

Cabinet – 8 February 2023

Derelict Sites Intervention

Portfolio: Councillor Andrew – Deputy Leader & Regeneration

Related portfolios: N/A

Service: Regeneration and Economy

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

- 1.1 A key area of focus of the Council Plan 2022-25 is to have a thriving borough by creating vibrant places, with affordable working and living spaces. Derelict brownfield sites and long-term empty properties have a negative impact on the appearance of a neighbourhood and on the housing and employment opportunities across the borough. Bringing redundant sites and buildings back into active economic use will generate economic and environmental outputs for the area and contribute towards development targets, including new homes, employment floorspace and place making.

2. Summary

- 2.1 In driving economic regeneration in the borough and providing residents with attractive and successful places to live and work, the Council will show leadership in creating improvements to neglected or abandoned sites, in a that could be brought back into use for housing and employment, as part of a robust place making strategy.
- 2.2 In July 2022, a Derelict Sites Task Force was established which developed an information base of problematic sites within the borough and a set of potential interventions to address them
- 2.3 The task force will look at all methods of interventions, through influence, enforcement and negotiation, to bring forward and restore derelict sites. Where these are unsuccessful, it will be necessary to consider compulsory purchase as a route to acquire the sites to restore them to use, preserve the public safety and environment and drive economic activity in the borough. Various public bodies, such as Local Authorities, the West Midlands Combined Authority (WMCA) and Homes England, have a range of powers to compulsorily acquire

land. As a local authority, the Council has powers to acquire land and buildings in private ownership to enable comprehensive and safe development, providing it can be shown that there is a “compelling case in the public interest”. The legal test for the use of Compulsory Purchase Order (CPO) powers is set high. There must be a clear case in the public interest; there must be a clear scheme for the redevelopment or regeneration of the area; and the making of a CPO must always be done as a last resort when all efforts to acquire by negotiation have failed, amongst other things.

- 2.4 The making of a CPO is a means to enable development and regeneration, but should never be used as a threat to landowners or as a ‘bargaining tool’. The Council’s Constitution does not provide any delegated authority for compulsory purchase. Accordingly, Cabinet authority is required before any step towards compulsory purchase can be made. There must be a clear case for a CPO and the Council must be prepared to see the process to completion, prior to making an Order. This includes preparing for a CPO to potentially proceed to a public inquiry where objections are made, and those objections are not able to be dealt with by negotiation.
- 2.5 This report invites Cabinet to support the use of compulsory purchase powers in-principle, where negotiations to purchase are not successful, to help facilitate the future development of derelict and underutilised regeneration sites and long-term empty properties and derelict land across the borough, in line with the Council’s own development aspirations. This could include, for example, sites identified within the Council’s development pipeline or funded regeneration programmes like Town Deal, where redevelopment by private landowners has not been forthcoming (e.g. long-term unoccupied/derelict with no planning proposals, or where planning consent has been awarded but no assurances or steps taken to implement in a timely manner or subsequently consent has lapsed) and negotiations to acquire via negotiated treaty prove unsuccessful. It could also extend to derelict and empty sites and buildings where an interested party requests assistance from the Council using its compulsory purchase powers.
- 2.6 Prior to making any CPO for any site in the borough, it is proposed that Cabinet receive a further report to a future meeting, setting out the detailed proposals and clear case for each CPO action, including costings in line with the relevant statutory guidance and legal tests, so that Cabinet can make an informed decision whether to use its CPO powers in respect of each individual property.
- 2.7 The recommendations of this report constitute a key decision, as there is the potential for the implementation to directly affect communities in an area comprising two or more wards in the borough, subject to the sites where the future use of compulsory purchase powers are sought.

3. Recommendations

- 3.1 That Cabinet supports the use of compulsory purchase powers in-principle where:

- a) the land cannot be acquired by agreement within a reasonable timeframe; and
- b) the relevant statutory and Ministerial Circular tests for making a compulsory purchase order ('CPO') are met.

and either c) or d) applies:

- c) the use of CPO powers would help facilitate delivery of particular sites as part of a strategic regeneration scheme; and/or
- d) the site is a derelict and underutilised regeneration site, a long-term empty property and/or derelict land.

Noting that approval to make any compulsory purchase order would be subject to a future Cabinet report.

- 3.2 That Cabinet note that reasonable attempts will be made to acquire the various land interests of owners, occupiers or others with a legal interest in any site by agreement, before consideration is given to compulsory purchase powers.
- 3.3 That Cabinet agree the prioritisation process and criteria set out at paragraph 4.7 to be used to identify the most appropriate sites for compulsory purchase, and that a programme arising from this prioritisation should be endorsed by Cabinet in a further report, for inclusion in the capital programme.

4. Report detail - know

Context

- 4.1 Across the borough there are a number of privately-owned brownfield sites and long-term vacant properties that continue to be undeveloped and left to deteriorate into dereliction causing blight in the local area. Many of these sites attract anti-social behaviour (e.g. vandalism, arson, drug abuse), vermin problems, and have an overall detrimental effect on the community, the environment and visible attractiveness and perceptions of the area.
- 4.2 As well as the environmental and community benefits of bringing sites and premises back into use, these sites are important to the borough's land supply and delivery of growth targets in relation to new homes and employment land. The redevelopment of brownfield sites will help reduce the pressure and need for the release of green belt land for development.
- 4.3 Whilst there are some responsible private owners who are proactive in bringing forward their assets for refurbishment or redevelopment, there are many examples where owners are unwilling or unable to achieve this, particularly within a reasonable timeframe, and despite concerted support and guidance from the Council (e.g. with planning and funding opportunities). This includes sites that are long-term unoccupied where the owner has no planning proposals or consent forthcoming for redevelopment; where the owner has secured

planning consent but provides no assurances, nor actively pursues steps to implement the permission in a timely manner; or where planning consent has been allowed to lapse.

- 4.4 Throughout the borough and our town and district centres, there is clear evidence of such long-term vacant sites. For example, former pub premises, redundant low quality industrial premises allocated for housing use, and empty buildings of conservation merit. There are also vacant brownfield sites within the regeneration pipeline that continue to be undeveloped, largely due to landowner expectations of valuations and viability. In cases of larger regeneration schemes where there are multiple private owners and interests, like in Walsall Town Centre and the Walsall to Wolverhampton Growth Corridor, achieving comprehensive redevelopment is also difficult without public sector intervention in land assembly.
- 4.5 As a local authority, the Council has powers to acquire land and buildings in private ownership to enable comprehensive and safe development, providing it can be shown that there is a “compelling case in the public interest”. The making of a CPO must always be done as a last resort when all efforts to bring forward redevelopment and acquire by negotiation have failed. This report seeks Cabinet authority to support the use of compulsory purchase powers in-principle, where negotiations to purchase are not successful, to facilitate and enable regeneration, subject to meeting the relevant guidance and tests, and subject to a further report to Cabinet setting out the detailed proposals and a clear case for each CPO action, including costings to enable an informed decision to be made prior to the making of any CPO.
- 4.6 In December 2022, Cabinet received a report for the Draft Revenue Budget and Draft Capital Programme. Due to long standing disuse and the associated problems with the site, along with the economic and social factors set out above, a development scheme was proposed (Appendix 4) for the Brown Jug Public House Compulsory Purchase Order, setting out land CPO costs with a legal/tax contingency. Additional enforcement measures are also being pursued in order to preserve public safety.
- 4.7 The Derelict Sites Task Force, set up by the Cabinet Member for Regeneration, has compiled a register of derelict sites and identified appropriate sets of measures in terms of public safety, building control, planning enforcement and any other areas where the Council can show leadership and have impact in improving the borough’s physical, economic and social condition. In addition, the taskforce has looked to identify strategic longer-term solutions to some of the sites, and has created a set of criteria through which to prioritise resource. The criteria are set out in the table below. In this way the interventions can be grouped accordingly and realistic, achievable routes to solutions can be identified. In some cases, partner intervention or corrective action by the present owners can be effective; in others a targeted intervention by the Council will be indicated through this process.

Criteria/Risk Factor	Score	Explanation
Fire	1-5	Current concerns by the Fire Service including recent call outs to the premises for fires or near to other high-risk locations.
Police	1-5	Current reports and issues identified by the Police including anti-social behaviour, exploitation, drugs, or other criminal behaviour at the premises.
Children's Services	1-5	Calls or reports to Children's Services with regards to anti-social behaviour, exploitation, drugs, or other criminal behaviour at the premises.
Community Safety	1-5	Reports received by Community Safety with regards to anti-social behaviour, modern day slavery or trafficking, links to radical groups at the premises.
Community Protection	1-5	Reports or concerns identified by Community/Environmental Protection with regards to anti-social behaviour, fly tipping, bonfires, people gaining illegal access/unauthorised encampments, pest infestations etc at the premises.
Financial Debt	1-5	Level of debt held against the property e.g. Council Tax, Business Rates, Work in Default etc, which could be used to leverage enforcement or regeneration activity.
Impact/Visibility	1-5	Property is a high value target e.g. proximity/relationship with adjoining property; key public gateway to the Town/District Centre, etc.
Cost of intervention	1-5	Total cost to the public sector to intervene e.g. acquire, demolish, secure, legal, redevelop/dispose.
Building condition	1-5	Structural integrity and safety; level of building dereliction.
Enforcement Action	1-5	Likelihood of successful enforcement action.
Regeneration	1-5	Links to wider regeneration objectives and initiatives.
Building Listed Status	1-5	Listed-5 Conservation Area-4 Locally Listed- 2 Non-heritage asset - 0
Redevelopment potential	1-5	Suitability of the site/premises for refurbishment or redevelopment for an economic use; development outputs.

Council Plan priorities

- 4.8 The Council has committed to five key areas of focus in the Council Plan 2022-2025, which support the overall aim of reducing inequalities and maximising potential. The proactive action to redevelop and bring strategic regeneration sites and long-term properties back into use will have a direct positive impact on the Council's ability to deliver its priorities, as stated in the Corporate Plan in particular:

Economic - Regenerating the Borough to support places where people are proud to live and work, delivering affordable homes and attracting inward investment.

Communities - Empower our communities so that they feel they are connected and belong in Walsall, creating safe and healthy places whilst building a strong sense of community.

Risk management

4.9 The Council is only able to use CPO powers as a last resort once it is satisfied that this is the only option left to acquire, and that there is a robust case for the use of such powers. When ascertaining the purpose, powers and extent of acquisition, the Council as the acquiring authority must consider whether it can demonstrate the existence of the following fundamental principles, which must exist if a CPO is to be confirmed:

- a) that there is a compelling case in the public interest;
- b) that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected;
- c) that the land included in the CPO is needed for the purposes specified, and that there are no alternatives which involve less interference with third party property;
- d) how the land included in the CPO is going to be used i.e. there needs to be a clear, deliverable and viable plan for how the land is needed;
- e) that all necessary resources are or will be available to bring forward the underlying scheme for which the CPO is required within a reasonable timescale. Substantive details of the sources and timing of funding available for acquiring the land, implementing the scheme and paying compensation should be given, and;
- f) that the scheme is unlikely to be blocked by any physical or legal impediments to implementation, including any infrastructure accommodation works or remedial work or any planning permission or other consent or licence.

In most cases, a scheme will need to be evidenced by way of full planning permission. It is advisable that Cabinet only consider a report to make a CPO once planning permission has been granted. In some circumstances, planning permission will not be obtained first, or at all. This usually relates to large scale schemes where the planning process itself is likely to proceed to a public inquiry, in such cases there is clear benefit in running the two procedures together but it does carry greater risks.

Where planning permission for the underlying scheme has not yet been obtained, the acquiring authority must demonstrate that there is no reason why it might be withheld. Given that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise, a statement from a planning consultant explaining why the balance lies in favour of granting permission may be useful.

- 4.10 In terms of the Secretary of State, any CPO must be submitted to the Secretary of State for Levelling Up, Housing and Communities for confirmation as the confirming authority. Confirmation of the CPO is subject to the Secretary of State being satisfied, that there is a balance between the intentions of the acquiring authority and the concerns of any objectors and the wider public interest, and also that the statutory procedures have been followed correctly.
- 4.11 The risks associated with the above general criteria and statutory procedures will need to be considered, and addressed as part of any future CPO case, so that Cabinet can make an informed decision whether to use its CPO powers pertaining to a specific identified site.

Financial implications

- 4.12 At this point, the financial implications are unquantified as negotiations have not yet taken place or are at an early stage for derelict sites in the Borough. When these negotiations progress, the purchase price will be subject to standard challenge by Corporate Landlord and the Section 151 officer and the availability of prioritised funds through the Capital Programme. The value of the sale will determine the subsequent approval route, as per thresholds set in the Standing Orders.
- 4.13 If a CPO is proposed, then there will be a number of associated costs relating to the acquisition, including the purchase price (based on market valuations), any disturbance payments, professional fees as well as the legal and land referencing costs in making the Order and, if necessary, the costs of any Public Inquiry and Lands Tribunal hearings. There would also be costs associated with any external support that may be procured to support the preparation of the CPO case and process (e.g. site due diligence [such as feasibility and survey work], valuations and planning), plus holding costs for securing and managing the site post a successful CPO acquisition.
- 4.14 Given the nature of brownfield sites and redundant properties that are likely to require CPO intervention, it is likely that there will also be a funding requirement to make future redevelopment viable (e.g. abnormal, remediation, infrastructure costs). As the acquiring authority, it will be for the Council to demonstrate that the funds are in place, and confirm the source of such funding to bring the proposed scheme to fruition. Funding and a clear and tangible scheme are therefore fundamental. Confirmation that the funding to deliver the scheme is in place is needed and required to sufficiently demonstrate that the scheme is likely to be delivered to justify interference with the Human Rights of those with an interest in the site.
- 4.15 A business case will be required for each proposed CPO case, for approval by the Strategic Investment Board (SIB), setting out the associated revenue and capital costs and sources of funding (i.e. internal and external) prior to seeking Cabinet approval for the making of a CPO. Sources of external funding may include public sector funding via the West Midlands Combined Authority or Homes England.

- 4.16 Where a report to Cabinet is being prepared for compulsory acquisition on behalf of a private developer, in order to bring about regeneration, the Council will need to obtain an undertaking from the developer that it will underwrite all of the Council's costs associated with the making of a CPO before any further steps are taken.

Legal implications

- 4.17 There are a number of compulsory purchase powers available to mainly public sector bodies, known as 'Acquiring Authorities.' Each power is set out in legislation known as the "enabling act" which sets out who can use the power, what the power can be used for, and criteria for confirmation of a compulsory purchase order in each situation. These are summarised in the table below.

Town and Country Planning Act 1990	Local Authorities	Section 226 enables local authorities to acquire land to deliver their planning policy objectives. Section 226(1)(a) enables an authority with planning powers to acquire land if they think it will facilitate development, redevelopment or improvement on or in relation to the land being acquired. Section 226(1)(b) allows an authority to acquire land required for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
Housing Act 1985: Part 2	Local Authorities	Section 17 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.
Housing and Regeneration Act 2008	Homes England West Midlands Combined Authority	Under Section 9 Homes England, the non-departmental public sector body, has compulsory purchase powers to acquire land and new rights over land. To justify use of CPO powers, Homes England must demonstrate such powers would facilitate the achievement of its objectives as set out in section 2 of the Act. Under the devolution deal, Homes England's compulsory purchase powers have been devolved to the Mayor of the West Midlands Combined Authority. These powers are only to be exercised in agreement with the relevant local authority.
Highways Act 1980	Highway Authorities	Part 12 of the Act enables Highway Authorities to compulsorily purchase land and interests in land. Sections 239 to 246 set out differing purposes for which land may be acquired for highways.

- 4.18 The purpose for which land is to be acquired, will define which enabling powers should be used. The most used power to assemble land interests for large redevelopment and regeneration projects is Section 226 of the 1990 Town & Country Planning Act. The Guidance on use of CPO powers is set out in the Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities and Local Government 'Compulsory purchase and compensation Guidance'. The Council will therefore, need to ensure that the criteria under the enabling act and guidance is satisfied prior to the making of any future Order.
- 4.19 The acquisition of land/property compulsorily is an interference with Human Rights of affected landowners. Section 6 Human Rights 1998 Act prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. The main articles of the Convention that are of importance in circumstances where the Council is considering making a CPO are Article 8 – the right to respect for private and family life and his/her home and Article 1 of the First Protocol – the protection of property. Furthermore, a CPO should only be made where there is a compelling case in the public interest, where the public interests of the development that underpins the Order outweighs the infringement of affected landowners' rights. An acquiring authority should therefore, be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected, having regard, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.
- 4.20 With regard to the funding solutions that may be required to deliver the proposed development scheme (referenced in Financial Implications above), any funding conditions imposed, together with timeframes on the availability of the funding stream will need to be carefully considered, in particular, their impact on delivery and development cost. The funding solution adopted will also need to be considered and tested to ensure it is state aid, and procurement compliant and within the Council's statutory powers.

Procurement Implications/Social Value

- 4.21 There are no procurement implications in relation to the recommendations of the report at this stage. Any future procurement implications that arise from the Council directly undertaking a CPO, and preferred delivery route for the future development of the land to be compulsorily acquired will be considered as part of the business case for CPO and to be reported to a future Cabinet meeting.

Property implications

- 4.22 There are no property implications in relation to the recommendations of the report at this stage. If the Council acquire sites through compulsory purchase, as landowner, the Council will have on-going responsibilities for the site until it is disposed of and/or developed. Such responsibilities could include, for example, maintaining site security/boundaries, management of existing tenancies, and responsibility for environmental liabilities and building insurance.

The funding source and budget for such revenue costs when acquiring property will need to be considered and identified as part of any future business case prior to the making of a CPO.

Health and wellbeing implications

- 4.23 Derelict sites and buildings typically attract neighbourhood complaints about matters such as accumulations of rubbish, rodent infestations, and attracting anti-social behaviour such as vandalism, drug taking and arson, as well as negatively impacting on the environment and perceptions of an area. All issues that can potentially negatively impact upon the health and well-being of Walsall's residents and the public. Bringing these sites back into use will help towards improving the environment and amenity of the local areas and provide new living and working opportunities for residents.

Reducing Inequalities

- 4.24 Council intervention through the use CPO powers, should only be used as a last resort. CPO action will have direct implications for owners and tenants whose private property/land are affected by potential acquisitions. The requirement and preparation of an Equalities Impact Assessment (EqIA) will be considered, in consultation with the Equalities service, on a site-by-site basis as part of the preparation for a CPO case.

Staffing implications

- 4.25 Internal and specialist external resourcing will be required to prepare, make and deliver any CPO case. This includes service areas such as Regeneration, Housing and Economy, Legal, Finance and Corporate Landlord, as well as external technical and legal advice to complete the necessary due diligence and evidence requirements.

Climate Impact

- 4.26 Derelict sites and older premises typically have poor/low building standards that are below current legislation requirements in regard to mitigating and protecting against climate change. The redevelopment of these sites will enable climate change implications and safeguarding, for example through design, building materials and layouts, to be mitigated as part of the planning process.

Consultation

- 4.27 When using any of the enabling powers for compulsory purchase, the Council needs to demonstrate that reasonable attempts to acquire the land by agreement have been made in advance of making a compulsory purchase order. The CPO Guidance is clear that there are benefits to running landowner negotiations in parallel with the compulsory purchase order process. The RICS Practice Statement on surveyors acting in relation to Compulsory Purchase also provides mandatory requirements and guidance for surveyors acting in these matters. Any future request for approval to make a CPO should provide details

of the negotiations and reasonable offers (based on full valuation evidence) made to those with interests in the land to acquire by agreement. Negotiations with the landowner must also continue through the CPO process.

5. Decide

5.1 This report sets out the preferred option for the Council to intervene in bringing forward redundant and derelict brownfield sites (particularly where comprehensive land assembly across multiple owners is required) and long-term empty properties for redevelopment using its compulsory purchase powers.

5.2 The following alternative options have been considered:

a) Do nothing - This would be a continuation of the existing position, whereby the Council relies on private landowners to bring forward their land and property interests for redevelopment and bring back into use. In this option there are no assurances that landowners will act independently and there is the risk that sites and buildings continue to deteriorate and negatively impact on the local environment and neighbourhood amenity, as well as attracting anti-social behaviour. This option would also not support the delivery of new homes and jobs through the brownfield regeneration.

b) Council work with private owners to support redevelopment schemes coming forward (e.g. pre-planning guidance, funding bid support, negotiating acquisition). A CPO is a last resort and any case for a CPO must demonstrate this to be the case. The Council will, therefore, continue to work alongside private owners to bring sites back into use. However, in cases where timely and meaningful progress is exhausted, the case for Council intervention using compulsory purchase powers will be pursued.

6. Respond

6.1 Significant work is to be carried out prior to the making of a CPO. This includes land ownership and site extent investigations, owner identification, establishing existing and potential uses of the site (this may include discussions with a stakeholder for end use), valuations, communications with owners and negotiations to purchase. The CPO process itself has a number of stages. The Council does not have the power to acquire land compulsorily until the Secretary of State confirms the CPO. The stages are thus:

- a) Ascertain the case for a CPO;
- b) Seek and obtain Cabinet authority to make the CPO;
- c) Make the CPO (including all statutory publications and consultations);
- d) Deal with objections/proceed to Public Inquiry;
- e) Secretary of State confirms CPO or declines to confirm Order;
- f) If not confirmed, there is no power to compulsorily acquire;

- g) If confirmed, valuers proceed to negotiate compensation and the site is vested in the Council;
- h) If compensation is not agreed, the question of compensation proceeds to the Lands Tribunal.

6.2 CPO is a lengthy process that can take approximately 18 months to resolve. However, should the case proceed to the Lands Tribunal, then the process will take longer. It is therefore imperative that Cabinet is presented with a clear and justifiable case for a CPO (as part of a future Cabinet report(s) on a case-by-case basis) and the Council must be prepared to see the process through to completion.

7. Review

7.1 The preparation of a CPO case will be overseen by the Council's internal 'Strategic Derelict Sites Task Force' comprised of officers from Regeneration, Legal, Housing, Planning, Finance and Corporate Landlord, with oversight and input from the Portfolio Holder for Regeneration, and funding approval via SIB.

7.2 Prior to making any CPO for any site within the borough Cabinet will receive a further report to a future meeting setting out the detailed proposals and clear case for CPO action.

Appendices

None.

Background papers

Compulsory Purchase and Compensation Guidance (guides 1-4), published by the Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government

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8 February 2023



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