

Chichester District Council

THE CABINET

10 April 2018

**Enabling the Delivery of Affordable Housing on the Crooked Lane,
Birdham Exception Site**

1. Contacts

Report Authors:

Holly Nicol - Housing Delivery Manager

Telephone: 01243 534699 E-mail: hnicol@chichester.gov.uk

Sherrie Golds - Commercial Property and Contracts Lawyer

Telephone: 01243 53456 E-mail: sgolds@chichester.gov.uk

Cabinet Member:

Jane Kilby - Cabinet Member for Housing Services

Telephone: 01243 773494 E-mail: jkilby@chichester.gov.uk

2. Executive Summary

Approval is sought to explore the proposal for a Compulsory Purchase Order (CPO), in respect of a small area of land (identified in appendix 3), in order to assist a housing association to bring forward an affordable housing development on the field North West of The Saltings, Crooked Lane, Birdham and to set out a preliminary timetable for 'making' any CPO. It recommends the principle of CPO land acquisition using a back to back agreement with the adjacent land owner Hyde housing association.

3. Recommendation

3.1 That the Cabinet approves:

- 1) The carrying out of a land referencing exercise in respect of the small area of land (identified in appendix 3) to be funded by Hyde group.**
- 2) That on completion of the land referencing exercise a further report to the Council be prepared by officers as to whether the acquisition of the land and interests or rights in respect of that land is justified on the grounds that it is in the public interest and considering the relevant statutory compulsory purchase powers.**
- 3) The authorisation of officers to undertake the next steps as set out in section 6 of the report in order that any decision by the Council can be carried through promptly.**

- 4) **That officers are authorised to spend up to £27,000, on the basis that this will be reimbursed by Hyde pursuant to a deed of indemnity as to costs in respect of the legal, land referencing and other costs related to the steps set out in section 6 of the report.**

4. Background

- 4.1 The purpose of this report is to help facilitate the delivery of an affordable housing scheme on the field North West of the Saltings, Crooked Lane, Birdham through compulsory purchase of the access to the site.
- 4.2 **Scheme Planning History:** The site benefits from planning permission granted on 29 November 2013 (ref BI/13/01391/FUL) for the “development of 15 new affordable dwellings and associated external works”. The approved site plan is include in appendix 1. The permission secured the following mix of affordable rented units, in perpetuity for households with a local connection to Birdham, through the section 106 agreement:
- 2 x 1 bedroom bungalows
 - 1 x 2 bedroom bungalow
 - 8 x 2 bedroom houses
 - 3 x 3 bedroom houses
 - 1 x 4 bedroom house
- 4.3 On 14 October 2016 variations to the wording of conditions 3, 5, 6, 8, 13, 20 and 21(ref BI/16/01809/FUL) of the above planning permission was granted. Hyde sought the variations in order to allow development to commence.
- 4.4 A certificate of lawful development was granted on 25 July 2017 (ref BI/17/01163/PLD). This confirmed the development permitted by the planning permission could be lawfully carried out.
- 4.5 The Birdham Neighbourhood Plan was made on 7 June 2016. Policy 12 identifies this site as a scheme with planning permission for 15 new social/affordable homes for letting to local people in perpetuity.
- 4.6 **Land Ownership** Hyde purchased the field North West of the Salting’s, Crooked Lane, Birdham shown on the plan at appendix 2 on 13 January 2014.
- 4.7 Access to the site is over a track which is unregistered as to ownership and lies north east of the site leading from Crooked Lane. This is shown edged red on the plan attached at appendix 3. The legal transfer of the development site, at the time of purchase by Hyde, granted rights of entry and a right of way over the access only so far as the vendor was able to do so.
- 4.8 The access is contentious with the neighbouring landowners to the north and south of it and there are other local objectors. In June 2012 the owner of ‘Hedgecox’, a property situated immediately to the south of the access, registered a caution against first registration of the access asserting to have a right of way over the access.

- 4.9 In July 2014 Hyde sought advice from Alan Johns at Maitland Chambers on the likelihood for establishing ownership rights over the access suitable to serve the development. A summary of Mr Johns' advice is set out in appendix 4 (Part II exempt).
- 4.10 Negotiations are ongoing and significant offers to settle have been made by Hyde but not accepted by persons having purported interests or rights over the land.
- 4.11 **Evaluation of the Council's Position and the Delivery of the Site** This scheme was brought forward through the Chichester Rural Partnership and £305,840 of the partnership money has been allocated to help deliver the scheme. The Chichester Rural Partnership Agreement states:
- 'Where such sites have been identified and agreed with Martlet (who are now referred to as 'Hyde') but are prevented from development by lack of consent from a third party landowner it (the Council) shall seek approval from its Executive Board for the use of compulsory purchase order powers to assemble the sites.'
- 4.12 Hyde has now made a formal request to the Council to assess whether the access site would meet the statutory requirements for a Compulsory Purchase Order (CPO).
- 4.13 On 28 June 2016 the Council jointly sought legal advice with Hyde from Jonathan Darby of Essex Chambers (legal counsel). The advice is set out in appendix 4 (Part II exempt).

5. Outcomes to be Achieved

- 5.1 The recommendations if approved will enable officers to carry out further investigation to enable an informed decision to be made by the Council meeting as to the potential use of compulsory purchase powers and to assess the relevant statutory tests.

6. Proposal

- 6.1 That officers undertake the relevant preparatory work with a view to the Council considering whether to pursue a CPO.
- 6.2 The Council would require Hyde to underwrite the costs of any CPO and to cover the costs of the initial land referencing work.
- 6.3 That:
- I. Cabinet noted that Hyde group will continue to seek to acquire the land by private treaty, but, failing that the Council will need to exercise its compulsory purchase powers if the relevant tests are met; and
 - II. If using compulsory purchase powers, the CPO would be used to acquire the land and/or necessary interests.
 - III. If the Council has to exercise its compulsory purchase powers, it and Hyde will enter into a disposal agreement

IV. Specialist external Legal advice on all of the actions within this section will be required.

6.4 Cabinet and Council approval will be sought for making a CPO at the appropriate time.

Progression of CPO

6.5 **Extent of the Land subject to the CPO** The boundary of the land which will be subject to any CPO will continue to be refined as detailed plans are drawn and land is acquired by agreement. At this stage, the extent of the land is that marked as unregistered on the plan in appendix 3. This may be amended by the Land Referencing exercise.

6.6 **Justification for the CPO** The Council has a range of compulsory purchase powers at its disposal. The exact power that may be relied upon will be confirmed prior to making any CPO. However, at the present time it is envisaged that powers under section 17 of the Housing Act 1985 and section 13 of the Local Government Act 1976 are to be the most appropriate means of promoting the CPO in order to ensure that the requisite rights for delivering and occupying the Development are acquired, whether they are existing or “new rights” which are not in existence when the order specifying them is made.

6.7 Recent government guidance (October 2015) updates and replaces previous guidance from 2004 and sets out the stages and process for making a CPO. The guidance sets out that a CPO should only be made where there is a compelling case in the public interest and the purpose for which the CPO is made is justifiable in the context of interference with the human rights of those affected.

6.8 In the circumstances and for the reasons set out above (subject to confirmation of the proposed CPO power and the case behind it) it is considered that the Council will be able to demonstrate a compelling case that the acquisition of the field North West of The Saltings, Crooked Lane will be in the public interest, though subject to the completion of the land referencing exercise to confirm the extent, type and detail of any relevant rights which can be demonstrated.

6.9 **Timescale to Delivery** The Council will be working to ensure that if on full assessment a CPO was to be sought and that no alternative means about bringing about the objective can be identified, the Council can demonstrate to the Secretary of State that:

- A proper statutory basis of potential CPO applies;
- That the CPO is necessary to achieve that purpose;
- There is a compelling interest in the land affected;
- That sufficient resources are likely to be available to implement the CPO within a reasonable time frame; and
- That Article 1 Protection of Property Rights from the First Protocol of the European Convention of Human Rights 1950 are properly taken into account.

6.10 The CPO process from the point at which the Council makes the Order to the Secretary of State confirming the Order is likely to take between 12 to 18 months to conclude. An approximate indicative timescale is outlined below, which is a cautious programme that does not allow for significant time savings if elements become settled by negotiation or similar scenarios:

Q2 2018	Commence CPO work
Q4 2018	Make CPO
Q3 2019	CPO Inquiry (if required)
Q4 2019	Inspector decision on CPO
Q1 2020	Target start on site

7. Alternatives Considered

7.1 On 11 January 2018 CDC planning officers gave pre application advice to Hyde on the viability of an alternative access route into the site. It was concluded that there are fundamental concerns with the proposed alternative access and it would be unlikely to receive officer support.

7.2 Officers have considered what alternative options are available to the Council in order to achieve the development on the site. The options are:

7.2.1 To continue to work with Hyde to identify the landowner of the access site and continue dialogue with all relevant landowners who are claiming rights over the land. If this does not prove possible a CPO will be pursued.

7.2.2 There is potential for the Council to pursue a CPO and to finance the process. However, underwriting a CPO is costly. This option is the most risky to the Council and a potential risk to public funds.

7.2.3 The Council could cease consideration of the CPO at any point including if evidence that the tests are not capable of being met arise from the land referencing process. However the impact upon delivery of the housing outcomes anticipated from the adjacent site are considered to support proceeding by officers at this time.

8. Resource and Legal Implications

8.1 The Council has broad powers, (subject to any restriction or condition contained in any other enactment) to promote and secure the development on the field North West of The Saltings in accordance with section 226 of the Town and Country Planning Act 1990, section 17 of the Housing Act 1985, section 13 (1) of the Local Government (Miscellaneous Provisions) Act 1976 and a variety of ancillary and subordinate legislation relating to the functions of the Council.

8.2 More detailed implications of a CPO on human rights, equalities and making a CPO are included in appendix 5.

8.3 **Financial Implications** There are significant up front financial and resourcing implications arising from the proposals in this report, and it will be necessary to

prepare a detailed programme of work and resourcing plan to take this process forward.

- 8.4 It is estimated that a maximum cost of £27,000 will be incurred for land referencing costs, legal advice and valuation fees to assess whether the site would meet the statutory requirements for a CPO. This would then be reimbursed by Hyde, subject to the Council being satisfied that the acquisition of each interest or right to be acquired is justifiable in the public interest.

9. Consultation

- 9.1 The Council’s Legal Services and external advisors, including solicitors with a specialisation in CPO procedures, have been consulted about this unusual and complex matter.
- 9.2 The local members have been made aware of the work being undertaken in relation to the use of CPO powers.

10. Community Impact and Corporate Risks

- 10.1 There are potential risks arising from the CPO process to deliver the field North West of The Saltings, such as negative publicity. However, these have been weighted against the reputational risks to the Council of being perceived as not supporting an affordable housing scheme for local people.

11. Other Implications

Are there any implications for the following?		
	Yes	No
Crime and Disorder The proposals in the planning applications should ensure that at the very least there is no negative impact on the potential for crime and disorder and that there should be a positive impact in reducing the potential for crime and disorder.	X	
Climate Change The planning permission should ensure that at the very least there should be no negative impact for climate change and that there should be a positive impact by including mitigation or adaption measures.	X	
Human Rights and Equality Impact An equalities impact assessment will need to be undertaken on the proposals in any CPO process in particular after the land referencing exercise.	X	
Safeguarding and Early Help		X
Other		X

12. Appendices

- 12.1 Appendix 1: Approved development site plan
- 12.2 Appendix 2: Plan of the land purchased by Hyde
- 12.3 Appendix 3: Plan of the access land
- 12.4 Appendix 4: Legal advice [Note Part II exempt restricted material printed on salmon paper for the information of members and relevant officers only: Paragraph 5 (information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) of Part I of Schedule 12A to the Local Government Act 1972]

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

13. Background Papers

13.1 None