

Public Report with Exempt Appendices  
Cabinet

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**Committee Name and Date of Committee Meeting**

Cabinet – 16 September 2019

**Report Title**

Proposed Compulsory Purchase Order (CPO) Acquisition - Unit 1 Riverside Precinct

**Is this a Key Decision and has it been included on the Forward Plan?**

Yes

**Strategic Director Approving Submission of the Report**

Paul Woodcock, Strategic Director of Regeneration and Environment

**Report Author(s)**

Paul Smith, Head of Asset Management  
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**Ward(s) Affected**

Boston Castle

**Report Summary**

The purpose of this report is to seek approval to invoke a Compulsory Purchase Order (CPO) for the acquisition of the remaining leasehold interest at Unit 1 Riverside Precinct, Corporation Street, Rotherham, should a purchase by agreement not be forthcoming.

**Recommendations**

1. That approval be given to invoke a Compulsory Purchase Order (CPO) for the acquisition of the remaining leasehold interest at Unit 1 Riverside Precinct Rotherham.
2. That the Assistant Director Planning Regeneration and Transport, in conjunction with The Assistant Director of Legal Services, prepare and publish the Order.
3. That the Assistant Director Planning Regeneration and Transport continue to negotiate a purchase by agreement with the leaseholder whilst the Compulsory Purchase order process is ongoing.

## **List of Appendices Included**

- Appendix 1 Equalities Assessment
- Appendix 2 Location Plan (Site B – Unit 1 Riverside Precinct)
- Appendix 3 Exempt Financial Appendix

## **Background Papers**

None

## **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

## **Council Approval Required**

No

## **Exempt from the Press and Public**

Partially Exempt

*An exemption is sought for **Appendix 3** under Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part I of Schedule 12A of the Local Government Act 1972 is requested, as this report contains details of all confidential negotiations to date.*

*It is considered that the public interest in maintaining the exemption would outweigh the public interest in disclosing the information because all such negotiations should remain confidential between the parties.*

## **Proposed Compulsory Purchase Order (CPO) Acquisition - Unit 1 Riverside Precinct**

### **1. Background**

- 1.1 The Council are moving forward with the Forge Island Regeneration Scheme, which aims to deliver a high quality mixed use leisure-led development, and upon successful completion, will comprise a cinema, a hotel provision, a number of complimentary food and beverage units, associated residential development and car-parking. The Forge Island Scheme is an integral part of the Town Centre Masterplan agreed at Cabinet on 11<sup>th</sup> September 2017.
- 1.2 The Council has secured a development partner for the Forge Island scheme and has recently completed the “Development Agreement for Lease (AfL)” which is the legal mechanism by which the whole project will be delivered. The scheme is yet to be finalised, but it is anticipated that a full planning application will be submitted before the end of 2019.
- 1.3 The Council has acquired all of the legal interests in Riverside Precinct, except one leasehold interest which is a tenant in occupation of Unit 1 located within Site B (identified in the attached location plan edged red at Appendix 2). To date negotiations with the Tenant have proved to be unsuccessful and therefore it is necessary for the Council to invoke its Compulsory Purchase Order (CPO) powers and seek confirmation of the order that will enable the compulsory acquisition of the outstanding leasehold interest.

### **2. Key Issues**

- 2.1 A fundamental issue for the success of any CPO scheme is that there has to be an absolute compelling case, in the public interest, to deprive the tenant of their private property rights and interest. The key components to a successful CPO are that there is a scheme and it can be delivered. This is all strongly evidenced with the development partner being secured, the AfL being signed, full design team being appointed, full planning application to be submitted later this year and the funding mechanism agreed.
- 2.2 The Council have obtained legal advice on the CPO proposals and are confident of success. It is believed that there is a compelling case which can be fully justified and that the order will be confirmed. The property interest is required to deliver the scheme and there are no alternatives.
- 2.3 Although the specific timescales for the confirmation of the order are unknown at this stage, the development partner is fully engaged with the Council on the basis that possession can be secured for the delivery of the scheme. The parties shall manage the process and the timescale for the scheme will align with the confirmation of the order, if CPO powers are required for the acquisition.

### **3. Options considered and recommended proposal**

3.1 There are three options available at this stage in order to obtain vacant possession:

Option 1 - Tenants Agreement to Surrender – this can only be obtained by agreeing to pay the full requested amount to extinguish the lease;

Option 2 - Wait until the end of the contractual term of the lease (2029) and then refuse to grant a new lease on the grounds of redevelopment;

Option 3 – CPO (Compulsory Purchase Order) which is the recommended option.

3.2 Whilst moving forward to promote any CPO scheme, in accordance with the government guidelines, the acquiring authority must always continue to and, use all reasonable endeavours, to negotiate a purchase by agreement. Recent negotiations with the tenant have broken down, but the Council will continue to explore this possibility to aim for an amicable settlement.

3.3 As part of the continued negotiations for a purchase by agreement, the Council, as the acquiring authority, should offer the claimant (the tenant) a full package of compensation entitlements (including all statutory loss payments) as if the parties were acting under a confirmed CPO scenario. Therefore, all further negotiations should continue on this basis and the Council must also give an undertaking to pay the claimant's reasonably incurred professional fees whether a settlement is agreed or not. This is the basis of negotiations that have been adopted so far.

3.4 Once a confirmed order for the scheme is made possession of the subject premises can be taken following the formal service of the relevant CPO notices.

3.5 It is therefore recommended to commence the process for the formal publication of a CPO to acquire the subject premises, whilst continuing to negotiate with the leaseholder for purchase by agreement.

3.6 A further recommendation, based on the assumption that terms for a compensation settlement will not be agreed between the parties following implementation of a confirmed order, is that an early reference to the Upper Tribunal (Lands Chamber) could be made. However, both parties need to be in full agreement to commence this process and following the lodging of the Notice of Reference, both parties would be bound to accept the compensation award of the court.

### **4. Consultation on proposal**

4.1 These matters were first considered at Asset Management Board (AMB) on 13<sup>th</sup> June 2019 and the proposal to take forward a Compulsory Purchase Order (CPO) for the acquisition of the remaining leasehold interest at Unit 1 Riverside Precinct was fully supported by the board.

4.2 Local Ward Members have been consulted on these matters and to date no representations have been forthcoming.

## 5. **Timetable and Accountability for Implementing this Decision**

5.1 The Assistant Director of Planning, Regeneration and Transport will be responsible for the continued negotiations with for tenant for purchase by agreement. If a purchase by agreement can be agreed between the parties, then there will be no need to progress the order through to formal confirmation.

5.2 The Assistant Director of Planning, Regeneration and Transport will also provide all necessary resources to Legal Services for all the associated tasks required in preparation of the order ready for publication.

5.3 The Assistant Director of Legal Services will be responsible for compiling all legal documentation to commence the promotion of the CPO and the final publication of such. It is anticipated that confirmation of the order could be received within 12-18 months.

## 6. **Financial and Procurement Advice and Implications**

6.1 Within the updated Capital Programme for 2019/20, approved by Council on the 24<sup>th</sup> July 2019, there is a capital allocation for costs associated with Riverside Precinct which is part of the overall Town Centre Masterplan budget. Further financial details are set out in Appendix 3, the exempt financial appendix.

6.2 As referred to in section 3.3 above, in the event that professional fees are incurred, the costs can be capitalised and therefore met from the capital programme funding.

6.3 There are no direct procurement implications arising from the recommendations contained in this report.

## 7. **Legal Advice and Implications**

7.1 Section 226 of the Town and Country Planning Act 1990 (TCPA 1990) authorises local authorities to compulsorily purchase land if the authority thinks that the acquisition will facilitate the development, redevelopment or improvement of land, or acquisition is required in order to achieve the proper planning of an area.

Before a CPO can be implemented, the acquiring authority will have to justify it to the Secretary of State.

The local authority must be able to demonstrate, in respect of the CPO, that:

- It is authorised by statute to purchase land compulsorily for a particular purpose and the CPO is necessary to achieve this purpose.

- There is a compelling case in the public interest that sufficiently justifies interfering with the rights of those with an interest in the land affected.
- Adequate resources are (likely to be) available to implement both the CPO and the CPO scheme, within a reasonable time frame.

This would include any financial contributions from other bodies, including the private sector.

- There is a reasonable prospect of the CPO scheme going ahead. For example, the scheme is unlikely to be blocked by the programming of any infrastructure or remedial work that may be required or the need for planning permission or other consent or licence
- There is no alternative site or alternative means of bringing about the objective of the CPO
- The CPO is a measure of last resort and that negotiations for acquisition by agreement have been pursued but have proved fruitless.

Legal advice has been obtained and it is considered that the Council have a strong case and these criteria and requirements are fully met. The compelling case in the public interest can be fully justified under the circumstances.

## **8. Human Resources Advice and Implications**

8.1 There are no such implications arising from this report.

## **9. Implications for Children and Young People and Vulnerable Adults**

9.1 There are no such implications arising from this report.

## **10. Equalities and Human Rights Advice and Implications**

10.1 There has to be an absolute compelling case in the public interest to deprive the third party person(s) of their private property rights and interests. If a compelling case cannot be justified then confirmation of any order will not be forthcoming.

10.2 Any decision at Public Inquiry, in the event that one is required, will judge the public interest of allowing the development against the allowing the continued enjoyment of the current owner's private property rights and interests.

## **11. Implications for Partners**

11.1 If the acquisition cannot be achieved, be it by agreement or by invoking of CPO powers, then the development partner is fully engaged with the Council to manage the risks together.

## 12. Risks and Mitigation

- 12.1. There is a risk that the order may not be confirmed. However, the Council have completed all reasonable steps for the scheme to be delivered and from the legal advice given are confident of success.
- 12.2 The current timescale for the delivery of the scheme could be delayed, but the Council are working together with the development partner to manage the development programme.
- 12.3 Following confirmation of the order, if terms for compensation cannot be agreed between the parties, then the claimant has the right to refer matters to the Upper Tribunal (Lands Chamber) and the compensation amount would be determined by this body, following representations from both parties.

## 13. Accountable Officers

Paul Smith (Head of Asset Management)

Approvals obtained on behalf of Statutory Officers:-

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	02/09/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	21/08/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	27/08/19

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