

**Agenda Item No:** 9.7 **Report No:** 124/15  
**Report Title:** Case for Compulsory Purchase of Land at Robinson Road, Newhaven  
**Report To:** Cabinet **Date:** 24<sup>th</sup> September 2015  
**Cabinet Member:** Cllr Andy Smith  
**Ward(s) Affected:** Newhaven Denton and Meeching  
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### **Purpose of Report:**

This report evaluates the Council's case for making a Compulsory Purchase Order in relation to land adjacent to Robinson Road Waste & Recycling Depot in Newhaven; and seeks Cabinet authority to commence the process for making the Order.

### **Officers' Recommendation(s):**

- 1 To agree the use of compulsory purchase powers to acquire the leasehold interest of land adjacent to Robinson Road Waste & Recycling Depot in Newhaven, as shown edged in red on the site plan at Appendix A, for development as affordable housing.
- 2 To grant delegated authority to the Director of Corporate Services and the Director of Service Delivery –
  - (i) to take all steps necessary for preparing the compulsory purchase order;

- (ii) alongside preparing the compulsory purchase order, to continue negotiating with the leaseholder over acquisition of their legal interest by agreement; and
  - (iii) if acquiring the leasehold interest by agreement proves unsuccessful, to make the compulsory purchase order following consultation with the Leader of the Council, and to seek confirmation of the order by the Secretary of State.
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## **1 Reason for Recommendations**

To enable the Council to obtain vacant possession of the land in question, so that the affordable housing development proposed for that site may proceed.

## **2 Information**

- 2.1** At its meeting on 6 July 2015, Cabinet authorised officers to establish the case for compulsory purchase and to report back.
- 2.2** Due to the complexity of the issues involved, officers instructed external lawyers to advise on the prospects of the Council successfully making a compulsory purchase order (CPO), and on the most appropriate enabling statutory power to make the order.
- 2.3** The criteria against which the lawyers have assessed the Council's case are set out in ODPM Circular 2004/06, namely:
  - (i) A CPO should only be made where there is a compelling case in the public interest. In particular, the public benefit achieved by the scheme underlying the compulsory acquisition must outweigh the rights of persons whose land is being acquired.
  - (ii) The Council must be able to acquire the land and implement the development within a reasonable timeframe.
  - (iii) There must be no impediment to the implementation of the development.
  - (iv) Could the development be carried out somewhere else?
  - (v) If the Council wishes to make the CPO under powers conferred by the Housing Act 1985, it must be able to demonstrate that the development will achieve a quantitative or qualitative housing gain, but ideally both.
- 2.4** The key findings are as follows:
  - (i) There is a clear public benefit from the provision of housing identified in the Council's Housing Strategy and its Affordable Housing Needs

Assessment 2013-2018. It is considered that the wider social benefits to be provided by the new housing would surpass any economic benefit arising from the continued presence on site of the leaseholder, Lochin Marine Ltd ('Lochin').

In addition, the provision of much needed housing is thought likely to outweigh Lochin's private rights. That said, the Council must continue to negotiate with Lochin to explore whether relocation is possible – see further at 2.5 below.

- (ii) The Council has sufficient evidence to demonstrate that there is a need for affordable housing in Newhaven, and that the specific development proposed for Robinson Road will bring about a quantitative housing gain. Further, the layout, design and building standards to be adopted for the development are likely to realise a qualitative housing gain too.
- (iii) As regards implementing the development within a reasonable timeframe, the necessary funding has been identified in the form of an HCA grant to Southern Housing Group, one of the Council's development partners, in addition to funding provided by the Council itself.
- (iv) In terms of potential impediments to development, the Council must be satisfied that:
  - (a) planning permission for the development will be forthcoming. It is anticipated that planning application will be submitted in late 2015.
  - (b) the relocation of the Robinson Road waste depot (on which the viability of the housing scheme depends) can be achieved. This is likely. Vacant possession of the new waste depot site in Avis Way is imminent, and a construction contractor has been appointed.
  - (c) the Council has sufficient funds to acquire the land leased by Lochin, either by agreement or by compulsory purchase; and to pay any compensation if Lochin's business had to be wound up. This will have to be determined once the required amount of funding is known – see Financial Appraisal.
  - (d) there are no condition precedents in the development agreement that cannot be satisfied in respect of the Robinson Road site. The development agreement contains a number of viability tests, relating in particular to the costs associated with achieving vacant possession, preparing the site, and constructing the development. These tests will be applied at key points during the project. The Council has already carried out and satisfied its first viability test; and on that basis has committed further expenditure to the scheme.
  - (e) apart from Lochin's leasehold interest in the land, there are no other legal interests that might prevent or adversely affect the Council's ability to acquire vacant possession and proceed with the

development. The Report On Title has not identified any such interests.

- (v) Given the nature of the proposed development, the most appropriate power for making the CPO is that conferred by section 17 of the Housing Act 1985. If, however, the housing development includes commercial units (as envisaged in the original design specification), the Council must be satisfied that any commercial uses of the land are for the benefit of the occupiers of the housing development.

If the final scheme at Robinson Road were characterised more by regeneration than purely housing, section 226 of the Town & Country Planning Act 1990 would provide the more appropriate power to make the CPO. Although the initial designs do have a commercial element, the focus of the scheme is to deliver housing as the priority. There will be regeneration benefits to the town and surrounding area, but these are supplemental to the main purpose of the project.

- 2.5** Part of the CPO case requires the Council to show it has made, and continues to make, all reasonable efforts to acquire the land by agreement.

Officers have held further talks with Lochin and, despite Lochin's unwillingness to surrender the lease, continue to explore options and negotiate with a view to reaching an acceptable agreement.

Compulsory purchase would be a measure of last resort if all reasonable efforts to acquire the site by agreement proved unsuccessful.

There are broadly 4 options which have been discussed with Lochin, most recently at a meeting on 24<sup>th</sup> August 2015. They are:

- a) Allow the lease to come to an end in 2022 and refuse a new lease based on grounds F and G of Section 25 of the Landlord and Tenant Act 1954, i.e. that the Council wishes to develop and occupy the land.
- b) Continue to negotiate with Lochin to reach a mutually agreeable settlement, the terms of which may be more flexible than under a CPO situation.
- c) Proceed with a CPO on the basis that the business can be relocated.
- d) Proceed with a CPO on the basis of extinguishment of the business, i.e. it is not able to relocate and must therefore cease trading at that location.

- 2.6** The external lawyers conclude that, subject to overcoming the impediments detailed in 2.4(iv) above, the Council has a strong case for taking forward a CPO under Housing Act powers.

- 2.7** It is therefore recommended that Cabinet authorise the making of a CPO by that route, but direct officers to continue negotiating with Lochin over acquisition by agreement until satisfied that compulsory purchase is the only

viable means of securing the site within the timescale needed to deliver the proposed housing development.

### **3 Financial Appraisal**

This section contains exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972, and is set out at Appendix B.

### **4 Legal Implications**

Most compulsory acquisitions, including the one contemplated in this report, are authorised by an enabling act of parliament (which authorises the use of compulsory purchase powers for a specific purpose) and a CPO made by a public body (e.g. the Council) and confirmed by the appropriate Secretary of State, that specifies the land needed for the CPO scheme.

In light of external advice, the most specific and relevant enabling power for the scheme envisaged by the Council is section 17 of the Housing Act 1985 which authorises local housing authorities to compulsorily purchase land, houses or other properties for housing accommodation.

Other legal implications are contained in the body of the report.

### **5 Risk Management Implications**

The risk of not gaining vacant possession on the land would severely impact the New Homes (formerly the Property Regeneration Portfolio) project. The Robinson Road site is earmarked for 100% affordable housing, but if it was not possible to develop all of the land, the number of units delivered would reduce accordingly and the scheme may become unviable.

It might be possible to phase the construction and return in 2022 once the lease has ended. However, with construction costs currently rising at an average of 14% pa, it could make a second phase unviable.

### **6 Equality Screening**

I have not conducted an Equality Assessment as there will be a detailed assessment carried out for the whole project.

## **7 Background Papers**

- (i) Report to Cabinet of 6 July 2015 entitled 'Compulsory Purchase – land adjacent to Robinson Road Waste & Recycling Depot in Newhaven'.
- (ii) External legal advice on the prospects of securing a compulsory purchase order.

## **8 Appendices**

Appendix A: Plan of land in Council ownership at Robinson Road

Appendix B: Financial appraisal (exempt)