

CITY OF WOLVERHAMPTON COUNCIL	Cabinet 23 March 2022
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Report title	The Wolverhampton City Council (Former Wolverhampton Eye Infirmary) Compulsory Purchase Order	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Stephen Simkins Deputy Leader: Inclusive City Economy	
Key decision	No	
In forward plan	No	
Wards affected	Park	
Accountable Director	Richard Lawrence – Director of Regeneration	
Originating service	City Development	
Accountable employee	Simon Lucas	Senior Regeneration Officer
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Report has been considered by	Directorate Leadership Team	8 March 2022
	Strategic Executive Board	10 March 2022

Recommendations for decision:

That Cabinet be recommended to approve:

1. That it be agreed to authorise in-principle the making of a compulsory purchase order ("CPO") to acquire the necessary interests in the land shown indicatively by the hatched area on the annexed plan required to deliver the proposed regeneration of the Site pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) and, in the case of any new rights, pursuant to section 13 of the Local Government (Miscellaneous Provisions) Act 1976, because it considers that:
 - a. the acquisition will facilitate the carrying out of the development, redevelopment or improvement of land; and
 - b. the development, redevelopment or improvement of the land is likely to contribute to the achievement of any one or more of the promotion or improvement of the economic, social and environmental well-being of Wolverhampton

2. That the Deputy Leader – Inclusive City Economy in consultation with the Director of Regeneration, be authorised to approve all necessary steps to commence the process for the making, confirmation and implementation of the CPO, including securing the appointment of suitable external advisors and preparing all necessary CPO documentation;
3. That a further report will be put before Cabinet to approve the final extent of the land to be acquired following the finalisation of the necessary preparatory work.

1.0 Purpose

- 1.1 To recommend the resolutions necessary to obtain an in principle agreement to the use of the Council's compulsory purchase order powers to facilitate the redevelopment and beneficial reuse of the site in a timely manner.

2.0 Background

- 2.1 The site in question extends to some 1.02 hectares and is shown edged red on the plan at Appendix 1. It houses the former Wolverhampton Eye Infirmary, Nurses Homes and a 20th century addition as well as some vacant land.
- 2.2 The original Eye Infirmary was opened in 1888 and finally closed in 2007. It has been empty and in a deteriorating condition since that time.
- 2.3 The present owners acquired the building in 2019 and inherited both an existing development agreement with a respected developer and a s215 Notice requiring the owners to undertake certain repairs to the buildings (including to the roof and windows) to ensure the building's negative impact on the local amenity of the area was mitigated and to limit any further decline. The s215 Notice has still not been complied with and proceedings to bring a prosecution for non-compliance are underway.
- 2.4 The site is in a very prominent location in Chapel Ash with a main road frontage to both Compton Road and Merridale Road. It is situated within The Oaks conservation area and all buildings are on the Council's local list of buildings of heritage value.
- 2.5 The sympathetic redevelopment of the site would achieve the following principal objectives:
 - Provide new housing opportunities
 - Restoration of locally listed heritage assets
 - Act as a catalyst for further regeneration activity
 - Enhance the Oaks Conservation Area
 - Resolve long standing issues of anti-social behaviour, dilapidation and blight on the surrounding area
- 2.6 Within the City Centre Area Action Plan (adopted September 2016) the site is situated within the Chapel Ash Local Centre and is specifically identified as a mixed use development opportunity (site 5a). It is referred to as being suitable for a "housing led mixed use scheme including retail (up to 600 sq m) office and leisure uses".

3.0 Current Position

- 3.1 Extensive dialogue has been undertaken with the current owners (BZ Holdings) to establish a way forward and a number of schemes have been prepared which would be acceptable in principle to the Planning Authority. Progress on all these schemes has

founded on the owner's expectations of value from the site which are not considered realistic.

- 3.2 On this basis it is considered that the making of a Compulsory Purchase Order for the land is a proportionate response to ensure delivery over the short term. It should be noted that with the buildings in a constant state of decline it is imperative to find a solution which enables their beneficial reuse before they become beyond economic repair.
- 3.3 The justification for making the proposed Order must meet certain tests set out in Section 226(1)(a) of the Town and Country Planning Act 1990 for the compulsory acquisition of land. Those tests are that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the Order land and that the authority thinks the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the authority area. Department for Levelling Up, Housing and Communities "*Guidance on compulsory purchase process and the Criche Down Rules*" 2018, provides guidance to acquiring authorities on the use of compulsory purchase powers. The Council considers that it has met the Section 226 tests and that its proposed actions are in accordance with the Guidance.
- 3.4 The successful land assembly for the Order land may be critical in bringing about the redevelopment of the site. The current position is that whilst there have been ongoing discussions with the owner about their intentions for the site there is no certainty that any particular scheme would be deliverable and the owner's recent track record in this respect indicates that in-principle authority to use CPO powers is a proportionate, appropriate and reasonable course of action.
- 3.5 The site is one of a number within the City which are discussed regularly with the West Midlands Combined Authority and they are aligned with and supportive of the Council's approach as described in this report.

4.0 Evaluation of alternative options

- 4.1 Option 1 would be to not obtain in-principle authority to make the Order and to continue to work with the current owners (or their successors) to ensure the site is redeveloped. There is little evidence that this approach would yield any positive results given the lack of progress of the past few years and non compliance with the s215 Notice. Given the state of the heritage assets and their continuing deterioration it is not considered that a "wait and see" option can be justified.
- 4.2 Option 2 would be to implement the recommendations of this report and confirm the in-principle use of CPO powers. Intervention by way of compulsory purchase would only formally be progressed when it remains the only option to secure the site's redevelopment over the short term.

5.0 Reasons for decision(s)

5.1 The redevelopment of the site would have significant benefits for the economic, social and environmental well-being of Wolverhampton. Authority in principle to use CPO powers would provide a robust framework within which to continue proactive and positive dialogue with the current owners and would provide certainty that that regeneration activity will occur within a reasonable timeframe.

6.0 Financial implications

6.1 Following an in-principle decision to use CPO powers some due diligence will be carried out in house. Costs of up to £20,000 may need to be met from existing City Development revenue budgets.

6.2 Should it be necessary to seek a formal decision to make a CPO a further report will be required to Cabinet setting out in full the likely costs and the funding arrangements. [VS/11032022/P]

7.0 Legal implications

7.1 The use of compulsory purchase powers will ensure the relevant land assembly can be reasonably achieved within an appropriate timescale. If it is necessary to use a Compulsory Purchase Order then the price paid for any acquired land will be in accordance with the statutory compensation scheme. Access to the land for the purpose of development will not be delayed due to any dispute as to the amount to be paid for the land or right in question.

7.2 In addition to acquiring land ownership the Council can also acquire any necessary third party rights required for the development, preventing the possibility of any third party seeking injunctive relief to prevent the development with particular regards to the Human Rights Act 1998 to ensure that there is a balance between individual rights and the wider public interest

7.3 The process for achieving land assembly by way of compulsory purchase is, in outline:

- identify the correct legal power;
- justify the need for a compulsory order;
- prepare and make the compulsory purchase order (including publication and service);
- consideration of the compulsory purchase order by the Secretary of State;
- implementation of the compulsory purchase order;
- compensation for affected landowners;

7.4 Detailed guidance "*Guidance on Compulsory purchase process and The Crichel Down Rules*" on the process is published by the Department for Levelling Up, Housing and Communities and Local Government which the Council will be required to follow.

7.5 The Council has the statutory powers for the purposes of the scheme; as the scheme is for the purposes of regeneration section 226(1)(a) Town & Country Planning Act 1990 is identified (at this stage) as being the most appropriate statutory power. In addition the Council may need to acquire other rights that are in third party ownership and has the necessary powers to do this pursuant to section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976.

- 7.6 In order to proceed with a compulsory purchase order (CPO) the Council will need to define the CPO Scheme and the land required for the operation of the CPO Scheme (the CPO Land) including any land which is necessary for the construction operation (for example “over sail rights” for cranes, access rights etc).
- 7.7 If Cabinet agrees to the “in principle” use of compulsory purchase powers it will be adopting a “two-stage” approach; if agreed Officers will start the formal process of preparing the necessary CPO documentation. An early “in principle decision” should allow issues with the scheme to be identified at an early stage and therefore minimise the risk of legal challenge by way of judicial review.
- 7.8 To progress to full CPO a Resolution will be needed to formally identify:
- the CPO Land
 - the CPO Scheme and the purpose for which the land is acquired
 - the justification for the use of compulsory purchase powers.
- 7.9 The CPO itself will need to be justified to the Secretary of State and the Council will need to be able to demonstrate that:
- there is appropriate statutory authority and the CPO is necessary for its purpose;
 - there is a compelling case in the public interest for the CPO;
 - that there are adequate resources available to implement both the CPO and the CPO scheme within a reasonable timeframe;
 - there are reasonable prospects that the scheme will go ahead;
 - that the scheme can only be achieved using compulsory powers;
 - that as compulsory powers are only to be used as a last resort, negotiations for acquisition by agreement have been actively pursued but have failed.
- 7.10 The Council will need to fully consider its Public Sector Equality Duty (section 149 Equality Act 2010) and the rights of individual property holders..
- 7.11 The Final CPO (if considered necessary and appropriate) will:
- set out the terms of the Order;
 - include the CPO Schedule and Map;
 - be supported by a statement of reasons; and
 - if relevant, the information required by the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004/2595).

[JA/07022022/A]

8.0 Equalities implications

- 8.1 Throughout the compulsory purchase process acquiring authorities must have due regard to the need to: (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between

persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.

9.0 All other implications

9.1 The beneficial reuse of the site will bring about significant positive environmental improvements to the area, providing housing with high standards of environmental performance.

10.0 Schedule of background papers

10.1 None

11.0 Appendices

11.1 Appendix 1: Draft Plan of the Order Lands (edged red)