

Chichester District Council

FULL COUNCIL

21 March 2023

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

1. Contacts

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2. Executive Summary

The Council is working to enable the delivery of an affordable housing scheme. Ownership of the access to the site is unknown with a number of parties claiming rights of access. To enable the affordable housing provider to complete the scheme a legal right of access is required. This report sets out the grounds for making a Compulsory Purchase Order to provide such certainty and the evidence to be considered before a final decision is made.

3. Recommendations

Following consideration of this report at its meeting on 7 March 2023 Cabinet made the recommendations to Council:

- 3.1 Council authorises the use of Compulsory Purchase powers as set out in Section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 to compulsorily acquire the Order Land identified within Appendix 1, and in particular that the Council makes the Order.**
- 3.2 The Director of Housing and Communities is authorised, following consultation with the Cabinet Member for Housing, Communications, Licensing and Events, to:**
 - a. settle the final form and content of the Order and all associated documentation and take all action needed to pursue the Order and secure its confirmation.**

- b. negotiate, agree terms and enter into agreements with interested parties including agreements for the withdrawal of objections or undertakings not to enforce the Order on specific terms including where appropriate removing land or rights from the Order or to request the modification of the Order by the Secretary of State;**
- c. implement the Order powers following confirmation of the Order and so acquire title to and/or take possession of the Order Land;**

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, 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. An update was also provided to Cabinet in July 2021.

4.1 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 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 1 (part II exempt).
- A detailed housing needs assessment has been undertaken by the Council's Housing Delivery Team, illustrating a need for affordable rented housing to come forward at the larger district level and more locally on the Manhood Peninsula. That housing needs assessment is shown in Appendix 2 (part II exempt)
- Hyde and the Council's appointed CPO valuer has 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 and from October 2014. The offers were re-issued in May 2018 following the grant of the certificate of lawful development. Since then, there has been regular correspondence with landowners and discussions with some individuals are ongoing. The current position is set out in the Statement of Reasons found in Appendix 3.
- 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 giving their opinion 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 4 (part II exempt).
- A CPO specialist surveyor has been appointed to act on behalf of the Council to conduct further negotiations with landowners and carry out further work, if required following the order.

4.2 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”. 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.

4.3 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.

4.4 To enable full understanding and consideration of all relevant elements a statement of reasons has been prepared (shown at Appendix 4) following the statutory format required by the Secretary of State but also including all information required by members to consider the making of the order.

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 shown by the Housing Needs assessment.

6. Proposal

6.1 That Council approves the use of its compulsory purchase powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the land shown in appendix 1. The land will provide the required access to the site to allow the development and delivery of affordable housing.

6.2 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)).

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

6.4 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.

6.5 A Statement of Reasons has been prepared which sets 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.

6.6 The Council shall enter into a further indemnity and disposal agreement with Hyde to underwrite any additional costs of making the CPO if required.

6.7 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 which have been considered by officers at all times.

7. Alternatives Considered

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. Without the access provided by the land covered by the CPO the housing cannot be delivered.

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.

Negotiations to acquire the land and interests will continue as an alternative to the use of powers of compulsory acquisition up to the point of obtaining the land through this CPO process. 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

Financial Implications

8.1 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.

Resource implications

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

Legal implications

- 8.3 There is a significant risk that affected persons 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 is in a robust position to defend such challenge through an inquiry for the reasons set out in this report and in the statement of reasons.
- 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 and on our website 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 on 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 including Cabinet who make the recommendations to this report.
- 9.3 Land referencing to identify and liaise with any person having any potential interest in the relevant land has been carried out by a specialist company.

10. Community Impact and Corporate Risks

- 10.1 There is a potential risk of negative publicity for the Council arising from seeking the CPO to deliver the site. However, this has been weighted against the reputational risks to the Council for not supporting an affordable housing scheme for local people.

11. Other Implications

	Yes	No
Crime and Disorder		X
Biodiversity and Climate Change Mitigation The planning permission will ensure there will be limited impact on climate change. Mitigation for the development site was carried out as part of the normal planning procedures when planning permission was granted.	X	
Human Rights and Equality Impact 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 directly affect any protected groups. The considerable public benefits to be derived from the implementation of the scheme to deliver affordable units in an area where they are needed, and the benefit to persons with protected characteristics by having sufficient housing of this class are considered in the EqIA to outweigh the harm caused by interference with the human rights of those likely to be affected by Compulsory Purchase.	X	
Safeguarding and Early Help		X
General Data Protection Regulations (GDPR)		X
Health and Wellbeing		X
Other (please specify)		

12. Appendices

- 1 Map of the CPO area and schedule of interests (PART II)
- 2 Detailed Housing Needs Report (Amended from Cabinet)
- 3 Statement of reasons (Amended from Cabinet) (PART II)
- 4 Legal advice (PART II)
- 5 Equality Impact Assessment
- 6 Public questions and answers from Cabinet 7th March 2023

13. Background Papers

Cabinet report of 7th March 2023