

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 16 December 2019

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WARD(S): Chalvey

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PART I **KEY DECISION**

DEVELOPMENT AT TOWER HOUSE AND ASHBOURNE HOUSE

OPERATION OF POWERS UNDER SECTIONS 226 AND S227 TOWN AND COUNTRY PLANNING ACT 1990, SECTION 122 OF THE LOCAL GOVERNMENT ACT 1972 AND SECTION 203 OF THE HOUSING AND PLANNING ACT 2016

1 Purpose of Report

The paper updates Cabinet on the prospective development of Tower House and Ashbourne House, in particular following the advertisement of the notification of intention to appropriate land at Tower House and Ashbourne House in order to facilitate redevelopment as authorised by Cabinet on 18 November 2019.

It is proposed that Cabinet pass resolutions to confirm that subject to obtaining the consent of the Secretary of State, appropriation powers are used in advance of making the compulsory purchase authorised by Cabinet on 4 February 2019 as updated on 18 November 2019. Cabinet is asked to have regard to the content of those reports when considering the recommendations below.

2 Recommendations

That Cabinet resolves:

- (a) To acknowledge that no responses were received following the advertisement of notice of intention to appropriate those parts of the relevant land that comprise open space under section 122(2A) of the Local Government Act 1972;
- (b) To appropriate the Council Interests for planning purposes so as to facilitate the comprehensive regeneration of land at and adjacent to Tower House and Ashbourne House, including the provision of affordable housing, subject to the consent of the Secretary of State under section 19(2) of the Housing Act 1985;

- (c) Affirm the decision to proceed with the CPO as considered at the meeting of Cabinet on 18 November 2019
- (d) Acknowledge that the appropriation of the Council Interests and the compulsory purchase of the interests in the Order Land will 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;
- (e) To note the delegation to the Service Lead for Housing Development and Contracts authority to proceed with making and effecting the confirmation and implementation of the CPO following the appropriation, under the powers delegated by the resolutions made at the Cabinet meeting on 4 February 2019 and 18 November 2019 including seeking the Secretary of State's Consent further to section 19(2) of the Housing Act 1985.

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 shown on the plan at Appendix 1
"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 updated on 18 November 2019 and further explained in this report
"HPA"	means the Housing and Planning Act 2016
"Order Interests"	means all those interests in land listed in the Schedule set out at Appendix 2 and shown on the Order Map at Appendix 3, 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 set out at Appendices 2 and 3
"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 Compulsory Purchase Order

As reported to Cabinet on 18 November, section 226(1) of the Town and Country Planning Act 1990 grants a power to a local authority to acquire any land in its area if (a) it thinks that the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land, or (b) if 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 relevant power in this case is section 226(1)(a) as the land which is proposed to be the subject of compulsory purchase (see Appendix 3) is required to facilitate the comprehensive regeneration of land at and adjacent to Tower House and Ashbourne House, including the provision of affordable housing. The Council seeks to achieve this regeneration by the development of the Scheme subject to any variations which may be approved by the Council as local planning authority. The potential compulsory purchase of land interests has been previously considered by Cabinet on 16 July 2018, 4 February 2019 and 18 November 2019.

It has previously been advised that the compulsory purchase would satisfy the requirements of section 226(1A) which states that the Council must consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of the area.

In 2015 a decision was made by the Council to find new homes for the existing tenants in Tower House and Ashbourne House, as the development was considered to face major shortcomings, including, a failure to meet modern building standards, high ongoing maintenance costs and anti-social behaviour and crime. All of the existing Council tenants have been relocated to other homes within the area and all but one of the right to buy tenants reached private settlements with the Council for the sale of their interest. The proposed CPO covers the remaining interests on part of the land which is required for redevelopment. The Scheme provides the opportunity to make a significant contribution to improving the economic, social and environmental well-being of the area by delivering the following benefits:

- Providing 193 new high quality, energy efficient residential dwellings, to be provided as 100% affordable housing, in a context where there remain over 2,500 applicants on the Council's waiting list in need of housing;
- Development of a brownfield site, removing the existing poor-quality buildings and improving the integration of the site with the surrounding area;
- Offering flexible commercial / community space which can be used by groups from the wider community, a facility which has been lacking from the existing development;
- Providing a range of high quality open spaces across the site including a children's play space which will be available for use by residents of the wider community;
- providing vehicular access to the site from the east only, removing the impact of traffic access on neighbouring properties along the Crescent;
- providing upgrades to the junction between the Crescent and Burlington Avenue, to provide a safe crossing point for pedestrians;

- increasing the permeability of the site to improve its accessibility to residents of the surrounding area and to address issues around crime and anti-social behaviour;
- delivering high quality landscape proposals, particularly the proposed planting, which will increase the ecological benefits of the site and contribution to local biodiversity;
- high quality architectural design to provide an attractive and safe place for people to live and visit;
- financial contributions towards outdoor gyms within the local area and towards the Windsor Road electric vehicle car club.

The Scheme will therefore provide a range of planning and regeneration benefits in a sustainable location, particularly the provision of 100% affordable units and a high quality layout and design which will significantly improve the current situation on site. Employment benefits will also be achieved through the construction phase. 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.

It is considered that the compulsory purchase would accord with government "Guidance on Compulsory purchase process and The Crichel Down Rules" (July 2019).

There is a compelling case in the public interest for the making of the CPO, as it will enable the final acquisition of land that will enable the delivery of the Scheme as part of the Council's objective to redevelop the site and make wider contributions to the Council area, including the provision of new housing stock as well as other benefits for the wider community, as set out above. These benefits are considered to outweigh any impacts on the remaining landowner, in a context where all other occupiers have been successfully rehoused and the landowner has been offered assistance with finding alternative accommodation, which can be funded through appropriate compensation paid as a result of the compulsory purchase.

As previously reported to Cabinet, the Council has taken reasonable steps to acquire the remaining interests that are required to deliver the redevelopment and it has been unable to secure the final interests in the Order land by agreement. The Order land is central to the Scheme acquisition of these interests is necessary to allow the Scheme to proceed.

The purpose for which the land is being acquired is for the purpose of facilitating the comprehensive regeneration of land at and adjacent to Tower House and Ashbourne House, to include the provision of affordable housing. This purpose fits in with the adopted planning framework for the area and accords with the National Planning Policy Framework. The scheme is to be delivered on brownfield land and delivers social, environmental and economic benefits to the wider community (Core Strategy policy CP1 Spatial Strategy); whilst it does not result in a net increase in open space it will improve the quality of space provided and deliver increased benefits to residents of the scheme and the wider community (CP2 Green Belt and Open Space). It is considered that it will be less likely to be used for crime and anti-social behaviour. The Scheme contributes to the target of 6,250 new dwellings being provided between 2006 and 2026 (CP3 Housing Distribution), would meet density and exceed social rented tenure targets (CP4 Type of Housing). Its sustainable design and construction would accord with policy CP8 (Sustainability and the

Environment). It seeks to create a safe and attractive environment which will reduce the prevalence of antisocial behaviour and its impact on the wider community (CP12 Community Safety). For similar reasons, these benefits would accord with the principles of sustainable development in the NPPF and support its aspirations for growth in housing provision, including affordable housing: see paragraphs 7, 8, 59, 186 and 187.

It is not considered that the comprehensive regeneration of land at and adjacent to Tower House and Ashbourne House, including the provision of affordable housing could be achieved by any other means. The Council has made significant but as yet unsuccessful efforts to acquire the remaining interest by voluntary agreement. The Order land is part of a development which has reached the end of its useful or beneficial life and is otherwise vacant, awaiting redevelopment. The land lies within a block which needs to be demolished to make way for high quality development that can contribute towards the well-being of the wider area. Any impact on the remaining occupiers are not considered sufficient to outweigh the need to bring forward the redevelopment as proposed.

The potential financial implications of the decision to proceed with the CPO were considered in the report of 18 November 2019. Following a review of the market led by Savills on behalf of the Council, Legal & General Investment Management (L&G) have 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 L&G following a binding Agreement for Lease signed by both parties. It is not considered that there is any funding impediment to acquiring the Order Land and or the delivery of the Scheme. It is anticipated that funding will be in place before the commencement of development and heads of terms between the Council and L&G have already been signed. The Council is fully committed to delivering the Scheme, having expended considerable resources to date on acquiring relevant interests, negotiating to acquire further interests by agreement, and in obtaining the main planning approvals required to authorise and deliver the Scheme.

As regards other impediments to implementation, telecoms apparatus of Vodafone and Virgin Media outside the Order Land but within the area of the proposed redevelopment will be removed by December 2020; and in any event they do not prevent the commencement of development of the Scheme well before that date. The appropriation of Council interests in the wider land to be redeveloped and covered by the Scheme is set out below.

5 Appropriation of Council Owned Land and Third Party Rights

The land which the Council seeks to redevelop and which is covered by the Scheme includes the Order Land (shown at Appendix 3) as well as a wider area of land comprising the Council Interests, as shown in Appendix 1. The Council Interests include interests in the tower block in which the Order Land is located.

The land including the Council Interests, along with other land in the vicinity, was acquired by the Council for the purposes of building housing in 1962 and was the subject of a compulsory purchase order made under Part V of the Housing Act 1957. Part of the Council Interests surrounding Tower House and Ashbourne House were laid out for public recreation and, the Council has maintained those parts as such ever since. Analysis as the status of the Council Interest land and its use as open space was carried out in respect of an application made for Town and Village Green Status which was ultimately refused. The report from 2016 prepared further to this

application is in the background papers (see paragraphs 67 and 99-114). The land laid out as open space within the Council Interests has been used by former Tower House and Ashbourne House residents further to rights granted in their leases or by virtue of local byelaws made inter alia under section 164 of the Public Health Act 1875. The report acknowledged, in the context of the application for registration as a town or village green, that the open space had been used by young persons and children for recreational activity associated with ball games and slides and swings, but did not consider that there was evidence of any user by persons in an identifiable neighbourhood, or that there was a significant number of inhabitants involved in the claimed activities throughout the requisite 20-year period. Subject to a few examples, it was found that there was no evidence as to the numbers of local inhabitants who were not tenants of the Houses who used the open space. All of the land forming the Council Interests are held by the Council for housing purposes in the Housing Revenue Account.

Further to the planning permission for the Scheme being issued a planning obligation under s106 of the Town and Country Planning Act 1990 will be entered into requiring open space be laid in accordance with the plan at Appendix 7 and provided for use by members of the public. In deciding whether or not to approve the appropriation of the Council Interests officers have balanced the loss of the existing open space against the improved, higher quality, public realm to be provided for under the s106.

As explained in the report of 18 November 2019, it is proposed to appropriate for planning purposes the land held in the Council Interests, to deliver the redevelopment of the site in respect of which permission has been granted for the Scheme. This will also enable the Council to rely upon section 203 of the HPA to override other rights, including third party rights to light outside the redevelopment area.

In the present case, subject to meeting the statutory requirements, section 203 would apply in respect of works on and use of any land held in the Council Interests that was appropriated for planning purposes. It would also apply in respect of works/use relating to the Order land as a result of the acquisition of land under the CPO. Section 203 is considered further below.

Appropriation for planning purposes is defined by section 246 of the Town and Country Planning Act 1990 (the "1990 Act") to mean its appropriation for purposes for which land could be acquired under sections 226 or 227 of the 1990 Act. Section 226 has been set out above (and section 227 authorises acquisition by agreement for any purpose for which acquisition may be authorised under section 226). It is considered that appropriation in this case would be for planning purposes, for the same reasons as set out above in relation to the application of section 226 to the proposed CPO.

Under section 122(1) of the Local Government Act 1972 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 considered that the open space on the land covered by the CPO and the Council Interests could potentially be treated as open space, albeit that it lay within land held for housing purposes only. It therefore published notice of an intention to appropriate as required by section 122(2A) of the Local Government Act 1972, in accordance with the Cabinet resolution of 18 November 2019. Specifically, the Council advertised its intention to

appropriate the Council Interests in the Slough Observer and Slough Express local newspapers on the 22nd and 29th of November 2019. Copies of the relevant notice (as shown at Appendix 4) were also posted on the Council's website on 20 November and available for inspection along with supporting materials at Hawker House, Heron Drive, Slough SL3 8XP.

Following this public consultation exercise, no responses were received citing any objections to the appropriation.

Having had due regard to the above, officers are of the opinion that the Council should proceed with the appropriation, subject to the consent of the Secretary of State, which is considered to be required under section 19 of the Housing Act 1985. As noted above and in the report to Cabinet of 18 November 2019 the existing housing stock on the land is no longer considered fit for purpose and is in need of replacement. The Council seeks to hold the land for wider purposes than housing to achieve the development, redevelopment and improvement of the Council Interests (with the Order Land) by facilitating the comprehensive regeneration of land at and adjacent to Tower House and Ashbourne House, including the provision of affordable housing as part of the achievement of wider benefits for the area. In the case of the Scheme, this would be achieved through a comprehensive development including housing as well as commercial / community space (Use Classes B1/A1/A2/A3/D1) and associated access works which would make a positive contribution to the wider area.

As stated in the report of 18 November 2019, it is to be recognised that the Scheme may need to be refined later through the planning process, perhaps with variations; and it is considered necessary in this regard to ensure that appropriation can allow for the long term regeneration of this redundant site for wider purposes. As the plans submitted with this report show, the Scheme would involve the loss of some of the open space which forms part of the land in question. Officers do not consider that there is sufficiently compelling evidence of user which would require the retention of all this land, in circumstances where better quality provision is made as part of the wider regeneration of the site is designed to secure benefits for the wider area. As set out above, the provision of this higher quality public open space is secured via the s106 entered into further to the planning permission for the Scheme.

Overall it is considered on a broad view that the current holding of the Council Interests is not needed in the public interest of the area, in circumstances where the land comprised in the Council Interests would benefit from wider regeneration including the Scheme which would contribute to the achievement promotion or improvement of the economic, social and/or the environmental well-being of the area.

As set out above, the consequence of appropriation for planning purposes (along with acquisition of the Order Land) would be that the Council could rely on section 103 of the HPA.

The report to Cabinet of 18 November 2019 (Appendix 6) explained, 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 including injunctive relief 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 Interests and/or the Council Interests is authorised by section 203. Compensation is provided for under section 204.

Section 203 applies to building or maintenance work or the use of land where there is planning consent for the work or use, the work or use relates to land which has become vested in a the relevant authority on or after 13 July 2016, or has been appropriated by a local planning authority for planning purposes as defined by section 246(1) of the 1990 Act. Further, it is required that the authority could acquire the land compulsorily for the work or use; and the work or use must be for purposes related to the purposes for which the land was acquired or appropriated. Following the grant of permission for the Scheme, 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). It would also be met in relation to any appropriation for planning purposes of the land held in the Council Interests. The requirement that the Council could acquire the land compulsorily for the work or use is also considered to be met. The Council has powers to compulsorily acquire the interests in the Order Land and the same powers would be available in respect of the Council Interests were they not already in the Council's ownership.

Officers consider that the following considerations are also relevant when deciding whether to appropriate the Council Interests and with that to enable the use of section 203:

1. The appropriation would enable work to take place to deliver the development permitted by the Scheme. 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, re-development 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.
2. 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 previously, officers consider that these benefits would also be achieved through the 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.
3. In addition to advertising its intention to appropriate the Council has also, via its rights of light surveyors EB7, written to all of the parties who they consider may have relevant rights or interests under the HPA, in particular rights of light, which would be affected by the development of the Scheme. Of the 16 parties written to date only 2 have responded and a site visit to gauge the level of light impact which will be had on the respondents properties have been arranged.

EB7 will continue to follow up and discuss with affected landowners the prospects for these rights to be released by agreement, however as matters stand officers do not consider it possible to rule out the risk of court proceedings or to conclude that the release of the rights will be achieved by agreement with affected owners. It is considered that ability to achieve the timely development of the land held by the Council Interests (and the Order Land) could be compromised unless this risk is

eliminated. The potential prejudice to the redevelopment of the Order Interests due to unresolved issues regarding the release of rights is considered to justify appropriating the Council Interests and relying on section 203. The potential effect on these landowners is also addressed by reference to human rights is considered under the “Legal Implications” section below. Interference with the property rights in question is considered necessary to deliver the beneficial regeneration of the land in question in particular through the permitted Scheme, which officers do not consider could be amended to avoid impacts without substantially affecting the benefits held in prospect by redevelopment. Any beneficiaries of such rights would be financially compensated under section 204 HPA. Overall officers consider that it is in the public interest that the redevelopment is carried out in reliance on the appropriation of the Council Interests and acquisition of the Order Land and that this public interest to be achieved proportionate to the private rights being infringed by the action of Section 203.

In order to appropriate housing land the approval of the Secretary of State under 19 of the Housing Act 1985 is required. Should Cabinet resolve to appropriate the Council Interests in accordance with the recommendations in this report and application will be made without delay.

6 **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.

7 Other Implications

(a) Financial

The specific Scheme currently envisaged has the potential to infringe upon third party rights.

Where such infringement occurs section 203 of the HPA will, following the appropriation of the Council Interests and the land having been appropriated for the same planning purposes of the CPO, give rise to a compensation under section 204 of the HPA. Accordingly the appropriation of the Council Interests to planning purposes may (indirectly) give rise to a requirement to pay compensation under sections 203 and 204 of the HPA

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
To acknowledge that no responses were received following the advertisement of notice of intention to appropriate those parts of the relevant land that comprise open space under section 122(2A) of the Local Government Act 1972	None received	External legal advisors providing legal advice in conjunction with Savills advising on property matters	6 (Economic/Financial, Political and Legal Regulatory. Low probability)	Further legal advice can be sought a necessary
To appropriate the Council Interests for planning purposes so as to achieve the same purposes as the CPO (i.e. for the purpose of facilitating the comprehensive regeneration of land at and adjacent to Tower House and Ashbourne House,	May give rise to right to compensation under sections 203 and 204 HPA	This risk has been mitigated through the receipt of professional valuation advice and the setting of appropriate budgets Further professional	6 (Economic/Financial. Low probability)	Further legal advice can be sought a necessary

including the provision of affordable housing) subject to the consent of the Secretary of State under section 19(2) of the Housing act 1985		advice in respect of any objections received will also be obtained		
Affirm the decision to proceed with the CPO as considered at the meeting of Cabinet on 18 November 2019	Facilitates the delivery of the Scheme. May give rise to the need for a public inquiry.	This risk has been mitigated through the receipt of professional valuation advice and the setting of appropriate budgets	6 (Economic/Financial. Low probability)	Further legal advice can be sought a necessary
Acknowledge that the appropriation of the Council Interests and the compulsory purchase of the interests in the Order Land will 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;	Facilitates the delivery of the Scheme. May give rise to challenge	External legal advisors providing legal advice in conjunction with Savills advising on property matters	6 (Economic/Financial. Low probability)	Further legal advice can be sought a necessary
To note the delegation to the Service Lead for Housing Development and Contracts authority to proceed with making and effecting the confirmation and implementation of the CPO following	Facilitates the delivery of the Scheme. May give rise to challenge	External legal advisors providing legal advice in conjunction with Savills advising on property matters	6 (Economic/Financial. Low probability)	Further legal advice can be sought a necessary

<p>the appropriation, under the powers delegated by the resolutions made at the Cabinet meeting on 4 February 2019 and 18 November 2019 including seeking the Secretary of State's Consent further to section 19(2) of the Housing Act 1985</p>				
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(c) Human Rights Act and Other Legal Implications

Legal implications

The November 2019 Cabinet report provides information on appropriation under section 122 of the Local Government Act 1972 and the operation of The enabling provisions in s203(1) and s203(4) of the HPA. We set this November 2019 Cabinet report at Appendix 6.

For the reasons set out in this and previous reports, officers consider that the requirements of making the CPO have been met, and would (in conjunction with other considerations relevant to CPOs as set out in this and earlier reports) also justify the appropriation of the Council Interests.

Statutory requirements were required to be met under s122 of the Local Government Act 1972 before the proposed appropriation could 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”. “Not required” has been construed to mean “not needed in the public interest of the locality” which involves matters of degree and comparative needs.

While the Council Interests are currently held for housing purposes as previously established in the November Cabinet paper their appropriation for planning purposes is justified.

Further, it is recognised that 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”.

On the 22nd and 29th November the Council advertised its intention to appropriate the Council Interests and received no objections.

For the reasons given earlier in this report, officers consider that section 122(1) and 122(2A) have been satisfied.

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. "Proportionate" means that any interference should be more than is necessary to achieve the identified legitimate aim.

In making the CPO, and having regard to the and the associated consequences for any beneficiaries of third party rights over the Order Interests 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 Interests, will be mitigated by the ability to relocate in the area, with compensation, and is outweighed by the positive effects held in prospect by the redevelopment of the Order Interests within the Scheme. A review of the current market in Slough by Savills has shown equivalent or superior properties available within the local area of the site which could be purchased by the remaining interest holder with the compensation being offered without subsidy.

Similarly, to the extent that it is necessary to override third party rights in reliance upon section 203, any negative impacts on rights to light in particular 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 and proportionate in the circumstances of this case. Further justification for the use of section 203 is given earlier in this report. The human rights implications of the development are also considered in the report relating to the planning application for the Scheme.

A rights of light report prepared by EB7 which at page 24 gives an indication of likely compensation values according to the estimated level of impact is enclosed at Part II Paper 2.

The Council is of the view, therefore, that the Order and consequent application of s203 to the planning purposes as the CPO as described in the Supporting Information to this report and previous reports to Cabinet is compatible with the ECHR.

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:

- iv eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- v advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- vi 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 Equalities Impact Assessment at Appendix 5.

(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.

8 **Conclusion**

The proposal is to recommend that the Cabinet resolve:

- (a) To acknowledge that no responses were received following the advertisement of notice of intention to appropriate those parts of the relevant

land that comprise open space under section 122(2A) of the Local Government Act 1972;

- (b) To appropriate the Council Interests for planning purposes so as to achieve the same purposes as the CPO (i.e. for the purpose of facilitating the comprehensive regeneration of land at and adjacent to Tower House and Ashbourne House, including the provision of affordable housing) subject to the consent of the Secretary of State under section 19(2) of the Housing act 1985;
- (c) Affirm the decision to proceed with the CPO as considered at the meeting of Cabinet on 18 November 2019;
- (d) Acknowledge that the appropriation of the Council Interests and the compulsory purchase of the interests in the Order Land will 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;
- (e) To note the delegation to the Service Lead for Housing Development and Contracts authority to proceed with making and effecting the confirmation and implementation of the CPO following the appropriation, under the powers delegated by the resolutions made at the Cabinet meeting on 4 February 2019 and 18 November 2019 including seeking the Secretary of State's Consent further to section 19(2) of the Housing Act 1985.

The Cabinet should note that agreeing to use appropriate the Council Interests will not undermine due process of pursuing negotiation and fair acquisition terms for existing rights holders (insofar as they can be identified). In fact the approach of seeking a resolution to use CPO and appropriation powers whilst continuing to try to negotiate acquisitions by private treaty agreement is in line with the CPO Guidance.

9 **Appendices Attached**

- '1' Draft Council Interests plan
- '2' Draft Schedule
- '3' Draft Order Map
- '4' Notice of appropriation
- '5' Equalities Impact Assessment
- '6' November Cabinet report on appropriation
- '7' Existing / Proposed Public Open Space Plans

10 **Part II confidential Papers**

- 'Part II paper 1' CPO and appropriation schedule of costs
- 'Part II paper 2' EB7 rights of light report dated October 2019

11 **Background Papers**

'B1' Report on Town and Village Green application by Barry Denyer-Green dated 6 May 2016

'B2' Committee report in respect of planning application for the Scheme