

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 16th July 2018

CONTACT OFFICER: Colin Moone, Service Lead Strategic Housing Services
(For all enquiries) (01753) 474057

WARD(S): Central

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

PART I
KEY DECISION

PROPOSED (TOWER AND ASHBOURNE) COMPULSORY PURCHASE ORDER 2018

1 Purpose of Report

To pass a resolution that the Council agrees, in principle, to use its compulsory purchase powers for the acquisition of land necessary for the delivery of the proposed redevelopment of Tower House and Ashbourne House (the Site).

2 Recommendations

Cabinet is requested to resolve:

- (a) That it be agreed in principle to make a Compulsory Purchase Order (a CPO) for the acquisition of land and rights within the area edged red on the draft plan entitled "Area to be referenced for Proposed (Tower and Ashbourne) Compulsory Purchase Order 2018";
- (b) That authority be given to the Director, Regeneration, following consultation with the Cabinet member for Corporate Finance & Housing to authorise officers to begin preparatory work to use its compulsory purchase powers, including serving requisitions on landowners and appointing land referencing agents to thoroughly investigate all land interests, the preparation of a Statement of Reasons and all other necessary documentation;
- (c) That a further report would come forward to the Cabinet recommending the making of a CPO, if necessary, in relation to specific land;
- (d) That it be noted that a scheme for the comprehensive redevelopment of the Site to deliver in the region of 195 units (the Scheme) will continue to be designed with the intention of full planning permission being applied for later in 2018;
- (e) That the CPO stages set out at section 6 be noted..

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

3a. **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 town centre 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.

3b. **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 Site is currently considered crucial for the delivery of the Scheme which will ensure:

- (a) our children and young people have the best start in life and opportunities to give themselves positive lives;
- (b) our people become healthier and will manage their own health, care and support needs;
- (c) Slough will be an attractive place where people choose to live, work and visit; and
- (d) our residents will have access to good quality homes.

4. **Other Implications**

(a) Financial

At this stage, the Council is being asked to only make an 'in principle' decision to use its powers. A full detailed assessment of the financial implications and costs of making the CPO will be prepared and presented to Cabinet in a further report (the Full CPO Report) should a CPO actually be required.

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 & Hamblins LLP as legal advisors – these costs will be met from the £3.9m in this year's capital programme. The Council has appointed a land referencing agent (Land Referencing Services LLP) to carry out a detailed examination of the all the legal interests within the area to be CPO'd as shown on the CPO Map. Land Referencing Services will also serve requisition for information notices under section 16 of the Local Government Act (Miscellaneous Provisions) Act 1976 on the interest holders in order to determine the nature of their legal interests in the land, should the Cabinet pass this resolution.

Work that is required before making a CPO includes serving the aforementioned 'requisition' notices on land owners to gather information

about their land interests on the Council's behalf, preparing the Statement of Reasons to support the making of the Order and drafting the Order itself. At this stage funding required for this work will be limited to professional fees.

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.

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 is likely to 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, will pursue opportunities to raise private finance through pension funds or institutional investment to deliver the Scheme.

The funding for delivery of the Scheme will be reported on in more detail in the Full CPO Report.

(b) Risk Management

The Table below must be completed fully for each recommendation from Section 2

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Risk Management Matrix Score the risk	Future Controls
To agree in principle to make a Compulsory Purchase Order (a CPO) for the acquisition of land and rights within the area edged red on the draft plan entitled "Area to be referenced for Proposed (Tower and Ashbourne) Compulsory Purchase Order 2018"	Best method to ensure vacant possession of the Site can be secured. The application for a CPO may be refused although advisors consider this unlikely	Trowers & Hamblins providing legal advice in conjunction with Savills advising on property matters	6 (Economic/Financial, Political and Legal Regulatory. Low probability)	Further report being prepared on use of CPO powers to be prepared and presented to Cabinet in due course
To authorise that the Director, Regeneration, in consultation with the Cabinet	Crucial in order to progress the CPO process. Consultant	Current costs known and being closely	6 (Economic/Financial. Low probability)	Fees to be approved in advance of being incurred

<p>member for Corporate Finance & Housing authorises officers to begin preparatory work to use compulsory purchase powers, including serving requisitions on landowners and appointing land referencing agents to thoroughly investigate all land interests, the preparation of a Statement of Reasons and all other necessary documentation</p>	<p>fees will be incurred although CPO may not prove crucial</p>	<p>monitored</p>		<p>and likelihood of agreement by private treaty to be closely monitored</p>
--	---	------------------	--	--

(c) Human Rights Act and Other Legal Implications

Legal implications

The Council is empowered under section 226(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), to acquire any land in its area if it is satisfied that the proposed purchase will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council may make a compulsory acquisition under section 226 of the 1990 Act (a) if it thinks the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land or (b) which 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. In order to make an acquisition under (a), the Council must also 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.

The Acquisition of Land Act 1981 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.

Further implications relating to requirements of the statutory guidance are as set out in the supporting information section of this report and would need to be considered by Officers and Cabinet in detail at the time of making a CPO. The Human Rights and equalities aspects of a CPO are set out below.

Detailed legal implications would need to be assessed when consideration is given to making a CPO.

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:

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

As part of the CPO preparation work 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 Cabinet as part of the Full CPO Report.

Human Rights and the Case for Compulsory Acquisition

The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrate that the use of compulsory purchase powers is in the public interest and that the use of such powers is proportionate to the ends being pursued.

If the Council decides to make a CPO, the Council will need to be sure that the purpose for which the land is required sufficiently justifies (or can be sufficiently justified in due course) interfering with the human rights of those with an interest in the land affected. It is acknowledged that the compulsory acquisition of the Site may amount to an interference with the human rights of those with an interest in the land. These include rights under Article 1 of the First Protocol of the European Convention on Human Rights (ECHR) (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides that everyone has the right to respect for his private and family life, his home and his correspondence).

When preparing the CPO, Officers will keep in mind and in due course advise the Council about the need to balance the public interest and the individual's rights and that any interference with these rights will be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim. As part of the investigations that will be undertaken ahead of making any CPO, there will be an investigation into the effect on landowners and leaseholders of the CPO, and this will be fully taken into account before a final decision is made as to whether or not to put forward a resolution for the making of a CPO.

(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.

5 Supporting Information

- 5.1 The use of CPO powers requires a compelling case in the public interest. Therefore, this report will explain the context and justification for recommending that the Cabinet, recommend to the Council 'in principle' to use such powers in this case.
- 5.2 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 1990 Act are the most appropriate. At the time of making a CPO it would need to be ensured that the proposal meets with the requirements of the statutory power.
- 5.3 Detailed advice to acquiring authorities on the use of compulsory purchase powers is set out in the guidance published by the Department for Communities and Local Government in October 2015 entitled "Compulsory Purchase and the Crichel Down Rules" (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 '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.
- 5.4 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. This is to be considered in more detail as part of the development of the Scheme and will be reported on as part of the Full CPO Report.
- 5.5 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.
- 5.6 The Scheme is not yet in final form but is expected to provide 195 units, of which 104 would be to replace the existing number of social housing units. Private funding options to deliver the Scheme are being considered following the recommendations of the Housing Options Appraisal project.
- 5.7 As a result of increasing obsolescence, the lack of DDA and other compliance, and a high rate of anti-social behaviour at the Site 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 three residential units owned and rented out by leaseholders at the Site which remain in occupation.
- 5.8 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 three residential interests remain at the Site in addition to the interests of two main telecommunications providers. A summary of the remaining interests and the efforts made to acquire these to date are set out in the Part II Appendix [B]. 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.

- 5.9 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 Site 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 December 2018. Officers propose to report again on the progress of the Scheme in advance of approval for a CPO being sought. 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.
- 5.10 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. Further consideration as to how all aspects of the CPO arising out of the Scheme will be met will also be reported on to Cabinet in advance of a further resolution for a CPO being sought.

6 Procedures for CPO

The basic steps are as follows:

- a) **In principle resolution** - Cabinet resolves to make CPO in principle.
- b) **Referencing** – Identify who owns, rents and leases properties and communicate with all qualifying people.
- c) **Formulation** – the Council obtains information about legal interests in the land, including serving requisitions for information.
- d) **Scheme** – the Scheme is determined and application documents are prepared.
- e) **Delivery** – determine how the Scheme will be delivered in terms of funding and identify the developer. Council to approve. .
- f) **Resolution** - Cabinet resolves to make CPO.
- g) **Making the Order** – The order is made by affixing the Council's Seal, advertising and serving formal notices on qualifying persons. This triggers a 28 day objection period.

h) **Notification and Publicity** – Advertise the CPO and advise qualifying persons (an owner, tenant or leaseholder) how to object and to whom.

i) **If objections are received** –The Secretary of State will direct a CPO Inquiry, on a timescale directed by the Secretary of State, into whether the CPO should be awarded or not. Once the inquiry is completed, the Inspector will put a report before the Secretary of State who will decide whether or not to confirm the CPO as submitted, modify it, or reject it.

j) **If no objections are received** – The Secretary of State or the Council will confirm the CPO.

k) **Confirmation** - Once confirmed, the Council can seek to take possession of the land via either a General Vesting Declaration or a Notice to Treat.

l) **Pay Compensation** – Compensation is calculated by reference to the national regime or if disputed determined by the Upper Tribunal.

7 **Conclusion**

As previously stated the current status of the Site is not acceptable in terms of its delivery of housing to local people and is not economically viable long term.

Having used best endeavours to reach a negotiated settlement with the various remaining interest holders the option of pursuing a CPO provides the highest degree of certainty that the Scheme will proceed within a realistic timescale and allows the Council to deliver the considerable benefits identified by the redevelopment of the Site. Negotiations will continue to try and reach an agreement between the parties without the need to resort to CPO powers.

8 **Appendices Attached**

‘A’ CPO Map labelled Area to be referenced for Proposed (Tower and Ashbourne) Compulsory Purchase Order 2018

‘B’ (Part II) Summary of negotiations with remaining leaseholders to date – contains exempt information