

Subject:	Use of CPO powers in order to facilitate the delivery of housing development of the site at Sunnyside Works/Albert Mill Whitworth	Status:	For Publication
Report to:	Cabinet Council	Date:	16 th September 2015 30 th September 2015
Report of:	Head of Health Housing & Regeneration	Portfolio Holder:	Leader of the Council/Regeneration and Leisure
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.	RECOMMENDATIONS
1.1	Members are asked to authorise the Head of Health, Housing & Regeneration in consultation with the Portfolio Holder for Regeneration, following the passing of a resolution to grant planning permission for the development and the entering into of legal agreements relating to the indemnification of the Council's costs in the process and regarding the delivery of the scheme, to make a compulsory purchase order ("CPO") under Section 17 of the Housing Act 1985 and or the Acquisition of Land Act 1981 for the purposes of acquiring any interests in the land (and any new rights) within the red line shown on the attached plan which are needed to facilitate the housing led redevelopment of the site on the basis that it will contribute towards the achievement of the economic, social and environmental well-being of the area.
1.2	Members are asked to authorise the Head of Health, Housing & Regeneration in consultation with the Portfolio Holder for Regeneration to:- <ul style="list-style-type: none"> (i) determine the boundaries of the CPO, provided that they shall fall within the red line on the attached plan, and determine the interests to be included in the CPO being those needed to facilitate the development; (ii) prepare the Statement of Reasons supporting the CPO; (iii) undertake a land referencing exercise; (iv) take all necessary actions to secure the confirmation of the CPO, including promoting the case for the CPO at public inquiry; (v) serve all statutory notices throughout the CPO process; (vi) make such amendments, modifications or deletions to the CPO during the process (including if appropriate to request the Secretary of State not to confirm the CPO in relation to any specific interest(s) in the event that agreement is reached in respect of such interest(s)); (vii) conclude agreements with parties included in the CPO to acquire outstanding interests; (viii) exercise the powers under the confirmed CPO to acquire the land in the CPO, whether by General Vesting Declaration(s) or by service of Notice(s) to Treat and/or Entry and complete all matters subsequent to this.

2. PURPOSE OF REPORT

- 2.1 The purpose of this Report is to obtain Member approval for the use of the Council's CPO powers to enable the proposed housing led redevelopment to proceed.
- 2.2 The scheme will directly contribute to the Council's corporate priorities by regenerating and improving the physical environment in that area.
- 2.3 The Report also seeks authorisation for the Council to either retain the site for development or enter into appropriate legal documentation with a developer (and/or their developer partner) to ensure delivery of the scheme, and to put in place an uncapped indemnity so that the Council's costs in pursuing a CPO and over-riding third party interests (including any compensation payable) are covered.

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **Regenerating Rossendale:** This priority focuses on regeneration in its broadest sense, so it means supporting communities that get on well together, attracting sustainable investment, promoting Rossendale, as well as working as an enabler to promote the physical regeneration of Rossendale.
 - **Responsive Value for Money Services:** This priority is about the Council working collaboratively, being a provider, procurer and a commissioner of services that are efficient and that meet the needs of local people.
 - **Clean Green Rossendale:** This priority focuses on clean streets and town centres and well managed open spaces, whilst recognising that the Council has to work with communities and as a partner to deliver this ambition.

4. RISK ASSESSMENT IMPLICATIONS

- 4.1 Any process of land assembly involves risk considerations, including:
- (i) the CPO/over-riding of interests is not successful or is subject to legal challenge. Legal agreements will be in place to protect/indemnify the Council from any legal/financial risk;
 - (ii) planning permission for the scheme is not granted – the owners are in discussions with the planning authority and consultees to mitigate this risk;
 - (iii) the development not being delivered/being unviable. An appropriate agreement will be entered into to facilitate the delivery of the scheme

5. BACKGROUND AND OPTIONS

- 5.1 The Council has an opportunity to bring forward the redevelopment of a site which is in poor physical condition. A company already owns part of the site known as Sunnyside Mill. The land behind the large mill is in receivership and this land was known as Albert Mill.
- 5.2 The Company have submitted a planning application for the site for residential units on land previously occupied by Albert Mill and currently occupied by the vacant and derelict Sunnyside Mill and Sunnyside Works buildings. However, to gain the full benefit of the development the whole site needs to be brought forward for development including those elements of the site not currently owned by the Company. To achieve this the 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 bring the site into one ownership and then immediately pass on the site to the Company (recovering all Council costs) for development. Alternatively, the Council could opt to develop the site through its Joint

Venture Partnership.

- 5.3 The application site is within the town of Whitworth which forms part of the Healey and Whitworth Ward. The site is approximately 1.45 hectares in size (3.58 acres) and previously comprised 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.
- 5.4 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.
- 5.5 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. In addition, it will also lead to the demolition of the vacant Sunnyside Mill and Sunnyside Works buildings which have become a regular source of anti-social behaviour in recent years.
- 5.6 Council's officers are in negotiation for a 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.
- 5.7 Once the legal documents are concluded, and following a resolution to grant planning permission by the planning authority, a CPO is proposed to be made to secure vacant possession of the site and to deal with title issues.
- 5.8 The CPO will help to ensure that vacant possession is obtained. The CPO is also needed to ensure that there are no title issues which might otherwise scupper the delivery of the scheme.
- 5.9 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. As is explained below, the Council should only make the CPO if it considers that there is a compelling case in the public interest to do so. That is the test that will be applied by the Secretary of State, and is the test that Members should adopt now in deciding whether or not to authorise the use of CPO powers.

6. CPO Powers and need for the CPO

- 6.1 Section 17 of the Housing Act 1985 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 achievement of the social, economic or environmental well-being of the area.
- 6.2 Government guidance on the use of CPO powers (Circular 06/2004 and 04/2010) 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.

6.3 The proposals for the site are considered to be the very sort of scheme for which the section 17 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.

7. Negotiations

7.1 Negotiations will continue after any CPO is made, as the Council and the Company would rather acquire the outstanding interests by agreement. However, the CPO is needed to ensure that vacant possession can be secured and to clean up any title issues so that the redevelopment of the site can proceed.

8. Human Rights Considerations

8.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention of Human Rights ("ECHR"/ "the Convention").

8.2 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. The Circular makes it clear that an acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. In making this assessment, an acquiring authority should have regard, in particular, to the provisions of Article 1 of the First Protocol and Article 6 of the Convention and, in the case of a dwelling, Article 8 of the Convention. There are no dwellings included in the proposed CPO. Articles 1 and 6 are summarised below.

8.3 Article 1 of the First Protocol states that:

"Every natural or legal person is entitled to peaceful enjoyment of his possession" and "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law..."

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 retail-led redevelopment of the site and those private rights which will be affected by the CPO.

8.4 Article 6 of the Convention provides that:

"In determining his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"

All those affected by the CPO will be informed and will have the right to make

representations to the Secretary of State for Communities and Local Government and to be heard at a Public Inquiry. It is therefore considered that the statutory procedures which will be followed, taken with the right to object and to judicial review, satisfy the requirements of Article 6.

- 8.5 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. The Compulsory Purchase Code has been held to be compliant with Articles 8 and Article 1 of the First Protocol.
- 8.6 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.

COMMENTS FROM STATUTORY OFFICERS:

9. SECTION 151 OFFICER

- 9.1 With regard to the indemnity the Council should ensure that it has adequate security and guarantees.

10. MONITORING OFFICER

- 10.1 Included within the report.

11. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT

- 11.1 No Human Resources Implications Arising from the report.
- 11.2 Landowners of the site, residents and businesses & Whitworth Town Council.
- 11.3 Cabinet met on 16th September 2015 and recommended Full Council to approve the recommendations as detailed in the report.

12. CONCLUSION

- 12.1 The Council has the opportunity to assist in the economic regeneration of the area for the specific benefit of residents within this locality.

No background papers.

Albert Mill 1

