

Land at The Windmill, Grange Lane, Lichfield - Compulsory Purchase Order

Deputy Leader & Cabinet Member for Economic Growth, Development & Environment

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Agenda Item: 4

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Key Decision? YES

Local Ward Members Cllr Mrs Boyle, Cllr Ray



CABINET REPORT

1. Executive Summary

- 1.1 The purpose of this report is to advise the Cabinet of the Compulsory Purchase Order (CPO) process in relation to the development at Land at The Windmill, Grange Lane, Lichfield and to seek approval from the Cabinet to make a resolution authorising the Council's use of its Compulsory Purchase Powers in order to acquire land on the site in unknown ownership.
- 1.2 The CPO is required to be made to facilitate the implementation of the development as proposed by Phase 7 Properties in their planning application reference number 17/01477/FULM
- 1.3 The report describe the development scheme and the current planning position. It also explains the powers of the Council to acquire land and rights compulsorily, describes the land and rights to be included in the proposed CPO and the general case for compulsory acquisition. This is set against the background of the Secretary of State's advice "Guidance on Compulsory purchase process and The Crichel Down Rules (February 2018) regarding the use of compulsory purchase powers and the aspiration for the delivery of new housing on this site.

2. Recommendations

- 2.1 To facilitate the carrying out and implementation of planning permission 17/01477/FULM, the Council agree to the making of a compulsory purchase order (CPO) to enable the necessary acquisitions of land and interests in land.
- 2.2 To note and approve the map at APPENDIX A showing the extent of the proposed CPO ("the Order Land") and the draft statement of reasons at APPENDIX B in support of the proposed CPO.
- 2.3 To authorise the Director of Place and Community to make the CPO, (within the black line boundary as shown on the map) as considered necessary.
- 2.4 To authorise the making of the Lichfield District Council (Grange Lane, Lichfield) Compulsory Purchase Order 2018 ("the Order") under section 226(1)(a) of the Town and Country Planning Act 1990 ("the 1990 Act").
- 2.5 To authorise the Director of Place and Community to issue notices under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976, where necessary, to authorise the entry on land and carrying out surveys where the Council is considering acquiring an interest in the land or a right over the land which is not such an interest.

- 2.6 To authorise the use of powers in the Town and Country Planning Act 1990 to secure the removal of any apparatus of statutory undertakers or communication code operators from the Order Land.
- 2.7 To authorise the acquisition by agreement of all third party interests in and over the Order Land under Section 227 of the Town and Country Planning Act 1990 before or after confirmation of the Order and in respect of any new rights required for the development or use of the Order Land.
- 2.8 To authorise the Director of Place and Community to take all necessary steps to investigate ownership interests and to secure confirmation of the Order and the acquisition of all third party interests in the Order Land and any new rights and the removal of all occupants from the Order Land. This authorisation includes the publication and advertisement of the Order, serving appropriate notices, seeking confirmation of the Order, taking all steps to acquire relevant interests and such other steps as deemed appropriate by the Director of Place and Community to facilitate the development, redevelopment or improvement of the Order Land.
- 2.9 To authorise the Director of Place and Community to enter into agreements and make undertakings, contracts and transfers on behalf of the Council with third party interests in the Order Land or with parties otherwise affected by the Order for the withdrawal of objections to the confirmation of the Order including the offering back of any part of the Order Land or acquisition of additional land or interests in or over any such land and the removal of any land from the Order and to defend any proceedings challenging the making or confirmation of the Order.
- 2.10 To authorise the Director of Place and Community following confirmation of the Order to publish and serve all appropriate notices of confirmation of the Order and to make one or more general vesting declarations or serve notices to treat and notices of entry (as appropriate) in respect of the Order Land.
- 2.11 To authorise the Director of Place and Community to initiate or take part in any proceedings before the Upper Tribunal (Lands Chamber) or the Courts in order to resolve any disputes as to compensation or other payments payable for any interests in the Order Land or arising from the making or confirmation of the Order or securing possession of any part of the Order Land or title to any part of the Order Land or the removal of any occupants or apparatus of statutory undertakers or communication code operators.

3. Background

- 3.1 The site referred to as 'Land at The Windmill' and that is the subject of this report is the site of a former public house known as 'The Windmill'. The site includes the detached two storey vacant public house with car parking and hardstanding surrounding it. The site is at a higher land level than the adjacent public highway and is surrounded by a sloped grass bank from the back of the public footpath. It is this grass bank land that that CPO is in relation to.
- 3.2 The area in which the site sits is primarily residential, with a small parade of shops to the north of the site on the opposite side of Wheel Lane. The site is located to the north west of Lichfield City centre.
- 3.3 The proposed scheme for this site is for the demolition of the former public house and the construction of 12 residential units comprising 12 no. 3 bedroom dwellings. The proposed dwellings would be in a terraced arrangement which would front onto Wheel Lane and Grange Lane. The units would be 2 story in height with parking provided in a rear parking court providing 2 spaces per unit. Each unit would have a private amenity/garden space. The developer will be responsible for the delivery of the scheme and all costs associated with it.
- 3.4 Land adjoining the site, which is or is reputed to be in unknown ownership is needed to facilitate the proposed redevelopment scheme. This land comprises the Order Land. Unless the Order Land is

secured through the CPO process, the scheme will be unable to proceed. Investigations to determine land ownership, including enquiries with Lichfield City Council, Staffordshire County Council, Conduit Land Trust, Lichfield Cathedral and Lichfield Diocese have been carried out and those bodies have confirmed that they have no interest in the land.

The land comprises an area of banked frontage land to the site measuring 346sq m.

3.5 Planning Position

There have been 3 planning consents on this site for residential development. These are detailed as follows:

- 12/01057/FULM – Demolition of existing public house and reception of 6 no. 3 bedroom dwellings and 6 no. 2 bedroom apartments and associated works. Approved 17.10.13
- 14/00065/FULM – Demolition of existing public house and erection of 12 no 3 bedroom dwellings and associated works. Approved 16.7.14
- 17/01477/FULM – Demolition of existing (vacant) public house and construction of 12no three bedroom dwellings and associated works

3.5.1 The scheme submitted under 17/01477/FULM is the same scheme as that permitted under 14/00065/FULM. The previous scheme was not implemented due to the issues regarding land ownership which this CPO refers to.

3.5.2 The principle of residential development is established through the above consents.

3.5.3 In terms of planning policy the National Planning Policy Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. The NPPF also encourages the effective use of land by reusing land that has been previously developed. The application site is brownfield land which is located within the settlement boundary of Lichfield, which is a sustainable location. Policy H5 of the Local Plan states that development within existing settlements will be acceptable provided that normal development control criteria are met and the development does not involve the subdivision of large residential grounds.

3.5.4 In her report the planning officer carefully considered amenity issues, highway safety, arboricultural issues and planning obligations. Subject to conditions regarding specifications and layout, landscape and planting, surface treatments, remodelling of the banked areas, bat mitigation, access widenings, and lighting, she concluded that the reuse of this brownfield site within the settlement boundary of Lichfield is acceptable in principle and represents a sustainable form of development, leading to an overall enhancement of the character of the area.

3.5.5 The permission was subject to a legal agreement for a CIL payment in regards to a contribution to education.

3.6 Benefits of the Scheme

3.6.1 Core Policy 3 of the Local Plan lists a number of key issues that development should address in order to ensure sustainable development including encouraging the re-use of previously developed land in the most sustainable locations. The redevelopment of this site will have significant benefits on the surrounding area. In terms of character and appearance, the removal of a vacant public house building which has become an eyesore and the replacement with modern housing will lead to an overall enhancement of the character of the area.

3.6.2 The redevelopment of the site will also provide much needed new housing within a sustainable location. The Local Plan Strategy (2015) identifies Lichfield City as one of the key settlements to be the focus of future development. Policy Lichfield 4 of the Local Plan states that approximately 38% of the

Districts housing growth to 2029 (approx. 3,900 dwellings) will take place in and around Lichfield City, with around 46% of this being located within the urban areas (either completed or windfalls).

3.6.3 Frontage planting, including trees, will be beneficial for the streetscene and will mitigate for any existing trees to be lost to facilitate the development.

3.7 Compulsory Purchase Powers

3.7.1 The Council has the power in Section 226 (1) (a) of the Town and Country Planning Act 1990 (as amended) to make a compulsory purchase order for any land in their area if the Council think that the purchase of the land will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.

3.7.2 Pursuant to Section 226 the Council may not exercise the power unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:

- (a) The promotion or improvement of the economic well-being of their area;
- (b) The promotion or improvement of the social well-being of the area;
- (c) The promotion of improvement of the environmental well-being of their area

It is immaterial that the development, redevelopment or improvement may be carried out by a third party.

3.7.3 Paragraph 106, CPO Guidance – What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?

DCLG Guidance (February 2018) (Guidance on Compulsory Purchase Process and The Crichel Down Rules) (the "CPO Guidance") provides updated guidance previously provided for in OPDM Circular 06/2004 (Compulsory Purchase and the Crichel Down Rules).

Section 1 of this guidance sets out:

“Compulsory Purchase Powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities and the promotion of business - leading to improvements in quality of life”

Particular guidance on orders made by local authorities under Section 226 of the Town and Country Planning Act 1990 is contained in Tier 2: Enabling Powers of the CPO Guidance. Para 95 states that

“This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate”

Importantly the CPO Guidance requires that a compulsory purchase order should only be made where there is a compelling case in the public interest. It is considered that a compelling case exists here.

“Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework

the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area

whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired

the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position.

These factors are considered in turn as follows:-

Whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework

- The site is located within the urban area of Lichfield wherein residential development accords with Core Policy 6 of the Local Plan Strategy, along with the National Planning Policy Framework. The redevelopment of this previously developed site accords with the emerging Site Allocations Plan which allocates the land for housing (emerging Policy LC1).
- The development comprises of 12 no. 3-bedroom dwellings which accords with Policy H1 of the Local Plan Strategy which seeks to rebalance the housing stock in the District by increasing the number of 2 and 3-bedroom properties across the District.
- The development involves the demolition of an existing Public House which, in planning terms, is considered to be a community facility. Notwithstanding, there are a wide range of similar facilities within the city that provide equivalent alternative facilities. A number are located a short walk away to the south and south west along Beacon Street. The loss of the Public House is therefore not considered to amount to a loss of a facility which has a key function in the operation of the existing community in the local area.
- Having regard to the wider Spatial Strategy and, specifically, to how the District Council plan to deliver their housing need, it is evident that Lichfield City is to play a significant role. The Local Plan Strategy identifies that a significant number of the housing requirement will be delivered within the urban area of Lichfield and therefore brownfield sites such as this form a crucial part in delivery of the Council's Spatial Strategy. It is therefore considered that the development is consistent with the Local Plan Strategy.
- The Local Plan Strategy sets out "The Vision for the District". That vision, along with a series of 15 strategic priorities, gives direction to the Local Plan Strategy. They together set out how the Council

seeks to achieve its well being objectives. The vision states that residents of the District will continue to be proud of their community and will experience a strong sense of local identity, of safety and of belonging. It states that residents of Lichfield District have opportunities to keep fit and healthy and will not be socially isolated and that people will be able to access quality homes and local employment which suits their aspirations and personal circumstances.

- The land is close to a small parade of shops providing convenience retail within 100 metres. The site is close to a number of bus stops providing public transport to Lichfield City Centre and other service centres beyond. Beacon Park is located only a short walk and cycle away to the south and south east. Large employment areas are located across the city, all accessible on foot, cycle or via public transport. The Lichfield City Railway Station and the Lichfield City Bus Station are all located a reasonably short distance away within the City Centre. The site is sustainable.

Further details of the compliance with planning policy of the development for which planning permission has been obtained are set out below.

The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area

The Council considers the Scheme will contribute significantly to the improvement of the economic, social and environmental well-being of the area for reasons as follows:

Economic well-being

- The land has been under-used, and the Public House vacant, for a considerable period. No investment has been made on the land in recent years and there has been no employment. Continuing in this manner will create no economic value to the District and, arguably, may detract from house prices in the area to the detriment of nearby residents.
- The redevelopment of the land will create direct employment through the construction process. Such is the modest size of development, it is likely that this employment will be local tradesman and those with local connections. Indirect employment, through the supply chain and local spending in nearby shops by construction workers, will also generate benefits in the economy.
- Once constructed, first occupation expenditure will have a modest benefit on the local and regional economy through spending on goods and services. There is a recognised economic impact on people spending to make new homes 'feel like home'. Finally, New Homes Bonus and additional Council Tax revenue will benefit the local economy insofar as additional spending on local services.

Social well-being

- The Local Plan Strategy plans the delivery of the District's housing need, in large part, within and at the edges of Lichfield. Approximately 1,794 dwellings are planned to be built within the urban area. In order for the District Council to meet the identified housing need, land such as this need to come forward in a timely and well planned manner.
- In addition to the significant contribution Lichfield will make to meeting the District's housing need, there is a policy objective (Policy H1 of the Local Plan Strategy) to re-balance the District's housing stock. This places a policy preference for 2 and 3-bedroom dwellings. The development is wholly aligned with these policy objectives and will represent a meaningful addition to the housing supply.

- Whilst the loss of the Public House removes a community facility from the area, there are equivalent alternatives within a short walk and cycle from the land. A number of Public Houses are located along Beacon Street and within the City centre. The demolition of the existing Public House will not result in the inability for the community to function and the benefits in delivering housing and removing building out of character and in a poor state of repair outweigh any limited harm.
- The redevelopment of the site will also remove an opportunity for vandalism within the area. The vacant site, being close to residential properties and a popular parade of shops, increases the perceived risks of crime and anti-social behaviour.

Environmental well-being

- The existing site comprises of a large building and large open areas of hardstanding. The site is neglected and detracts from the pleasant residential suburb. The land is largely free from landscape planting, except for its boundaries. Consequently, the redevelopment of the site affords an opportunity to enhance the natural and built environment through a well designed residential development with appropriate landscape planting and a comprehensive management regime to ensure it is well maintained and long lasting.
- Given the increasing opportunities for habitat creation and planting, the development will generate no net loss to biodiversity. Measures to further boost the natural environment, for example, through the installation of bat boxes/tile/bricks, will provide a net gain to biodiversity.
- In addition, the development removes a derelict and dilapidated building, thereby having a positive impact on the character and appearance of the area.

Conclusion

The Scheme will contribute significantly to the improvement of the economic, social and environmental well-being of the Council's area.

Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.

- The existing, vacant, Public House, which is located to the south west of the Site is to be demolished as part of the development proposals. The Site is currently served by two vehicular access points onto Grange Lane. The access point located closest to the junction with Wheel Lane is closed as part of the development proposals with the access point to the north remaining as the sole vehicular access. The existing pedestrian steps located on the eastern boundary to Wheel Lane will be retained as part of the development to facilitate good access for residents of the development to access the wider area, including the nearby parade of shops. A new footpath is provided within the Site allowing pedestrian access to each of the new homes.
- In using the northern access to serve the development, the Order Land is crossed by vehicles entering and leaving the development. The Order Land is therefore required to provide unimpeded vehicular and pedestrian access, to facilitate and have control over the visibility splays and enable drainage and other services to be brought to the Site without restriction.

- The purpose of acquiring the Order Land is to facilitate delivery of the Scheme which will provide for the demolition of existing (vacant) public house and construction of 12 no. 3-bed dwellings. The dwellings are situated to front the road with car parking for 24 no. cars located to the rear. The dwellings are therefore sited to the front of the Site. Plots 1-6 and 9-12 have a gross internal area of 80 square metres. The dwellings measure 4.6 metres to eaves and 9.1 metres to the ridge. Plots 7 and 8 have a gross internal area of 112 square metres and measure 4.6 metres to eaves and 7.5 metres to the ridge.
- The Scheme is in accordance with planning policy. Planning permission for the Scheme has been granted.
- Core Policy 1 of the Local Plan Strategy states that the District Council will deliver a minimum of 10,030 dwellings between 2008 and 2029 within the most sustainable settlements whilst making best use of and improving existing infrastructure. Core Policy 1 states that development proposals will be expected to make efficient use of land and to prioritise the use of previously developed land. As part of this strategy the District Council will direct the majority of future development to Lichfield City Centre and its urban area, amongst other places.
- Core Policy 6 sets out the strategy of how the District Council's housing need will be delivered across the plan period. It states that Lichfield District will provide 70% of housing on previously developed land to 2018 and 50% thereafter. It reads on to say that housing development will be focused on a number of key urban and rural settlements including Lichfield City and that, apart from four large SDA's, at the edge of Lichfield, a significant proportion of the Districts housing need will be provided within the urban area of Lichfield.
- Policy H1 of the Local Plan Strategy seeks to secure an enhanced housing market and states that the District Council will "actively promote" the delivery of smaller properties including 2 and 3-bed houses, in order to increase local housing choice.
- Policy Lichfield 4 re-confirms that approximately 38% of the District's housing growth will take place in and around Lichfield City, with around 46% of this being located within the urban area. This amounts to approximately 1,794 homes being provided within the urban area of Lichfield.
- Insofar as the loss of a community facility, Core Policy 4 sets out that the District Council will seek to protect and where appropriate, improve services and facilities that provide a key function in the operation of existing communities. It reads on to state that development proposals resulting in the loss of a key facility from a settlement, which is essential to the sustainable functioning of that settlement, will not be supported unless a replacement facility of improved quality is provided for that community in a sustainable location.
- In this context, the development accords with the Development Plan and emerging Site Allocations Plan. It represents sustainable development and the recycling of previously developed land. There are substantial environmental, social and economic benefits that will arise through the development and occupation of the land for housing and its commencement should be encouraged without delay.
- As the Order Land is in unknown ownership, it is not possible to secure the land and interests in land required by agreement. Compulsory purchase powers are therefore essential to enable the scheme to proceed.
- The Council has considered whether redevelopment in accordance with planning policy might be achieved by individual landowners without the need for compulsory purchase. However, owing to the

comprehensive nature of the Scheme and the fact that the land is, or is reputed to be in, unknown ownership, redevelopment by individual owners is not considered to be a practicable option.

- Sub-division of the Scheme into separate components controlled by different developers is unviable and unworkable commercially as the Scheme requires a comprehensive and sequential design and delivery which cannot be achieved without control of the land.
- It is considered that the Order Land is not capable of redevelopment in isolation, due to its nature, size and location and can only be brought into beneficial use as part of a comprehensive development scheme as proposed by Phase 7.
- Overall, it is concluded that there is no credible alternative scheme for the redevelopment of the Order Land which could deliver such a comprehensive Scheme meeting the planning policy objectives within a reasonable timeframe.

The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position

- The developer has the necessary funding to deliver the Scheme and acquire the necessary Order Land and interests in land. Viability of the Scheme is not in doubt.

Paragraph 14 – What information about the resource implications of the proposed scheme does an acquiring authority need to provide?

"In preparing its justification, the acquiring authority should address:

*a) **sources of funding** - the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:*

- *the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and*
- *the basis on which the contributions or underwriting is to be made*

*b) **timing of that funding** - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances, would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.*

Evidence should also be provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice."

- Phase 7 is responsible for construction costs of the scheme and has given an undertaking to the Council under which it has agreed to meet all land and compensation costs relating to the purchase of the Order Land. Phase 7 is also responsible for reimbursing the Council for all costs relating to the making and implementation of the Order, including land acquisition costs.
- The Council is therefore confident that funds will be available for the Scheme and satisfied that there are no financial impediments to the Scheme proceeding.

Paragraph 15, CPO Guidance – How does the acquiring authority address whether there are any other impediments to the scheme going ahead?

"The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- *the programming of any infrastructure accommodation works or remedial work which may be required; and*
- *any need for planning permission or other consent or licence*

Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious reasons why it might be withheld. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is required for the scheme, then, under section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations might include, for example, a local authority's supplementary planning documents and national planning policy, including the National Planning Policy Framework."

- Planning permission has been granted for the Scheme and therefore there is no impediment to implementation in this regard.
- The Council is therefore satisfied that there are no physical or legal impediments to the Scheme proceeding.
- The Council has requested a copy of the development appraisal for the scheme to ensure that the proposed development is viable. Phase 7 Properties, have agreed in writing to underwrite the Council's costs in promoting a Compulsory Purchase Order including all land acquisition and compensation costs.

Paragraph 12, CPO Guidance – How does an acquiring authority justify a compulsory purchase order?

The overarching consideration for the Council when making the Order and for the Secretary of State in deciding whether the Order should be confirmed, is set out in paragraph 12 of the CPO Guidance which states:-

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

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.

Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention."

- Section 6 of the Human Rights Act 1998 prohibits a public authority from acting in a way which is incompatible with the rights and fundamental freedoms set out in specified provisions of the European Convention on Human Rights. Article 1 of the First Protocol provides the right to peaceful enjoyment of possessions and that no one shall be deprived of his possessions except in the public interest, Article 8 provides the right to respect for private and family life including a person's home and Article 6 provides the right to a fair and public hearing.
- The European Court of Human Rights has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate. Compulsory purchase and overriding private rights must be justified by sufficiently compelling reasons in the public interest and must be a proportionate means of achieving the objectives of the Order. Similarly, any interference with rights under Article 8 must be "necessary in a democratic society" and proportionate.
- The Order, if confirmed, would strike an appropriate balance between public and private interests. Interference with Convention rights, to the extent that there is any, is considered to be justified in order to secure the economic, social and environmental well-being benefits the Scheme will bring. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the statutory compensation code.
- The requirements of Article 6 are satisfied by the statutory procedures under which this Order is being prepared and confirmed, which include for the right to object, the right to be heard at any public inquiry and by the right to statutory challenge under the Acquisition of Land Act 1981.
- For the reasons set out in this Statement of Reasons, the Council considers that there is a compelling case in the public interest for the Order to enable this much needed housing scheme to be delivered, thus meeting the requirements of the Convention.

Paragraph 13, CPO Guidance – How will the confirming minister consider the acquiring authority's justification for a compulsory purchase order?

"The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.

However, the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.

If an acquiring authority does not:

- *have a clear idea of how it intends to use the land which it is proposing to acquire; and*

- *cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale*

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making."

- The Council considers it has demonstrated that there are sufficiently compelling reasons for the powers to be sought at this time to enable the Scheme and the benefits it will bring to be delivered. Phase 7 and the Council has more than a clear idea of how it intends to use the land which it is proposing to acquire; the detail of which is set out in **Section 3** above. Further and as demonstrated in this report the necessary resources are in place to enable the Scheme to be delivered by the Council and Phase 7 within a reasonable timescale.

Paragraph 2, CPO Guidance - When should compulsory purchase powers be used?

"... The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. ..."

- Since February 2017, Phase 7 has been making enquiries regarding ownership and other interests in the Order Land but without success. In the absence of any party or parties to negotiate with it is not possible for the land and interests in land to be secured by agreement. In the circumstances compulsory acquisition is the only means of securing the land so that the Scheme can be implemented.
- The Council considers that both it and Phase 7 has taken more than reasonable steps to establish ownership and to acquire all of the land included in the Order by agreement. However on the basis of the enquiries made to date, it seems unlikely that it will be possible to acquire the Order Land by agreement and thus CPO powers will need to be employed. The Council is making this Order to secure the assembly of all the land needed for the implementation of the Scheme.
- Phase 7 and the Council will continue to make enquires to establish ownership of the Order Land and interests in the Order Land and will seek to acquire these by agreement, should ownership or other interests in the Order Land be established.

3.8 Compulsory Purchase Order

In asking the Council to make a Compulsory Purchase Order, Phase 7 Properties, have confirmed that they have made reasonable endeavours to identify the owner of the land that is subject to the CPO, without success and have therefore formally requested that the council make a compulsory purchase order so that any third party rights and interests which are required for the purposes of the development as currently proposed can be acquired.

The land and property to be included in the proposed CPO generally includes the legal interests within the site shown coloured pink on the CPO Plan (see Appendix A)

The land comprises an area of banked frontage land to the site measuring 346sq m .

3.9 Case for Making the CPO

- 3.9.1 Under the CPO Guidance the Secretary of State encourages local authorities to use their compulsory purchase powers to assemble the land needed in order to implement schemes that will deliver social and economic change. Specific mention is made of the use of these powers as a positive tool to promote effective and efficient urban regeneration leading to the revitalisation of communities and the promotion of business. This should ultimately lead to improvements in the quality of life for all of the Council’s customers, especially its residents.
- 3.9.2 Officers are of the opinion, and commend Members to agree, that making the proposed CPO will, for all the reasons described in this report, contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of Lichfield District.
- 3.9.3 In particular, the provision of much needed additional houses in Lichfield will improve the lives of those who will occupy them, and the character and appearance of the area for all others.
- 3.9.4 With reference to efforts made to acquire outstanding land interests, as an owner of the land has not been identified, despite enquiries with land registry, local councillors, Lichfield Cathedral, Lichfield Diocese, Staffordshire County Council, Lichfield District Council and Lichfield City Council. Officers therefore consider that a CPO should be made to facilitate the scheme.
- 3.9.5 The draft Statement of Reasons for the making of the Order, attached at Appendix 2 fully sets out the case for the making of the CPO and is provided for the information of Members.
- 3.9.6 Officers conclude, in the light of the factors and considerations set out above, that there is a compelling case in the public interest for the exercise by the Council of its compulsory purchase powers. Members are recommended to the same conclusion.

Alternative Options	1. Not to pursue a CPO. The scheme is unlikely to come forward without the use of compulsory purchase powers, with a result that the Council’s policy aspirations for the redevelopment of the site would not be realised.
Consultation	1. Consultation has taken place with the local community via the planning application process
Financial Implications	1. The developer of the scheme has agreed in writing to underwrite all of the council’s costs in promoting a Compulsory Purchase Order including all land acquisition, legal and compensation costs.
Contribution to the Delivery of the Strategic Plan	1. The Strategic Plan 2016-2020 sets out that new homes will be built or developed in line with our Local Plan and planning guidance and the making of a CPO to facilitate the building of new houses contributes to that aim.

<p>Equality, Diversity and Human Rights Implications</p>	<p>The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights (“the Convention”). The Convention includes provisions in the form of articles, the aim of which is to protect the rights of the individual.</p> <p>In resolving to make the CPO the Council should consider the rights of property owners under the Convention, notably under the following Articles:</p> <p>Article 1</p> <p>This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.</p> <p>Article 8</p> <p>This protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the country.</p> <p>Article 14</p> <p>This protects the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, or national or social origin.</p> <p>In the case of each of these Articles under the Convention, the Council should be conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit which would arise from the implementation of the proposed development scheme, officers consider that it would be appropriate to make the CPO. It is not considered that the CPO would constitute any unlawful interference with individual property rights.</p> <p>The opportunity has been given to landowners and other affected parties to make representations regarding the Council’s planning policies which underpin the proposed CPO. Further representations can be made in the context of any public inquiry which the Secretary of State decides to hold in connection with the CPO. Those directly affected will be entitled to compensation proportionate to the loss which they incur as a result of the acquisition of their interests.</p> <p>An Equality Impact Assessment is appended to this report at Appendix C</p>
<p>Crime & Safety Issues</p>	<p>1. None</p>

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	That the CPO is not confirmed	Procure legal advice throughout the	Green

		process to ensure correct procedure is carried out	
B	The developer cannot cover council's costs in making the CPO and land acquisition	Written agreement to reimburse council's costs plus monitoring of development finances	Green
C			
D			
E			

Background documents Planning Committee Report for application 17/01477 and Decision Notice dated 19.2.2018

Relevant web links