

**PROPOSED COMPULSORY PURCHASE ORDER – THE METROPOLITAN
BOROUGH COUNCIL OF STOCKPORT (LAND AT HIGHER HILLGATE/HIGHER
BARLOW ROW)**

Report of the Director of Place Management

1. Purpose of Report

- 1.1 To seek consent to progress with a Compulsory Purchase Order (CPO) of land at Higher Hillgate/Higher Barlow Row, Stockport (the Site) to enable the development of 24 affordable homes (the Scheme) by Stockport Homes Group (SHG) within the HRA.

2. Background

- 2.1 The Site is located within the Higher Hillgate Conservation Area in an area of mixed use but with an increasing predominance of residential (see location plan in Appendix 1).
- 2.2 The Site itself comprises land which is in four separate ownership parcels; three in private ownership (see plan attached at Appendix 2), and one which is owned by the Council within the general fund (see plan attached at Appendix 3). One building, in a derelict state, exists within the Site and fronts Higher Hillgate. A second building on the Site was previously demolished because of safety concerns. The remaining land, and building have been the subject of anti-social behaviour. The Council owned land lies off Higher Barlow Row to the rear of Higher Hillgate and is currently used as informal parking with no revenue benefit to the Council.
- 2.3 Informal discussions with the private landowners over several years as part of the Hillgate Regeneration works were unsuccessful. In an attempt to encourage the Site's development, the Council issued a revised planning brief for the Site in August 2016.
- 2.4 Since then the landowners have worked on a draft scheme for the Site but were not able to agree on or package a viable proposal – the nature and size of the Site does not lend itself to the development of each of the parcels of land in isolation, and highways works are required to address the narrow entrance into Higher Barlow Row. With the cooperation of the private owners, Stockport Homes Group (SHG) investigated the development potential of the Site and brought forward a recommendation to develop the site for affordable housing. This subsequent financial offer, which was subject to further discussions with the Local Planning Authority and planning permission being obtained, was accepted by the private landowners. The proposal would be to develop the Site on behalf of the Council through the Housing Revenue Account (HRA) as council owned accommodation for affordable housing in the form of circa 24 (7 one bed and 17 two bed) apartments. This residential use is in line with the preferred use outlined in the planning brief and the financial offer is in line with an independent valuation commissioned by SHG.

- 2.5 On 12th April 2022 the Deputy Chief Executive approved the entering into an Option Agreement (the Option) with the other landowners at Higher Hillgate, and also authorised the Strategic Head of Service (Legal and Democratic Governance) to do all things necessary or incidental to implement the option agreement. This option has since expired (see section 3 “Development Approach” below)
- 2.6 The car park is owned by the Council but held within the General Fund. This car park will need to be reappropriated (with financial reimbursement) to the HRA to enable the development to progress for housing. The car park doesn’t receive any income and could not be developed in isolation without the Higher Barlow Row alterations referred to previously. The development would also require the stopping up of an unadopted highway running through the middle of the Site which hasn’t been used for a considerable number of years (see plan attached at Appendix 4) and there is a potential need for the Council to achieve possession on a narrow strip of land adjacent to the highway and which has formed part of the informal parking area for a number of years. The appropriation and the option to purchase the other landowners land will be the subject of separate reports and approvals in accordance with the approved Council governance procedures.
- 2.7 SHG submitted the following planning application to the Local Planning Authority in Dec 2022:
- *DC/087511 | Demolition of existing buildings on Site and construction of 24 no. apartments with associated hard and soft landscaping and car parking. | Site Of Former 1-19 Higher Hillgate, Stockport At The Corner Of Higher Hillgate And Higher Barlow Row*
- 2.8 The planning application is subject to a Section 111 agreement regarding the junction improvements to Higher Barlow Row and, also a financial contribution to open space provision. The final determination of the application is, however, currently on hold until the Option can be amended to take account of the requirement for a CPO to be enacted. Without this amendment, the Option would be triggered upon the granting of planning permission and the Council would be compelled to purchase the other landowners properties. The other landowners have agreed to work with SHG and the Council to make the necessary amendments to the Option Agreement to incorporate the requirement for a CPO.
- 2.09 Previously, SHG have provided evidence to demonstrate that, despite securing in principle Affordable Housing Grant allocation from Homes England, the total costs to develop this challenging Site would have rendered the scheme unviable and therefore requested that support was provided through the Council’s affordable housing commuted sums.
- 2.10 A request for commuted sums monies to pay for the necessary highway junction improvements at Higher Hillgate/Higher Barlow Row was sought and £200,000 was approved on 12th June 2020 (see the Decision Record attached at Appendix 5).

3. Development Approach

- 3.1 During the course of recent detailed Site investigation work it became apparent that some small areas of the land within the development Site, are unregistered. These unregistered plots (see Appendix 4) appear to be related to previous alleyway

access into mostly now demolished/collapsed buildings within the privately owned plots owned by the other landowners. SHG and the other landowners have since sought legal advice and explored various routes to mitigate/secure ownership of the unregistered land including:

- Adverse Possession: The landowners made a case to HM Land Registry that as the land was land locked and had been used by them for more than 12 years and had not been challenged, then they had the benefit of adverse possession. Unfortunately, the landowners could not provide any visual evidence that demonstrated this, such as vegetation clearance/a maintenance regime, and the claim was rejected even though the Site had been unused for considerably more than 12 years.
- Indemnity – SHG and the Council have sought legal advice as to whether indemnity insurance would be sufficient to mitigate for any potential claims of ownership relating to the unadopted/unregistered land and whilst it may be possible to obtain access indemnity insurance, so that SHG and/or the Council could use the unadopted highway to access the Site, and to build upon the unregistered land this would not mean SHG and or the Council have good title to the unregistered land as there is no title. Also, unregistered land cannot be a secure legal interest under the Homes England Capital Funding Guide for Affordable Homes grant funding purposes.
- Ad medium filium – legal advice has also been sought as to whether the ad filium medium rule could be applied to the Site. This is the presumption that the owner of land fronting a road owns the sub soil up to the centre line of the road and requires an application to HM Land Registry. Unfortunately the layout does not lend itself to this option.

4. Compulsory Purchase Order

- 4.1 Legal advice is that the best mechanism to secure clean title for the proposed development is to make a CPO across the whole of the Site.
- 4.3 CPO guidance confirms that in addition to the requirement to demonstrate there is no financial impediment to the delivery of the development (which has been demonstrated in this report), there is also no physical or legal impediment. Although the planning decision is awaited, it is believed that there is no impediment to planning permission being granted and the physical constraints of the Site have been addressed in this report.
- 4.4 In considering the use of CPO powers regard has been given to human rights and the public interest test that a CPO should only be made where there is a compelling case in the public interest and the purpose for which a CPO is made justifies interfering with the human rights of those parties with interests in the Site. It is recognised that there may be interference pursuant to a legitimate aim which is proportion between the competing interests of the individual and the community as a whole. This report demonstrates the need the need to put the Site to a use that discourages anti-social behaviour, brings the site back into beneficial use (through the provision of much needed affordable housing) and is no longer detrimental to the amenity of the local area.
- 4.5 A new Option will need to be drawn up to include it being subject to obtaining a successful CPO of all the land required for the development, including the privately owned and the unregistered land as well as successfully obtaining planning

consent. SHG have approached the other landowners on this matter and they have agreed to this in principle. There are no other known owners of the unregistered lands.

- 4.6 Taking account of the above, the fact that all other routes to securing a clean title have been explored, and that there appear to be no planning encumbrances, a CPO is the best way to proceed and is a last resort.
- 4.7 The CPO would take place as a regeneration scheme under the Town and Country Planning Act 1990. An outline of the process is provided under Appendix 6 and, as with all other CPO schemes, will need to consider whether the Human Rights of the landowners are affected. In this particular case, given the reasons for the CPO and the fact that the landowners will be entering into an option agreement taking account of the CPO process, it is felt that their Human Rights are not affected.
- 4.8 In order to mitigate against any future claims on the unregistered plots, the council will need to take out indemnity insurance.
- 4.9 If no objections are received or those that are received can be resolved, then the process will take approximately 6 – 9 months. This timescale would increase to an estimated 12-18 months if objections are received.

5. Finance

- 5.1 It should be noted that the financial structure includes elements of public funded subsidy in the form of Homes England Affordable Housing Grant and Brownfield Funding as well as previously approved Affordable Housing Commuted Sums.
- 5.3 A Brownfield funding allocation of £408,000 was approved by GMCA in January 2024 and Affordable Housing Commuted Sums of £200,000 were approved by the Cabinet Member for Sustainable Stockport in June 2020 (EDR CMDSS32).
- 5.4 Homes England have been informed of the scheme and SHG are confident that an application to Homes England for the affordable housing grant will be successful.
- 5.5 Based on cost estimates, the Brownfield funding allocation, commuted sums approvals and anticipated Homes England Affordable Homes grant allocations, the scheme is currently viable.

6. Financial and Risk Assessment Considerations

- 6.1 The proposal includes land owned by the Council which will need to be transferred from the General Fund to the Housing Revenue Account for a consideration. This matter will be the subject of a separate report to the Deputy Chief Executive.
- 6.2 All costs associated with borrowing will be recovered from rents.

7. Legal Considerations

- 7.1 Compulsory Acquisition will transfer any freehold and leasehold title interests affected to the Council to enable the scheme to proceed. Should there be any formal objections to the CPO it may be necessary for a Public Inquiry to be held, which will result in additional resources and expenses being incurred.

8. Human Resources Impact

- 8.1 None.

9. Equalities Impact

- 9.1 The proposed CPO and subsequent regeneration of this derelict site will result in the land being brought back into usefulness for the benefit of the community. In this case the proposal to develop the site post CPO will provide 24 affordable homes for people in affordable housing need.

10. Environmental Impact

- 10.1 The proposal will result in the redevelopment of derelict land.

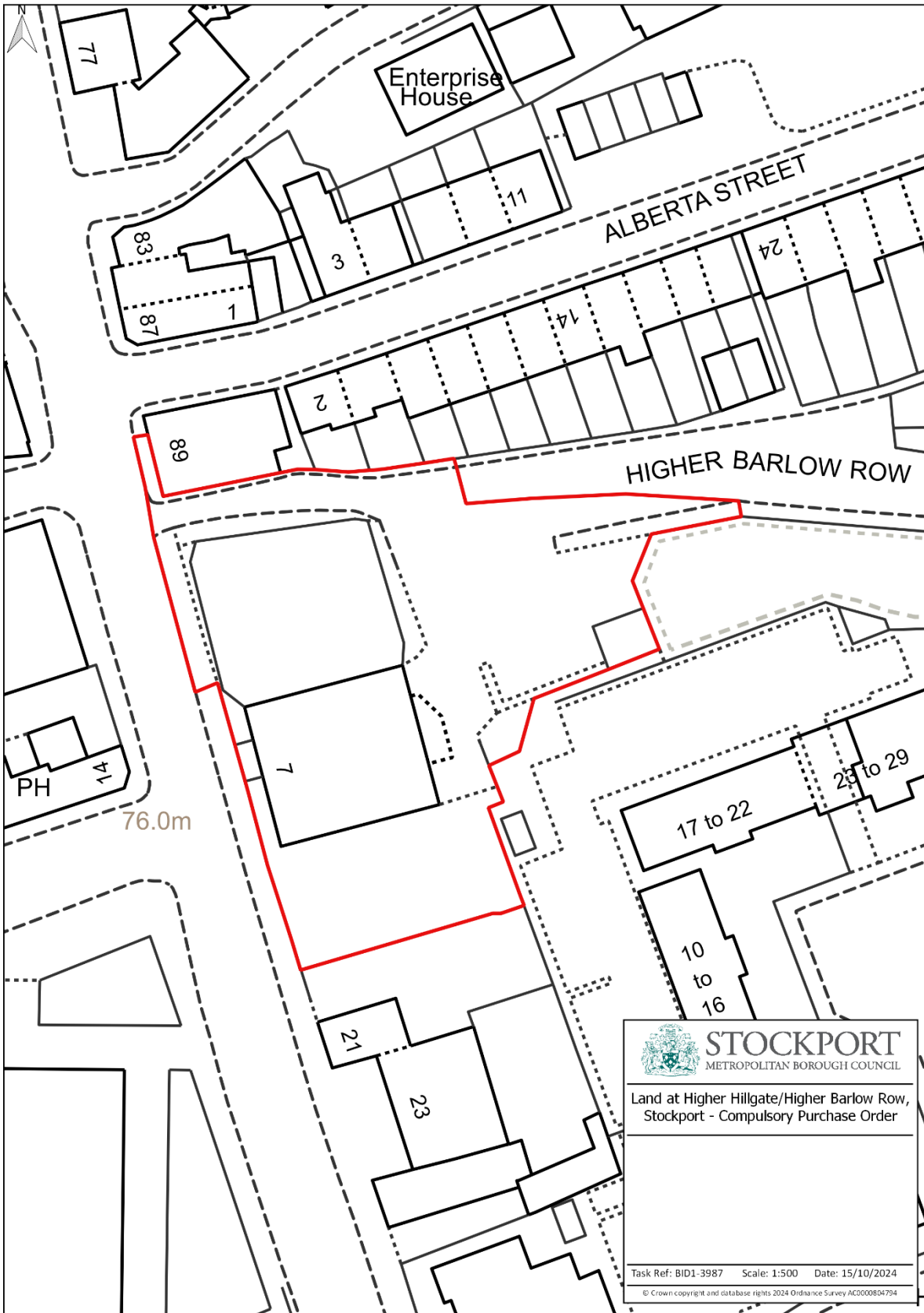
11. Recommendations

- 11.1 That Cabinet notes the contents of this report and agrees to the use of CPO powers to acquire the land at Higher Hillgate/Higher Barlow Row for the purposes of affordable housing development.
- 11.2 That the Economy, Regeneration and Climate Change Scrutiny Committee are asked to comment on the report

Anyone requiring further information should contact:

Andy Kippax, Strategic Housing Lead, email andy.kippax@stockport.gov.uk

Appendix 1:

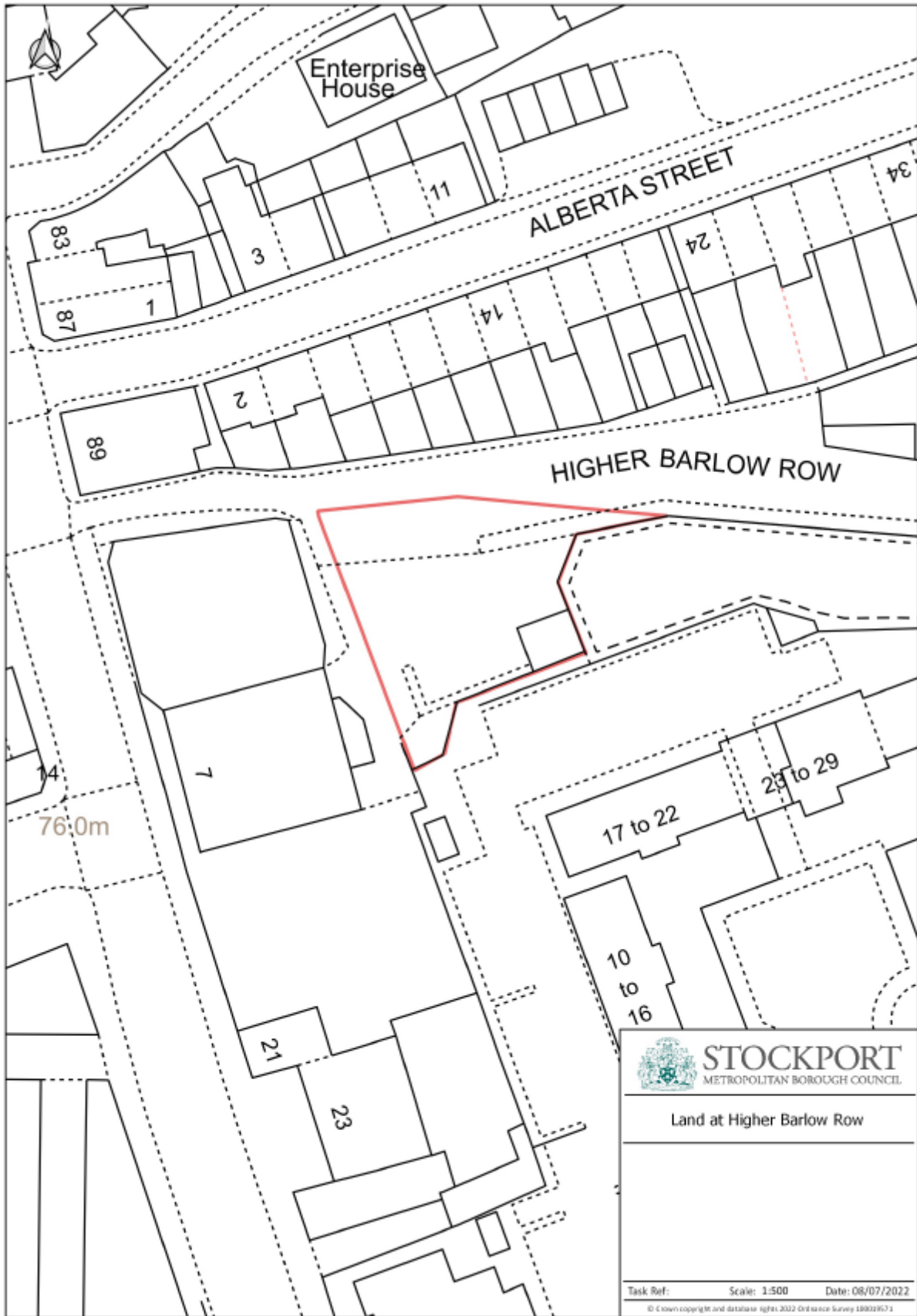


Appendix 2: Higher Hillgate Private Land Ownerships:



Land Parcel	Address/Owner
<u>Land A – GM304045</u>	Property: 1,3,7,9,11 and 13 Higher Hillgate and the land and buildings at the back of 9, 11 and 13 Higher Hillgate, Stockport (SK1 3ER). PAUL TANG
<u>Land B – CH45641</u>	5 Higher Hillgate, Stockport (SK1 3ER) JANET LANGHAM
<u>Land C – GM260702</u>	Land on the east side of Higher Hillgate, Stockport. JANE HARRISSON
<u>Land D – MAN161590</u>	Land on the east side of Higher Hillgate, Stockport JANE HARRISSON
<u>Land E – CH27044</u>	Land on the east side of Higher Hillgate, Stockport JANE HARRISSON

Appendix 3: Plan Showing Council Owned Land at Higher Barlow Row, Stockport



Appendix 5

STOCKPORT COUNCIL

Executive Decision Record

Reference

*(for use by
Democratic Services)*

CMDSS32

Date of Decision

12 June 2020

Subject

Proposals for the use of 'commuted sums' for affordable housing at Higher Hillgate, and 96/98 Shaw Heath, Stockport

**Details of, and
reasons for,
decision
(Summary)**

The Cabinet Member for Sustainable Stockport has:-

(1) Given approval to the use of up to £0.20m to support the development of the Higher Hillgate site identified in the report subject to receiving the appropriate planning consent for the proposed scheme and confirmation of Affordable Housing Grant from Homes England.

Appendix 6: CPO Process Summary:

A compulsory purchase order (CPO) should only be made where there is a compelling case in the public interest.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of a project. The acquiring authority is expected to be able to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the compulsory purchase order by agreement. In addition, the acquiring authority must also be able to demonstrate that it has the resources/funding in place to undertake the scheme for which the land is necessary.

Indicative process

Preliminary Enquiries

The Council considers what land is required to deliver a project and the extent of land which may be required

Design scheme, identify appropriate compulsory purchase power, investigate land ownership and obtain in principle approval to use of CPO powers

Identify the appropriate compulsory purchase power.

Prepare a report to the Council Executive which sets out why the recommendation is to use compulsory purchase powers, identifies the land to be acquired, the purpose for which the land is required and identifies the budget for acquisition of the land and its development.

The Council resolves to use its compulsory purchase powers and collates full land information. This includes serving "requisition for information" notices on all people believed to own or occupy the land, asking for details of a person's interest in the land and whether there are any other persons with an interest in the land. The requisition for information notice usually specifies a deadline of 21 days for responses although it can often take longer to gather all the information required.

The Council shall undertake negotiations with affected landowners to acquire all interests in Site by agreement if possible.

People affected by the

Make the CPO

Prepare the CPO and statement of reasons and serve notice of it on parties with "qualifying interests". The acquiring authority puts up Site notices fixed on or near the land to be covered by the order and publishes notification of the CPO in one or more local newspapers for 2 successive weeks. The CPO, CPO plan and statement of reasons are made available for inspection.

CPO consideration

The relevant minister will decide the case themselves or appoint an inspector.

Objections can be made to a CPO.

Those who are affected by the CPO can make objections to the CPO if they have relevant grounds. The period for objections will be set out in the notices published as above and is a minimum of 21 days. The CPO will be submitted to the relevant confirming authority for consideration.

(a) No objections received

If no objections are made to the CPO and the confirming authority is satisfied that the proper procedure for serving and publishing notices has been observed, they will consider the case on its merits. The confirming authority can then confirm, modify or reject the CPO without the need for any form of hearing. If the CPO can be confirmed without modification and does not include statutory undertakers' land or special kinds of land, the Secretary of State may remit the case back to the acquiring authority for confirmation.

(b) Objections received

Where objections are received, the confirming authority may arrange for a public local inquiry to be held or for written representations to be made. The acquiring authority will need to prepare a statement of case providing a detailed response to the objections made to the CPO. When considering the acquiring authority's order submission, the confirming authority may, if necessary, request clarification of particular points. Remaining objectors may also be asked to provide a statement of case prior to the inquiry. Once the need for an inquiry has been established, it will normally be arranged for the earliest date on which an appropriate inspector is available. This should be held within 22 weeks of the relevant date.

The inspector to the public inquiry will produce a written report setting out conclusions and recommendations for consideration by the relevant minister, unless the decision has been delegated to the inspector who will issue the decision themselves.

Objections can as an alternative to an inquiry be considered through the written representations procedure. Instead of appearing in person, the cases for and against the CPO are submitted in writing, An inspector will consider the written representations, carry out a site visit if required and makes the decision.

Decision

The confirming authority will confirm, modify or reject the CPO and notify the acquiring authority, any objectors and any person who attended the inquiry, setting out the reasons for the decision.

Publication and implementing the CPO

Within 6 weeks of a CPO being confirmed, the acquiring authority must publish a confirmation notice in 1 or more newspapers and fix a copy of the notice and the confirmed CPO on or near the site and serve a copy of the notice and a copy of the confirmed CPO on every qualifying person.

A CPO can be challenged within 6 weeks following the newspaper publication of the notice of confirmation of the CPO.

Possession and acquisition

The actual acquisition process can proceed through a number of methods following confirmation of the CPO:

- by agreement
- following a notice to treat/notice of entry
- by a general vesting declaration (GVD)
- by procedures for acquiring 'short tenancies'
- in response to a blight notice

An acquiring authority may use a combination of these methods to acquire different parcels of land within a single CPO.