

Swindon Borough Council (Southern Connector Road, New Eastern Villages) Compulsory Purchase Order 2018

Cabinet

Date: 14th March 2018

Author:	Cabinet Member for Strategic Planning and Sustainability, Corporate Director, Resources and Growth
Wards:	Covingham and Dorcan, St Margaret and South Marston, and Ridgeway
Parishes Affected:	Stratton St Margaret, South Marston and Wanborough

1. Purpose and Reasons

- 1.1 Cabinet is requested to authorise a Compulsory Purchase Order (CPO) to be made in respect of areas of land required for the construction and delivery of the Southern Connector Road (SCR), New Eastern Villages (NEV).
- 1.2 Further to the Cabinet's decision on 16th June 2016 (details set out below) negotiations are ongoing with various land owners in the NEV and it is considered that it is now necessary to obtain Cabinet's authority for a CPO in the event that purchase by private treaty is unachievable. Without the acquisition of the relevant areas of land it will be impossible to deliver the SCR which is essential highway network infrastructure required to support the delivery of around 8000 houses, and associated employment and community facilities, to be built in the NEV.
- 1.3 The recommendation of this report supports the delivery of the Vision for Swindon, and in particular:
 - 1.3.1 Priority One: improve infrastructure and housing to support a growing, low carbon economy,
 - 1.3.2 Priority Two: offer education opportunities that lead to the right skills and right jobs in the right places, and
 - 1.3.3 Pledge Thirteen: improve highway linkages to the Eastern Villages particularly around White Hart Roundabout.

2. Recommendations

Cabinet is recommended to:

- 2.1 That, in the event that purchase by private treaty is not achievable, the Director of Law and Democratic Services be authorised, in consultation with the Corporate Director Resources and Growth, the Cabinet Member for Finance and the Cabinet Member for Strategic Planning and Sustainability, to take all steps necessary to secure the making and implementation of a Compulsory Purchase Order under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) and/or any other enabling statutory provisions deemed appropriate by him, in order to acquire the areas of land shown shaded pink on the Order Map

Further information on the subject of this report can be obtained from Sam Howell Direct Dial Telephone Number (01793) 466500, showell@swindon.gov.uk.

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attached to this Report as Appendix 1 and marked "Map referred to in the Swindon Borough Council (Southern Connector Road, New Eastern Villages) Compulsory Purchase Order 2018", ("the CPO Land"), including the publication and service of all statutory notices and the presentation of the Council's case at any public inquiry and courts (if necessary).

3. Detail

3.1 Further to a report before the Cabinet on 16th June 2016, Cabinet resolved as follows:

3.1.1 That the Head of Property Assets, in consultation with the Board Director, Service Delivery, the Director of Law and Democratic Services, the Cabinet Member for Strategic Planning and all relevant stakeholders, be authorised to: (a) identify and compile a list of specific areas of land within the area shown on the plan at Appendix 2 to the report, which are required for the purpose of the delivery of necessary infrastructure and in order to achieve the proper planning of the NEV area; and (b) subject to obtaining the necessary authority, depending on purchase price, to undertake negotiations with the owners of relevant interests in the said areas of land with a view to achieving purchase by private treaty.

3.1.2 That the Director of Law and Democratic Services, in consultation with the Cabinet Member for Strategic Planning and the Head of Property Assets, be authorised to complete such transactions, on such terms as he considers necessary to protect the Council's interests.

3.1.3 That, in the event that purchase by private treaty proves unachievable, a report (or reports) be brought to the Cabinet to seek authority for the Director of Law and Democratic Services to make any necessary Compulsory Purchase Order(s).

3.2 Pursuant to the Cabinet resolutions of 16th June 2016, officers, working with consultants, have carried out comprehensive assessments of the highway works required for the SCR scheme. A lot of work has also gone into identifying the route of the SCR and the areas of land required for this route. Meetings have been held with land owners whose land will be required for the scheme, with a view to agreeing purchase by agreement. Valuation of the CPO Land has also been undertaken by consultants working with the Council. Whilst it is likely that some land owners will enter into sale contracts with the Council, there are a number of land owners who are unlikely to, hence the need for the CPO.

3.3 The case for a CPO is well established in Planning terms. The Council has a suite of Planning policies which form the basis for the NEV development and the need for the SCR. The NEV development area is the largest strategic allocation in the adopted Swindon Local Plan 2026. It will comprise around 8,000 new

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homes, 40 hectares of employment, new secondary school, new primary schools and extension to South Marston primary school, and new retail, health and leisure facilities.

- 3.4 The transport strategy for the NEV is predicated on a number of strategic transport interventions including the Southern Connector Road, and funding has been secured through the Swindon and Wiltshire Local Enterprise Partnership's (SWLEP) Local Growth Deal to support the delivery of the NEV transport package, including the SCR.
- 3.5 It is necessary to enable infrastructure to come forward early in the development management process to achieve the timely delivery of a sustainable and properly planned new community. This includes providing key transport routes which will provide access to the whole development, thereby mitigating additional strain on existing highways, providing the potential to unlock difficult sites, ensuring residents have access to essential services and facilities including healthcare and education provision in the short term, and delivering benefits to Swindon as a whole.
- 3.6 The SCR will provide a new link road between the NEV and Commonhead roundabout, relieving demand on the existing highway infrastructure to the north. The SCR works are proposed to start in 2019 and will last approximately 18 months, hence the urgent need to acquire the necessary areas of land.
- 3.7 The adopted NEV Planning Obligations Supplementary Planning Document (October 2016) states that "where necessary, the Council will use its compulsory acquisition powers to acquire land that is required for the timely delivery of necessary infrastructure".
- 3.8 As Acquiring Authority, the Council is required to demonstrate that reasonable steps have been taken to acquire by agreement all of the land interests included in any CPO, and that there is a compelling case in the public interest to make the Order. Therefore, prior to using its CPO powers, the Council will continue to seek to purchase interests by agreement where it is possible to do so. This approach is in line with Government advice contained in the Compulsory Purchase Process and the Crichel Down Rules, October 2015.
- 3.9 Modelling of the transport demand generated by the NEV has informed the design of the road. The current plan for the road will be a two-way single carriageway with pedestrian and cycle facilities. The footprint of the road increases through flood zone areas, where the road is required to be raised. The road avoids, where possible, known constraints such as archaeology, flood zones, the safeguarded canal route, and Thames Water infrastructure and complies with current road design standards.

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- 3.10 Additionally, land for drainage infrastructure is also required. Alongside the road this will consist of swale-style drainage ditches. Off-line attenuation areas and connecting drainage will also be required at certain locations. Private access for landowners will be retained and access points have been included within the design where appropriate.
- 3.11 The SCR works will be funded from Local Growth Fund capital grant and section 106 contributions. The total cost of the scheme is estimated at £34.6m including land acquisition costs.

Planning Policy

- 3.12 Compulsory Purchase must be supported by sound planning policy. Policies NC3, RA3, SD3, IN1 of the adopted Local Plan and the adopted NEV Planning Obligations SPD (October 2016) set out the clear approach to securing comprehensive development at the NEV. The SPD supports the use of Compulsory Purchase powers in ensuring development is integrated and comprehensive.
- 3.13 As the Planning basis for the scheme is well established, the necessary Planning consent to undertake the works will be obtained in time for the submission of the Order to the Secretary of State for confirmation. It is anticipated this will be in the autumn of 2018.

4. Alternative Options

- 4.1 The Council will continue to pursue acquisition by private treaty as the first option. However, given the tight timescale for delivering the scheme (the Local Growth Fund allocation is for the period up to March 2021) and the pace at which development in the NEV is expected to come forward, the use of the Council's CPO powers as an alternative is urgently required.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 Cabinet approved a budget of £48.7m in February 2015 for New Eastern Villages infrastructure, funded from Local Growth Fund provisional award (Council minute 62 2014/15). £11.8m of this total relates to the Southern Connector Road and is sufficient to be able to fund the expected cost of the land and any other associated costs.

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The current full estimated total cost of the scheme is £34.6m, funded from LGF grant and S106 contributions. Approval for the full budget will be sought at a future Cabinet later in the year confirming the sources of funding and will set out the full financial implications and risks of the scheme. This will then enable the planning application for the SCR to be submitted.

Legal and Human Rights Implications

The Compulsory Purchase Order Powers and Process

- 5.2 It is proposed to make a Compulsory Purchase Order under Section 226 (1)(a) of the Town and Country Planning Act 1990 (as amended), and/or any other relevant statutory provisions that may be appropriate.
- 5.3 Section 226(1)(a) of the Town and Country Planning Act enables the compulsory acquisition of land where the Council thinks the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the CPO land where the Council thinks the development, redevelopment, or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of its area.
- 5.4 The Compulsory Purchase Process and the Crichel Down Rules, October 2015 provides guidelines which acquiring authorities must follow on the use of compulsory purchase powers, which the Council would take full account of. In making a CPO, the Council would be doing so on the basis this facilitates the improvement of the economic, social and environmental wellbeing of its area. As set out in the main body of the report, the NEV is a significant strategic urban extension that provides economic, social and environmental benefits. If it is not delivered as a comprehensive and integrated scheme, specific development parcels would be compromised, and this would undermine delivery of the Adopted Local Plan.
- 5.5 The guidance states that a CPO should only be made where there is a compelling case in the public interest and that regard should be had in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and Article 8 of the Convention. A balanced view has to be taken between the intentions of the Council and concerns of those whose interest in land it is proposed to acquire. There must be clear evidence that the public benefit will outweigh the private loss.
- 5.6 Article 1 of the First Protocol states as follows - Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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- 5.7 In considering Article 1 of the First Protocol, the Courts have held that whilst individuals are entitled to the peaceful enjoyment of their property and possessions, the state can deprive and control the use of them where its actions are in accordance with law, necessary and legitimate, in the general interest and proportionate
- 5.8 Article 8 – (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 5.9 These rights are qualified and do not preclude the Council from exercising its statutory powers that are deemed necessary in relation to the CPO land in accordance with the law and in public interest.
- 5.10 In reaching its decision, Cabinet needs to consider the extent to which the decision may affect the Human Rights of landowners of the CPO Land and to balance these against the overall community benefits of the NEV scheme. Cabinet will need to be satisfied that interference with the rights is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest. Officers consider that this would be the case in this instance

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.11 Other Implications have been considered and taken into account in the preparation of this report. No other specific implications were identified.

Diversity Impact Assessment

- 5.12 A Diversity Impact Assessment (DIA) has not been undertaken at present. However, as this report involves a Compulsory Purchase Order, should it prove necessary, a DIA would be undertaken as part of the on-going project.

Risk Management

- 5.13 The vast majority of the acquisitions will be by private treaty and using CPO powers will be the last resort and only on land and buildings that are considered essential to acquire. However, with a large number of landowners involved, there is a risk that acquisition of all the required land by private treaty will not be possible, triggering the need for the CPO powers to be used.

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- 5.14 A specific risk to the Council if the CPO is not made is that the NEV is not deliverable as a comprehensive and integrated strategic urban extension due to the inability to acquire the land to construct the SCR. Without the SCR, the NEV allocation will only be able to be partially built out. Specific development parcels could be compromised, and this would undermine delivery of the Adopted Local Plan, as well as making housing delivery targets for the Council difficult to achieve.
- 5.15 Delays in the land acquisition process will also impact upon the delivery programme for the SCR, and this could have financial implications through the risk of losing the Local Growth Fund grant if construction of the SCR is not well advanced by March 2021. The ability to draw upon CPO powers if required is therefore important to ensuring that the delivery programme for the SCR is achieved.
- 6. Consultees**
- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.
- 7. Background Papers**
- 7.1 Cabinet report of 16th June 2016
- 8. Appendices**
- 8.1 Appendix 1 – Plan of the CPO Land
- 9. Key Decision/Decision in Cabinet Work Programme and Forward Plan**
- 9.1 This is a Key Decision and is included in the Cabinet Work Programme and Forward Plan for March 2018.