

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 4 February 2019

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WARD(S): Central

PORTFOLIO: Cllr Nazir, Cabinet Member for Corporate Finance & Housing

PART I **KEY DECISION**

PROPOSED (TOWER AND ASHBOURNE) COMPULSORY PURCHASE ORDER 2019

1 Purpose of Report

To pass a resolution that the Council agrees to use its compulsory purchase powers for the acquisition of land necessary for the delivery of the redevelopment of Tower House and Ashbourne House (the Order Land) as shown on the Draft Order Map at Appendix A.

The proposed scheme will comprise of circa 197 new homes all of which will be provided as affordable housing (the Scheme).

2 Recommendations

The Cabinet resolves:

- (a) That the Council makes a compulsory purchase order (the CPO) for the acquisition of land for the purposes of facilitating development, redevelopment and improvement of the Order Land.
- (b) That the Cabinet delegates to the Director, Regeneration, in consultation with the Cabinet member for Corporate Finance & Housing, the power to effect the making, confirmation and implementation of the CPO and to take all necessary steps to give effect to the CPO in respect of the Order Land including, but not limited to, the following procedural steps:
 - i finalise a Statement of Reasons to properly reflect the Council's position regarding the proposed CPO so as to properly present the Council's case;
 - ii making the CPO, the publication and service of any press, site and individual notices and other correspondence for such making;
 - iii acquire for planning purposes all interests in land and new rights within the Order Land as may be necessary to facilitate the Scheme, either by agreement or compulsorily, including entering

into negotiations with any third parties for the acquisition of their land interests and/or for new rights over their land (as appropriate), the payment of compensation and dealing with any blight notices served in connection with the CPO;

- iv approve agreements with land owners or statutory undertakers as applicable, setting out the terms for withdrawal of any objections to the CPO, including where appropriate seeking exclusion of land or new rights from the CPO;
- v make any additions, deletions or amendments to the plans at Appendix A and to seek any requisite modifications to the CPO Order and any CPO maps;
- vi seek confirmation of the CPO by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act 1981) (the 1981 Act), including the preparation and presentation of the Council's case at any Public Inquiry which may be necessary;
- vii publication and service of notices of confirmation of the CPO and thereafter to execute and serve any general vesting declarations and/or notices to treat and notices of entry, and any other notices or correspondence to acquire those interests within the area;
- viii referral and conduct of disputes, relating to compulsory purchase compensation, at the Upper Tribunal (Lands Chamber); and
- ix make an application to the Secretary of State under section 19(1)(aa) of the 1981 Act to ensure any land found to be open space is preserved and managed as such.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

(a) Slough Joint Wellbeing Strategy Priorities

The provision and maintenance of good quality and affordable family housing can reduce housing need for local households and contribute to the identified priorities of the JSNA by increasing the availability of good quality accommodation. This initiative will provide an opportunity to improve the safety, health and wellbeing of families in the Borough by providing new and fit for purpose housing stock. Proceeding with the proposed CPO is crucial to the delivery of the Scheme which may otherwise fail to be deliverable.

(b) Five Year Plan Outcomes

It is well established that having a stable, attractive home has a significant impact on a person's health and wellbeing. A CPO of the Order Land is currently considered crucial for the delivery of the Scheme which will ensure:

- i our children and young people have the best start in life and opportunities to give themselves positive lives;
- ii our people become healthier and will manage their own health, care and support needs;

- iii Slough will be an attractive place where people choose to live, work and visit; and
- iv our residents will have access to good quality homes.

4 **Other Implications**

(a) Financial

On 16 July 2018 the Council made an 'in principle' decision to use its powers to make the CPO. A full detailed assessment of the likely financial costs of making the CPO has now been prepared and is presented to Cabinet enclosed confidentially at Appendix 2.

The work required to prepare for the use of CPO powers, including all work needed to support the making of such an order will be managed and coordinated by Council officers. The Council would continue to employ the services of Trowers & Hamlins as legal advisors. The Council will continue to instruct Land Referencing Services LLP as land referencing agents to carry out a detailed examination of the all the legal interests within the area including any refresh of the land referencing as may be required prior to the CPO being made. Savills will continue to be instructed as surveyors leading negotiations with the remaining interest holders.

If the CPO is required to be heard at a public inquiry it will be necessary to instruct a barrister and experts to act as witnesses on behalf of the Council.

All of the professional costs, including compensation for the remaining interest on the site referred to have been budgeted for as part of the Council's HRA capital programme

In basic summary, under a CPO, property or rights are acquired at open market value but disregarding any increase (or decrease) in value attributable to the 'scheme' for which the land is acquired. Affected parties may also be entitled to other compensation for loss payments and disturbance depending on circumstances. The Council will be responsible for paying all compensation to landowners, whether payable by purchases through voluntary negotiation or through the CPO process. Sums due to affected interest holders payable either as compensation or by way of private treaty have been budgeted for.

Looking beyond an 'in principle' agreement, a prerequisite to any resolution of the Council to acquire land by CPO will be satisfying itself that if the CPO is confirmed the Scheme will be delivered. Further to the Council's Housing Option Appraisal resolution of 22 January 2018 the Council via the Director for Finance & Resources, Neighbourhood Services Lead and Cabinet Member for Corporate Finance and Housing, is pursuing opportunities to raise private finance through pension funds or institutional investment to deliver the Scheme.

Savills were instructed to seek this institutional investment and have, through a series of engagements with four investors over a period of months, established a positive response from each and are aware of the nature and general terms of their offers.

In Savills' view, the Council will have a fully-funded, realistic, achievable and positive set of offers from which to choose the most effective route to funding the Scheme by spring 2019. A more detailed paper on the funding of the Scheme is set out confidentially at Appendix E.

(b) Risk Management

| Recommendation from section 2 above | Risks/Threats/ Opportunities | Current Controls | Risk Management Matrix Score the risk | Future Controls |
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| <p>To agree to make a CPO for the acquisition of land and rights within the area edged red on the Order Plan entitled</p> <p>(TOWER AND ASHBOURNE HOUSE) COMPULSORY PURCHASE ORDER 2019</p> | <p>Best method to ensure vacant possession of the Order Land can be secured</p> <p>The application for a CPO may be refused although this is considered unlikely</p> | <p>Trowers & Hamblins providing legal advice in conjunction with Savills advising on property matters</p> | <p>6</p> <p>(Economic/Financial, Political and Legal Regulatory. Low probability)</p> | <p>Director, Regeneration, in consultation with the Cabinet member will review final reports prior to making the CPO</p> |
| <p>To authorise that the Director, Regeneration, in consultation with the Cabinet member for Corporate Finance & Housing authorises officers to continue preparatory work to use compulsory purchase powers, including serving any further requisitions on landowners and continuing to appoint land referencing agents to thoroughly investigate all land interests, the finalisation of a Statement of Reasons and all other necessary documentation</p> | <p>Crucial in order to progress the CPO process</p> <p>Consultant fees will be incurred although CPO may not prove crucial</p> | <p>Current costs known and being closely monitored</p> | <p>6</p> <p>(Economic/Financial. Low probability)</p> | <p>Fees to be approved in advance of being incurred and likelihood of agreement by private treaty to be closely monitored</p> |

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| To acquire for planning purposes all interests in land and new rights within the Order Land as may be necessary to facilitate the Scheme, either by agreement or compulsorily | Crucial in order to progress the CPO process Sums payable may be more than budgeted for | This risk has been mitigated through the receipt of professional valuation advice and the setting of appropriate budgets | 6 (Economic/Financial. Low probability) | Director, Regeneration, in consultation with the Cabinet member will review final reports including valuations prior to making the CPO |
| Seek confirmation of the CPO by the Secretary of State | There is a risk that the public inquiry is unsuccessful and the CPO is not confirmed. The Council would have to pay the costs of successful objectors. | Proceed as far as practicable with acquiring land ahead of serving a CPO and undertaking as much preparatory work as practicable | 6 (Economic/Financial. Low probability) | Director, Regeneration, in consultation with the Cabinet member will review final reports including valuations prior to making the CPO |

(c) Human Rights Act and Other Legal Implications

Legal implications

Section 226(1) of the TCPA 1990 grants a power to a local authority to acquire any land in its area if (a) it thinks the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land, or (b) it is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The appropriate power in this case is subsection (a) as the land is required for development, redevelopment and improvement. In order to make an acquisition under section 226(1)(a), the Council must also have regard to section 226(1A) which states that the Council consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of its area. According to the Ministry of Housing, Communities and Local Government's Guidance on the Compulsory Purchase Process (the Guidance) the Council's "area" includes part of its area.

Where a local authority exercises its power under section 226(1), in relation to land, it shall, on being authorised to do so, also have power, under section 226(3)(a), to acquire any adjoining land which is required for the purpose of executing works for facilitating its development or use. Such land might be required for construction purposes, for example.

Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 grants a power to a local authority to acquire rights by the creation of new rights. The new rights to be created might include crane oversailing, temporary access rights and rights to carry out works of improvement to public space.

Powers to carry out the CPO are also available to the Council under Section 17 of the Housing Act 1985.

The 1981 Act governs the procedures which apply to such an acquisition, the Compulsory Purchase Act 1965 governs post-confirmation procedures and the Land Compensation Act 1961 governs the amount and assessment of compensation.

Having acquired the land and any rights the Council may dispose of the land under section 233 of the TCPA 1990 for the purpose of bringing it forward for development or otherwise facilitating development. Any such disposal must be for the best consideration that can reasonably be obtained, unless the Secretary of State's consent is obtained. By a combination of sections 226 and 233 of the TCPA 1990, it is open to the Council to compulsorily acquire land for planning purposes and then transfer it to a developer partner should this be decided as the best way forward.

The 1981 Act provides that the authorisation of a compulsory purchase is to be conferred by a CPO. A CPO is required to be made in a prescribed form and must describe by reference to a map the land to which it applies. If the Council makes a CPO, it must submit the CPO to the Secretary of State for confirmation. Prior to submission to the Secretary of State, the Council must publish notice of the making of the CPO specifying that the Order has been made, describing the land and the purpose for which it is required, naming a place where the Order and Map may be inspected and specifying a time which (and the manner in which) objections may be made. The Council must also serve a notice in prescribed form on affected owners, lessees, tenants or occupiers (if any exist) of the land allowing them the opportunity to object. The procedure for confirmation is specified in the 1981 Act and may require a public inquiry if there are objections.

As an acquisition under the TCPA 1990 will acquire third party interests and rights, the Council will need to take care that it does not contravene the rights of individuals under the European Convention on Human Rights (the **ECHR**). Section 6 of the Human Rights Act 1998 makes it lawful for the Council to act in a way which is incompatible with a right under the ECHR in certain circumstances. The use of compulsory purchase powers is compatible with the ECHR and the Human Rights Act 1998 provided it can be demonstrated that the CPO is in the public interest and that it is necessary and proportionate. It is considered that, as the requirements of section 226 (1) and (1A) of the Act have been fulfilled (i.e. the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of its area), this will provide a very substantial basis upon which to make the case that the Scheme is policy based and is consistent with statutory objectives. Further information about Human Rights in respect of the use of CPO powers is set out below.

Before making a CPO, the Council must also have due regard to the need to eliminate unlawful conduct under the Equality Act 2010 (the need to advance

equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not). The equalities analysis, proportionate to the potential impact of the CPO on individuals or communities, is considered further below.

The making of a CPO should be a last resort and should be preceded by reasonable steps attempt to acquire the land by agreement.

The Guidance provides guidance to acquiring authorities in England on the use of compulsory acquisition powers, although it is guidance only and may be adapted to the particular circumstances. The Guidance has been referred to, as appropriate, in the preparation of this report and the draft Statement of Reasons.

The making of a CPO is an executive function, by virtue of section 9D of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Pursuant to section 9E(2) of the Local Government Act 2000, the Council may arrange for the discharge of an executive function by an officer of the authority.

Once a CPO is confirmed the Council can then take steps to acquire land either by serving a notice to treat and notice of entry in accordance with the 1981 Act or by serving a general vesting declaration under the Compulsory Purchase (Vesting Declarations) Act 1981. Consideration would need to be given to the most appropriate route and the procedure set out by legislation must be followed.

Persons having interests in the land acquired compulsorily will be entitled to compensation. Although the liability to pay compensation will arise only after the Council has exercised its power to acquire land following confirmation of the CPO, likely levels of compensation payable as calculated by Savills are set out at Appendix 2 of the confidential papers of this report. Payment is in accordance with the "compensation code" which is the law as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law.

Equalities Impact Assessment

Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states that a public authority must, in the exercise of its functions have due regard to the need to:

- i eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- ii advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- iii foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In advance of Director, Regeneration approving the making of a CPO an Equalities Impact Assessment will be undertaken on the potential impact of the proposal and any necessary mitigation strategy. The result of any assessment would be presented to the Director, Regeneration to consider before deciding whether to proceed with making the CPO.

Human Rights and the Case for Compulsory Acquisition

Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the ECHR. Articles 6 and 8 and Article 1 of the First Protocol are potentially relevant to the compulsory purchase of land:-

- i Article 6 provides that everyone is entitled to a fair and public hearing in the determination of his civil rights and obligations. The statutory procedures applicable to compulsory purchase, which include the right to object and provide for judicial review, are sufficient to satisfy the requirements of this Article;
- ii Article 8 provides that everyone has the right to respect for his private and family life and that there shall be no interference by a public authority with the exercise of this right except in accordance with the law, where there is a legitimate aim and where it is fair and proportionate in the public interest; and
- iii Article 1 of the First Protocol provides for the peaceful enjoyment of possessions (including property) and that no one shall be deprived of possessions except in the public interest and subject to the conditions provided for by law.

The reference in Article 1 of the First Protocol to 'the public interest' means that, in deciding whether to make and confirm a CPO, a fair balance must be struck between the public benefit sought and the interference with the rights in question.

In making this Order, the Council considers that there is a compelling case in the public interest to enable the Scheme to proceed in order to secure the economic regeneration, environmental and public benefits which the development will bring.

The Council is of the view, therefore, that the Order is compatible with the ECHR Further analysis as to the Orders compliance with the ECHR.

(d) Property

The Scheme is recognised to support the Council's ambition to maintain and invest in its current housing assets and deliver new, affordable homes in Slough. The Scheme will redevelop a Site and provide circa 197 units where currently only two are in use and in a dilapidated and generally unsatisfactory condition.

5 **Supporting Information**

In order to compulsorily acquire land the Council must have a relevant statutory power that authorises such acquisition. In addition the Council must use the most specific and appropriate power available to it. In the case of a CPO in connection with the Scheme the Council's planning powers under planning powers, that is, under section 226 of the TCPA 1990 are the most appropriate. Officers are comfortable that the proposal meets with the requirements of the statutory power.

Detailed advice to acquiring authorities on the use of compulsory purchase powers is set out in the Guidance. The Guidance provides helpful information on the matters which the Secretary of State will take into account when considering whether or not to confirm a CPO, so should be fully considered by Cabinet now in relation to the 'in principle' use of a CPO and later with reference to any specific CPO that may be considered in the future. These matters as they relate to the Scheme are considered below.

The Guidance states that in considering whether or not to confirm a CPO, the Secretary of State will have regard to the extent to which the purpose for which the land is being acquired fits with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and National Planning Policy Framework.

The Scheme benefits from strong policy support at national and local level. The Scheme has been designed so that it is planning policy compliant and represents a viable scheme that can be delivered within the short to medium term. It will provide a range of planning and regeneration benefits, particularly the provision of 100% affordable units and a high quality layout and design which will significantly improve the current situation on site.

The Guidance states that the Council must demonstrate a '*compelling case in the public interest*', and that the public benefits that will arise from the purpose for which the land is to be acquired (i.e. the Scheme) outweigh the impact on those affected. The Council must demonstrate both the need for the Scheme in principle and in general and the need to acquire each and every parcel of land included in the CPO. On the basis of the legal advice and the Guidance, Council Officers are of the view that such a compelling case can be demonstrated from the desirability of implementing the Scheme – in particular from the substantial wider benefits resulting from it.

The Scheme is not yet in final form but is expected to provide circa 197 units of affordable housing units at the Order Land. Private funding options to deliver the Scheme are being considered following the recommendations of the Housing Options Appraisal project.

As a result of increasing obsolescence, the lack of DDA and other compliance, and a high rate of anti-social behaviour at the Order Land since 2015, social housing tenants have been rehoused to alternative accommodation by the Council and negotiations undertaken with leaseholders to compensate them for their properties accordingly. There are only two residential units owned by leaseholders at the Order Land which remain in occupation. The Scheme will remedy this and provide vital new housing stock within the Borough.

Part of the justification for obtaining confirmation of a CPO would involve demonstrating that compulsory purchase powers are necessary because the land

required cannot be acquired voluntarily. Compulsory purchase is seen as a last resort and an authority must be able to show that it has made genuine attempts to acquire the land by negotiation. The Council has made significant efforts to acquire all interest by voluntary agreement. As it stands only two residential interests remain at the Order Land in addition to the interests of two telecommunications providers. A summary of the remaining interests and the efforts made to acquire these to date are set out at Appendix 1. The Guidance expects the Council to continue its efforts to acquire the remaining interests by private treaty and the Secretary of State will seek evidence of those further efforts prior to making a CPO.

The Council must also demonstrate that there are no other impediments to proceeding with the Scheme (for example the need for planning permission, other consents or physical constraints). While planning permission for development of the Scheme has not yet been applied for the principle of redevelopment of the Order Land was agreed by the Cabinet on 22 January 2018 as part of the Housing Option Appraisal. Savills are instructed to develop the Scheme with a view to planning permission being applied for in early 2019. In the event that planning permissions and consents have not been obtained by the time the CPO is made, it would have to be demonstrated that there is no reason to have serious doubts that they would be granted or overcome.

The Council would have to demonstrate that it has, or at least will obtain, the resources necessary not only to pay compensation for the land but also to implement the Scheme. The reason for this requirement is to avoid a situation in which private land has been acquired compulsorily for a purpose which, in the event, cannot be achieved for lack of funds. The note at Appendix 3 sets out the current position regarding Scheme funding in more detail.

6 Procedures and timescales for CPO

Once a CPO is made the programme is no longer wholly in the control of the Council, but is subject to a timetable led by the Planning Inspector. This said, Trowers & Hamlins have provided an outline indication of the timetable process:

- (a) If no relevant objections, (i.e. objections from parties with an interest included in the Order) are received, or any that are received are withdrawn it should be possible to confirm the CPO within 12 weeks from its making.
- (b) If there are relevant objections, these will need to be addressed before the CPO is confirmed. It may be possible to reach agreements with objectors which result in the withdrawal of objections but if this is not possible they will be considered at a Public Local Inquiry.
- (c) If there are objections that cannot be resolved, a Public Inquiry would need to be called by the Secretary of State. The inquiry would be held by an independent Inspector who would report to the Secretary of State. The Secretary of State would then decide whether to confirm the CPO. The date of the inquiry and its duration will be set by the Inspector. Generally, the date of the inquiry will be about six months after the CPO is made. The length of the Inquiry will depend on the number of objections received but a reasonable estimate would be two to three days.

Following the inquiry the Inspector will write a report with a recommendation to either confirm (with or without modifications) or reject the CPO.

It is currently anticipated that work will begin on the Scheme by mid-2020.

7 **Conclusion**

The proposal is to recommend that the Cabinet agrees to use the Council's CPO powers to facilitate the development of the Scheme.

The Cabinet should note that agreeing to use CPO powers in relation to the Order Land will not undermine due process of pursuing negotiation and fair acquisition terms for existing land owners. In fact the approach of seeking a resolution to use CPO powers whilst continuing to try to negotiate acquisitions by private treaty agreement is in line with the Guidance, which provides best practice advice for assembling land for schemes of this nature. Officers are of the opinion that a resolution to use compulsory purchase powers would assist the ongoing negotiations because landowners would know that the Council genuinely means to progress the Scheme and, if terms to acquire all land interests and new rights by agreement could not be achieved in a reasonable timescale, compulsory powers will be used. This would encourage landowners to negotiate in a meaningful way.

The Scheme will give rise to substantial social, economic and environmental benefits for both the Order Land and the wider area. Those benefits include introduction of new residential development, which will provide much needed residential accommodation in a sustainable location; employment benefits through the construction phase; environmental and townscape improvements through contemporary and well-designed fit for purpose built development.

The Council could decide not to use CPO powers at all. It should be noted, however, that whilst Officers been successful in acquiring a significant number of interests in the Order Land, attempts to acquire the remaining interests by agreement have proven unsuccessful to date. The significant benefits and regenerative effects of the Scheme would therefore be delayed or even prejudiced altogether without the CPO process. Given the Council's support for the Scheme, Officers consider it is appropriate to make the CPO to ensure the important positive effects of the Scheme are realised in a timely manner.

8 **Appendices Attached**

'A' Draft Order Plan

'B' Draft Order

The following appendices contain exempt information and are included in Part II of the agenda:

'C' Summary of negotiations with remaining leaseholders to date

'D' Schedule of potential costs

'E' Funding progress note