

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 18 November 2019

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PART I KEY DECISION

DEVELOPMENT AT TOWER HOUSE AND ASHBOURNE HOUSE – OPERATION OF POWERS UNDER S226 AND S227 TOWN AND COUNTRY PLANNING ACT 1990 AND S203 HOUSING AND PLANNING ACT 2016

1 Purpose of Report

To inform members that due to the single remaining leaseholder's refusal to transfer their interest in Ashbourne House on reasonable terms, and with 119 laying vacant, this single property is preventing the development of 193 affordable new homes for rent. So that the community realises the intended benefit of the development the Council has been left with no alternative other than to formally proceed with the legal processes for compulsory purchase.

The paper sets out to Cabinet the arrangements to secure the delivery of the development, redevelopment of the open amenity space and improvement of site currently known as Tower House and Ashbourne House as authorised by Cabinet on 16 July 2018 and 4 February 2019.

In particular the recommendations in this report enable the compulsory purchase application to address:

- (a) the land and interests in respect of which officers consider compulsory purchase to be necessary, in light of the interests that have been acquired by private treaty;
- (b) the progress of the planning application for the Scheme; and
- (c) the steps that Cabinet should take to progress the making of the compulsory purchase order, including the approach to addressing potential rights to light or other unknown rights over the Order land and the Council's Interests in land affected by the Scheme.

It is proposed that Cabinet pass resolutions to confirm progress towards the use of compulsory purchase powers having regard to those matters.

2 Recommendations

That Cabinet resolves:

- (a) To approve the draft Order Map and Schedule appended to this report;
- (b) To note the progress of the planning application for the Scheme (planning application reference S/00020/5) and confirm that the planning purposes underpinning the CPO are to facilitate the development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme as further described in the Supporting Information to this report;
- (c) To acknowledge that the delivery of the Scheme will encompass works upon or use of the Order Land which may infringe upon third party rights, in respect of which section 203 of the Housing and Planning Act 2016 may be required to authorise the overriding of such rights, or other matters burdening the land, where that is needed to deliver the Scheme;
- (d) To note that a decision will be required on whether, in accordance with section 122 of the Local Government Act 1972, to appropriate the Council Interests to the same planning purposes as the CPO (i.e. development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme and described in the Supporting Information to this report), so as to enable reliance on Section 203 of the Housing and Planning Act 2016 to override third party rights affected by works on or use of that land; and
- (e) To delegate to the Service Lead for Housing Development and Contracts authority to:
 - a. advertise notice of an intention to appropriate the relevant land under section 122(2A) of the Housing and Planning Act 2016;
 - b. give further consideration of the statutory requirements for appropriation of the Council Interests
(including for the avoidance of doubt authority to consider any properly made objections received pursuant to those statutory steps) and thereafter to report to Cabinet on whether or not to proceed with appropriation in light of any issues raised; and
 - c. in the event that Cabinet decides to appropriate the land, proceed with making and effecting the confirmation and implementation of the Order following any appropriation, under the powers delegated by the resolutions made at the Cabinet meeting on 4 February 2019;
- (f) To acknowledge therefore that the foregoing resolutions may give rise to claims for compensation against the Council under section 204 of the Housing and Planning Act 2016, in addition to claims for compensation made in respect of the acquisition of interests included in the Order;
- (g) To approve that recommendation (e) be implemented urgently in accordance with paragraphs 20 and 21 of the Overview & Scrutiny Procedure Rules.

3 **Terms**

In this report a number of defined terms have been used, which are intended to be read with the following meanings:

"Council Interests"	means all those interests in land owned by the Council within the boundary of the land required for the delivery of the Scheme shown on the plan at Appendix 6
"CPO"	means the proposed Slough Borough Council (Tower and Ashbourne) Compulsory Purchase Order 2019 as authorised in Cabinet on 16 July 2018 and 4 February 2019 and further explained in this report
"HPA"	means the Housing and Planning Act 2016
"Order Map"	means the draft map identifying the plots of land to which the Schedule relates as appended to this report at Appendix 1
"Schedule"	means the draft schedule of interests of which powers of compulsory purchase will be sought by way of the CPO as appended to this report at Appendix 2
"Order Interests"	means all those interests in land listed in the Schedule, which comprise all of the interests in land that have been revealed in the course of the land referencing undertaken on behalf of the Council other than the Council Interests and the Telecommunications Interests
"Telecommunications Interests"	means two leasehold interests of statutory undertakers which benefit from statutory protection and which it is therefore proposed will be secured by private treaty with the affected statutory undertakers rather than by compulsory purchase
"Scheme"	means the demolition of the existing buildings and comprehensive redevelopment of the site comprising 193 residential units (Use Class C3), provision of 136 sqm of flexible commercial / community space (Use Classes B1/D1/D2) and associated access works, car parking and landscaping, pursuant to planning application reference S/00020/005 (as amended in accordance with revised details submitted on 21 May 2019)

4. Private Treaty Acquisitions and Scope of the Compulsory Purchase Order

The use of CPO powers to secure the development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme has already been approved by Cabinet by resolutions made on 16 July 2018 and 4 February 2019. In accordance those approvals a land referencing exercise was undertaken to identify all of the owners of the necessary land.

Compulsory purchase is intended as a last resort and the Council will be expected to demonstrate that it has taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Accordingly the Council has made significant efforts to acquire all interest by voluntary agreement. As it stands only one residential interest remains at the Order Land as now proposed (see section 6 below) in addition to the interests of two telecommunications providers. A summary of the efforts made to acquire the remaining interest holders interest to date are set out at Part 2. Further unknown rights have been identified during the land referencing process and are set out in the Order Schedule. As these rights are for the benefit of unknown parties it has not been possible to seek to acquire them by private treaty.

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. In the event that the remaining interests cannot be obtained, the Council's efforts to acquire them without compulsory purchase powers will form part of the justification for obtaining confirmation of a CPO.

The Telecommunications Interests benefit from statutory protection from compulsory purchase. Whilst that protection is not absolute, discussions with the relevant parties are progressing and officers consider it is not necessary to include the Telecommunications Interests within the scope of the CPO.

Other changes to the scope of the Order, resulting from further consideration of the Council-owned land affected by the Scheme, are set out in section 6 below.

Accordingly the Order Interests will be limited to the one remaining residential interest located within Ashbourne House. The leasehold structure of Ashbourne House means the remaining leaseholder has rights of way on foot over most of the rest of the site, however as those rights form part of the leasehold interest, the CPO boundary need not include the larger area and is proposed to be limited to the footprint of Ashbourne House itself along with a small section of unregistered land. A draft Order map and Schedule is provided within this report.

5. Supporting Information - Progress of Planning Application

Since the Cabinet last considered this matter, the planning application in respect of the land has progressed to a point at which a more precise description of the proposed redevelopment and improvement can now be given – in the form of the Scheme. It should be noted that the Scheme represents one possible form of such redevelopment and improvement and that it is not proposed to narrow the purposes of either the CPO or the appropriation of the Council Interests pursuant to this report to only the Scheme, which may undergo changes in accordance with the usual planning process, market variations or other factors.

The Scheme comprises the demolition of the existing buildings and comprehensive redevelopment of the site comprising 193 residential units (Use Class C3), provision

of 136 sqm of flexible commercial / community space (Use Classes B1/D1/D2) and associated access works, car parking and landscaping, pursuant to planning application reference S/00020/005 (as amended in accordance with revised details submitted on 21 May 2019).

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 Scheme is currently proposed to provide all 193 units as Affordable Housing, on a "Slough Living Rent" tenure. The applicant considers that *"this allows the Council to deliver the most affordable housing at the most affordable level for future residents"*.

The Council's Planning Committee considered the application on 3 July 2019. The officer's report noted that whilst *"daylight impacts are considered to result in some limited harm... there are over-riding factors which limit the nature and extent of [those] impacts."* The report said *"the development would make a positive contribution to the housing supply in the Borough to which significant positive weight is afforded"* and cited further economic and social benefits. The Scheme benefits from strong policy support at national and local level. The report concluded that:

"Weighing all of the factors into the planning balance, and having regard to the NPPF as a whole, all relevant policies in the Core Strategy and Local Plan, there is strong merit in supporting a 100% affordable housing scheme that intensifies an existing residential site, and simultaneously exploits an opportunity to improve a recognised poor quality housing estate and significantly enhance the public realm and level of amenity. As such the proposal will deliver wider environmental, community/social gains and economic benefits in accordance with the principles of sustainable development in the NPPF. In applying paragraph 11 of the NPPF, it is considered that the limited adverse impacts do not demonstrably outweigh the benefits of the proposals"

The Committee resolved (subject to the Secretary of State's option to 'call in' the application) to delegate authority to grant planning permission in accordance with the application to the Planning Manager, subject to the completion of a planning agreement under s106 of the Town and Country Planning Act 1990.

This progress with the application confirms the advice set out in the report to Cabinet on 4 February 2019, which was that the Scheme and purpose of the Order would accord with the planning policy framework for the area. The progress of the Scheme also confirms that the Council has a clear idea of how it intends to use the land which it is proposing to acquire.

The other factors set out in the "Supporting information" in that report continue to apply subject to the updates as stated in this report.

In particular, as a result of increasing obsolescence, the lack of DDA and other compliance, and a high rate of anti-social behaviour at the Council Interests and 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 is only one residential unit at

the Order which remains in occupation. The Scheme will remedy this and provide vital new housing stock within the Borough.

The Ministry of Housing, Communities and Local Government's Guidance on the Compulsory Purchase Process (the Guidance) for the use of CPO powers 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 remain 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 will give rise to substantial social, economic and environmental benefits for both the Land and the wider area. Those benefits, which are explained further in the officer report relating to the planning application, include introduction of new residential development, which will provide much needed affordable accommodation in a sustainable location; employment benefits through the construction phase; and environmental and townscape improvements through contemporary and well-designed fit for purpose built development. Officers consider that there are no other means by which the benefits of the Scheme could be delivered, in circumstances where it has been unable to secure the remaining interest to enable delivery of development in a central area of the Scheme.

The Council should also be able to show that all the necessary resources are likely to be available not only to pay compensation for the land and any rights acquired or infringed, but also to implement the Scheme. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. 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 reasons including a lack of funds. Enclosed at Part II is the budget for this project held by the Council which is considered sufficient to meet the current needs.

A private lender has agreed substantive Heads of Terms with the Council to finance the development of the scheme. The capital costs of the scheme will be forward funded by a private lender who will enter into an Agreement for Lease between the private lender and a Council-owned SPV. There are not considered to be any funding impediment to acquiring the Order land or delivering the Scheme; and the Council has already demonstrated its full commitment to the Scheme by activity including the expenditure of resources to date on the acquisition of interests necessary for delivery

6. Third party rights and appropriation of Council Owned Land

Since the previous report, progress towards the making of the CPO has revealed the possibility that third party interests outside the Scheme may have rights of light which would be affected by the development of the Scheme.

Third party interests within the originally intended Order lands would also be affected by the development.

The Land Referencing Agents instructed by the Council are confirming the property rights which may be interfered with. The Council has also instructed EB7 as rights of light surveyors to confirm the extent to which any rights of light may be impacted by

the development of the Scheme. A report prepared by the Council's rights of lights surveyors have suggested that there are around 16 properties who may potentially be effected. The outcome of those investigations is a possibility of some unknown rights over the Order Land and the Council Interests.

In general terms, if works are commenced which infringe upon third party rights then the normal principles of property law would apply to those works. Various remedies up to and including injunction may be available to affected third parties. This can cause potentially long delays in delivering development.

However, section 203 of the HPA 2016 can be relied upon to “override” these rights. Where land has become vested in the Council, or has been appropriated for planning purposes, and the construction, maintenance and use of development on the land is carried out with planning permission, resulting interference with private rights over the Order Land and/or the Council Interests is overridden under section 203. Compensation is provided for under section 204.

In this case, planning permission for the relevant use or work would need to be in place. A planning application for development of the Scheme as described below has been recommended for approval subject to the completion of a s106 agreement. The planning permission is anticipated to be issued imminently, prior to the making of the Order.

The relevant land must be vested in or acquired by the Council, or appropriated to the relevant purposes, in either case on or after 13 July 2016 (the Relevant Date). This requirement would be met in respect of the Order Interests upon acquisition (whether in the exercise of the CPO or as a result of successful negotiations in advance thereof).

The confirmation of the CPO would therefore enable section 203 to operate in respect of third party rights affected by work or use of the permitted development on the Order Land.

Officers consider that the overall assessment of the justification for the Order, in this and previous reports to Cabinet, also apply to any potential impact on third party rights in respect of which section 203 may be engaged as a result of acquiring the Order lands under the Order. Cabinet is asked to recognise these potential impacts in confirming towards as part of prior to any making of the Order.

It is also necessary to consider existing Council Interests, including those in the wider area covered by the Scheme. These include areas of potential open space. They have been held since before the Relevant Date and are not proposed for inclusion within the Order.

The appropriation of such land for planning purposes would enable section 203 to be used similarly to override any other third party interests affected by the Scheme, as regards development carried out in reliance on planning permission for the Scheme. Such third party interests would no longer need to be acquired under the Order. The appropriation would extend to land outside the Order land as now proposed and allow for the Order land to be reduced, as identified on the attached map.

There are statutory requirements to be followed under section 122 of the Local Government Act 1972 to allow the Council to rely on section 203 of the HPA to the extent that this is considered to be necessary.

Under section 122 land belonging to a Council may be appropriated where it is no longer required for the purpose for which it is held immediately before the appropriation. However a Council may not appropriate land consisting or forming part of an open space unless they first cause notice of their intention to do so by newspaper and consider any objections to the proposed appropriation which may be made to them.

The Council is not yet in a position to decide to appropriate the Council interests pending proper consideration any public consultation exercise, at which stage the position must be reviewed. However at this initial stage, officers consider that there are grounds for issuing a notice of intention to appropriate, for the following reasons.

As noted above the existing housing stock on the land is no longer considered fit for purpose and is in need of replacement. The development, redevelopment and improvement of the Order land and the Council Interests including (without limitation) for the Scheme is proposed so as to bring about that replacement, as part of the achievement of wider planning purposes for the area. In the case of the Scheme, this would be achieved through a comprehensive development including commercial / community space (Use Classes B1/A1/A2/A3/D1) and associated access works which links and makes a positive contribution to the wider area. The land does not need to be held for its existing purposes in the wider public interest in the locality.

Section 203 can be relied upon where appropriation is for planning purposes. These purposes are defined in the Town and Country Planning Act 1990 (the 1990 Act) by reference to the powers which underpin the exercise of CPO powers elsewhere in the 1990 Act. This applies to the appropriation the same considerations as the power under which the CPO is proposed to be made in section 226 of the 1990 Act.

As previously reported to Cabinet, the Order as originally proposed was prepared under section 226 of the 1990 Act to facilitate the carrying out of development, redevelopment or improvement on or in relation to land which would now be covered by the appropriation. Appropriation would for similar reasons be consistent with section 226. Further, under section 226(1A) of the 1990 Act that a local authority must consider the development, redevelopment or improvement on or in relation to the land to be likely to contribute to the achievement promotion or improvement of any one of the following objectives – the economic, social and/or the environmental well-being of the area. For the reasons given in previous reports to Cabinet, officers consider that these benefits would also be achieved through any appropriation. Officers also consider that the broader justification for the use of compulsory purchase powers, as set out in this and earlier reports by reference to government guidance on the use of compulsory purchase powers, would apply to any appropriation.

The Council will discuss with affected landowners the prospects for these rights to be released by agreement, however the potential prejudice to the timely redevelopment of the Order land due to unresolved issues regarding the release of rights is considered to justify issuing a notice of intention to appropriate at this stage and further consideration of appropriation following public consultation. The potential effect on these landowners is also addressed by reference to human rights is considered under the “Legal Implications” section below.

The overall intention is to ensure that any third party rights including any rights to light of neighbouring properties will not prevent the delivery of the Scheme. Any

beneficiaries of such rights would be financially compensated under section 204 HPA.

The Council must advertise an intention to appropriate the relevant land before making a decision to appropriate. Officers recommend that authority be delegated to the Service Lead for Housing Development & Contracts to advertise the Council's intention to make the appropriation, and consider any objections to the appropriation in accordance with the statutory requirements, before reporting back to Cabinet for a decision on appropriation, before any CPO is made.

7. Implications for 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 and use of s203 of the Housing and Planning Act 2016 (the HPA) powers 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. The use of s203 HPA powers is 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.

8 Other Implications

(a) Financial

On 4 February 2019 the Council made a decision to delegate powers to the Director, Regeneration to make the CPO. This followed an in-principle resolution to commence the compulsory purchase process on 16 July 2018. A full detailed assessment of the likely financial costs of making the CPO was prepared, and this has now been updated and is presented to Cabinet enclosed confidentially within the Part II Papers.

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 will employ the services of external an external law firm and counsel 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.

All of the professional costs referred to above have been budgeted for as part of the Council's capital programme.

As previously set out to Cabinet in the February 2019 CPO report, 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 negotiation have been budgeted for.

The specific Scheme currently envisaged has the potential to infringe upon third party rights. As explained above, however, the acquisition of land pursuant to the Order would enable the use of section 203 of the Housing and Planning Act 2016 to override such rights for the purposes of building or using the development. Section 204 provides for compensation to be payable on any exercise of the section 203 power.

Section 203 of the HPA will not apply to the Council Interests unless and until those interests are appropriated to the same planning purposes of the CPO. That appropriation having taken place, the same financial considerations (i.e., the possibility of third party claims for compensation arising from any infringement of third party rights) will apply in respect of the Council Interests as outlined above in respect of the Order Interests.

The Council has made reasonable allowance for the compensation that may be payable in respect of the rights interfered with. This is set out in more details at Part 2 Papers, Appendix 1.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Risk Management Matrix Score the risk	Future Controls
<p>To approve the draft Order Map and Schedule appended to this report</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>External legal advisors 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 note the progress of the planning application for the Scheme (planning application reference S/00020/5) and confirm that the planning purposes underpinning the CPO are to facilitate the development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme as further described in the Supporting Information to this report</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>External legal advisors 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>(a) To acknowledge that the delivery of the Scheme will encompass</p>	<p>Operation of section 203 would follow as a consequence of compulsory acquisition under the</p>	<p>This risk has been mitigated through the receipt of professional valuation</p>	<p>6</p> <p>(Economic/Financial. Low probability)</p>	<p>Director, Regeneration, in consultation with the Cabinet to follow</p>

<p>works upon or use of the Order Land which may infringe upon third party rights, in respect of which section 203 of the HPA may be required to authorise the overriding of such rights, or other matters burdening the land, where that is needed to deliver the Scheme;</p> <p>(b) To note that a decision will be required on whether, in accordance with section 122 of the Local Government Act 1972, to appropriate the Council Interests to the same planning purposes as the CPO, so as to enable reliance on Section 203 of the HPA to override third party</p>	<p>Order, the justification for which has been set out in this and earlier reports to Cabinet</p> <p>Operation of section 203 would be enabled by the appropriation of Council interests in and near the Order land for planning purposes, subject to meeting the statutory requirements for appropriation. A decision is required on appropriation following consideration of public consultation responses.</p> <p>Addressing third party rights is necessary in order to ensure that such rights do not pose an impediment to the delivery of the Scheme.</p> <p>Compensation may be payable for infringement of third party rights, and the sums payable may be more</p>	<p>advice and the setting of appropriate budgets</p> <p>Further professional advice in respect of any objections received will also be obtained</p>		<p>statutory procedure and duly consider any objections before proceeding with any appropriation.</p>
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<p>rights affected by works on or use of that land; and</p> <p>(c) To delegate to the Service Lead for Housing Development and Contracts authority to:</p> <p>a. advertise notice of an intention to appropriate the relevant land under section 122(2A) of the Housing and Planning Act 2016;</p> <p>b. give further consideration of the statutory requirements for appropriation of the Council Interests (including for the avoidance of doubt authority to consider any properly made objections received pursuant to those statutory steps) and thereafter to report to Cabinet on whether or not to proceed with appropriation in light of any issues raised; and</p> <p>c. in the event that Cabinet decides to appropriate the land, proceed with making and effecting the</p>	<p>than budgeted for</p>			
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<p>confirmation and implementation of the Order following any appropriation, under the powers delegated by the resolutions made at the Cabinet meeting on 4 February 2019.</p> <p>(d) To acknowledge therefore that the foregoing resolutions may give rise to claims for compensation against the Council under section 204 of the Housing and Planning Act 2016, in addition to claims for compensation made in respect of the acquisition of interests included in the Order.</p>				
<p>To acknowledge therefore that the foregoing resolutions may give rise to claims for compensation against the Council under section 204 of the Housing and Planning Act 2016</p>	<p>Crucial in order to progress the CPO process</p> <p>Compensation may be payable for infringement of third party rights, and the sums payable may be more than budgeted for</p>	<p>This risk has been mitigated through the receipt of professional valuation advice and the setting of appropriate budgets</p>	<p>6 (Economic/Financial. Low probability)</p>	<p>Director, Regeneration, in consultation with the Cabinet member will review final reports including valuations prior to making the CPO</p>

(c) Human Rights Act and Other Legal Implications

Legal implications

The legal implications of the CPO were dealt with more fully in the report to Cabinet of 4 February 2019 and those considerations remain relevant to the continued pursuit of the CPO as there set out.

In addition to providing an update on the CPO and the Scheme, this report explains the approach to dealing with third party rights, including potential third party rights which have become known to the Council through further preparations to make the CPO. This section sets out further background to section 203 of the Housing and Planning Act 2016 (the HPA) and provides information on appropriation under section 122 of the Local Government Act 1972.

The enabling provisions in s203(1) and s203(4) of the HPA provide that works for the construction, maintenance and use of the Scheme carry statutory authorisation even if they interfere with private rights over the Order Land and/or the Council Interests.

Sections 203(2)(a) and 203(5)(a) require there to be a planning permission for the relevant use or work to be in place and a planning application for development of the Scheme as described below has been recommended for approval subject to the completion of a s106 agreement. The planning permission is anticipated to be issued imminently. No works to which section 203 might apply would be carried out prior to the grant of planning permission.

Sections 203(2)(b) and 203(5)(b) require the relevant land to be vested in or acquired by the Council, or appropriated for planning purposes (as defined by section 246 of the Town and Country Planning Act 1990) , in either case on or after 13 July 2016 (the Relevant Date).

The Order Interests will satisfy those requirements upon acquisition (whether in the exercise of the CPO or as a result of successful negotiations in advance thereof).

The Council Interests have been held since before the Relevant Date, and accordingly it is proposed that they be appropriated from housing purposes to the planning purposes of development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme.

By section 246(1) of the Town and Country Planning Act 1990, any reference to appropriation for planning purposes is a reference to acquisition section 226 or 227 of the 1990 Act.

Section 226 gives local authorities the power to acquire compulsorily any land in their area if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. By section 226(1A) an authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the

social well-being of their area; (c) the promotion or improvement of the environmental well-being of their area.

For the reasons set out in this and previous reports, officers consider that these requirements are considered to be met in the case of the proposed CPO, and would (in conjunction with other considerations relevant to CPOs as set out in this and earlier reports) also justify serving notice of an intention to appropriate in respect of the Council Interests.

Sections 203(2)(c) and s203(5)(c) of the HPA also incorporate reference to a requirement for the local authority to have the ability to compulsorily acquire the Land. The Council has powers to compulsorily acquire the Order Interests further to the Cabinet's most recent resolution regarding the use of CPO powers of 4 February 2019, and the same powers would be available in respect of the Council Interests were they not already in the Council's ownership.

If the steps necessary to trigger the application of section 203 are not taken, and the works are commenced which infringe upon third party rights which have not been released, then the normal principles of property law would apply to those works. Various remedies up to and including injunction may be available to affected third parties. Injunction is an equitable remedy and is within the court's discretion to grant. The Court can also award damages where it considers this an adequate remedy. This could cause delays (possibly very long delays) in the delivery of the Scheme, or the Scheme not coming forward at all, with corresponding detriment to the benefits that this would bring to the local community.

Statutory requirements must be met under s122 of the Local Government Act 1972 before the proposed appropriation can be made. By section 122(1) appropriation may take place in respect of "any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned". By section 122(2A) a Council "may not appropriate under subsection (1) above any land consisting or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them".

For the reasons given earlier in this report, officers consider that section 122(1) is satisfied.

Since the Council Interests include open space, before making the proposed appropriation the Service Lead for Housing Development and Contracts will advertise the Council's intention to make the appropriation, and consider any objections to the appropriation in accordance with the statutory requirements.

1. Equalities Impact Assessment

S149 of the Equalities Act 2010 created the public sector equality duty. S149 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.

An Equalities Impact Assessment has been undertaken and concludes that the scheme would not constitute a breach of the Council's obligations under s149 of the Equalities Act 2010. We attach a copy of the initial Equalities Impact Assessment at Appendix 3 and this will be further reviewed and updated as the CPO and appropriation process progresses.

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 European Convention on Human Right (the ECHR). Articles 6 and 8 and Article 1 of the First Protocol are potentially relevant to the decision to bring the Scheme within the scope of s203:-

- 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 with potential implications under s203, a fair balance must be struck between the public benefit sought and the interference with the rights in question.

In making the CPO, and having regard to the and the associated consequences for any beneficiaries of third party rights over the Order Land and/or the Council Interests, 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. Any negative impact arising from the acquisition of the outstanding interests to be acquired, including any need for the remaining occupants to move away from the Order land, will be mitigated by the ability to relocate in the area and is outweighed by the positive effects held in prospect by the redevelopment of the Order land within the Scheme. Similarly, to the extent that it is necessary to override third party rights in reliance upon section 203, any negative impacts would be outweighed by the overall public benefits held in prospect by the Scheme. The acquisition or interference with rights would be the subject of compensation.

The Council is of the view, therefore, that the Order and consequent application of s203 to the planning purposes of development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme as described in the Supporting Information to this report and previous reports is compatible 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 194 units where currently only one is in use and in a dilapidated and generally unsatisfactory condition.

9 Conclusion

The proposal is to recommend that the Cabinet resolve:

- (a) To approve the draft Order Map and Schedule appended to this report; and
- (b) To note the progress of the planning application for the Scheme (planning application reference S/00020/5) and confirm that the planning purposes underpinning the CPO are to facilitate the development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme as further described in the Supporting Information to this report;
- (c) To acknowledge that the delivery of the Scheme will encompass works upon or use of the Order Land which may infringe upon third party rights, in respect of which section 203 of the Housing and Planning Act 2016 may be required to authorise the overriding of such rights, or other matters burdening the land, where that is needed to deliver the Scheme;
- (d) To note the availability of powers under section 122 of the Local Government Act 1972 to appropriate other land (including land outside the Order Land) to planning purposes, to enable reliance on section 203 of the Housing and Planning Act 2016 to override of such rights or other adverse matters burdening the land, where that is needed to deliver the Scheme;

- (e) To note that a decision will be required on whether, in accordance with section 122 of the Local Government Act 1972, to appropriate the Council Interests to the same planning purposes as the CPO (i.e. development, redevelopment and improvement of the Order Land and the Council Interests including (without limitation) for the Scheme and described in the Supporting Information to this report), so as to enable reliance on Section 203 of the Housing and Planning Act 2016 to override third party rights affected by works on or use of that land;
- (f) To delegate to the Service Lead for Housing Development and Contracts authority to
 - a. advertise notice of an intention to appropriate the relevant land under section 122(2A) of the Housing and Planning Act 2016;
 - b. give further consideration of the statutory requirements for appropriation of the Council Interests (including for the avoidance of doubt authority to consider any properly made objections received pursuant to those statutory steps) and thereafter to report to Cabinet on whether or not to proceed with appropriation in light of any issues raised; and
 - c. in the event that Cabinet decides to appropriate the land, proceed with making and effecting the confirmation and implementation of the Order following any appropriation, under the powers delegated by the resolutions made at the Cabinet meeting on 4 February 2019.
- (g) To acknowledge therefore that the foregoing resolutions may give rise to claims for compensation against the Council under section 204 of the Housing and Planning Act 2016, in addition to claims for compensation made in respect of the acquisition of interests included in the Order; and
- (h) To approve that recommendation (e) be implemented urgently in accordance with paragraphs 20 and 21 of the Overview & Scrutiny Procedure Rules.

The compulsory acquisition in the Order would facilitate the carrying out of development, re-development or improvement on the Order land and the wider area covered by the Scheme. The Scheme will give rise to substantial social, economic and environmental benefits for both the 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 Cabinet should note that agreeing to use CPO to acquire the Order Land will not undermine due process of pursuing negotiation and fair acquisition terms for existing land owners or rights holders (insofar as they can be identified). 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. 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.

10 Appendices Attached

- '1' Draft Order Map
- '2' Draft Schedule
- '3' Equalities Impact Assessment
- '4' Planning Committee report for Scheme
- '5' Cabinet resolution on use of CPO powers
- '6' Draft Council interests plan

11 Part II confidential Papers (contain exempt information)

- '1' Remaining interest holder correspondence
- '2' CPO Schedule of costs
- '3' EB7 report summary