

CABINET

16 July 2019

Title: Gascoigne West and Sebastian Court Development Proposals – Use of CPO and Appropriation Powers	
Report of the Cabinet Member for Regeneration and Social Housing	
Open Report	For Decision
Wards Affected: Gascoigne	Key Decision: Yes
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Accountable Strategic Director: Graeme Cook, Director of Inclusive Growth	
Summary <p>Cabinet approved the use of compulsory purchase powers in regard to a number of estate renewal schemes in January 2015. In the case of the Gascoigne West Estate this was subject to confirmation of Housing Zone funding, which was subsequently granted in 2017. This report seeks to provide a specific update in regard to the redevelopment of part of the Gascoigne West Estate (Phase 2) and seeks confirmation of the approval of the use of the Council’s compulsory purchase powers to acquire those interests in land and property which fall outside of the Council’s ownership and which are required in order to bring forward the redevelopment of the estate.</p> <p>Outline Planning Permission (ref: 17/00977/OUT) was granted by the Council in December 2018 for the demolition of existing buildings and structures on part of the Gascoigne West Estate and the construction of up to 850 new homes with accompanying commercial and community floor space, improved public realm and landscaping (“the Consented scheme”). Appendix 1 shows the red line of the Outline Planning Permission. The proposed CPO would apply to Phases 2 (as marked up on Appendix 1).</p> <p>Concurrent to the Planning Application, the Council has been trying to secure through negotiation the purchase of leasehold interests in flats originally sold via the Right to Buy process. Good progress has been made in this regard including all of Phase 1, but we have now reached the stage where pursuing a CPO seems the only viable strategy to achieve vacant possession on target. Accordingly, it is considered that it is an appropriate time to progress the use of the Council’s compulsory purchase powers.</p> <p>In addition, this report seeks approval for the use of appropriation powers for Gascoigne West Phase 1 and Sebastian Ct. This is to enable transfer of land and address third party rights issues.</p>	

Recommendations

The Cabinet is recommended to:

- (i) Agree, subject to consideration of the matters set out in the report, to make a Compulsory Purchase Order (“CPO” / “the Order”) pursuant to Section 17 Housing Act 1985 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of land and new rights in respect of the area identified as Phase 2 in Appendix 1 to the report, "draft CPO Plan" and the Schedule, to facilitate delivery of the Gascoigne West Estate regeneration proposals set out in the report;
- (ii) Delegate authority to the Director of Inclusive Growth to approve the Statement of Reasons supporting the CPO;
- (iii) Delegate authority to the Director of Law and Governance, in consultation with the Director of Inclusive Growth, to:
 - (a) agree minor amendments to the CPO Plan and CPO Schedule before the making of the CPO if required;
 - (b) take all steps to secure the making, confirmation and implementation of the CPO including the publication and service of all notices and the promotion of the Council’s case at any public inquiry;
 - (c) negotiate, agree terms and enter into agreements with interested parties including agreements for the withdrawal of blight notices and/or the withdrawal of objections to the Order and/or undertakings not to enforce the Order on specified terms, including (but not limited to) where appropriate seeking the exclusion of land or rights from the Order, making provision for the payment of compensation and/or relocation;
 - (d) in the event the Order is confirmed by the Secretary of State, to advertise and give notice of confirmation and thereafter to take all steps to implement the Order including to execute General Vesting Declarations and/or to serve Notices to Treat and Notices of Entry in respect of interests and rights in the Order Land;
 - (e) take all steps in relation to any legal proceedings relating to the Order including defending or settling claims referred to the Upper Tribunal and/or applications to the courts and any appeals;
- (iv) Agree that, where required to assist in the delivery of the Gascoigne West Estate regeneration proposals, the Council shall appropriate land for planning purposes pursuant to Section 122 of the Local Government Act 1972 to enable Section 203 of the Housing and Planning Act 2016 to be utilised to override any third-party rights;
- (v) Agree the appropriation of the land at Gascoigne West Phase 1 under Section 122 of the Local Government Act 1972 from the Housing Revenue Account to the General Fund, following completion of the decanting and demolition of each block, as shown edged in red in Appendix 1; and
- (vi) Agree the appropriation of the land at Sebastian Court under Section 122 of the Local Government Act 1972 from the Housing Revenue Account to the General

Fund, following completion of the decanting and demolition of each block, as shown edged in red in Appendix 2.

Reason(s)

The making of a CPO pursuant to Section 17 of the Housing Act 1985 will facilitate the redevelopment of part of the Gascoigne West Estate and surrounding area. This will accelerate the Council's regeneration agenda and bring forward homes in line with the Council priority 'Growing the borough'. Accordingly, it is considered that there is a compelling case in the public interest to make a CPO.

1. Introduction and Background

- 1.1. Since the 2015 Cabinet Report officers have been progressing the scheme in a number of ways.
- 1.2. Housing Zone funding was secured with an initial allocation of £3.3m grant and £3.5 M interest free loan for Gascoigne West (Grant / Loan). The grant has been fully drawn down. This funding has been used for buybacks and for the road improvements to Abbey Rd.
- 1.3. In addition, Outline Planning approval for the scheme has been obtained and all properties included in the CPO area are within the Planning Red Line. Across all 3 Phases this Approval allows for the replacement of 179 homes with up to 850 new dwellings. The approval divides the scheme into 3 phases. The Council has successfully purchased by agreement all the properties required to take forward the first phase and will be submitting a Reserved Matters Planning Application in the near future. It is worth noting that the Outline Planning Permission assumes that Phase 2 will deliver over 450 new homes.
- 1.4. In addition, the Council has been purchasing by agreement a number of the leasehold interests in later phases.
- 1.5. The January 2015 report set out that a total of 89 Leaseholders across all 3 phases would need to be acquired. To date 70 leasehold interests have successfully been purchased by agreement. In Phase 2 there are 11 properties outstanding and, in some cases, terms have been agreed and the sale is progressing through the conveyancing process. All affected leaseholders have been contacted and in all cases the property has been inspected and an offer made based upon market value. We have negotiated as far as realistically possible and have followed standard practice including paying for vendors' Valuers fees, etc. where requested and Statutory Loss Payments. Only 4 of the remaining leaseholders are owner occupiers with the rest of the properties being privately let.
- 1.6. Officers believe a stage has been reached where a CPO is required to achieve vacant possession. While each case has its own circumstances largely the issue with the remaining purchases falls into 3 categories:
 - Unrealistic expectations of property values along with a misunderstanding of the CPO process.

- In some cases, we have agreed terms, but owners are reluctant to terminate tenancies and lose rent.
 - Personal circumstances including probate, tax and other individual issues.
- 1.7. The Council will, of course, continue to negotiate with remaining leaseholders through the CPO process seeking to purchase by agreement and it is expected that should we need to reach the later stages of the CPO process there will be a much smaller number of outstanding cases. The expectation based upon experience is that the early stages of the CPO process will focus minds, and this will trigger further purchases.
- 1.8. The redevelopment of part of the Gascoigne West Estate will be delivered by the Council's regeneration vehicle, Be First. The scheme is considered to be financially viable and the necessary resources to deliver the project are available. Please see Finance comments below
- 1.9. We have also appointed a consultant to advise us through the CPO process. They have carried out an initial "Health Check" of our proposal and believe it is sound. However, given that 4 years have passed since the Cabinet resolution approving the use of the Council's compulsory purchase powers, and that this decision could be 5 years in the past by the time of any CPO inquiry, they have recommended we "refresh" the approval based upon the current situation. This will help mitigate one of the potential challenges to the CPO. Accordingly, approval of the use of the London Borough of Barking and Dagenham's compulsory purchase powers and appropriation powers are being sought to assist in the delivery of the Gascoigne West Estate regeneration proposals.

2. Proposal and Issues

- 2.1. This report seeks Cabinet approval of the use of the Council's compulsory purchase powers and to appropriate any land required for planning purposes to enable delivery of the regeneration proposals for the relevant parts of the Gascoigne West Estate.

Proposed Order Land

- 2.2. The extent of the land to be subject to the CPO ("the Order Land") is identified in the Plan attached to this report as appendix 1 and labelled Phase 2.
- 2.3. The Order Land includes leasehold interests falling within the addresses below:
- 2-55 Lindsell Road
 - 26 -63 Hardwick Road

The Gascoigne West regeneration proposals

- 2.4. The Council has ambitious objectives, policies and targets for growth across the Borough including the delivery of more than 50,000 new homes and 20,000 new jobs over the next 20 years. This scheme forms an important part of that programme.

- 2.5. Outline Planning Approval for the scheme has been obtained (reference: 17/00977/OUT) and all properties included in the CPO are within the planning permission's red line. This scheme is a key part of the Borough's ambitious development programme going forward.
- 2.6. The proposals seek the redevelopment of the western part of the Gascoigne West Estate. The area proposed to be redevelopment comprises 179 residential units with the outline planning permission secured providing for the replacement of these units with up to 850 new dwellings, a potential uplift of 671 residential units. 97 of the existing properties are social rent units and these are proposed to be re-provided on a one-for-one basis, but with an increased percentage of three-bedroom units.
- 2.7. Overall the planning permission obtained provides for 357 affordable housing units (subject to grant funding) reflecting 42% of the new units being delivered. There is a quantitative increase in both the number of private and affordable units on account of the Scheme.
- 2.8. The scheme will also deliver qualitative improvements, not just in terms of new housing meeting modern design standards but also in respect of the layout of the estate. The existing layout of the estate makes wayfinding and site navigation difficult and illegible. The development promotes the introduction of clearly defined, legible pedestrian circulation routes. The proposed layout of blocks across the site creates a series of new streets/routes and redefines the character of existing ones. The proposed blocks restore a more traditional street character, with active frontages addressing the street
- 2.9. There are no listed buildings or unlisted buildings of merit within the development site area.

Land acquisition and negotiations and Decant Programme

The Council has made very good progress in securing those properties required for the redevelopment by agreement. In January 2015 there was a total of 89 Leaseholders across all 3 phases which would need to be acquired and this number now stands at 19. In regard to Phase 2 there are 11 properties outstanding with 27 purchased by agreement. In regard to the remaining 11 in 3 of these cases the matter is progressing through the conveyancing process.

The Council has been in contact with all affected leaseholders and in all cases have inspected the property and made an offer based upon the property's market value. Active negotiations have taken place and with the reasonable professional fees of leaseholders paid in respect of obtaining an independent valuation where requested. Statutory loss payments have also been made in accordance with the Ministry of Housing, Communities and Local Government's Guidance on Compulsory purchase process and The Crichel Down Rules" (February 2018) ("the CPO Guidance").

Officers have reached a stage where they consider that a CPO is required in order to ensure vacant possession of the required properties is achieved within the required timeframes. Negotiations will continue throughout the CPO process, and it is expected that the commencement of the process will assist in progressing some discussions through demonstrating the Council's commitment to the delivery of the

scheme. It is therefore expected that the number of properties to acquire through the CPO will be further reduced.

- 2.10. The appropriate compulsory purchase power to support the redevelopment of part of the Gascoigne West Estate is Section 17 Housing Act 1985 which permits the compulsory acquisition of land by a Council for the purpose of the provision of housing accommodation that will achieve a qualitative and quantitative housing gain by carrying out the Scheme to develop and regenerate homes in the area. Section 17(1)(c) of the Housing Act 1985 provides that a local housing authority may acquire land proposed to be used for facilities to be provided in connection with the housing accommodation, including for the provision of shops, laundrettes, recreation grounds and any other building or land which will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided. The commercial and community accommodation proposed to be delivered within the outline planning consent is considered to be ancillary/complementary accommodation which will meet the needs of the development.
- 2.11. The CPO Guidance requires the Council to demonstrate that there is a qualitative or quantitative housing gain and that the development will be brought forward and the land required within 10 years of the date of confirmation. The redevelopment of part of the Gascoigne West Estate will deliver on each of these tests.
- 2.12. The proposed development would result in the much-needed regeneration of the Gascoigne West Estate, in line with the recently approved regeneration scheme for the Gascoigne East Estate. The proposed development would improve urban design; provide better quality housing; and a more diverse mix of housing types and tenures to address current demand. As a result of the proposed development, the Gascoigne West Estate would be better designed; more legible; and provide for a safer environment than the existing development it replaces. Overall, the proposal would result in a more desirable place to live.
- 2.13. Accordingly, it is considered that the Scheme will deliver both a qualitative and quantitative housing gain: the scheme delivers an increase in the number of habitable rooms from the pre-existing level and will replace dwellings that do not meet the Decent Homes standard with modern homes. Furthermore, the redevelopment of the Estate will address the design and layout issues of the Estate, creating an environment that meets the needs of its residents and helps reduce anti-social behaviour. The development is expected to be delivered within 5 years of the confirmation of the Order, inside the 10-year delivery requirement of the s.17 Housing Act 1985.
- 2.14. In addition to meeting the tests of providing a quantitative and qualitative housing gain, the Council will need to satisfy that the acquisition of property in order to deliver the Scheme is in the public interest and in particular:
 - that there are no legal or physical impediments to the delivery of the scheme;
 - that the necessary resources and funding are available to achieve the purpose of the CPO within a reasonable timeframe;
 - that the purpose for which the land is to be acquired could not be achieved by any other means;
 - that the use of the Council's compulsory purchase powers is as a last resort.

- 2.15. Officers are satisfied that there are no legal or physical impediments to the delivery of the scheme. Outline planning permission has been secured establishing that the proposed development accords with the Development Plan and other relevant planning considerations. Whilst further reserved matter applications providing the detail of the proposals need to be submitted and approved, providing these are in accordance with the parameter plans there is no impediment to obtaining the relevant consents. Other than ownership of all third-party interests in land, which will be addressed through the CPO, there are no impediments to the delivery of the scheme.
- 2.16. The Scheme will be delivered by the Council's regeneration vehicle, Be First. BeFirst has been established with an objective to deliver 50,000 new homes and 20,000 new jobs in the borough over the next 20 years. The company was incorporated in October 2017. It is committed to delivering high quality, socially inclusive and environmentally friendly development whilst putting local residents at the heart of its business plan. This includes delivering a range of housing tenures, types and styles but making affordable housing truly affordable.
- 2.17. Single ownership and control of the Order Land is necessary to enable the Scheme to proceed and to deliver the full range of public benefits. Given the number of third-party interests identified to still be acquired and the history of negotiations, it is unlikely that the Council will be able to acquire all of the necessary interests by agreement within a reasonable timescale. The Council has therefore made the Order to ensure that the significant benefits of the Scheme can be brought forward in a reasonable timescale. Whilst the Council's approach is to negotiate the purchase of all interests wherever possible by agreement, given the fragmented nature of the Order Land, confirmation of the Order is required in order to use compulsory purchase powers where necessary.
- 2.18. Negotiations have been pursued with those affected by the Order with success: agreements have been reached with 27 leaseholders, leaving 11 properties to acquire. All reasonable efforts will be made by the Council going forward to acquire property through negotiation and agreement. Nevertheless, it is clear that an Order is required to ensure that there is sufficient certainty that regeneration can come forward as envisioned by the Council, the community, key stakeholders and partners.
- 2.19. As is typical of Regeneration schemes generally, a point is reached where those willing to engage and reach a sensible agreement have all been engaged with success and there are those who, for various reasons, are not willing to enter into an agreed sale of their property with the Council. While it is possible the Council could continue to work without a CPO to deliver the scheme, even when taking an optimistic view such an approach would probably mean delivery of the scheme was delayed by years. If the Council were not prepared to use its CPO powers some Leaseholders would see this as increasing their leverage and raise their expectations as to the value of their property. So, to ensure that properties can be acquired at an appropriate level of compensation, a CPO needs to be progressed.
- 2.20. For the reasons explained above, Officers consider there to be a compelling case in the public interest to proceed with Order.

- 2.21. We have also reviewed the decant programme for tenants to ensure it is aligned with the CPO process. Currently there are 30 tenants and we are on average rehousing 3-4 a month. The final decants are likely to be more problematic but, on this basis, it appears that we should achieve vacant possession for both tenures at approximately the same time.

Appropriation of land for planning purposes

- 2.22. Cabinet is also being asked to agree to the appropriation of land within the proposed area of redevelopment of the Gascoigne West Estate as shown on the plan provided in Appendix [1] as Phase 2 for planning purposes in accordance with Section 122 of the Local Government Act 1972 and Section 203 of the Housing and Planning Act 2016. The appropriation of land and buildings allows local authorities to alter the purposes for which it holds land. Where land has been appropriated for planning purposes third party rights over the land can be overridden under Section 203 of the Housing and Planning Act 2016. Beneficiaries of rights are still entitled to claim compensation but are not able to seek an injunction to stop the development. The use of these powers will assist in ensuring that these important regeneration proposals can proceed on time.

In addition to the above this report allows an opportunity to address outstanding historic issues around appropriation on other schemes. In the first instance for Phase 1 at Gascoigne West we are seeking approval to appropriate the land from the Housing Revenue Account to the General Fund, following completion of the decanting and demolition of each block, as shown edged in red and a labelled Phase 1 in Appendix 1. This will enable us to address third party rights.

Secondly, we are seeking approval to appropriate the land at Sebastian Ct from the Housing Revenue Account to the General Fund, following completion of the decanting and demolition of each block, as shown edged in red in Appendix 2. This will enable us to address third party rights.

3. Options Appraisal

- 3.1. Certain public bodies including local authorities have enabling powers authorising them to acquire land compulsorily. They also have powers to appropriate their own land for planning purposes and subsequently override third party rights.
- 3.2. The main alternative option to the use of the Council's statutory powers would be to continue to try and acquire all third-party interests required for the redevelopment entirely through negotiation and private treaty. However, it would be very unlikely that all the interests could be acquired by private treaty within the necessary timescales and at a reasonable cost. Some third parties may choose not to sell, some may choose to wait a longer time before selling and the Scheme could stall or even fail to proceed if this was the case.
- 3.3. The option of excluding properties has been reviewed but this would not allow delivery of the Outline Planning Permission as the scheme requires the properties to enable the comprehensive development with the range of social and economic benefits it would deliver.

4. Consultation

- 4.1. Use of CPO and appropriation powers for Gascoigne West Estate has been discussed at the Council's Capital and Assets Board and Investment Panel.
- 4.2. Consultation took place on the scheme proposals prior to the submission of the Outline Planning Application. Formal planning consultation processes also took place including affected occupiers who were able to submit objections. It is worth recording that there were only 5 objections to the application.
- 4.3. In regard to the purchase process as outlined above we have been working with all affected parties on an individual basis. This is the most appropriate format when purchasing properties as each individual's circumstances are personal and confidential. There has been no request to meet leaseholders as a group or any body formed by leaseholders.
- 4.4. The CPO process itself gives affected third parties the opportunity to object to the making of the CPO and could potentially result in a public inquiry whereby the independent Planning Inspectorate assesses the case for utilising CPO powers and puts forward a recommendation to the Secretary of State as to whether to confirm the CPO or not.

5. Human Rights

- 5.1. In reaching their decision, members should take account of the provisions of the Human Rights Act 1998. As a public authority, the Council must not act in a way which is incompatible with a Convention right protected by the Human Rights Act 1998. The relevant human rights protected by the 1998 Act which are engaged by the decision to authorise the compulsory purchase are those Article 8 (right to a private and family life), Article 1 of the First Protocol of the Convention and Article 6 (1) (right to a fair and impartial public hearing within a reasonable time).
- 5.2. A key provision of the CPO Guidance is the need for there to be a "compelling case in the public interest" for compulsory acquisition. It is necessary in this to consider Convention rights which are engaged by and potentially affected by the making and confirmation of a CPO. In relation to Article 1 of the First Protocol of the European Convention which provides a right for the peaceful enjoyment of possessions, a fair balance is required to be struck between the public interest and private rights in relation to possessions/property. Article 8 is not an absolute but qualified right, such that any interference with the right to respect for a person's private and family life and home must be proportionate to any legitimate aims, such as promoting regeneration for the well-being of the area.
- 5.3. Article 6(1) is engaged because the CPO process involves determinations as to third party rights of individuals, as to which they have the right to a fair hearing. Similarly, to Article 8, the Article 6(1) rights are also qualified, and some restrictions may be justified to pursue legitimate aims and provided that they are proportionate. Potentially affected individuals have had the opportunity to date to object to the Scheme through the planning process. Individuals whose human rights could potentially be interfered with as a result of the CPO can object to the validity of the CPO and such objections would be considered at an independent public inquiry, which would afford the objectors a fair hearing of their concerns. Failing agreement

on the compensation arising from the CPO, any affected individuals have the right to pursue a claim for compensation to the Upper Tribunal (Lands Chamber). It is deemed that the process affords affected individuals sufficient opportunity to a right to a fair hearing.

- 5.4. The proposed development has been a long-term objective of the Council. In addition to delivering both a quantitative and qualitative housing gain, the Scheme will deliver wider public benefits in the form of a better designed, more legible and a safer environment than the existing development it replaces.
- 5.5. It is considered that the potential for some degree of interference with Article 8 and Protocol 1 rights is necessary in the interests of well-being of the area, it is in the general public interest and is deemed proportionate to those legitimate aims. Any interests acquired or any interference with third party rights will carry a right to compensation in accordance with the Compulsory Purchase Compensation Code and the opportunity to a fair and impartial hearing in that regard.

6. Equalities

- 6.1. The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Section 149 of the Equality Act 2010 places the Council, as a public authority, under a legal duty ("the public sector equality duty"), in the exercise of all its functions, to have due regard to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
 - advance equality of opportunity between persons who share a "relevant protected characteristic" (i.e. the characteristics referred to above other than marriage and civil partnership) and persons who do not share it; and
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.2. An equalities impact assessment has previously been undertaken as part of setting the planning policy framework for the Borough. The planning application for the development proposal also assessed the potential impact on equalities and social cohesion. The conclusion reached was that the impact was neutral.
- 6.3. With the limited number of cases now left we have carried out a more in-depth exercise writing to remaining owners. With specific reference to equality issues we asked owners to confirm if there were any particular personal circumstances that were impeding the sale of their properties to us. We received 3 responses. One response identified issues around mobility which we are now addressing as far as possible, the 2 other responses cited valuation issues as the problem. We believe the outstanding cases reflect the original demographic mix with no group overrepresented in the remaining cases.
- 6.4. A scheme assessment has not identified any adverse equalities impacts from exercising the Council's CPO powers in order to facilitate the development scheme.

7. Financial Implications

Implications completed by: Katherine Heffernan – Finance Group Manager

- 7.1. As set out in this report, the Gascoigne West scheme was included in a report to Cabinet in January 2015 on the Estate Renewal Programme. In the case of Gascoigne West this was subject to confirmation of the Housing Zone funding which has been received. Costs above this will be funded by the Council including from the HRA as part of the capital allocation for the Estate Renewal Programme.
- 7.2. It should be noted that the HRA capital programme is largely funded from revenue contributions although the recent lifting of the debt cap does mean that capital borrowing may be available in future for schemes with a strong business case.
- 7.3. Since approximately 2015/16 the costs of voluntary and compulsory purchase for estate renewals schemes has been rising in line with the London land values. This has required additional funding to be made available for the Estate Renewal Programme which funds these. The total allocation in 2019/20 is £11.5m and then £6m in all subsequent years.
- 7.4. Within the 2019/20 allocation is an estimated £3m for Gascoigne West. The costs of the buy outs are estimated to be £2.5m to £3m so there is sufficient funding. However, if the expenditure goes above this level it will result in an overspend. The HRA has been under financial pressure in recent years and the overall balance is projected to fall in 2019/20 so over spending could present a serious risk to the HRA and so strict monitoring should be in place to ensure it does not arise.
- 7.5. In addition, the Finance team would recommend as good practice that where the costs of purchase have risen then the overall financial returns from the scheme should be reassessed.
- 7.6. The Estate Renewal programme has an allocation for the costs of the buy outs. However, the subsequent costs of development will need to be addressed. It is expected that these should be funded from borrowing using the Council's prudential borrowing powers. This requires a strong business case showing that the return on the investment is sufficient to meet both the interest costs and make a minimum revenue provision on the total costs of the scheme. This requires the approval and ongoing monitoring by the Council's investment panel and Cabinet will need to approve its addition to the capital programme.

8. Legal Implications

Implications completed by: Dr. Paul Feild Senior Governance Lawyer

Outline

- 8.1. This Report asks the Cabinet to agree subject to consideration of the matters set out in the report to make a Compulsory Purchase Order ("CPO" / "the Order") pursuant to Section 17 Housing Act 1985. This is a Cabinet decision (see Constitution Part 2 Chapter 6 (vi)).

- 8.2. The exercise of the CPO power is to take action to force a property owner to sell to a local authority their interest in land be it freehold or if a flat their leasehold interest. It is only to be used as a last resort as it involves an interference in property rights which are protected in law and specifically by the Human Rights Act. Justification has to be made by providing a statutory Statement of Reasons.
- 8.3. Section 17 of the Housing Act enables a Local Housing Authority (the Council) to acquire property for the purposes of erecting housing either by agreement or with the authority of the Secretary of State by CPO. Guidance has been issued on the use of CPO's and process to be followed (Ministry of Housing, Communities and Local Government's Guidance on Compulsory purchase process and The Crichel Down Rules" (February 2018)). It is a key requirement that the acquisition under the Section 17 power must achieve a quantitative or qualitative housing gain.

Human Rights Act 1998 Considerations

- 8.4 The Human Rights Act 1998 ('the HRA 1998') effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions officers and members, therefore, need to have regard to the Convention. The use of CPO powers are regulated by the HRA 1998 It prohibits unlawful interference by public bodies with European Convention rights. The term 'engage' simply means that human rights may be affected or relevant.
- 8.5 The rights that are of significance to the decision in this matter are those contained in Article 8 (right to respect for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions). Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic wellbeing of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 8.6 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the legitimate aim of regeneration. The availability of an effective remedy and compensation is relevant in assessing whether a fair balance has been struck. Therefore, in reaching a decision, the Council needs to have regard to the extent to which the decision may impact upon the Human Rights of the leaseholders who are subject to a CPO and to balance this against the overall benefits to the community, which the proposed redevelopment would bring. The Cabinet will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 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.

- 8.7 This report seeks authority that where required to assist in the delivery of the Gascoigne West Estate regeneration proposals, the Council shall appropriate land identified in this report in Appendix 1 for planning purposes pursuant to Section 122 of the Local Government Act 1972 this will enable Section 203 of the Housing and Planning Act 2016 to be utilised to override any third-party rights. In such case account will be taken of any value of a disposal from the Housing Revenue Account in accordance with statutory guidance and consents
- 8.8 This report further seeks authority that in the delivery of the Sebastian Court Development regeneration proposals, the Council shall appropriate land identified in this report as Appendix 2 for planning purposes pursuant to Section 122 of the Local Government Act 1972 this will enable Section 203 of the Housing and Planning Act 2016 to be utilised to override any third-party rights. In such case account will be taken of any value of a disposal from the Housing Revenue Account in accordance with statutory guidance and consents.

9. Other Implications

- 9.1 **Risk Management** - The scheme is crucial to delivering the regeneration aspirations being pursued by Be First on behalf of Barking and Dagenham Council. As the project proceeds risks will be identified early in the process, a risk register maintained, and mitigation measures put in place.
- 9.2. **Staffing Issues** - External Consultant expertise will be appointed as appropriate. However, the process will be cliented by current internal staff.
- 9.3 **Corporate Policy and Customer Impact** - The use of statutory powers to deliver the Gascoigne West scheme will assist in delivering an important regeneration proposal. This is consistent with the independent Growth Commission's recommendations for the borough to continue bringing forward redevelopment which will help encourage further regeneration and investment. The delivery of the scheme will help deliver the aspirations of the Council's vision and corporate policies. The Scheme which will be enabled by the CPO is also consistent with the Council's planning policies.
- 9.4 **Safeguarding Children** - These issues were considered as part of the original planning approval and the Equalities Impact Assessment in relation to the CPO.
- 9.5 **Health Issues** - The scheme itself presents an opportunity for improving health and reduced health inequalities through social and economic regeneration, improved public realm, e.g. walking and cycling and future health and care facilities.
- 9.6 **Crime and Disorder Issues** - These were considered as part of the planning application decision making. The Scheme will improve crime prevention through its design which improves natural surveillance.

9.7 **Property / Asset Issues** - The Council will be acquiring additional assets however with the intention of redevelopment.

Public Background Papers Used in the Preparation of the Report:

Ministry of Housing, Communities and Local Government's Guidance on Compulsory purchase process and The Crichel Down Rules" (February 2018)

List of Appendices:

Appendix 1: Gascoigne West

Appendix 2: Sebastian Court