

Chichester District Council

THE CABINET

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Delivery of the Tangmere Strategic Development Location

1. Contacts

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2. Executive Summary

The purpose of this report is to provide information on the progress made in bringing the Tangmere Strategic Development Location (SDL) forward for its allocated development on a co-operative basis, as well as to seek approval for exploring proposals for a Compulsory Purchase Order (CPO) to ensure its delivery and to set out a preliminary timetable for 'making' any CPO. It recommends the principle of CPO land acquisition using a development partner approach. The report seeks approval to commence the process for the selection of a development partner and outlines the need to prepare for compulsory purchase of relevant interests in the Tangmere SDL and the next steps in the process. It also recommends the retention of the legal adviser, the CPO advisor and surveyor (for non-legal advice).

3. Recommendation

3.1. The Cabinet approves:

- I. That the use of the Council's compulsory purchase and associated powers (which at this stage are anticipated as likely to include but not be limited to those under the Town and Country Planning Act 1990 and the Local Government Act 1972) to facilitate comprehensive development at Tangmere SDL be supported in principle, subject to the Council being satisfied that the acquisition of each interest or right to be acquired is justified in the public interest;
- II. That in conjunction with the appointed CPO advisors, work commences on the selection process to identify a suitable development partner (master developer) to deliver a masterplan for the Tangmere SDL and a subsequent scheme that delivers the comprehensive development of the Tangmere SDL in accordance with the adopted Chichester Local Plan and 'made' Tangmere Neighbourhood Development Plan;
- III. That retention of Knight Frank (CPO Advisor), Citicentric (CPO Surveyor/non-legal advice) and Davitt Jones Bould (legal advice) to

assist the Council in carrying out the above steps, subject to remaining within the overall approved budget provision for the project, be approved; and

- IV. That the authorisation of officers to undertake the next steps as set out in section 6 of the agenda report be approved.**

4. Background

- 4.1. This purpose of this report is to help facilitate the delivery of the Tangmere SDL by seeking authorisation to commence the necessary processes to select a development partner in association with the compulsory purchase of the site.
- 4.2. **Policy Background** The site at Tangmere is identified in the Chichester Local Plan: Key Policies (the Local Plan) as a Strategic Development Location (SDL) for the provision of 1,000 homes and associated infrastructure including a school, open space and community facilities. The site is fundamental to the delivery of the housing proposed in the Local Plan and for the Council to be able to continue to demonstrate housing land supply. The site is also identified for development in the Tangmere Neighbourhood Plan. The Neighbourhood Plan provides development and design guidance which will provide the context for masterplanning.
- 4.3. **Land Ownership and Site Promoters** Throughout the formulation of the Local Plan, the Council was assured by the landowners and site promoters that there was a commitment to jointly deliver the scheme and requisite infrastructure in a coordinated way through the production of a masterplan and subsequent planning applications. However, since the Local Plan has been adopted and unlike the other strategic development locations there has been slow progress in producing a masterplan which, in turn was expected to lead to the submission of a comprehensive planning application for the strategic development location as a whole.
- 4.4. At this point in time the ability of the landowners and site promoters to work together to deliver the scheme has not been demonstrated and it appears unlikely that the site will be delivered without public intervention. It is considered that it is now necessary to take steps to examine other methods to bring forward development of the site, including the use of a compulsory purchase order by the Council.
- 4.5. **Evaluation of the Council's position and delivery of the SDL** At its meeting on 7 June 2016, Cabinet resolved that a valuation of the site be undertaken prior to further consideration of the potential to use CPO powers to facilitate development. This has been completed by the Council's CPO advisors, Knight Frank.
- 4.6. Despite discussions taking place over the past few years, the landowners / site promoters have not submitted a masterplan or planning application for the comprehensive development of the Tangmere SDL. Whilst recent correspondence from the developers' consortium has indicated that a masterplan is being prepared and should be available in time for the Cabinet meeting, it is unclear at this stage whether it is being prepared and is supported by all interested parties.

- 4.7. Since the Local Plan examination, the Council has yet to receive any firm evidence that the landowners/promoters are willing and able to work together to deliver the site. Officers have, on numerous occasions, requested to be advised of any collaboration agreement or timetable for bringing the site forward for delivery of housing and infrastructure in accordance with the Local Plan. No such information has been received.
- 4.8. Initial legal and valuation advice from the Council's specialist advisors (Knight Frank and Citicentric) indicates that a potential CPO of the Tangmere SDL is viable. They have advised that the Council should commence a process to select a development partner (a master developer) for the whole site, with the intention that they be appointed before the Council commits to making a CPO, in order for the Council to minimise its risk. The Council would expect the master developer to underwrite the costs of the CPO.

5. Outcomes to be Achieved

- 5.1. The single outcome to be achieved from the recommendations contained in this report is appropriate development of the Tangmere SDL in accordance with the policies set out in the Chichester Local Plan and the Tangmere Neighbourhood Plan.

6. Proposal

- 6.1. It is proposed that officers take all the necessary steps to facilitate the delivery of the Tangmere SDL, including relevant preparatory work with a view to the Council pursuing a CPO for the whole site.
- 6.2. Advice received from the specialist advisers is that the Council should consider selecting a master developer for the whole site, with the intent that they are appointed before the Council finally makes a CPO. The Council would look to the master developer to underwrite the costs of the CPO.
- 6.3. There are a number of significant steps required to be taken in relation to the CPO process to achieve the delivery of the housing and associated infrastructure at the Tangmere SDL. These are:
 - i. Selection process of a development partner (as indicated above) culminating in the Council and the development partner entering into a development agreement;
 - ii. Preparation and submission of a masterplan by the development partner prior to a planning application that the Council (as the local planning authority) will determine;
 - iii. The development partner will seek to acquire the land by private treaty, but, failing that the Council will need to exercise its compulsory purchase powers. and
 - iv. If using compulsory purchase powers, the CPO would be used to acquire the land and/or necessary interests.
- 6.4. Given the complexity of the CPO process, it is proposed that a member briefing session is arranged, to be delivered by the Council's specialist legal/CPO advisors.

- 6.5. **Selection of a development partner** Approval is sought to formalise the commissioning of Knight Frank as CPO Advisor and Citicentric as CPO Surveyor. To assist in providing advice for this report, Knight Frank has already started 'soft marketing' to gauge interest in developing the Tangmere SDL via the Office Journal of the European Union (OJEU) and non-OJEU (development agreement) routes. This has confirmed their view that there are strategic developers and infrastructure specialists with the appropriate capacity and skills who will be interested in the scheme where the focus is on delivering a start on site as soon as possible. The advice is that the non-OJEU route will achieve the Council's aims, broaden the market appeal, save six to eight months in the selection process together with associated costs of a more prescriptive process. It is necessary to commence work now to prepare for and commence an appropriate selection process for a development partner before the end of this year.
- 6.6. This selection work will involve amongst other things assessing the infrastructure requirements, the costs and the viability of a potential scheme, and preparing a specification and the objectives, milestones and deliverables that would be required from the development partner.
- 6.7. The selection process is expected to take approximately 4 months, resulting in a development partner entering into a development agreement with the Council. The selection process will enable the Council to appoint a developer with a proven track record with appropriate financial backing to support the costs of development. It will also enable the Council to ensure any scheme is masterplanned and delivered in line with the requirements of the Local and Neighbourhood Plans.
- 6.8. Contracting with a development partner, following a suitable selection process, will ensure that the Council is best positioned to oversee the delivery of the Tangmere SDL, with less risk to itself. This will send a clear signal of the Council's over-riding ambition and commitment to the development of the Tangmere SDL to all interested parties including landowners, site promoters, developers, investors, service providers and the local community.
- 6.9. There are a number of benefits to this approach which are outlined in appendix 1.
- 6.10. Members will be aware that land ownership and site promoters can change and officers will keep the strategy under review with the objective of delivery of homes remaining the key point. If any circumstances change which warrant a change in or reconsideration of the CPO strategy, the Cabinet will be updated accordingly.
- 6.11. With this strategy in mind officers will continue with the process of dialogue with the landowners and site promoters. It is expected that dialogue with the landowners and promoters will be maintained during the course of procurement activity and the formulation period of the CPO process in an effort to reach an agreement and potentially work collaboratively through to delivery. This is consistent with Government guidance on the compulsory purchase process. This twin-track approach is considered the best means of the Council taking the delivery forward.

- 6.12. It should be noted that further Cabinet and Council approval will be sought for the making of a CPO and selecting development partners at the appropriate time.
- 6.13. **Preparation of planning application** In order to achieve comprehensive development, officers envisage an application for planning permission (prepared and submitted by the Council's selected development partner) to seek comprehensive development of the Tangmere SDL in line with the Local Plan and Neighbourhood Plan being submitted in Summer 2019.

Progression of CPO

- 6.14. **Extent of Land Subject to the CPO** The boundary of the land which will be subject to any Compulsory Purchase order will continue to be refined as detailed plans are drawn up and land is acquired by agreement. At this stage, it should be considered as that area of land which is required to deliver the objectives of the Local and Neighbourhood Plans (plan attached at appendix 2).
- 6.15. **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 the appropriate power is that under section 226 of the Town and Country Planning Act 1990 (as amended). This power is designed to facilitate development projects and to apply, the Council must be satisfied that the development is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area.
- 6.16. 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 justifies the interference with the human rights of those affected.
- 6.17. The guidance also advises that resource implications for the proposed scheme need to be addressed, as well as a programme for delivery of infrastructure and remedial works and obtaining consents such as planning permission. The ability to deliver a comprehensive scheme, on the scale needed at the Tangmere SDL, will be at the forefront of the process of seeking a development partner.
- 6.18. 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 land at the Tangmere SDL will be in the public interest.
- 6.19. **Timescale to delivery** As set out above, the process for selecting a development partner is expected to take approximately four months. One of the aims relating to the selection process will be to ensure that a planning application is made within a reasonably short period after the development partner is selected, ultimately progressing to a target start on site in the first quarter of 2020). The determination of a planning application of this scale is envisaged to take up to six months.

- 6.20. The CPO process from the point at which the Council makes the Order to the Secretary of State confirming the Order could take in the region of 12 to 18 months.
- 6.21. The three main elements to delivering the Tangmere SDL are the selection of a development partner, planning and compulsory purchase (if necessary). These should not be considered as separate and distinct from each other as each are interrelated and processes will overlap where appropriate and feasible. However, an approximate indicative timescale is outlined below, which is a cautious programme that does not allow for significant time savings:

Q4 2017	Commence marketing / selection of a master developer
Q1 2018	Procure master developer / commence CPO and masterplanning work
Q1 2019	Make CPO / Submit planning application
Q3 2019	CPO Inquiry (if required)
Q4 2019	Inspector decision on CPO
Q1 2020	Target start on site
Q3 2020	Long-stop date for start on site

7. Alternatives Considered

- 7.1. Officers have considered what alternative options are available to the Council in order to achieve a comprehensive development of the Tangmere SDL. The options are:
1. To continue as at present to encourage and support the submission of a comprehensive masterplan and planning application by the landowners and site promoters. As compulsory purchase remains a last resort, officers will therefore continue in their dialogue with all the relevant landowners and site promoters to seek development of the site as a whole through co-operation with the landowners and site promoters. If this does not prove possible, a CPO will be pursued.
 2. There is potential for the Council to pursue a CPO, financing the cost itself. However underwriting a CPO is costly. This option is the most risky to the Council and a potential risk to public funds.

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 comprehensive development of the Tangmere SDL in accordance with section 1 of the *Localism Act 2011* (the general power of competence), the *Town and Country Planning Act 1990*, the *Local Government Act 1972* and a variety of ancillary and subordinate legislation relating to the functions of the Council.
- 8.2. More detailed implication of a CPO on Human Rights, Equalities and making a CPO are included in appendix 2.
- 8.3. **Financial Implications** There are significant 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 the process forward.

- 8.4. At the Cabinet meeting on 7 June 2016 a sum of up to £100,000 was allocated from the Planning Delivery Grant and General Reserve to fund a registered valuer and specialist solicitor. So far approximately £22,700 has been spent on valuation and legal advice.

9. Consultation

- 9.1. The Council's Legal Service and external advisors including the CPO Solicitor have been consulted about this complex matter.
- 9.2. The local member has been made aware of the work being undertaken in relation to the use of CPO powers.

10. Community Impact and Corporate Risks

- 10.1. The primary intention of the Tangmere Neighbourhood Plan is to shape how and where the allocated 1000 new homes and associated infrastructure are delivered. The identification of the site for development is fundamental to the delivery of the Local Plan and Neighbourhood Plans.
- 10.2. There may be a negative impact if the Tangmere SDL is not delivered in line with the Local Plan strategy in terms of the Council's five-year housing land supply. If there is not a five year housing land supply the Council will be at risk of an increase in speculative planning applications and appeals.
- 10.3. There are potential strategic risks arising from the CPO process to deliver the Tangmere SDL, such as negative publicity. However, these have been weighed against the reputational risks to the Council of being perceived as failing to deliver the housing identified in the adopted Local Plan.

11. Other Implications

Are there any implications for the following?		
	Yes	No
Crime and Disorder The proposals in the masterplan and 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 Any masterplan or planning application 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 and masterplan.	x	
Safeguarding and Early Help		x
Other		x

12. Appendices

- 12.1. Appendix 1: Benefits of the Council contracting with a development partner
- 12.2. Appendix 2: Plan of the Site

12.3. Appendix 3: Further information as part of Section 8 Resource and legal implications

13. Background Papers

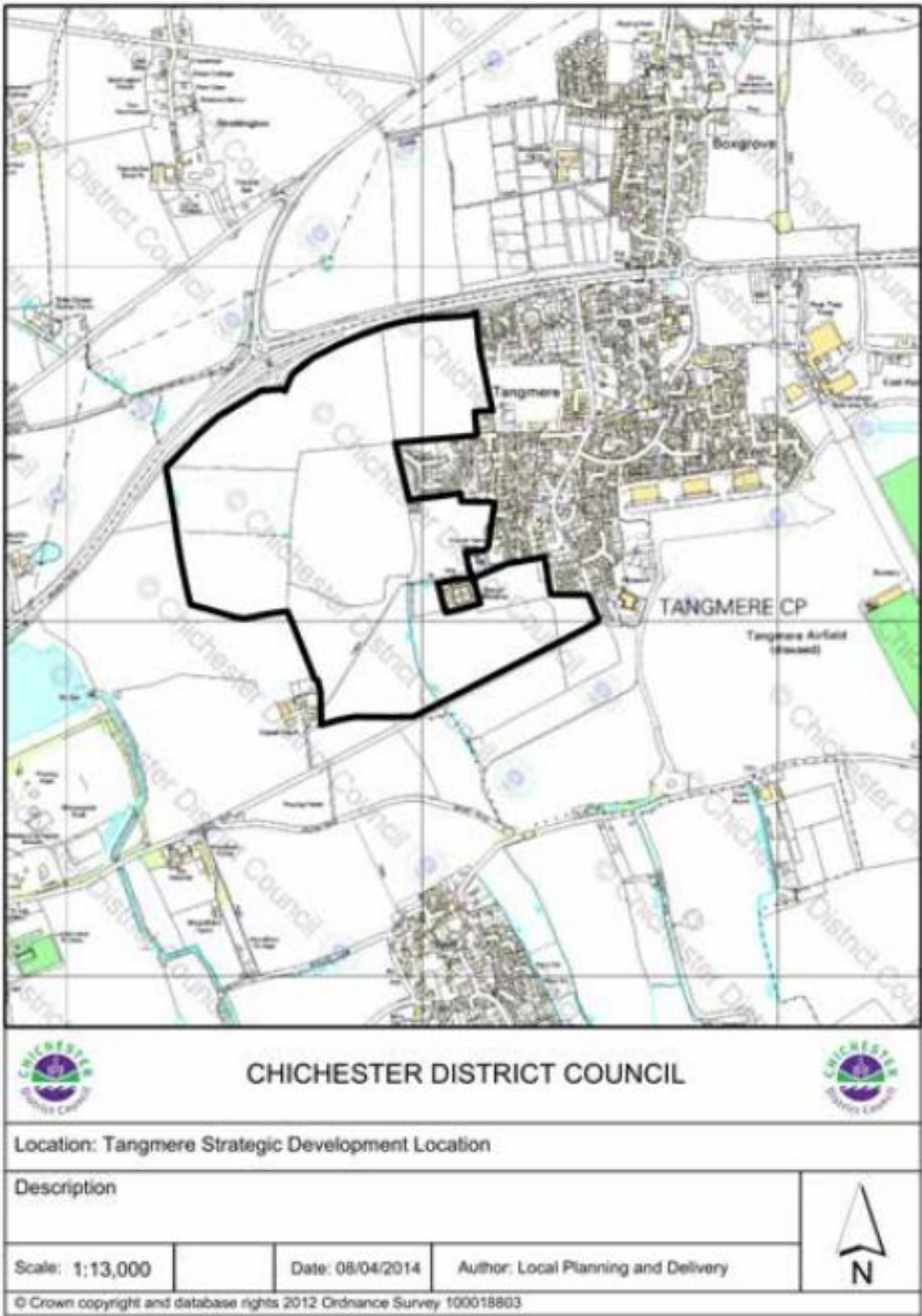
None

Appendix 1: Benefits of the Council contracting with a development partner

- The development partner would enter into a development agreement with the primary focus being on delivering homes and associated infrastructure. This would be achieved by the master developer having capital outlay on the land price and the costs of securing planning thus being incentivised to meet the target start on site date and no later than a long-stop date. If a start on site has not been achieved by the long-stop date the Council would have the remedy to exercise a buy-back at an agreed price. This provides a strong incentive to deliver infrastructure and serviced sites to house builders for housing delivery. In contrast, even if a developer obtains planning permission, delivery is not capable of being enforced by the Council and there is limited ability through planning to compel delivery and thereby contribute to the 5 year housing land supply;
- It would secure comprehensive development and allow the Council to drive forward delivery to secure the delivery of the Tangmere SDL which is compliant with the policies of both the Local and Neighbourhood Plan;
- The selection process would test a development partner's credentials, its experience and ability both to raise the necessary finance as well as to promote a masterplan and planning application acceptable to the Council. By using the proposed selection process, the Council can have some control over the development partner through a development agreement to meet certain milestones. If this process is not followed the Council may find itself with a development partner who has the potential to 'land bank' the site, thereby not delivering it in a timely manner;
- With numerous landowners and site promoters within the SDL, if negotiations are ultimately unsuccessful, exercising the Council's compulsory purchase powers would overcome the problems of land assembly to secure comprehensive development;
- The Council's costs relating to the Compulsory Purchase Order (CPO) would be met by the development partner under the terms of the development agreement.

Appendix 2: Plan of the Site

Map 12.8 Tangmere Strategic Development Location



Appendix 3: 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 Tangmere SDL. Proposals will be thoroughly impact assessed at each stage of the development and compliance built into the obligations required of any development partner selected to deliver the proposals.
- 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 comprehensive redevelopment of the Tangmere SDL in order to secure social, environmental and economic benefits for the wider community of Tangmere and the District as a whole that would not otherwise be possible by piecemeal acquisition and development, 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 the Council's development partner, however, the ability to compulsorily purchase land to secure development of the Tangmere SDL remains a lawful and appropriate/necessary option in the circumstances.
- 1.5. **Development Partner Selection Process:** The selection of a preferred developer will be procured in accordance with all prevailing UK and EU public procurement law and the Council's own Constitutional requirements in this regard.
- 1.6. It should be noted that up until April 2019 whatever EU processes are in place will remain.
- 1.7. **Compulsory Purchase Order – Making the Order:** The making of a Compulsory Purchase Order is a function which the Council may exercise.
- 1.8. Initial research points to the powers under Section 226 of the Town and Country Planning Act 1990 of most relevance in this case, although the specific power relied upon will be determined as part of the CPO preparation process. However, assuming the purpose of this Report the chosen CPO power, the power enables a Local Authority to exercise its compulsory purchase powers:
 - I. 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 (s.226(1)(a)); and
 - II. 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 (s.226(1A)); and

III. in respect of any land adjoining the primary land which is required for the purpose of executing works for facilitating its development or use (s.226(3))

- 1.9. The Council must therefore be satisfied on counts (i) and (ii) 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, 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. Qualifying interest owners 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.
- 1.14. 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).