and Governance to carry out the functions set out in (a), (b) (c), (d), (e), (f), (g) and (h) below and
- (2) the Executive Director of Place to carry out the functions set out in (b), (c), (d), (e), (f) (h) below:
- (a) To negotiate and enter into the CPOIA;
- (b) Subject to the completion of the CPOIA, and subject to the requirements of the CPOIA, to take all steps to secure the making, confirmation and implementation of the CPO including the publication and service of all notices and all preparation and promotion of the Council's case at any public inquiry;
- (c) To identify and acquire all third party interests required to facilitate delivery of the Scheme either by agreement or compulsorily pursuant to the CPO (including pursuant to any blight notices as appropriate) including the conduct of negotiations and making provision for the payment of compensation;
- (d) To negotiate, agree terms and enter into agreements with interested parties including agreements for the withdrawal of blight notices and/or the withdrawal of objections to the CPO and/or undertakings not to enforce the CPO on specified terms, including where appropriate removing land or rights from the CPO and making provision for the payment of compensation;
- (e) In the event the CPO is confirmed by the Secretary of State, to advertise and give notice of confirmation and thereafter to take all steps to implement the CPO including the making of a General Vesting Declaration(s) and/or service of Notices to Treat and Notices of Entry in respect of the acquisition of interests in the Order Land;
- (f) To take all steps in relation to any legal proceedings relating to the CPO including defending or settling claims for compensation which

are referred to the Upper Tribunal (Lands Chamber) and/or applications to the courts and any appeals;

- (g) To retain and/or appoint external professional advisers and consultants to assist in facilitating the promotion, confirmation and implementation of the CPO, the settlement of compensation and any other claims or disputes; and
- (h) Following implementation of the Council's powers of compulsory acquisition, to authorise and take all legal and procedural steps to secure the transfer of the Order Land to Historic England.

REPORT

4. Risk Assessment and Opportunities Appraisal

4.1 Risk Management appraisal

4.1.1 The proposed redevelopment of the Flaxmill has been a long held objective for Shropshire Council. The site is important for its historic interest incorporating a number of Grade I internationally significant buildings including the world's first Iron framed building. The regeneration of this historic site is also key to the Council's wider ambition to deliver sustainable economic growth contributing to the regeneration and economic viability of Shrewsbury.

4.1.2 If the Council is minded to resolve to make a CPO, the Order can be objected to by affected parties in which case the Secretary of State can convene a public local inquiry into the making of the CPO. Furthermore, any inability to agree compensation could result in the reference of claims to the Upper Tribunal (Lands Chamber) for resolution.

4.1.3 The significant costs involved in the making, confirmation and implementation of a CPO - to include any inquiry costs, professional fees and compensation payments arising - will be underwritten by Historic England, and should the Council decide to make a CPO, this decision will be subject to the completion of a CPO Indemnity Agreement.

4.2 Human Rights Act Appraisal

4.2.1 The CPO Guidance directs acquiring authorities to give particular consideration to the rights protected under the European Convention on Human Rights (hereafter the Convention) in order that they can be sure that the purposes for which a compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.

4.2.2 The Human Rights Act 1998 incorporates the rights set out in the Convention into domestic British law – section 6 prohibits public

authorities from acting in a way which is incompatible with the Convention and the rights it protects.

4.2.3 The following articles of the Convention are of particular relevance and are usually engaged in the process of making a compulsory purchase order:

4.2.3.1 Article 1 of the First Protocol provides as follows: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one should be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties"*.

4.2.3.2 Article 6 provides that in determining their civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

4.2.3.3 Article 8 protects private and family life, home and correspondence. No public authority can interfere with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4.2.3.4 Article 14 requires that all of the rights and freedoms set out in the Convention must be protected and applied without discrimination. In particular, the enjoyment of the said rights and freedoms shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

4.2.4 Each of the rights set out within the above-mentioned articles are qualified such that they may be interfered with provided such interference is prescribed by law, is pursuant to a legitimate aim, is necessary in a democratic society and is proportionate. Furthermore, within the context of Article 1 of the First Protocol, the European Court of Human Rights has recognised that regard must be had to the fair balance which is required to be struck between

the competing interests of the individual and the community as a whole.

- 4.2.5 There are two dwellings included within the Order Land, namely the tenanted first floor residential accommodation located above the takeaway premises which operate from no. 1 and no. 15 Haughmond Square (hereafter the Haughmond Square Properties). Therefore, Article 8 of the Convention is engaged. Re-housing options for the residential tenants are being actively explored and the Council is prepared to lend the necessary support via its Housing Team.
- 4.2.6 As regards Article 1 of the First Protocol, consideration has been given to the individual rights of those affected by the CPO and the wider public interest, together with the fair balance to be struck between these competing interests in the delivery of the Scheme. As set out in Section 12 below, the Scheme will give rise to a number of very significant public benefits, both in its own right, and as an integral part of the wider redevelopment proposals for the Flaxmill. Given these benefits and the critical need to secure their delivery, the Council considers that the making and subsequent confirmation of the CPO would be legitimate, proportionate and justified, such that the CPO would not constitute an unlawful interference with the property rights of those affected.
- 4.2.7 Furthermore, the statutory procedures relating to the making of the CPO, which include a right to object, for any objection to be considered by an independent and impartial inspector and, where necessary, to be heard through the public inquiry process, together with the right to pursue a legal challenge to a confirmed compulsory purchase order, made under the Acquisition of Land Act 1981 and on the relevant statutory grounds, satisfy the requirements of Article 6. Affected persons are also entitled to claim compensation, proportionate to any losses incurred, where their interests within the Order Land have been acquired or where possession of their land has been disturbed as a consequence of the exercise of the Council's powers of compulsory acquisition.
- 4.2.8 Turning finally to Article 14 of the Convention, this article is based on the core principle that all of us, no matter who we are, enjoy the same human rights and should have equal access to them. However, it should be noted that the protection against discrimination enshrined in the Convention and enacted into UK law under the Human Rights Act 1998 is not 'free-standing'. Therefore, to rely on this right, a person must demonstrate that discrimination has affected their enjoyment of one or more of the other rights in the Convention.
- 4.2.9 The protections and procedures summarised above will not be exercised in a discriminatory manner. English is not spoken as a

first language by one of the takeaway owners. Accessible formats and translations have been offered for all communications with him and discussions, in the main, have been conducted via a family member who is a fluent English speaker. Further, Historic England has sought to identify solicitor who speaks their first language to act on their behalf. Accordingly, it is not considered that the making and pursuance of the CPO by the Council will fall foul of Article 14. The more general protection against discrimination which is afforded by the Equality Act 2010 is addressed in Section 4.3 below.

4.3 Part 4 Public Sector Equalities Duty & Appraisal

4.3.1 Paragraph 6 of the CPO Guidance states that:

“All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. In exercising their compulsory purchase and related powers (eg powers of entry) these acquiring authorities must have regard to the effect of any differential impacts on groups with protected interests.”

4.3.2 Therefore, in making the Order, the Council has a statutory duty under section 149 of the Equality Act 2010 (the 2010 Act) to have due regard to the need to:

- 4.3.2.1 Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- 4.3.2.2 Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- 4.3.2.3 Foster good relations between persons who share a ‘relevant protected characteristic’ (age, disability, gender reassignment, pregnancy & maternity, race, religion or belief, sex & sexual orientation, and marriage & civil partnership) and persons who do not share it.

4.3.3 These are sometimes referred to as the three aims of the general equality duty. The 2010 Act helpfully explains that having due regard for advancing equality involves:

- 4.3.3.1 Removing or minimising disadvantages suffered by people due to their protected characteristics;
- 4.3.3.2 Taking steps to meet the needs of people from protected groups where these are different from the needs of other people; and

- 4.3.2.3 Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 4.3.4 The redevelopment of the Flaxmill is part of the Council’s ongoing plan for Shrewsbury as a historical and cultural destination for tourists. The proposed learning centre and interactive exhibition (see paragraph 9.8 below) will facilitate opportunities for interaction between local, national and international visitors, local residents and employees of the Flaxmill. This will create an environment that will encourage good relations between those who share a Protected Characteristic as defined by the Equality Act 2010, and those who do not. In promoting a local heritage site, participation from across groupings, including our tenth category of Social Inclusion (an additional grouping that is used by Shropshire Council to ensure that it considers individuals and households that may describe as vulnerable due to their circumstances, eg those living in low income households, young people leaving care, etc.), will be encouraged.
- 4.3.5 Notably, the concept of private life (the protection of which is captured within Article 8 of the Convention (see Section 4.2 above) includes a person’s right to develop their personal identity and to forge friendships and other relationships. This includes a right to participate in essential economic, social, cultural and leisure activities. By taking steps to secure the implementation of the Scheme and the coming to fruition of the wider regeneration opportunity which the Flaxmill embodies, the Council is supporting the enjoyment of this fundamental right – the right to a private life, including a person’s ability to participate in society.
- 4.3.6 Furthermore, the redevelopment of the Flaxmill and the surrounding area is part of the Council’s ongoing plan to promote Shrewsbury as a business investment location, with additional employment opportunities, the framework for which is set out in Shrewsbury’s Big Town Plan (2018) – see Section 10 below. All offers of employment will be made having due regard to the duties contained in the 2010 Act.
- 4.3.7 An Equality, Social Inclusion and Health Impact Assessment (ESHIA) has been carried out in order to screen the proposals for such impacts and in order to incorporate the assessment detailed in this Report with regard to Human Rights considerations - see **Appendix 4**. Overall, positive equality impacts are anticipated for local people in the groupings of Age, Disability, and Sex, for whom employment opportunities will be closer to where they live. There will also be likely to be positive impacts with regard to promoting Social Inclusion, through the provision of physical access to the listed buildings and the intellectual access and educational opportunities provided by the visitor facility.

- 4.3.8 Focusing in particular on the acquisition of the Haughmond Square Properties, and the impact such acquisition will have on the owners of each takeaway business, their families and employees, it is acknowledged that there will be a potential negative impact with regard to the grouping of Race, for the proprietors and their families and workers affected. This is notwithstanding the entitlement of the affected persons to compensation and the support on offer as regards the identification of suitable commercial relocation premises and re-housing options. The Council and Historic England are aware that English is not spoken as a first language by one leaseholder/owner of one of the takeaway businesses. Accessible formats and translations have been offered for all communications with them and discussions, in the main, have been conducted via a relative who is a fluent English speaker. Further, Historic England has sought to identify a solicitor who speaks their first language to act on their behalf. These actions present as positive ongoing efforts in terms of mitigating negative impacts on grounds of Race.
- 4.3.9 The impact of the Order (and delivery of the Scheme) on other Protected Characteristic groupings groups was considered, found, in the main, to be neutral. Further, there is an anticipated likely low to medium positive impact on the communities that are resident in the vicinity of (and in due course at) the Flaxmill due to the increased opportunities for social inclusion, employment and educational betterment which a fully repurposed and regenerated site will offer and related recognised positive mental well being impacts that may be accrued from employment opportunities and from access to leisure and cultural opportunities.
- 4.3.10 Accordingly, in promoting the wider Flaxmill redevelopment proposals and, latterly, in formulating the proposal for the CPO, it is considered that full regard has been had to the Council's statutory obligations under the 2010 Act and, in particular, its duty under section 149. In the event that a CPO is made, these obligations will be kept under review throughout the compulsory acquisition process noting the particular needs and characteristics of the parties affected, to ensure that no person with a protected characteristic or from a protected group is left at a disadvantage.

4.4 Community and other Consultation

- 4.4.1 The Council has actively consulted with the community and other interested parties over the successive applications for planning permission and listed building consent to redevelop and regenerate the Flaxmill, including the outline planning permission (ref. 20/05065/OUT) granted in respect of the Scheme. Comments received from the community have been taken into account when

regulatory decisions have been taken through the planning process. A schedule of planning permissions relating to the Flaxmill is attached as **Appendix 6**.

4.4.2 Historic England has opened the site periodically and actively engaged with the local community through a formally constituted Friends of the Flaxmill group.

5. Financial Implications

5.1. As explained in paragraph 4.1.3 of this report, the Council's costs incurred in making and securing the confirmation and implementation of the CPO (including the costs of any public inquiry), as well as acquiring interests included in the CPO (including any compensation payments arising), are being underwritten by Historic England. Any decision by the Council to make a CPO, will be subject to the completion of a CPO Indemnity Agreement.

6. Climate Change Appraisal

6.1 Whilst the acquisition of additional properties as part of the land assembly process itself has limited implications for climate change, detailed project planning for the redevelopment of the Flaxmill, which through the conservation and conversion of the nationally important historic buildings will retain embodied energy they contain, will be expected to take into account opportunities to incorporate:

- i. Measures to improve the energy efficiency of the buildings and reduce the need for travel;
- ii. The generation of renewable energy on site;
- iii. Measures to capture and store carbon emissions, including through tree planting and landscaping on site;
- iv. Design measures or features which will improve the resilience of the site to the impact of more extreme temperatures or rainfall events.

7. Legal Implications – Statutory Powers to undertake proposals in this report

7.1 The compulsory purchase is to be pursued in accordance with section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) and the procedural requirements prescribed by the Acquisition of Land Act 1981 will be required to be observed.

8. Other Implications

- 8.1 In recommending the making of a CPO, the rights of third parties that may be affected (including their property rights) have been balanced against the public interest in acquiring the Order Land and delivery the Scheme which underpins the CPO. It is recommended that the Council can be satisfied that the proposed CPO is necessary and proportionate having regard to the provisions of the Human Rights Act 1998 and is in the public interest having regard to the need to support and facilitate the wider regeneration of the Flaxmill.

9. Background

- 9.1 The Scheme is an integral part of a wider redevelopment project being undertaken at the Flaxmill.
- 9.2 This internationally important site reflects a time when Shropshire led the way in engineering innovation. It comprises 8 listed buildings, including the Main Mill which was built in 1797 (which coincided with the completion of the Shrewsbury and Newport Canal) and which was added to the list in January 1953 at Grade I. The Main Mill was the world's first iron framed building and, as such, is the forerunner of the modern skyscraper. The site was a Flaxmill from 1797 until 1886. It reopened as a maltings in 1897 and operated as such until the maltings closed in 1987.
- 9.3 The conversion of the site to a maltings gives it further significance, as an example of a large scale maltings and the ingenious adaption of a complex of buildings of special architectural or historic importance, 3 of which are Grade 1 listed. This grading is applicable to just 2.5% of all listed buildings. The whole of the Flaxmill was of great local significance as the economic and social driver for the northward expansion of Shrewsbury, facilitated by the Shrewsbury and Newport Canal.
- 9.4 In recent history (1987-present), there have been various failed attempts to regenerate the Flaxmill, none of them successfully harnessing the private sector investment required to give the complex of mill buildings a new lease of life. Vandalism and neglect have also taken their toll on the site, which has been on the Heritage at Risk Register for a number of years. Both an Urgent Works Notice under section 54 and an Urgent Repairs Notice under section 47 of the Planning (Listed Building and Conservation Areas) Act 1990 were served on the site's then owner in April 2004.
- 9.5 Historic England (then English Heritage) acquired the freehold of the Flaxmill in 2005 in order to halt its further decline. In 2010, The Friends of the Flaxmill Maltings was formed to support the renovation and regeneration of the Flaxmill while actively engaging the local and wider communities in its objectives. Their primary

role is to promote the site's history, conducting guided tours and organising open days and lectures, as well as liaison with local residents, community organisations and schools.

- 9.6 Planning permission for the redevelopment of the Flaxmill (comprising an outline planning permission (ref. 10/03237/OUT) and a detailed planning permission and listed building consent (ref. 10/03230/FUL and ref. 10/03233/LBC respectively) for a first phase of development) was first obtained in November 2010 following a masterplan study (undertaken in 2004) which identified the opportunity to greatly improve the site and surrounding environment based upon the acquisition and sympathetic redevelopment of neighbouring sites (together the masterplan consents). The masterplan consents have now expired.
- 9.7 A series of planning permissions and listed building consents, obtained subsequent to the masterplan consents, have been implemented by Historic England (see Appendix 6 for a full list of the planning permissions relating to the site). In particular, the Office (now Smithy) and Stable buildings have been renovated to provide a visitor centre (pursuant to planning permission ref. 12/04435/FUL and listed building consent ref. 12/04436/LBC) and the repair and restoration of the Main Mill and Kiln is underway and nearing completion. These repair and restoration works constitute a second stage of development, consent for which was obtained on 3 November 2016 (in the form of planning permission ref. 16/02872/FUL and listed building consent ref. 16/02873/LBC).
- 9.8 The detailed planning permission for the "stage 2 project" comprises the comprehensive repair and restoration of the Main Mill and Kiln. The ground floor of the Main Mill and North Engine house will be opened to the public and house a visitor and interpretation centre and café. The four upper floors of the Main Mill will provide commercial space (offices and creative light industry) for a maximum of c.330 people. The upper floors will be accessed from the Kiln, which will provide circulation space for commercial tenants and will house two 13-person internal lifts and level access to all floors. The Jubilee Tower will also be fully repaired and restored and, subject to the requisite consents being obtained, will be available for special tours to visiting members of the public.
- 9.9 The "stage 2 project" also includes the creation of a car parking area comprising 94 spaces intended for use by visitors to the Flaxmill (the Main Mill and Kiln), together with users of the proposed commercial space. A new vehicular roadway leading north from Marshalls Court to the other side of the mainline railway (Shrewsbury to Crewe) and a combined cycle and pedestrian route will provide access to the Flaxmill from the new car park.

- 9.10 The area of land comprising the new car park, roadway and combined cycle and pedestrian route is known as the 'Railway Triangle'. The Railway Triangle has been the subject of a previous compulsory purchase order which was confirmed by the Secretary of State on 7 April 2021. Following the confirmation of this CPO, the Council has implemented its compulsory acquisition powers via the making of a General Vesting Declaration (GVD). The land, subject of the GVD, vested in the Council on 3 November 2021 and has been transferred to Historic England. The transfer is in the process of being registered at HM Land Registry.
- 9.11 The Scheme is to comprise a third phase of development at the Flaxmill. Outline planning permission of the Scheme was granted by the Council on 10 May 2021 (ref. 20/05065/OUT) (hereafter the 2021 Permission) for the residential development of the Order Land, incorporating elements of commercial, business and service uses (i.e. Class E uses), with all matters reserved, save for access. Copies of the Officer's Report and the 2021 Permission are provided at **Appendix 7a & Appendix 7b** respectively. The 2021 Permission identifies a quantum of development (with the illustrative masterplan showing 120 residential dwellings and two commercial units, plus the retained, but newly refurbished, no. 1 and no. 15 Haughmond Square which the application site is capable of accommodating, and in doing so sets the site's capacity. Further, the change of use of the Apprentice House (Grade 2* listed) to residential use is authorised, as well as the change of use of the ground floor of the Haughmond Square Properties to a mixed commercial use.
- 9.12 The 2021 Permission presents an illustrative scheme, intended to demonstrate how the maximum quantum of development applied for can be accommodated in an acceptable manner. The primary use of the application site will be residential (a mixture of house types and tenures is considered suitable), with a small number of commercial units (suitable for use as local shops and/or cafes, a gym and lifestyle centre or other health and beauty businesses) located at key, visually prominent positions within the site, strategically placed on the Spring Gardens frontage, where there will be passing traffic and footfall. The illustrative scheme shows the Haughmond Square Properties retained and refurbished, potentially as live/work units, so that they would act as 'gate posts' forming an appropriate entrance, indeed the community gateway, to the historic core of the wider Flaxmill. This will rebuild the relationship and physical connection between the buildings with the surrounding public realm, and once occupied will bring activity to the area.
- 9.12 It will be necessary for reserved matters approval in respect of the scale, layout and appearance of the outline elements of the Scheme to be obtained. These applications will be made in due course by

the private sector development partner who will be appointed by Historic England, following a competitive tendering exercise, to deliver the Scheme. Accordingly, assembly of the Order Land is of critical importance and a pre-requisite to Historic England being able to 'go to market' and invite tender responses in respect of this unique development opportunity.

- 9.13 The fourth and final stage of the redevelopment project for the Flaxmill is dependent on the third and the successful implementation of the Scheme. Historic England plan to dispose of the Order Land to their appointed development partner on terms which will see reinvestment of a pre-agreed proportion of the profit generated by the delivery of the Scheme into the ongoing maintenance, repair and preservation of the complex of historic buildings comprised within the Flaxmill. The site's redevelopment represents a unique regeneration opportunity. In order to realise the plethora of public benefits which the Flaxmill Maltings project has the potential to deliver, it is essential that this final stage of development is reached, implemented and completed. The Scheme is vital to ensuring the overall success of the Flaxmill's regeneration. Moreover, it will secure the site's long-term and sustainable future in order that its legacy may be safeguarded and continue for the benefit of all, including the local and wider communities and visitors to the town of Shrewsbury.

10. Planning Policy and current development

- 10.1 The Local Plan for Shropshire consists of the Shropshire Core Strategy adopted March 2011 and the Site Allocations and Management of Development (SAMDev) Plan adopted in 2015. The most relevant Core Strategy and SAMDev Plan policies (for a full schedule of relevant policies see **Appendix 8**), as considered in relation to the 2021 Permission, are:

CS2: Shrewsbury Development Strategy
CS6: Sustainable Design and Development Principles
CS8: Facilities, Services and Infrastructure Provision
CS17: Environmental Networks
MD2: Sustainable Design
MD12: Natural Environment
MD13: Historic Environment
S16: Shrewsbury area settlement policy

- 10.2 Policy CS2 identifies that: 'The Shrewsbury Northern Corridor will be improved in accordance with the aims of the Northern Corridor Regeneration Framework, with the restoration and redevelopment of the Ditherington Flaxmill site and the enhancement of major existing commercial, employment and mixed use areas a priority'.

- 10.3 SAMDev Policy S16 supports the restoration and redevelopment of the Flaxmill as part of improvements to the Shrewsbury Northern Corridor in accordance with the aims of the Northern Corridor Regeneration Framework to provide a sustainable and complementary mix of retail, community, employment and residential uses.
- 10.4 The Flaxmill is an allocated housing site under SAMDev Policy S16.1a (SHREW198) with the following development guidelines:
- 'Mixed use development to have regard to the adopted masterplan for the re-development of the Flaxmill and adjoining land and buildings, to include approximately 120 dwellings. The redevelopment will comprise of the repair and reuse of historic buildings to create workspace and associated cultural activities, new retail/commercial office and residential development, associated access, landscaping and car parking, with demolition of non-listed buildings'*
- 10.5 The Scheme, which makes effective use of a brownfield site, is considered to represent sustainable development and is acceptable in principle having regard to Policy CS2 which identifies Shrewsbury as the main focus for all new residential development. The development of the Flaxmill also accords with SAMDev Policy S16.
- 10.6 The Scheme is to be delivered wholly within the Shrewsbury Town Centre Conservation Area and has the potential to affect the complex of listed buildings at the Flaxmill. Therefore, in determining the 2021 Permission, the Scheme was considered against Shropshire Council policies MD2, MD13, CS6 and CS17 and with national policies and guidance including section 16 of the National Planning Policy Framework (NPPF). Likewise, special regard had to be given to the desirability of preserving or enhancing the character or appearance of the Conservation Area and to preserving the Flaxmill's listed buildings, their setting and the features of special architectural or historic interest which the buildings possess as required by sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 10.7 A full Heritage Impact Assessment was submitted with the application for the 2021 Permission, as required by Policy MD13 and the NPPF. While the focus of the policy considerations is the sensitive repair and conversion of the historic buildings, and the impacts upon their settings, the Scheme concerns the redevelopment of the wider site around them. The Order Land is prominently situated and central to the frontage of the site. Hence, the buildings to be constructed pursuant to the 2021 Permission will be viewed in context with the Grade 1 Listed Main Mill to the rear. The CPO will enable the assembly of the whole of the Order Land.

With regard to the Haughmond Square Properties in particular, this will enable Historic England to change the use of the properties and to undertake a programme of coordinated repairs and enhancements to the buildings, thereby providing a gateway entrance to the historic core of the Flaxmill via the Kiln.

- 10.9 Similarly, the Council's Big Town Plan (2018) for Shrewsbury establishes a vision to prepare the town for sustainable growth, ensuring Shrewsbury fulfils its role as an important sub regional centre with an excellent quality of life and a growing and balanced economy with an exceptional and widely celebrated natural and historic environment. Further, there is a desire to enhance areas in need of investment and renewal and to expand the town centre beyond the river loop to include edge of centre areas. The comprehensive regeneration of the Flaxmill is central to this vision.

11. The Order Land

- 11.1 The Order Land is situated in Ditherington approximately one mile to the north of Shrewsbury Town Centre. It is part bounded by the Crewe to Shrewsbury railway line to the north west and Spring Gardens, a busy main road, to the south east. Residential properties lie immediately to the north west and south west of the Order Land and on the opposite side of Spring Gardens to the south east.

- 11.2 The Order Land includes thirteen land parcels with a total area of circa 1.74 hectares. Full details of the Order Land are contained in the draft CPO Schedule and shown on the draft CPO Map at **Appendix 2 and Appendix 3** respectively.

11.3 Current Ownership and Use of the Order Land

- 11.3.1 The majority of the Order Land is already within the ownership of Historic England. However, delivery of the Flaxmill's redevelopment in full, and, in particular, the implementation of the Scheme as the third phase of the Flaxmill Maltings project (see paragraph 9.11 above), requires the acquisition of a number of privately owned, third party interests. These interests are primarily comprised within Plots 5, 6, 7 and 8 – the Haughmond Square Properties (i.e. no. 1 & no. 15 Haughmond Square).
- 11.3.2 .The freehold owner of no. 1 Haughmond Square (comprising ground floor commercial premises, residential accommodation above, and yard to the rear) leases both the commercial premises , which is occupied by the 'Spring Garden' Chinese takeaway, and the residential flat above..
- 11.3.3 Turning to no. 15 Haughmond Square (comprising ground floor commercial premises, residential accommodation above, and yard

to the rear), the ground floor of this property also operates as a hot food takeaway; in this instance the 'Chilli Spice' Indian takeaway. The business owner leases the commercial premises from the freehold owner of no. 15 Haughmond Square. The first floor residential flat is also let to a tenant

11.3.4 The Haughmond Square Properties are not listed, but as with the whole of the Order Land they sit within the Shrewsbury Town Centre Conservation Area. They are in average condition and have each been the subject of inappropriate alterations and additions and currently have semi-derelict rear yards.

11.3.5 In addition to the third party interests held in the Haughmond Square Properties, the Council also wishes to acquire all private rights, covenants and other qualifying interests by which the Order Land is burdened, details of which are recorded in the draft Order Schedule (see **Appendix 3**). Upon implementation of the Scheme, the effect of the Order will be to override the aforesaid burdens, thereby ensuring that there are no legal impediments to its delivery.

11.3.6 The balance of the Order Land comprises land in front of and to the south east of the Main Mill. This land, together with land to the north east, has been cleared of all buildings by Historic England in order to ready it for development. In addition to the Haughmond Square Properties, the Grade 2* listed Apprentice House is proposed to be retained. The Apprentice House has been vacant since 1987 and is awaiting conversion to residential use as part of the Scheme.

11.4 Negotiations with Affected Parties

11.4.1 In pursuing a CPO the Council must have regard to paragraph 2 of the CPO Guidance. This states that whilst compulsory acquisition is intended as a measure of last resort to secure the assembly of all of the land required for the implementation of a scheme or project, it may often be sensible for the acquiring authority to initiate formal procedures and, in parallel, to continue to engage in meaningful negotiations with affected parties.

11.4.2 Negotiations to acquire the third party interests comprised in no. 1 Haughmond Square are at an advanced stage. Heads of terms to acquire both the freehold and leasehold interests in the property have been agreed and solicitors have been instructed to prepare and negotiate the legal agreements required to document the same. Alongside and in parallel with the acquisition of no. 1 Haughmond Square, options for the relocation and re-housing of the tenant are being actively explored.

11.4.3 Conversely, very little, if no, progress has been made towards securing the acquisition of the third party interests comprised in no. 15 Haughmond Square. To date, the freehold owner has been unwilling to engage in any meaningful discussion with the Council and/or Historic England and has strongly objected to the initiation of any direct communication with this tenants. Requisitions for information have been sent out as part of the land referencing exercise undertaken on the Council's behalf in respect of the Order Land, to which all parties have responded. Therefore, the nature of their respective interests in no. 15 Haughmond Square is clear. However, negotiations to acquire these interests by agreement are considered to be at an impasse with little prospect of being moved forward in a constructive and timely manner. As envisaged by the CPO Guidance, it is hoped that the making of the Order will serve to focus minds and to impress upon the parties the seriousness of the Council's intent and the imperative to assemble all of the land required to deliver the Scheme.

11.4.4 The Council will continue to negotiate with affected parties, both by way of direct communication where this is sought, and via the ongoing consultation and attempts at engagement being conducted by Historic England, with a view to acquiring their interests by agreement. However, it is clear that use of the Council's powers of compulsory acquisition is needed to ensure that the Scheme can be delivered in full and within a reasonable timeframe.

12. Justification for making the Compulsory Purchase Order.

12.1 Account has been taken by Officers of paragraphs 12-15 of the CPO Guidance which set out the fundamental principles that a confirming minister should consider when deciding whether or not to confirm a compulsory purchase order. A draft of the Statement of Reasons which sets out the case for compulsory acquisition is at **Appendix 4**.

12.2 Intended use of the Order Land and the consideration of Alternatives

12.2.1 Paragraph 13 of the CPO Guidance confirms that whilst a confirming minister will not require a particular degree of justification for any specific order:

"If an acquiring authority does not: have a clear idea of how it intends to use the land which it is proposing to acquire; and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making".

12.2.2 The Council has a very clear idea of how it intends to use the Order Land through the delivery of the Scheme. Further, and as demonstrated below, the necessary resources (and consents) are in place to enable the Scheme and the wider redevelopment of the Flaxmill to be delivered within a reasonable timeframe.

12.2.3 Turning to the consideration of alternatives, the 'do nothing' option or the delivery of an alternative development proposal which excludes the acquisition and refurbishment of the Haughmond Square Properties are not considered credible, nor viable.

12.2.4 As explained in Section 9 above, the Scheme constitutes a penultimate and crucial 'enabling' stage in the successful delivery of the Flaxmill Maltings project. The Council and Historic England have gone through a deliberative process to identify the key component parts of the Scheme, with the retention and refurbishment of the Haughmond Square Properties being one such part, with a view to maximising the Scheme's appeal as an attractive redevelopment opportunity to the private sector developer market and the value of the return which will be generated by its delivery. This has been done in order to make certain, so far as possible, that the fourth and final stage of the Flaxmill Maltings project will be reached, implemented and completed, thereby ensuring the overall success of the Flaxmill's regeneration.

12.2.5 Accordingly, it is considered that the redevelopment of the Order Land pursuant to the Scheme, will secure the long-term and sustainable future of the Flaxmill in order that it may have a lasting legacy and that there is longevity to the reaping of the benefits generated.

12.3 Impediments to the Scheme

Resource and Funding Implications of the Scheme

12.3.1 The funding for the redevelopment of the Flaxmill is secured in the main and has been obtained from a variety of sources. The National Lottery Heritage Fund, Historic England, The Marches Local Enterprise Partnership, the Council and the European Regional Development Fund are the primary sources of secured funding – circa £30,650,148.

12.3.2 Alongside this, Historic England have a fundraising target of £1,000,000, against which £965,000 has already been raised with further opportunities identified via its Philanthropy Team. It is anticipated that these further opportunities will be secured by the end of the construction period in the Autumn 2022. The income and volunteer time of the Friends must also be factored in and equates to circa £1,160,955 of additional funding.

- 12.3.3 Further funding in the order of £1,000,000 has been obtained via the Heritage Stimulus Fund and committed in order to enable the carrying out of essential works at the Flaxmill during the COVID-19 pandemic.
- 12.3.4 As regards acquisition of the Haughmond Square Properties, the requisite funding has been ringfenced by Historic England and is available to be drawn down at the point at which agreement over their purchase is agreed or authorised via the CPO. As such, the compulsory acquisition of these third party interests via the CPO can be completed within a reasonable timeframe. This is a key step in unlocking a third and crucial stage of development at the Flaxmill and in enabling Historic England to pursue its disposal and redevelopment strategy for the Order Land.

Planning Permission and Scheme Delivery

- 12.3.5 Paragraph 15 of the CPO Guidance confirms that, in addition to demonstrating that there are no funding related impediments to the delivery of the scheme underpinning a compulsory purchase order, an acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation.
- 12.3.6 Any need for planning permission or other consent or licence is amongst the examples given by the CPO Guidance as to what may constitute a legal impediment. As confirmed in Section 9, outline planning permission for the Scheme is in place. Further details of the Scheme's compliance with planning policy are set out in Section 10 above.
- 12.3.7 The required reserved matters approvals will be applied for and obtained in due course following the disposal of the Order Land by Historic England to a private sector development partner who will take forward the Scheme. In building out the Scheme, strict adherence to design criteria, materials and sustainability requirements, set by Historic England, will be insisted upon to ensure quality. Further, the intention is for a pre-agreed proportion of the profit generated by the development of the Order Land to be reinvested in the ongoing maintenance repair and preservation of the complex of historic buildings at the Flaxmill.
- 12.3.8 Sufficient certainty over acquisition of the Haughmond Square Properties is a pre-requisite of Historic England 'going to market' and commencing the competitive tendering process to identify a private sector development partner. Subject to this, there is no reason why delivery of the Scheme could not progress at pace.

12.3.9 Failing an agreement to acquire the Haughmond Square Properties, it will be necessary to rely upon the CPO to provide the requisite certainty. Assuming that the Secretary of State is minded to confirm the CPO, the Council will take immediate steps to implement the same. The land assembly process will be completed as soon as possible once the statutory minimum period of 3 months following the CPO becoming operative has been observed and the requisite notices have been served on affected landowners. The competitive tendering process in respect of the third stage of development at the Flaxmill is proposed to be run in parallel such that the appointment by Historic England of its private sector development partner would be completed within the same timeframe.

Demonstrating a compelling case in the public interest

12.3.10 Paragraph 12 of the CPO Guidance states that a compulsory purchase order should only be made where there is a compelling case in the public interest. Acquiring authorities required to give particular consideration to the rights protected under the European Convention on Human Rights - Section 4.2 above provides a Human Rights Appraisal for the CPO.

12.3.11 In the absence of the CPO, there is no certainty as regards assembly of the land required to implement the Scheme, thereby jeopardising the delivery of the Flaxmill's redevelopment in full and its associated public benefits. Accordingly, the Officer's consider there is a compelling case in the public interest for the compulsory acquisition of the Order Land.

13. Conclusions

13.1 The Council's vision for the regeneration of the Flaxmill is set out in the Core Strategy and the Shrewsbury Big Town Plan (2018). Delivery of the Scheme will enable that vision to be realised. The Scheme offers an opportunity to develop a high quality residential led-mixed use development which will make a significant contribution to the economic and social vitality of the town and provide an enhanced environment and sense of place.

13.2 Absent the CPO, the successful delivery of the Scheme is in jeopardy, as is the ability of this third and crucial phase of development to enable the implementation of the final stage of the redevelopment project for the Flaxmill. The project must be delivered its entirety otherwise the wider public benefits arising from the comprehensive regeneration of both the Flaxmill and Shrewsbury's Northern Corridor as a whole will not be realised.

13.3 In light of the facts and considerations set out within this report, it is concluded by Officers that there is a compelling case in the public interest for the exercise by the Council of its compulsory purchase powers.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Shropshire Core Strategy and SAMDev Plan

Shrewsbury Big Town Plan 2018

Reports to Central Area Planning Committee

Cabinet Member (Portfolio Holder)

Edward Potter, Portfolio Holder for Economic Growth, Regeneration & Planning

Local Member

Councillor Alan Moseley

Appendices

Appendix 1 – Request from Historic England for the council to use its CPO powers

Appendix 2 – Draft CPO Schedule

Appendix 3 – Draft CPO Map

Appendix 4 – Draft Statement of Reasons

Appendix 5 – Equality and Social Inclusion Impact Assessment (ESIIA)

Appendix 6 – Schedule of planning permissions relating to the Flaxmill

Appendix 7a – Officer Report for Outline Planning Permission Ref. 20/05065/OUT

Appendix 7b – Decision Notice for Planning Permission Ref. 20/05065/OUT

Appendix 8 – Planning Policy Schedule