

## **Appendix 5: Further information as part of section 8 resource and legal implications**

- 1.1. **Human Rights and Equalities:** A comprehensive process will be undertaken to secure the delivery of the development together with compliance with the appropriate statutory land acquisition and planning powers and duties. The process will be subject to compliance with the Equalities Act 2010 both in terms of accessibility to the procurement processes themselves and of the implementation and delivery of the affordable housing development on the Field North West of The Saltings, Crooked Lane, Birdham. Proposals will be thoroughly impact assessed at each stage of the development.
- 1.2. Article 1 of the First Protocol of the European Convention on Human Rights protects the peaceful enjoyment of possessions (including land). The Convention states that no one shall be deprived of their possessions except in the public interest and otherwise as provided for by law. The Compulsory Purchase process enshrined in UK legislation has been found to be Human Rights Act - and Convention - compliant where the powers are exercised reasonably and where necessary to secure the control and use of property in the public interest.
- 1.3. It is considered necessary to secure the development of the site in order to secure social, environmental and economic benefits for the wider community of Birdham, and to achieve delivery of the site within the timescales necessary to secure the delivery of comprehensive levels of affordable housing in the local area.
- 1.4. Wherever possible, the Council will seek to acquire land by agreement or through Hyde, however, the ability to compulsorily purchase land to secure development of the site remains a lawful and appropriate/necessary option in the circumstances.
- 1.5. **Compulsory Purchase Order – Making the Order:** The making of a Compulsory Purchase Order is a function which the Council may exercise.
- 1.6. Initial research points to the powers under section 17 of the Housing Act 1985 in combination with section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976.
- 1.7. The DCLG Guidance provides relevant guidance on the use of section 17 of the Housing Act 1985. At paragraph 106 the guidance notes as follows:

*“Section 17 of the Housing Act 1985 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.*

*The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve substandard or defective properties. Current practice is for authorities acquiring land or property*

*compulsorily to dispose of it to the private sector, housing associations or owners occupiers.”*

- 1.8. Section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976 authorises a local authority to compulsorily acquire rights over land for the same purpose as it is authorised to compulsory acquire land.
- 1.9. The Council must therefore be satisfied with that the request meets the test under powers above, when, and if, in due course it comes to make a resolution to make an Order.
- 1.10. **Compulsory Purchase Order – Confirmation of Order and Acquisition of the land:** If, following consideration of a further detailed report, the Council resolves to make a Compulsory Purchase Order (CPO), the Order must be submitted to the Secretary of State for confirmation AND, notified to those persons affected by it and advertised in the local press.
- 1.11. Any party who wishes to object to the making of a CPO at that point would have 21 days within which to do so from the date of notification. All statutory objectors have a right to be heard at a Public Inquiry although it is possible for the Secretary of State to deal with objections in writing. Although any Inquiry will be held on the earliest possible date, typically this could be 6 months after submission of the Order to the Secretary of State.
- 1.12. The Council cannot exercise its compulsory purchase powers until such time as the Compulsory Purchase Order has been confirmed by the Secretary of State or the Secretary of State permits the Council itself to confirm the Compulsory Purchase Order.
- 1.13. Following confirmation of a Compulsory Purchase Order the Council has 3 years within which to exercise the CPO powers. Owners with a qualifying interest will be entitled to compensation, the quantum of which will be assessed in accordance with the compensation code – established by the relevant Acts of Parliament, Statutory Instruments and decided case law.
- 1.12. Once the interests included in the CPO have been acquired, the site will benefit from the operation of Section 237 of the Town and Country Planning Act 1990, which (subject to the payment of compensation) overrides all existing third party rights that could prevent the development or use of the land from proceeding. The costs of compensation will be limited to the statutory basis as provided by section 237 of the 1990 Act (as amended).