

Subject:	Use of CPO powers in order to facilitate the delivery of housing development of the site at Sunnyside Works Whitworth	Status:	For Publication
Report to:	Council	Date:	18 th March 2020
Report of:	Director of Economic Development	Portfolio Holder:	Resources
Key Decision:	<input checked="" type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception	<input type="checkbox"/> Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required:	No	Attached: No
Biodiversity Impact Assessment	Required:	No	Attached: No
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1.	RECOMMENDATION(S)
1.1	Council authorise the making of the "Borough of Rossendale (Sunnyside Works, Market Street, Whitworth) Compulsory Purchase Order 2020" utilising powers contained in Section 226 (1) (a) of the Town and Country Planning Act 1990.
1.2	That the Director of Economic Development and the Monitoring Officer be authorised to undertake all necessary procedures and associated action in relation to the Compulsory Purchase Order including defending or settling claims referred to in the Lands Tribunal and for applications to the courts and any appeals and to appoint external professionals to facilitate the making and settling of the CPO.

2. PURPOSE OF REPORT

- 2.1 The purpose of this report is to request member approval in order to proceed with a Compulsory Purchase Order ("CPO") of Sunnyside Works under Section 226 (1) (a) of Town and Country Planning Act 1990. The area is detailed on the attached red edged plan in Appendix I.

This is to enable the proposed housing development on the surrounding land at Albert Mill, for which planning permission has been submitted, on the basis that it will contribute towards the achievement of the economic, social and environmental well-being of the area.

3. BACKGROUND

- 3.1 The application site is within the town of Whitworth which forms part of the Healey and Whitworth Ward – map provided in Appendix II. The site is approximately 1.45 hectares in size (3.58 acres) and previously comprised of a series of interconnected, semi-derelict factory warehouse units. The majority of these buildings have now been demolished, apart from Sunnyside Mill and Sunnyside Works which are immediately adjacent to Market Street.

Sunnyside Works is a derelict mill situated on the above brownfield land that previously formed the aforementioned mill and factory complex (Albert Mill, Sunnyside Mill & Sunnyside Works). The building is in a state of disrepair - recent images are attached in Appendix III.

3.2 The Council has made numerous attempts to contact the various owners of the mill over a prolonged period of time. A valuation was obtained with the view to acquiring the site by consent and the Council attempted to link the owners of the mill with the proposed developers of the adjacent land. However the mill owners had an unrealistic expectation of value and negotiations did not proceed.

Further attempts to contact the mill owners with requests to secure / improve the condition have been non forthcoming. The owners have on numerous occasions stated that it is their intention to bring the property back in to use but again none of this has occurred, despite warning of potential CPO in the event of non-action. Given the long term vacancy of the property and the lack of willingness to improve and repair the site, a CPO is considered to be the only mechanism available to the Council to prevent further deterioration and to contribute toward the achievement of the economic, social and environmental wellbeing of the area.

3.3 A proposal to undertake a CPO of this site was approved by Council on 30th September 2015 (see background documents) under Section 17 of the Housing Act 1985 and or the Acquisition of Land Act 1981. However, as the reasons for undertaking the Order are that it will contribute towards the achievement of the economic, social and environmental wellbeing of the area, section 226 of Town and Country Planning Act 1990 is more appropriate. This is intended to be used to enable local authorities to assemble land to implement proposals in their Local Plan; or to be used where strong planning justifications for the use of the power exist Section 226(1) may be used where:

- a. the authority thinks that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. It must be likely to contribute to the achievement of any one or more of the following objects: (i) the promotion or improvement of the economic wellbeing of their area; (ii) the promotion or improvement of the social wellbeing of their area; (iii) the promotion or improvement of the environmental wellbeing of their area.

3.4 The company proposing the housing development own the area known as Albert Mill / Sunnyside Mill which sits behind and to the side of Sunnyside Works and have submitted planning permission to undertake full demolition of the existing buildings and the erection of 37 dwellings and 48 apartments for the over 55s (48 x2 beds, 24 x3 beds and 13 x4 beds). The s106 agreement, including the affordable housing element, is being drafted for signature no later than 19th March 2020.

Further to the aforementioned attempts to negotiate with the mill owners, the development company have approached the Council to work in partnership to unlock the site. This would be achieved by the Council utilising its CPO powers to take ownership and then immediately pass on the site to the Company (recovering all Council costs) for development. The necessary back to back and CPO Indemnity and Site Assembly Agreement have been completed and remain in force.

3.5 In order to meet development aspirations the whole site needs to be brought forward, including Sunnyside Works. The CPO of the land in question will cover all outstanding land requirements. To remove Sunnyside Works from the equation would leave a derelict and unusable building that would not have any point of access as the current point of entry is via the adjoining land. It would also raise issues for public safety and anti-social behaviour which would affect new and existing residents.

- 3.6 The site falls within one of six Area Visions outlined in RBC’s adopted Core Strategy (specifically Area Vision and Policy 1, ‘Whitworth, Facit and Shawforth’). These Visions are broad plans which seek to provide direction for the future of local areas for local people, developers, investors and RBC through to the end of the plan period in 2026. The proposals will make a key contribution to the Area Vision and Policy for Whitworth by reusing a site specifically identified for development within the Core Strategy – in so doing, promoting Whitworth as a prime location of choice to live and work.
- 3.7 The public benefits associated with the proposal are that the redevelopment of the site will remove a significantly problematic building and clean up the area, remove Health and Safety concerns from the contamination of the site and remove the fire risk which the vacant mill causes. The Council will only use CPO powers if it considers that the statutory tests have been satisfied and all other avenues have been exhausted.

Public Sector equality duty has been considered at all stages of the decision making process. It is considered that the acquisition on the land will not have any impact on people with protected characteristics under the Equality Act 2010.

4. RISK

4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- The CPO is not successful and is subject to a legal challenge. A CPO indemnity and site assembly agreement is in place to protect/indemnify the Council from any legal risk. This was signed on 15th November 2017.
- The CPO is not undertaken which results in the mill continuing to deteriorate thus attracting antisocial behaviour and resulting in a detrimental effect on nearby growth
- The claimant mill owners challenge the CPO and costs increase. Council officers have negotiated the aforementioned CPO indemnity agreement under which all the Council’s costs in promoting a CPO and all compensation payable to third parties (including where any third party interests are over-ridden) are covered.
- The development scheme is blocked by any physical or legal impediments to implementation. There are no known issues with the site, aside from the physical relocation of the existing river which will be relocated to the bottom of the site. The Council owns the small area of land that will be required and it is unused. The Council has instructed an independent valuation of the required land parcels in order to enter into separate negotiations with the developers. There are no other parties involved.
- The developer delays any works once the CPO is undertaken. The developer has committed to commencing demolition and ground works in readiness to start the build promptly once the CPO is complete.

5. CPO Powers and need for the CPO

5.1 Section 226(1)(a) of Town and Country Planning Act gives Local Authorities the power to acquire buildings and land through compulsory purchase. This allows CPOs to be made for the purpose of providing housing accommodation or facilities connected with housing accommodation. The power should only be used if the Council thinks that doing so will contribute to the promotion or improvement of the social, economic or environmental well-being of the area.

5.2 Guidance on Compulsory Purchase Process and The Crichel Down Rules” (publicised 29

October 2015, last updated 16 July 2019) states that this power is a wide one and that authorities should consider its use to bring forward development in their areas. The Guidance also states that authorities should be reasonably certain of the proposals for which the land will be used, and that there is at least a reasonable prospect that any proposed development will go ahead within a reasonably short period after the confirmation of the CPO.

- 5.3 The proposals for the site are considered to be the very sort of scheme for which the section 226 power should be used, with it giving rise to the public benefits outlined earlier. Whilst the use of CPO powers (and the over-riding of any third party interests) will involve an interference with individuals' private rights under the Human Rights Act 1998, it is considered that the interference is justified given the public benefits that the scheme will bring. It is considered that there is a compelling case in the public interest in the use of CPO powers to facilitate the scheme.
- 5.4 The Convention rights which may be engaged in the process of making and considering the CPO are Article 6 of the Convention and Article 1 of the First Protocol. The position is summarised in paragraph 17 of Part 1 of the Memorandum to ODPM Circular 06/2004, which states that a compulsory purchase order should only be made where there is a compelling case in the public interest.
- 5.5 Whilst occupiers and owners will be deprived of their property if the CPO is confirmed, this will be done in accordance with the law. It is being done in the public interest as required by Article 1 of the First Protocol. The public benefits arising from the Scheme are set out earlier in this Report. It is considered that the CPO will strike a fair balance between the public interest in the implementation of the redevelopment of the site and those private rights which will be affected by the CPO.
- 5.6 Those directly affected by the CPO will also be entitled to compensation proportionate to any losses that they may incur as a result of the acquisition. Compensation will be payable in accordance with the Compulsory Purchase Code, assessed on a market value basis plus any disturbance and statutory loss payment.

In pursuing this CPO, the Council has to consider the balance to be struck between the effect of acquisition on individual rights and the wider public interest in the development of the site. Interference with Convention rights is considered to be justified and proportionate in order to secure the economic regeneration, environmental and public benefits explained above which the Scheme will bring.

6. FINANCE

- 6.1 Financial Implications are considered within the report, and as outlined there should be no financial impact based on the indemnity provided by the developer. It is important that this indemnity is reviewed and updated if needed prior to the CPO being completed to protect the Council from any potential liabilities.

7. LEGAL

- 7.1 Legal implications are well documented within the body of the report. The necessary indemnity and conditional sale agreements are in place and due diligence will continue to be undertaken throughout the process. All attempts to work with the mill owners have proven fruitless and they are fully aware that the Council is considering the pursuit of a CPO. The tests for pursuing the CPO have been met and this is very much action of last resort.

8. POLICY AND EQUALITIES IMPLICATIONS

- 8.1 No Human Resources Implications Arising from the report.
- 8.2 Consultation has been carried out with landowners of the site, residents and businesses and Whitworth Town Council.

9. CONCLUSION

- 9.1 The Council has the opportunity to assist in the economic regeneration of the area for the specific benefit of residents within this locality. The scheme will directly contribute to the Council's corporate priorities by regenerating and improving the physical environment in that area and by bringing forward an underutilised site.

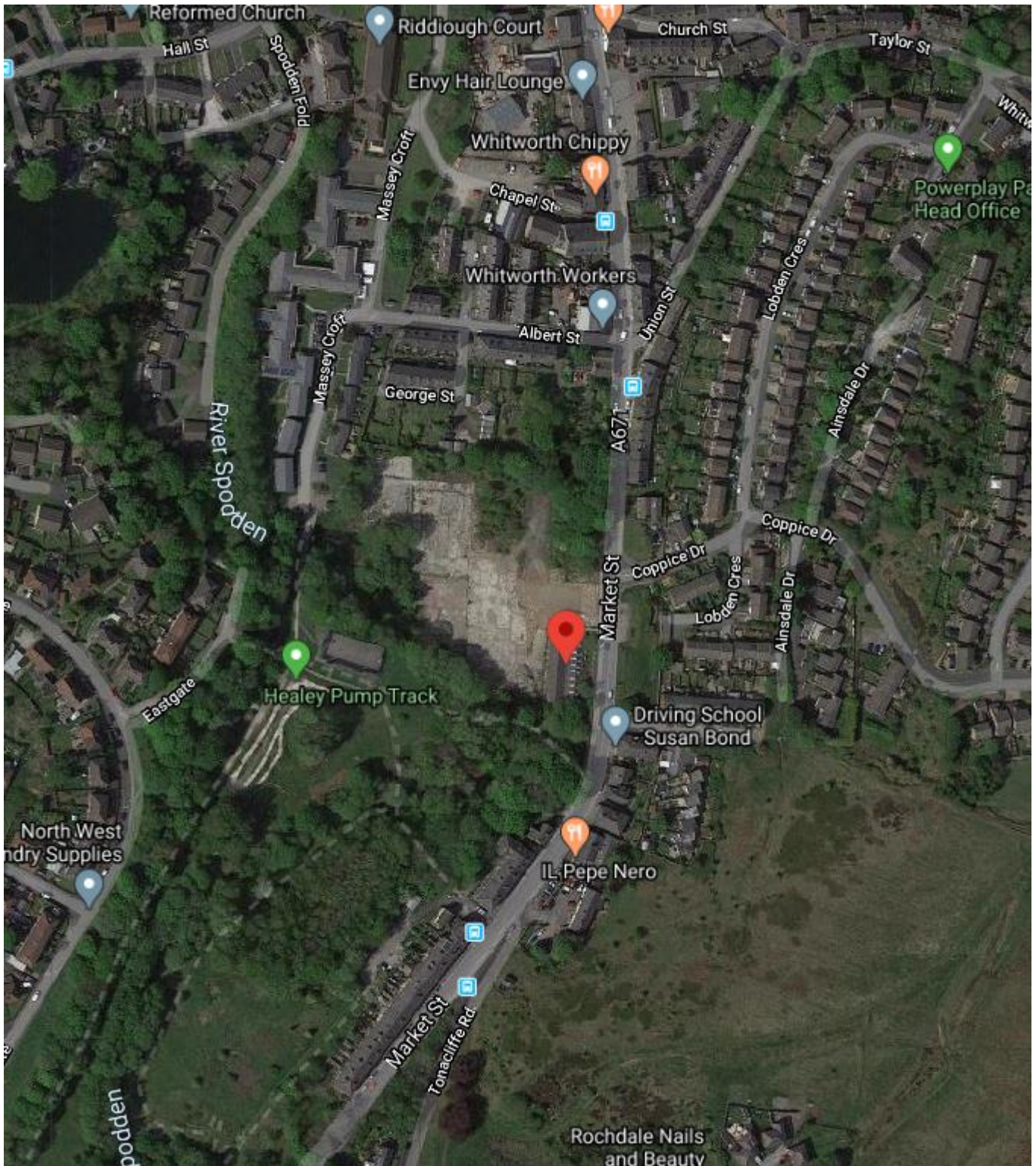
Background Papers	
Document	Place of Inspection
Appendix I	Attached
Appendix II	Attached
Appendix III	Attached
30 th September 2015 Council Meeting	https://www.rossendale.gov.uk/meetings/meeting/873/council/attachment/8053

SUNNYSIDE WORKS RED EDGED PLAN

Sunnyside Works, Market Street, Whitworth, OL12 8PJ



MAP OF SUNNYSIDE WORKS LOCATION



IMAGES OF SUNNYSIDE WORKS SITE

