

Chichester District Council

THE CABINET

6 July 2021

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

1. Contacts

Report Authors:

Bryn Jones- Housing Enabling Officer

Telephone: 01243 521028 E-mail: bajones@chichester.gov.uk

Sherrie Golds - Commercial Property and Contracts Lawyer

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

Cabinet Member:

Alan Sutton - Cabinet Member for Housing Services

Telephone: 01798 342881 E-mail: asutton@chichester.gov.uk

2. Executive Summary

Approval is sought from the Cabinet to carry out all necessary preparatory work in advance of using its Compulsory Purchase Order powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the unregistered access track (identified in appendix 1) along with all other necessary rights and interests to enable the delivery of an affordable housing development at the Field North West of the Saltings, Crooked Lane, Birdham.

3. Recommendation

3.1 That the Cabinet notes the progress made to date at section 4 of this report and approves:

- 1) That officers be authorised to carry out all necessary preparatory work for the making of a Compulsory Purchase Order (CPO) along with all supporting documentation for submission, on the basis that a decision to make the CPO be deferred to a later cabinet.**
- 2) That officers are authorised to have the draft CPO documentation reviewed by an independent legal advisor prior to submitting for a preliminary review by the Secretary of State ready for final submission, on the basis that this will be reimbursed by Hyde pursuant to an indemnity agreement.**
- 3) That officers are authorised to enter into such legal agreements with affected third parties and other relevant stakeholders as deemed appropriate, in preparing for a CPO, and prior to the actual making of a CPO.**

- 4) That officers are authorised to extend the indemnity agreement with Hyde to cover all costs incurred by CDC in relation to the preparatory work and making of the CPO including, for the avoidance of doubt, the appointment of a CPO surveyor.**

4. Background

- 4.1 In April 2018 Cabinet agreed to investigate Hyde's formal request to the Council to use its Compulsory Purchase Order powers to purchase the access track (Appendix 1) to the development site on the field North West of the Salting's, Crooked Lane, Birdham to enable the delivery of 15 affordable rented homes.
- 4.2 Given the length of time since the previous Cabinet report, it was deemed prudent to update members on the progress made to date on the preparation of the CPO as well as obtain a resolution to proceed with the next steps to move the CPO and permitted affordable dwellings onto completion.
- 4.3 Since the approval:
- A land referencing exercise has been undertaken which has identified those with a statutory or reputed interest in the access land to the Field North West of the Salting's. The interests identified cover 5 plots of land leading from Crooked Lane to the development site, of which 4 are within the limits of the CPO. The remaining plot is located outside of the access track and can be dealt with through agreement with the local highways authority. The purported interests in the 4 plots of land would need to be acquired and extinguished or renegotiated to enable consistent access to the permitted development. A CPO map and schedule detailing the interests are shown in appendix 2 (part II exempt).
 - A detailed housing needs assessment has been undertaken by the council's Housing Delivery Team, illustrating a significant need for affordable rented housing to come forward at the larger district level and more locally at the Manhood Peninsula and Parish level.
 - A valuation of the access land has been undertaken.
 - Hyde and the Council's appointed CPO valuer have been in dialogue with relevant landowners who are claiming rights and or interests in the land. Formal offers to acquire such interests were originally made in October 2014. The offers were re-issued in May 2018 following the grant of the certificate of lawful development and again in January 2020. Discussions with the parties are ongoing but the offers have not yet been accepted by any of the relevant landowners. A review of the offers and negotiations will be carried out along with further negotiations with the relevant parties and other stakeholders.
 - Further external specialist CPO legal advice has been sought, which confirms the most appropriate compulsory purchase power is Section 226(1)(a) of the Town and Country Planning Act 1990, and that there is a compelling case in the public interest for the Council to implement its CPO

powers, meeting all the statutory tests. A summary of the legal advice received can be found in appendix 3 (part II exempt).

- A CPO specialist surveyor will be appointed to act on behalf of the Council to conduct further negotiations with landowners and carry out the work.

4.4 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 included in appendix 5. 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 This scheme was brought forward through the Chichester Rural Partnership and £305,840 of the partnership money has been allocated towards the delivery of the scheme. Grant funding has also been secured through Hyde’s Homes England Strategic Partnership.

5. Outcomes to be Achieved

5.1 Development of 15 social rented homes on the Field North West of the Saltings in accordance with implemented permission, to meet the identified local need.

6. Proposal

6.1 This report proposes that the Cabinet authorises officers to continue with the preparation of the documentation necessary to allow the use of its powers of compulsory purchase under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the land for the purpose of providing an access to the development as shown in appendix 1 to facilitate the delivery of affordable housing at the permitted site.

6.2 The making of a CPO under the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 (along with other powers) is a function, which can be undertaken on behalf of the Council. The power must be exercised in line with the statutory requirements and the national policy and guidance.

6.2.1 Section 226 of the Town and Country Planning Act 1990 enables a local authority to exercise its compulsory purchase powers:

- if it considers that acquiring the land in question will facilitate the carrying out of development, redevelopment, or improvement on, or in relation to the land being acquired; and
- provided that it considers that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its area (S226 (1A)).

6.2.2 Any CPO made by the Council will require confirmation by the Secretary of State in accordance with the statutory requirements.

6.2.3 The Council is entitled to acquire relevant sites through negotiation with third parties before or after the making of the CPO as well as its confirmation by the Secretary of State.

6.3 A draft Statement of Reasons will be prepared which shall set out the full justification for the use of CPO powers. This will demonstrate to the Secretary of State that CDC has:

- A proper statutory and policy basis for making the CPO;
- There is a compelling case in the public interest for the land affected by the proposed CPO to be acquired;
- That the CPO is necessary to achieve that purpose;
- That sufficient resources are likely to be available to implement the CPO within a reasonable time frame;

The CPO, which will be subject to a further resolution, will be consistent with Article 6 of the Human Rights Act 1998. All those who may be affected will be informed and advised of a right to make representations to the Secretary of State, to be heard at a public inquiry and have a fair entitlement to compensation within the statutory provisions; and officers will ensure that the CPO complies with the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups has been and will be complied with as part of the CPO process.

6.4 The Council shall enter into a further indemnity and disposal agreement with Hyde to underwrite the costs of making the CPO.

6.5 **Extent of the Land subject to the CPO** The boundary of the land which will be subject to any CPO has been refined in accordance with the land referencing exercise completed by Dalcour Maclaren on behalf of the Council in June 2019. The subsequent extent of the land to be compulsory purchased is shown at appendix 1. A further review of this land and the need for additional land and or rights in land will be carried out as part of the preparatory work for the CPO.

6.6 **Justification for the CPO** The above points and justification for the making of a CPO will be set out in the draft Statement of Reasons. The Council will need to demonstrate that there is a compelling case in the public interest for the acquisition of the land and interests in land to enable the access to the field North West of The Saltings, Crooked Lane along with any other rights necessary for the development is in the public interest.

6.7 **Timescale to Delivery** 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 6 to 18 months to conclude. An approximate indicative timescale is set out in appendix 4. This is a cautious programme that does not allow for significant time savings if elements become settled by negotiation or similar scenarios.

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 The Council could cease consideration of making a CPO. However, this option would prevent the delivery of 15 much needed social rented homes for local people.

7.3 In addition, negotiations to acquire the land and interests will continue as an alternative to the use of powers of compulsory acquisition. However, the nature and extent of the negotiations will be governed by the need to deliver the much needed social rented homes for local people.

8. Resource and Legal Implications

8.1 **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. Hyde has and will continue to be underwriting all costs of the compulsory purchase process. As with any land transaction, there are potential implications for the Council's VAT position and the Council must therefore protect its ability to opt to tax any or all of this land at any stage during the process. This potential impact of this contingency for Hyde will be the subject of ongoing discussions with them. The detailed financial implications of making a CPO will be the subject of a further report and resolution to Members at a later date.

8.2 **Resource implications** The CPO process will continue to be managed internally, requiring use of existing staff resources within the Housing Delivery and Legal Teams.

8.3 **Legal implications** There is a significant risk that affected landowners will challenge the decision of the Council to 'make' the CPO. If the Council decides to make the CPO, parties will have 21 days to provide a formal objection. If objections are received, the Secretary of State may deem it necessary to hold a public inquiry into the CPO, conducted by an independent government-appointed inspector.

8.4 It is anticipated that objections to the CPO will be received, however officers, along with the Council's external legal advisors consider that the Council are in a robust position to defend such challenge through an inquiry.

8.5 Following a potential inquiry and a decision on the CPO by Secretary of State, the Council is required to publicise the decision in local newspapers as soon as possible. The validity of the CPO can be challenged through a judicial review within 6 weeks of the first newspaper notice.

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 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? | | |
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| | Yes | No |
| <p>Crime and Disorder</p> <p>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.</p> | | X |
| <p>Climate Change</p> <p>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.</p> | X | |
| <p>Human Rights and Equality Impact</p> <p>An equalities impact assessment (EqIA) has been undertaken to assess the potential impacts of the CPO and the proposed development of the Field to the North West of the Saltings, Crooked Lane, Birdham. The land being acquired is agricultural and does not require the relocation of, or affect any protected groups. The considerable public benefits to be derived from the implementation of the scheme outweigh the harm caused by interference with the human rights of those likely to be affected by Compulsory Purchase.</p> | X | |
| <p>Safeguarding and Early Help</p> | | X |
| <p>Other</p> | | X |

12. Appendices

- 12.1 Appendix 1: Plan of access land subject to CPO
- 12.2 Appendix 2: CPO schedule & map (part II exempt)
- 12.3 Appendix 3: Summary of legal advice inclusive of enabling powers (part II exempt)
- 12.4 Appendix 4: Timescale to delivery

13. Background Papers

Cabinet Paper – Enabling the Delivery of Affordable Housing on the Crooked Lane,
Birdham Exception Site – 10 April 2018