

CABINET

17 July 2018

Title: Vicarage Field Development Proposals - Use of CPO Powers	
Report of the Cabinet Member for Regeneration and Social Housing	
Wards Affected: Abbey	Key Decision: Yes
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Summary	
<p>In March 2018 (Minute number 111) Cabinet gave "in principle" approval to the use of the Council's statutory powers including compulsory purchase and appropriation powers, if required, to support and facilitate the delivery of the Vicarage Field regeneration proposals.</p> <p>This report sets out the progress made since March and seeks Cabinet approval to proceed with the compulsory purchase order (CPO).</p> <p>The Vicarage Field development is a significant mixed-use regeneration proposal which will transform Barking Town Centre, improving its image and function, and with the potential to act as a catalyst for further high-quality developments within the Borough. Council policies and objectives, and London and borough planning policies support and promote this regeneration proposal requiring a mixed use, high quality development in the heart of Barking Town Centre.</p> <p>Outline planning consent was granted by the Council in April 2017 for a large mixed-use scheme including retail, offices, a hotel, a primary school, healthcare facilities, leisure uses and around 855 new homes. As part of these current proposals the existing Vicarage Field Shopping Centre and other buildings would be demolished and the redevelopment would provide a new focus for Barking Town Centre with a range of mixed uses, improved public realm and landscaping ("the Consented Scheme").</p> <p>The current scheme is being delivered by developer Lagmar (Barking) Ltd which is an entity of Benson Elliot Capital Management LLP (Benson Elliot). Benson Elliot is an independent private equity real estate fund manager who has experience of delivering town centre projects. The developer has programmed to start construction of the Consented Scheme in early 2020. In addition to obtaining outline planning consent, the developer has been assembling the site ready for redevelopment through the acquisition of the various third-party interests within the site. Whilst the developer and the Council own a large part of the site, in common with other development schemes of this size, the exercise of compulsory purchase and appropriation powers is likely to be necessary to enable the timely delivery of the regeneration proposals. Lagmar (Barking) Ltd has been working closely with Be First to ensure that construction can commence on time and the positive transformation of Barking Town Centre can begin.</p>	

Overall it is considered that the development proposal will significantly improve and transform what is an important gateway site opposite the station, enhancing the immediate environment, attracting investment and creating new housing and employment opportunities within the Borough. At this stage, balancing the regenerative benefits emanating from the development proposal, it is considered that the impact this may have on third parties likely to be affected by the use of CPO is proportionate and that accordingly there is a compelling case in the public interest for authorising the use of CPO powers.

A separate future report to Cabinet will address the Council's freehold interest in the site and the terms of any land agreements between the Council and Lagmar (Barking) Ltd.

Recommendations

The Cabinet is recommended to:

- (i) Agree, subject to consideration of the matters set out in the report and the prior completion of the proposed Compulsory Purchase Order Indemnity Agreement ("CPOIA"), to make a Compulsory Purchase Order (CPO) pursuant to Section 226(1)(a) of the Town and Country Planning Act 1990 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 in Appendix 1 to the report "draft CPO Plan" and the Schedule, to facilitate delivery of the Vicarage Field regeneration proposals detailed in the report;
- (ii) Note that a full Statement of Reasons supporting the CPO had been substantially progressed and to delegate authority for its final approval to the Director of Inclusive Growth.
- (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 Compulsory Purchase Order ("Order") 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, as applicable in accordance with the CPO Indemnity Agreement 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 Vicarage Field 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; and
- (v) Agree that the making of the CPO be conditional upon the terms for the land agreement(s) between the Council and Lagmar (Barking) Ltd. being in accordance with the arrangements set out in paragraph 2.48 of the report and subject to the approval of the Cabinet at a future meeting.

Reason(s)

The making of a compulsory purchase order pursuant to Section 226(1)(a) of the Town and Country Planning Act 1990 will facilitate the redevelopment of the Vicarage Field site and surrounding area. This will accelerate the Council's regeneration agenda and bring forward homes, inward investment, business growth and job creation, whilst improving skills and productivity, in line with the Council priority 'Growing the borough', thereby contributing to the environmental, social and economic improvement of 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. The Vicarage Field development is a significant mixed-use regeneration proposal for Barking Town Centre. The scheme would contribute towards the Council's vision for growth and positive change. This is in line with the Growth Commission's recommendations including that Barking Town Centre should continue its direction towards becoming a more urban centre, with an active, interesting street life, a broad range of retail and restaurants and places of employment. The Growth Commission recommended that Barking Town Centre should be the initial priority for growth and investment and that it should be used as an exemplar for the Council's new approach to its urban areas. The delivery of the Vicarage Field scheme has the potential to be an exemplar scheme in delivering these recommendations.
- 1.2. Developer Lagmar (Barking) Ltd are working closely with the Council's regeneration company, Be First, to deliver this scheme and accelerate regeneration in the heart of Barking Town Centre. The proposals will contribute significantly to the delivery of the Borough's regeneration agenda and will deliver the aspirations of Council policies including the Borough's vision and corporate policies, specifically those around promoting growth in the Borough. The proposals will enable the Council's planning policies to be delivered in a coordinated manner including fulfilling the policy objectives and allocations in the Barking Town Centre Area Action Plan and delivering new homes, consistent with the Mayor of London's designation of Barking Town Centre as a Housing Zone.

- 1.3. There is a current scheme (The Consented Scheme) to deliver these regeneration proposals which was granted outline planning consent in April 2017 and Lagmar (Barking) Ltd is programming to start construction of this scheme in early 2020.
- 1.4. The Council owns the freehold of the Vicarage Field shopping centre with the long lease owned by Lagmar (Barking) Ltd with a number of occupiers within the centre itself. Also falling within the development site boundary are separate freehold and leasehold properties which are owned by third parties and not within the control of either the Council or Benson Elliot (BE). BE's development team, has to date been seeking to acquire all third-party interests by agreement or utilising its landlord and tenant powers and whilst there has been a good degree of success, particularly relating to the occupiers of the centre, there are a number of other interests yet to be secured.
- 1.5. Accordingly, 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 Vicarage Field regeneration proposals. In March 2018 Cabinet gave an "in principle" decision to authorise preparation for the use of CPO powers; officers and professional advisors have prepared the detailed CPO documentation and supporting information and now seek approval to authorise the formal CPO process.

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 Vicarage Field.
- 2.2 The March Cabinet report stated the compulsory purchase powers would only be sought and used if appropriate agreement(s) are in place covering all the Council/Be First's costs including the land purchase, compensation payments and professional fees. The body entering into the agreement would need to have an appropriate covenant strength for the scale of expenditure potentially required. A CPO indemnity agreement between the Council and Benson Elliot (of which Lagmar (Barking) Ltd is a subsidiary) is being finalised addressing appropriate covenant strength and would be entered into prior to the making of the CPO. This will indemnify the Council in respect of any compensation and costs liability which the Council is exposed to in making the CPO.

Proposed Order Land

- 2.3 The extent of the land to be subject to the CPO ("Order Land") is identified in the Plan and Schedule attached to this report (subject to final boundary confirmation).
- 2.4 The Order Land includes the Vicarage Field Shopping Centre, street properties at 13 to 23 Ripple Road and 24 to 38 Station Parade, the Vicarage Field Health Clinic and St Awdry's Walk.
- 2.5 The Order Land is in the heart of Barking Town Centre, opposite Barking Station and is bounded by the railway line to the north alongside St Awdry's Walk, Station Parade to the west, Ripple Road to the south, and Sunningdale Avenue and St

Awdry's Road to the east. Abbey and Barking Town Conservation Area covers a small part of the Order Land boundary including the street properties along Ripple Road and Vicarage Health Centre. None of the buildings on the Order Land are listed.

Property	Description
Vicarage Field Shopping Centre	Land comprising commercial premises.
St Awdry's Walk	Land comprising public footway.
13-23 Ripple Road	Land comprising commercial premises and flats
24-38 Station Parade	Land comprising commercial premises and flats
Vicarage Field Health Clinic and adjoining land	Land and premises known as Vicarage Field Health Clinic and land adjoining the health clinic.

The Vicarage Field regeneration proposals

- 2.6 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. Barking Town Centre is identified by the Council and Be First as one of the key Growth Opportunities/Hubs for significant new development.
- 2.7 The shopping centre itself is allocated within the Barking Town Centre Area Action Plan as a development site and is located within Barking Town Centre which has been awarded Housing Zone status by the Mayor of London. Proposals for Vicarage Field will deliver the planning aspirations of these designations including mixed use, high quality development, integrating the new development into the wider town centre and creating a much more pleasant and enjoyable environment with a retail and leisure offer meeting Barking's future needs.
- 2.8 There are currently proposals for the redevelopment, which Lagmar (Barking) Ltd intend to start constructing in early 2020. Outline planning consent was granted by the Local Planning Authority in April 2017 (application number 16/01325/OUT). The outline planning consent authorises:

Redevelopment of the existing shopping centre to create a mixed-use scheme of up to 138,000 sqm (GEA), comprising;

- Up to 25,650 sqm retail floorspace (A1-A5)
- Up to 1,250 sqm B1 offices
- Up to 81,750 sqm residential floor space (C3) (around 855 new homes)
- Up to 7,750 sqm hotel floor space (C1)
- Up to three-form entry primary school (D1)
- Healthcare facilities (D1)
- Leisure uses (D2)
- Public realm
- Landscaping
- Basement parking

- 2.9 The Consented Scheme comprises the Vicarage Field Shopping Centre and the car park to the rear of the shopping centre and some street properties along Station Parade and Ripple Road, as well as Vicarage Field Health Centre on Vicarage Drive. The site adjoins the Abbey and Barking Town Centre Conservation Areas with a small area comprising the 1920s/30s terrace at 13-23 Ripple Road and the 1930s health centre building on Vicarage Drive falling within the conservation area. There are no listed buildings or unlisted buildings of merit within the development site area.
- 2.10 The Consented Scheme aims to transform Barking Town Centre with the provision of high quality retail floorspace at ground and first floor levels and the creation of new outdoor high streets which will cross through the heart of the development. Leisure and cultural uses will also be distributed across the ground and first floors. Whilst the precise uses are not yet finalised these could include a gym, cinema and music venue. Business floorspace will also be provided including affordable workspace for Barking's local businesses. New homes will be delivered, with the outline application's indicative scheme expecting around 855 units although this could rise to over 900 new homes depending on the final mix of units. A new 150 bed hotel is also to be provided with an alternative residential use to provide more new homes if there is insufficient demand for a hotel. A new 3-form entry primary school and replacement healthcare facilities will also be provided with the Council delivering the school on specified land. The scheme will also significantly improve the public realm linking the station to Ripple Road. It represents a significant investment into Barking Town Centre generating new employment, homes and facilities and a striking gateway into the Borough. It aligns both with the Council's vision and recommendations of the Growth Commission.
- 2.11 The application falls within the Barking Town Centre Area Action Plan (AAP) and the existing shopping centre is located within the Barking Town Centre Site Specific Allocation Area 10. As was concluded by the Council's Barking and Dagenham Council Development Control Board the development proposal is consistent with the strategic principles of the Site Specific Allocation and AAP and as confirmed in the Mayor's Stage II Report, is consistent with the adopted London Plan.

Land acquisition and negotiations

- 2.12 Lagmar (Barking) Ltd has been seeking to acquire the entire development site through private treaty negotiation to enable delivery of the regeneration proposals. The existing Vicarage Field Shopping Centre's freehold is owned by the London Borough of Barking and Dagenham. Lagmar (Barking) Ltd has the long leasehold interest and is in the process of securing vacant possession of the units within the centre as occupational leases come to an end. Currently 65 out of 68 interests are now on short term tenancies, and landlord and tenants powers can be exercised to obtain vacant possession by the required construction start date. Therefore between the Council and the developer, a substantial proportion of the site is already under control.
- 2.13 The interests at 24-38 Station Parade (evens), 13-23 Ripple Road (odds) and the Vicarage Field Health Centre, Vicarage Drive are not currently in the control of Lagmar (Barking) Ltd. However, some of these properties have agreed terms and completion is expected imminently. Part of the site is outside the developer's ownership, therefore the need for additional land assembly was acknowledged by officers when reporting to the Planning Committee and by councillors when making

the decision to grant planning permission. The Planning Committee report made it clear that the applicant would need to acquire the remaining interests through negotiation or through the use of the Council's compulsory purchase powers.

- 2.14 The developers are negotiating with the owners of the remaining interests and where possession cannot be secured using landlord and tenant powers, compensation will be offered in line with the Compulsory Purchase Code. This includes paying compensation to affected parties as if the interest was actually being acquired under compulsory purchase powers even if agreement is actually reached through negotiation.
- 2.15 The developers have made some progress already in acquiring the required interests including land interests both within and outside the shopping centre. This includes Heads of Terms agreed for two of the properties on Ripple Road. Further negotiations are underway and will continue alongside CPO processes.

The need to use the Council's compulsory purchase powers

- 2.16 Whilst the developers are seeking to acquire the required interests through negotiation, consistent with other schemes of this nature it is considered unlikely that all of the third parties will voluntarily agree to sell their interests within the required timescale or at a reasonable cost. It is common practice to seek approval to the use of compulsory purchase powers by the Council in case negotiations fail or cannot be concluded within a reasonable timescale. Furthermore, by starting the formal process of preparing for the use of compulsory purchase powers now, affected parties are more likely to engage in meaningful discussions to sell their interests as the prospect of the CPO will make clear that the scheme will be delivered within a reasonable timescale. Government guidance¹ is clear that negotiations can, and should, continue in parallel with the preparation and making of a CPO. Given the nature of the property owners, dialogue about alternative business premises is likely to form part of the discussions.
- 2.17 The appropriate compulsory purchase power to support the Vicarage Field redevelopment proposals is to use Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) which permits the compulsory acquisition of land by a Council: *"if the authority think that the acquisition will facilitate the carrying out of development/re-development or improvement on or in relation to the land."*
- 2.18 Under section 226(1A) the power must not be exercised unless Members think that the development, redevelopment or improvement of land is likely to contribute to the achievement or the promotion or improvement of the social, economic and/or environmental well-being of the area. When using CPO powers, it is also necessary to have regard to the national guidance in the '*Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion, updated February 2018*' which provides detailed guidance on the use of compulsory purchase powers including the use of Section 226(1)(a) powers. This guidance sets out the process that should be followed in seeking to use compulsory purchase powers, and this guidance will be followed throughout the CPO process.

¹ "Guidance on Compulsory Purchase Process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion (updated February 2018)".

- 2.19 The Government guidance sets out that Section 226 powers are 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. It is normally used to assemble land for regeneration. Effectively this allows local planning authorities to acquire land for planning purposes if the development is likely to contribute to the promotion or improvement of the economic, social and/or environmental wellbeing of the area, and most importantly there must be a compelling case in the public interest for the use of the statutory powers.
- 2.20 The Council/Be First and the developer will need to jointly demonstrate the case for the use of compulsory purchase powers to deliver the regeneration of the Vicarage Field proposals. This will include demonstrating;
- the policy basis for the Consented Scheme to demonstrate that the scheme fits with the planning policy framework for the area;
 - Deliverability- demonstrating that the development is able to proceed and is deliverable, that the necessary resources and funding are available to achieve the purpose of the CPO within a reasonable time frame;
 - that the scheme is unlikely to be blocked by legal or physical impediments;
 - the extent to which the development will contribute to the achievement of the economic, social and/or environmental wellbeing of the area;
 - whether the purpose for which the land is to be acquired could be achieved by any other means.
- 2.21 In addition there will need to be justification that there is a compelling case in the public interest and to show that reasonable efforts to acquire the interests by negotiation have been made in advance of making the CPO. Officers are satisfied that to date Lagmar (Barking) Ltd and its agents have undertaken effective engagement with land owners and have been successful in acquiring a large number of third party interests through private treaty negotiations and securing rights to ensure vacant possession in time for the delivery of the scheme.
- 2.22 Be First (on behalf of the Council) has worked with Lagmar (Barking) Ltd to ensure that there is a strong case to justify the use of CPO powers, that the necessary 'tests' are met and that all necessary preparation is carried out prior to making the CPO. It is considered the CPO Guidance requirements are met to justify the making of the CPO, as is further assessed below.

Social, environmental and economic wellbeing benefits

- 2.23 The regenerative benefits derived from the development of this site have already been outlined above and are more fully set out in the draft Statement of Reasons, all of which will contribute to the social, economic and environmental improvement of the area.
- 2.24 A range of various community/social benefits will be brought forward as part of the proposals. This includes the provisions of a new primary school, brand new replacement health facilities and new leisure and evening uses within the town centre.

- 2.25 New public realm will be brought forward as part of the overall development proposals, enhancing the immediate environment outside the station and surrounding area, with new and improved linkages being provided through the site.
- 2.26 The development will attract investment to the area and a range of commercial operators. New job opportunities will be created both during the construction and operational stages of the development. Affordable workspace, the provisions of goods, services and employment from the local area are secured as planning obligations.
- 2.27 It is considered all of these elements will contribute positively to the social, economic and environmental well-being of the area.

Planning Background and Policy Framework

- 2.28 The recent grant of planning permission for the development affirms that the proposal accords with the relevant planning policy framework and that there is no planning impediment from the proposals proceeding.
- 2.29 The National Planning Policy Framework (NPPF) promotes mixed-use developments and encourages multiple benefits from the use of land. The use of sites within town centres for residential development is also supported and the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable development.
- 2.30 The NPPF encourages development to optimise the potential of sites to create and sustain an appropriate mix of uses. The effective use of previously developed land (brownfield land) is also encouraged.
- 2.31 Policy 3.7 of the London Plan encourages proposals for large residential development, including complementary non-residential uses in areas of high public transport accessibility. The Mayor of London's 'Housing' Supplementary Planning Guidance (SPG) identifies that London's town centres have substantial potential for housing intensification, particularly through residential-led, higher density, mixed-use development.
- 2.32 Barking Town Centre is a key development area within the London Riverside Opportunity Area. The London Riverside Opportunity Area Planning Framework (OAPF) states that the town centre is suitable for high density, mixed-use developments with the potential for tall buildings.
- 2.33 Policy CM1 of the Core Strategy states that residential development (particularly higher density development) will be focussed in the key regeneration areas, which includes Barking Town Centre. Policy CM2 of the Core Strategy sets a target of 6,000 new homes in Barking Town Centre.
- 2.34 The application site as a whole falls within the area included in the Barking Town Centre Area Action Plan (AAP) and the existing shopping centre is located within Barking Town Centre Site Specific Allocation Area 10 (BTCSSA10) (Vicarage Field). The Site Specific Allocation identifies an indicative capacity of 2,500 square metres (net) of retail floorspace and 250 new homes. This quantum was based on the previous (now expired) planning permission for the existing shopping centre site which

included a 23-storey building. The Site Specific Allocation states that a scheme providing the stated uses is to be encouraged and permitted provided that it reviews car parking provision and servicing arrangements to encourage a more efficient use of the site and a reduced impact on the local road system.

- 2.35 Policy BTC17 of the Barking Town Centre AAP identifies Vicarage Field on the Station Parade frontage as 'sensitive' but potentially suitable for tall buildings. The Council's Development Control Board in determining the planning application for the Consented Scheme were satisfied that the proposals were consistent with the planning policy framework and that together with the regenerative benefits secured as part of the development, resolved for planning permission to be granted.

Whether the purpose for compulsorily acquiring the land could be achieved by other means

- 2.36 Officers are satisfied that all of the land identified is necessary to deliver the proposed development and that Lagmar (Barking) has invested time and resources seeking to acquire by negotiation land and interests held by third parties.
- 2.37 The purpose for which land and any rights are proposed to be acquired is to enable the comprehensive redevelopment of the application site (in which the Order Land falls) in accordance with the adopted planning policy framework. The planning permission which has been granted, namely the Consented Scheme, secures the comprehensive redevelopment in general accordance with those policies.
- 2.38 The Consented Scheme will be delivered in a single phase during the build out period, the developer therefore needs certainty prior to commencing the development on site that all land required to deliver the scheme is within its control.
- 2.39 The location of the development proposal within the town centre and opposite Barking station is an important one, as supported by local planning policies. The development will have a transformative impact in this significant location. The use of CPO will enable those outstanding interests and new rights to be acquired so that the development can proceed.

Reasonable prospect of the Development proceeding

- 2.40 Lagmar Barking Ltd the developer for the Development is an entity of Benson Elliot Capital Management LLP (BE). BE is a leading independent private equity real estate fund manager with over £1 billion of equity under management. It holds a diversified real estate portfolio including office, retail hotel and residential assets. It is well established in town centre revitalisation and regeneration projects and has past experience of bringing together the necessary financial backing and operational requirements to deliver complex town centre projects.
- 2.41 BE has appointed Londonewcastle (LN) as its development managers, a firm experienced in designing and delivering sustainable communities. LN has a track-record in delivering mixed use schemes similar to Vicarage Field elsewhere in London, which includes the Whitechapel Estate on behalf of GreenOak and Queens Park Place, London in partnership with the London Borough of Brent and BY Development Limited.

- 2.42 The Development will be predominantly financed by BE. It has already invested significant funds in securing some of the outstanding third party interests and continues to dedicate resources to working up the detail of the Development in readiness for commencing on site. Assuming confirmation of the CPO and vacant possession the intention is for work to start on site in January 2020.
- 2.43 The property arrangements between the Council and BE are in the process of being agreed. As set out in the resolution, the making of the CPO is contingent on those matters being approved by Cabinet and final terms agreed. The completion of an indemnity agreement between an Acquiring Authority and developer is a common pre-condition to the exercise of CPO powers. A stopping up order for St Awdry's Walk will also need to be secured prior to commencing works –it is required to facilitate the development. The Consented Scheme includes a permanent improved route through the development. Once the land arrangements have been agreed there will be no legal impediment to the development proceeding.
- 2.44 Be First, the Council and Lagmar (Barking) have been working on the following activities:
- Land referencing work including serving requisition notices on those it is thought have an interest in the land or may have a right over the site. This work is now complete and has informed revision to the schedule/plan.
 - Assessing and reviewing the case for the CPO and identifying the extent of the land and new rights required to facilitate delivery of the development.
 - Preparing the Statement of Reasons to be published alongside the CPO; and
 - Finalising the CPO Plan and Schedule
- 2.45 Whilst Appendix 1 shows the CPO plan expected to be utilised, Cabinet is asked to grant delegated approval to the Director of Law and Governance in consultation with the Director of Inclusive Growth, to make minor amendments to the plan should new information become available before the CPO is made. Subject to the necessary decisions by the Cabinet and the confirmation of the CPO by the Secretary of State, this timetable should enable work to begin on site in early 2020.

Existing Occupiers

- 2.46 With three exceptions, all the occupiers of Vicarage Field Shopping Centre have entered into agreements with Benson Elliot, as landlord, which will enable vacant possession of the units to be secured when required; the occupiers are aware of the redevelopment proposals. The developer, Be First and the Council will work together to support business relocations wherever possible to other town centre locations or other locations within the Borough. It is acknowledged vacancy rates in the Borough are relatively low and that the Council's own stock of premises is very limited. One of the largest property interests is the Vicarage Health Centre and discussions are underway with the different stakeholders within the centre. There is scope for some services to operate from the Child and Family Health Centre and for the GP practice to operate from their other town centre premises. The redevelopment proposals include health centre provision.

Appropriation of land for planning purposes

- 2.47 Cabinet is also being asked to agree to the appropriation of land subject to the CPO 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.

Council Freehold

- 2.48 The Council owns the freehold of the shopping centre with Lagmar (Barking) Ltd holding a long leasehold interest. The Council wants to see the development proceed for the reasons set out in the report but needs to ensure it is securing best value for granting an extension to the lease/new lease for a term which enables residential development to take place. The Council should also secure a premium for the associated marriage value enabling the development to happen. The proposed principles of the agreement are that the Council retains its freehold ownership but grants a new lease/lease extension, of no more than 250 years, based on ongoing turnover rent as well as a premium. Approval will be sought from Cabinet to approve the terms based on these principles and independent valuation advice. The CPO will not be made until these terms have been agreed by the Council however discussions have been progressing positively.

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. In general, private developers do not have such enabling powers, therefore the usual process where land needs to be assembled for development is for private developers to reach agreement with a local authority to seek to use its compulsory purchase powers and in some cases appropriation powers.
- 3.2 The main alternative option to the use of the Council's statutory powers would be to require the developer to assemble the site 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 to enable construction of the development to begin on time. Some third parties may choose not to sell, some may choose to wait a longer time before selling and the Consented Scheme could stall or even fail to proceed if this was the case.
- 3.3 The option of excluding the properties outside of the existing shopping centre from the development has been rejected as the scheme requires the properties to enable the comprehensive development with the range of social and economic benefits it would deliver.
- 3.4 As part of Consented Scheme given outline planning consent in April 2017, the first reserved matters application must be made to the Local Planning Authority within

three years of the date of consent, and application for all of the remaining reserved matters (except for the primary school site) must be made within six years of the date of the consent. The reserved matters application for the primary school must be made within ten years from the date of the consent.

- 3.5 The intent is for the construction to begin in early 2020, with some of the reserved matters applications expected to be submitted during the course of the next 12 months. If all the interests cannot be acquired, the Consented Scheme cannot be delivered in these timescales.

4. Consultation

- 4.1 A steering group has been established with Be First, the in-house legal practice, Dentons (external CPO legal advice for LBBD), Londonewcastle (Benson Elliott's Development Managers), CMS (Benson Elliot's legal advisors) and GVA (advising Londonewcastle).
- 4.2 Use of CPO and appropriation powers for Vicarage Field has been discussed at the Council's Property Advisory Group and Capital and Assets Board.
- 4.3 Extensive pre-planning consultation took place on the scheme proposals including public exhibitions, a website and newsletters. Formal planning consultation processes also took place with stakeholders and affected occupiers who were able to submit objections. 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 Consented 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 in the Lands Tribunal. 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 and fits within the Council's planning framework for the area. The development will be transformational for Barking town, securing investment, creating new homes and delivering significant regenerative benefits. Overall, having regard to the potential of the Consented Scheme and the CPO enabling it, to deliver significant regeneration benefits and improvements to the social, economic and environmental well-being of the area, 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 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 A further assessment of any equalities impact of the CPO has been undertaken. This is an on-going process and the equalities assessment will be kept under review and updated as the CPO and regeneration programme progresses. The assessment carried out has considered:

- (a) whether the CPO will affect any groups or individuals with protected characteristics and if so what steps can be taken to minimise any impacts;
- (b) whether there are any long term social and economic benefits to those with protected characteristics arising from the development facilitated by the CPO;
- (c) any other impacts across any protected groups arising from both the construction and operational phases of development;

6.4 The current assessment concludes that the proposal and impact of the CPO is aligned with the Mayor's London Plan, the findings of the Growth Commission and the local planning framework for Barking own Centre. The long-term benefits of the proposal will result in employment, housing, primary school places and health facilities, all of which are of major benefit to the area. The assessment identifies some mitigation measures to be put in place to provide signposting to alternative key facilities elsewhere within the town for facilities currently provided for in Vicarage Field. It is deemed that further data as to the characteristics of the current businesses and individual owners located in the CPO area may be forthcoming as the CPO progresses. If so the assessment would be updated to identify and address any equalities impacts. However it is noted that the make-up of the business and residential interests within the CPO area is reflective of other types of business within the town centre. As a consequence, there are no businesses at this time which are identified as providing a service or range of products specifically serving any protected characteristics group which is not available elsewhere in the Town centre.

6.5 Equalities will continue to be reviewed and updated throughout the CPO process and any impact of the CPO in the context of equalities will be monitored.

7. Compelling Case in the Public Interest

7.1 The need for comprehensive redevelopment of the application site within which the proposed Order Land is located is acknowledged and supported in the adopted planning policy framework as summarised above. Delivery of the Development would fulfil the key planning policy objectives and transform Barking town centre, its retail and residential offer. It would contribute significantly to the improvement of the economic, social and environmental well-being of the area as outlined above. Officers consider that there is a reasonable prospect that the Development is likely to proceed and that there are no likely realistic alternatives to compulsory purchase to achieve the purposes of the proposed Order. The impact on the human rights of those likely to be affected by the proposed Order is considered in this report. The impact of the Order in the context of the Equalities Act 2010 is also considered in this report and will be monitored.

7.2 In officers' view, there are considerable public benefits resulting in environmental, social and economic improvements to the local area to be derived from implementation of the Development. It is considered these benefits outweigh the harm caused by any interference with the human and other rights of those likely to be affected by compulsory purchase. In officers' view, there is a compelling case in the public interest sufficient to justify the making of the Order.

8. Financial Implications

Implications completed by: Katherine Heffernan – Finance Group Manager

- 8.1 Ultimately all costs of the Compulsory Purchase Order process including the sums paid to the owners of the various interests and the Council's administrative and legal costs are to be borne by the developer Benson Elliot. There should therefore be no financial implications for the Council itself.
- 8.2 However since the Council will incur costs up front it is essential that an indemnity agreement is entered into with the developer backed by a surety or guarantor from an entity with sufficient financial standing. This is necessary to mitigate the Council's risks in this matter.
- 8.3 It is also essential that all associated matters and arrangements especially including the agreement of the lease terms set out in paragraph 2.45 are settled and approved by the Cabinet. Full financial and legal advice should be taken before this approval.

9. Legal Implications

Implications completed by: Dentons (advising the Council in respect of the CPO)

- 9.1 The legal requirements for justifying the making of a CPO are set out in this report. The relevant documentation including the Statement of Reasons, required for the making of a CPO will explore and set out the justification in further detail having regard to the requirements of Section 226(1)(a) of the Town and Country Planning Act 1990 and the CPO Guidance.
- 9.2 The CPO will not be made until the CPO Indemnity Agreement is in place and land arrangements and final terms have first been agreed and approved by the Council.

10. Other Implications

- 10.1 **Risk Management** - Whilst Lagmar (Barking) Ltd is responsible for the delivery of this project, the London Borough of Barking and Dagenham also has an interest in the scheme including the freehold of the existing shopping centre.

The scheme is crucial to delivering the regeneration aspirations being pursued by Be First. Regular progress meetings are taking place between Be First and representatives of Lagmar (Barking) Ltd's project team to ensure that the scheme remains on track for delivery. Risks will be identified early in the process, a risk register maintained, and mitigation measures put in place.

- 10.2 **Contractual Issues** – The Indemnity agreement has been negotiated between the Council and Benson Elliott. Agreements between individual landowners and the Council will follow standard agreements.
- 10.3 **Staffing Issues** – The majority of the work involved in the use of the Council's statutory powers to deliver the Vicarage Field regeneration proposals is being carried out by Lagmar (Barking) Ltd's project team. Any fees/costs/compensation incurred by Be First or the Council in relation to the CPO (including historic and professional costs) would be the subject of the CPO indemnity agreement.

- 10.4 **Corporate Policy and Customer Impact** - The use of statutory powers to deliver the Vicarage Field scheme will assist in delivering important regeneration proposals in the heart of Barking Town Centre. 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 specifically encouraging civic pride and growing the borough. In particular it is supported by the Borough Manifesto, the Growth Strategy 2013-2023, the Corporate Plan 2017-2018. It will also assist in delivering the aspirations of the Council's Housing Strategy through the delivery of around 855 new homes.

Furthermore, delivery of the scheme will also assist in accelerating growth at the heart of Barking Town Centre, which is an aspiration set out in Be First's document titled 'Accelerating growth in London's growth opportunity'. This document identifies Vicarage Field as one of four key case studies to help deliver the Council and Be First's growth vision for the borough.

The Consented Scheme, which will be enabled by the CPO is also consistent with the Council's planning policies and specifically the site allocation in the Barking Town Centre Area Action Plan.

- 10.5 **Safeguarding Children** – These issues were considered as part of the original planning approval and, if applicable, will form part of any equalities assessment specifically related to the CPO.
- 10.6 **Health Issues** – The CPO area includes Vicarage Field health centre. The future plan includes development of a new health facility. There are ongoing discussions with the NHS in this regard. 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. To maximise this impact, it is suggested that a health equality impact assessment or an integrated impact assessment is undertaken of the future plans for this development and the surrounding area
- 10.7 **Crime and Disorder Issues** – These were considered as part of the planning application decision making.
- 10.8 **Property / Asset Issues** - Discussions are taking place between London Borough of Barking and Dagenham and Lagmar (Barking) Ltd to establish how the various land interests will be dealt with to enable the development. Issues relating to future land ownerships will need to be addressed to the satisfaction of the Council before formally commencing any CPO process and will form part of a future Cabinet report.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix 1: Draft CPO Plan (blue land is acquiring rights only, with many only being during construction).