

Use of compulsory purchase powers in the New Eastern Villages (NEV), Swindon

Cabinet

Date: 16th June 2016

Author:	Cabinet Member for Strategic Planning, Board Director, Service Delivery
Wards:	Covingham and Dorcan, St Margaret and South Marston, and Ridgeway
Locality Affected:	North, North East, East, South
Parishes Affected:	Stratton St Margaret, South Marston and Wanborough

1. Purpose and Reasons

- 1.1 Cabinet is requested to agree that the Council will use its compulsory purchase powers to acquire any land falling within the area shown on the attached plan at Appendix 2, which it has not been possible to acquire by private treaty, and which is necessary for the provision of an item or items of infrastructure and in order to achieve the proper planning of the area.
- 1.2 It is considered to be extremely important that the Council makes its position very clear at this early stage that it will use its CPO powers where purchase by agreement is not possible.
- 1.3 The recommendation of this report supports the delivery of the One Swindon outcome: 'we can all benefit from a growing economy and a better town centre', and the Council's Vision, Priorities and Pledges. In particular, to:
 - 1.3.1 deliver a 'model of well managed housing growth which supports and improves new and existing communities,
 - 1.3.2 improve infrastructure and housing to support a growing, low carbon economy,
 - 1.3.3 offer education opportunities that lead to the right skills and right jobs in the right places, and
 - 1.3.4 improve highway linkages to the Eastern Villages particularly around White Hart Roundabout.

2. Recommendations

Cabinet is recommended to:

- 2.1 To authorise 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:
 - 2.1.1 to identify and compile a list of specific areas of land within the area shown on the plan at Appendix 2 which are required for the purpose of the

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delivery of necessary infrastructure and in order to achieve the proper planning of the NEV area;

- 2.1.2 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; and
- 2.2 Authorise the Director of Law and Democratic Services, in consultation with the Cabinet Member for Strategic Planning and the Head of Property Assets, to complete such transactions on such terms as he considers necessary to protect the Council's interests
- 2.3 In the event that purchase by private treaty proves unachievable, a report or reports will 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. Detail

- 3.1 The New Eastern Villages (NEV) development area is the largest strategic allocation in the adopted Swindon Local Plan - March 2015 (Appendix 1). It will comprise around 8,000 new 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.
- 3.2 Policy NC3 of the Local Plan requires the form of development in the NEV to comprise a series of new inter-connected distinct villages and an expanded South Marston village. The policy lists a variety of development to be provided in the area, along with the items of infrastructure that will be required to support these.
- 3.3 Policy RA3 of the adopted Local Plan sets out the policy requirements for development at South Marston, including on brownfield sites, to ensure a comprehensive and integrated village expansion is delivered, including 500 homes as part of the NEV.
- 3.4 The emerging NEV Planning Obligations Supplementary Planning Document 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". Compulsory purchase powers are an important tool for assembling land needed to help deliver social, environmental and economic change
- 3.5 The site, amounting to 724 hectares, is controlled by over 100 different land owners. There is no formal development consortium to deliver the strategic

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allocation as a whole, and a small number of strategic land agents and house builders are promoting development on different village islands as detailed below.

- 3.6 The Council is currently dealing with outline planning applications for:
- 3.6.1 2,380 dwellings and associated facilities north of the A420 (S/OUT/13/1555) - Hallam, Hannick and Taylor Wimpey,
 - 3.6.2 2,600 dwellings and associated facilities (with means of access off Wanborough Road not reserved) at Lotmead and Lower Lotmead (S/OUT/15/0753) – Ainscough Strategic Land,
 - 3.6.3 200 homes (with means of access off Wanborough Road not reserved) at Lotmead (S/OUT/15.10753) – Ainscough Strategic Land,
 - 3.6.4 370 dwellings and associated facilities at Redlands (S/OUT.16.0021) – Barberry Developments.
- 3.7 Further outline planning applications for residential development are expected in summer 2016. Planning applications for the first primary schools and the Southern Connector Road are expected by spring 2017.
- 3.8 The Council granted outline planning permission for 112,725 square metres of Class B1b, B2 or B8 employment uses with new landscaping and a new junction onto the A420 in June 2015 (S/OUT/14/0253). Reserved matters in relation to appearance, landscaping and layout for phases 1-4 and 7 of the outline planning permission were approved in April 2016, and work has commenced on site. The site is owned by DB Symmetry.
- 3.9 Within the NEV, the village islands are defined by the floodplain. Transport links will need to be delivered across this, and other areas of non-developable land which it may not be possible to acquire through agreement.
- 3.10 Further, the transport strategy for the NEV is predicated on a number of strategic transport interventions including White Hart Junction, Great Stall Bridge, and the Southern Connector Road, for which a provisional allocation of £48.5m has been secured from the Department for Transport.
- 3.11 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 scheme. This includes providing key transport routes supporting access to the whole development and mitigating additional strain on existing highways, the potential to unlock difficult sites, to ensure residents have access to essential services and facilities including healthcare and education provision in the short term, and deliver benefits Swindon as a whole.

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- 3.12 The emerging NEV Planning Obligations Supplementary Planning Document 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”.
- 3.13 The Council would manage the compulsory purchase powers process in parallel with a comprehensive land assembly strategy for expediency given the current development pressures, and would still expect the majority of shared and necessary infrastructure to be provided by developers through negotiated private treaty acquisition.
- 3.14 Where the Council is to purchase land by private treaty, the Head of Property Assets will follow the usual requirements under the Council’s Scheme of Delegation and seek appropriate authority before the Council enters into an agreement with any party. However, in the absence of a formal development consortium it is considered likely that some land required for enabling and/or shared infrastructure may not be secured by agreement, or become available for purchase in a timely fashion. In such a case, the Head of Property Assets would bring a report to Cabinet to seek authority for the Director of Law and Democratic Services to acquire by compulsory purchase order any land that has been identified as being required for the purpose of the delivery of necessary infrastructure and to achieve the proper planning of the NEV area.
- 3.15 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 Compulsory Purchase Order (‘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 would 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.

Planning Policy

- 3.16 Compulsory Purchase must be supported by sound planning policy. Policies NC3, RA3, SD3, IN1 and the emerging NEV Planning Obligations SPD (March 2016) set out 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.

4. Alternative Options

- 4.1 Without any formal Development Consortium for the Council to negotiate with on purchase of land needed for infrastructure, it is considered likely that some of the land required for enabling and/or shared infrastructure may not be secured, or become available for purchase in a timely fashion. It is therefore imperative that the use of the CPO powers as an alternative is clearly set out by the Council at

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this early stage, whilst it continues to pursue diligently the first option of assembly of land by private agreement.

- 4.2 The Council could decide not to use compulsory purchase powers. However, this could render parts of the NEV undeliverable, and thus undermine the sustainable delivery of the Local Plan and the proper planning of the area.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There are no direct financial implications arising from this report that are not covered within existing budgets. Allowances for land purchases are included within scheme cost estimates as part of the capital budget, which is funded from a mixture of Local Growth Fund grant and anticipated S106 contributions from the developers.
- 5.2 Should the costs increase from those budgeted, then overall scheme costs will increase and the S106 from developers will be amended to reflect this, although subject to overall viability conversations.
- 5.3 The Council has appointed an independent valuer to identify the full cost of the use of compulsory purchase powers, if required. This would include claims for compensation, advance payments if relevant/appropriate, reasonable initial offers, potential relocation and independent advice for land owners, as well as professional costs such as valuation and legal costs.

Legal and Human Rights Implications

The Compulsory Purchase Order Powers and Process

- 5.4 A Compulsory Purchase Order would be made 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.
- 5.5 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.
- 5.6 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

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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.

- 5.7 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.
- 5.8 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 principals of international law.
- 5.9 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
- 5.10 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.
- 5.11 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.
- 5.12 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

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

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

Diversity Impact Assessment

- 5.14 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

- 5.15 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.
- 5.16 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. Specific development parcels could be compromised, and this would undermine delivery of the Adopted Local Plan.

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

8. Appendices

- 8.1 Appendix 1 – Swindon Local Plan Figure 11 – New Eastern Villages Inset Diagram
- 8.2 Appendix 2 - The New Eastern Villages Compulsory Acquisition Powers Area

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 June 2016.