

**Wiltshire Council**

**Cabinet Capital Assets Committee**

**14 March 2017**

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**Subject: Compulsory Purchase Order Powers**

**Cabinet Member: Councillor Fleur de Rhe-Philippe  
Cabinet Member for Economic Development, Skills,  
Strategic Transport and Strategic Property**

**Councillor Stuart Wheeler  
Cabinet Member for hubs, governance (including  
information management), support services (HR, legal,  
ICT, business services, democratic services) heritage and  
arts and customer care**

**Key Decision: No**

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### **Executive Summary**

Compulsory purchase powers enable public bodies to acquire land compulsorily in the event that attempts to acquire land by agreement fail. The compulsory purchase of land requires the approval of a confirming minister, the Secretary of State. A Compulsory Purchase Order (CPO) should only be made where there is a compelling case in the public interest.

They can be exercised by local authorities to promote schemes for various purposes. The powers contained in Town and Country Planning Act 1990 (as amended) enables acquiring authorities with planning powers to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement (Section 226). Different Acts of Parliament enable public bodies to use compulsory purchase powers to acquire land or rights over land for a particular purpose (e.g. Highways Act 1980 which authorises a Highways Authority to compulsorily purchase land to construct or improve highways).

Compulsory purchase can be appropriate in many situations, for example to regenerate run down areas or assemble land to improve town centres. More high profile uses include major infrastructure projects such as the HS2 rail project. Compulsory purchase may also be appropriate to support proposals for growth to enable the provision of new homes, economic development and the infrastructure necessary to accommodate them.

The Council should establish an internal process for carrying out a CPO should it become necessary.

## **Proposals**

That Cabinet Capital Assets Committee:

- (i) Note the main considerations for the Council in relation to compulsory purchase powers.
- (ii) Delegates authority to the Associate Director for Economic Development and Planning in consultation with the Associate Director for Legal and Governance and, the Associate Director for Finance to establish the Council's process for carrying out the compulsory purchase of land to ensure the timely delivery of infrastructure, regeneration projects and development sites.

## **Reason for Proposals**

Compulsory purchase is a measure of last resort. However, should the Council consider that it is necessary to ensure the timely delivery of infrastructure, regeneration projects and development sites, a clear, open and transparent process is needed to manage the risks surrounding the use of such powers.

**Dr Carlton Brand**  
**Corporate Director**

## **Wiltshire Council**

### **Cabinet Capital Assets Committee**

**14 March 2017**

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**Subject: Compulsory Purchase Order (CPO) Powers**

**Cabinet Member: Councillor Fleur de Rhe-Philippe  
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**Councillor Stuart Wheeler  
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information management), support services (HR, legal,  
ICT, business services, democratic services) heritage and  
arts and customer care**

**Key Decision: No**

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#### **Purpose of Report**

1. The purpose of the report is to:
  - (i) Summarise the main considerations for the Council in relation to compulsory purchase powers;
  - (ii) Delegate authority to Associate Director for Economic Development and Planning in consultation with the Associate Director for Legal and Governance and, the Associate Director for Finance to establish the Council's process for carrying out the compulsory purchase of land to ensure the timely delivery of infrastructure, regeneration projects and development sites

#### **Relevance to the Council's Business Plan**

2. Ensuring planned development is delivered and unblocking barriers to growth contributes to delivering a thriving and growing economy, one of the priorities of the Business Plan 2013-2017 to delivering stronger and more resilient communities. Regeneration projects can also contribute to ensuring everyone lives in a high quality environment, a further priority of the Business Plan.

#### **Background**

3. Compulsory purchase powers enable public bodies to acquire land compulsorily in the event that attempts to acquire land by agreement fail. They can be exercised by local authorities to promote schemes for various purposes. Compulsory purchase of land requires the approval of a confirming minister, the Secretary of State.

4. The powers contained in Town and Country Planning Act 1990 (as amended) enable acquiring authorities with planning powers to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement (Section 226). Different Acts of Parliament enable public bodies to use compulsory purchase powers to acquire land or rights over land for a particular purpose (e.g. Highways Act 1980 which authorises a Highways Authority to compulsorily purchase land to construct or improve highways).
5. The procedure for making and confirming compulsory purchase orders (CPO) is, in most cases, governed by the Acquisition of Land Act 1981 as amended by the Planning and Compulsory Purchase Act 2004.
6. CPO powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business - leading to improvements in quality of life. However, a CPO should only be made where there is a compelling case in the public interest.
7. Compulsory purchase can take several years to complete and is intended as a last resort to secure the assembly of land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is needed, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:
  - plan a compulsory purchase timetable as a contingency measure; and
  - initiate formal procedures.
8. This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

### **Main Considerations for the Council**

9. The Council needs to consider when it would be appropriate to use CPO powers and the process for carrying out a CPO should it become necessary.
10. Compulsory purchase can be appropriate in many situations for example:
  - to regenerate run down areas or assemble land to improve town centres.
  - the acquisition of important listed buildings of special architectural or historic interest that are a valuable asset to the community but at risk of being lost.

- to support planned growth whether that is for the provision for new homes or economic development and the infrastructure necessary to accommodate that growth.

More high profile uses of CPO include major infrastructure projects such as the HS2 rail project.

11. Given the potential scenarios outlined above, the Council should have a clearly stated approach to CPO. This would avoid the possibility for confusion and delay; both of which might undermine the Council's abilities to respond promptly and effectively. An established approach to the use of CPO would fit with a more proactive role for the Council, working with partners, to help deliver sustainable economic growth.

### **Overview and Scrutiny Engagement**

12. There has been no overview and scrutiny engagement at this stage.

### **Safeguarding Implications**

13. There are no safeguarding implications arising from the proposal

### **Public Health Implications**

14. There are no public health implications arising from the proposal.

### **Procurement Implications**

15. At this stage there are no procurement implications arising from this proposal. Should a decision be made in the future to pursue a CPO this would need to be reviewed.

### **Equalities Impact of the Proposal**

16. At this stage there are no equalities impacts arising from this proposal. As outlined below, should a decision be made in the future to pursue a CPO the acquiring authority must serve notice of the CPO on persons with an interest in the CPO land to ensure they have full and equal opportunity to engage with the process. The proposal would be advertised and there is an opportunity for comment from the public. There is a process for parties to object to the implementation of the CPO by written representation or public enquiry

### **Environmental and Climate Change Considerations**

17. There are no environmental or climate change implications relating to the proposal.

### **Risks that may arise if the proposed decision and related work is not taken**

18. Compulsory purchase can take several years to complete and is intended as a last resort to secure the assembly of land needed for the

implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. The recommendation to establish the necessary procedures and practices to carry out CPO will enable the Council to act quickly if required. The risk of not taking the decision is that infrastructure projects, planned regeneration schemes and planned development are more likely to be delayed.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

19. There may be reputational risk to the Council as criticism may be attracted from local people who are opposed to the use CPO powers and the wider development it may support. The recommendation within this report is part of the process of managing that risk to ensure clear, open and transparent processes are followed and that the use of CPO is genuinely one of last resort.

### **Financial Implications**

20. At this stage there are no financial implications arising from this proposal. There would be financial implications should the Council decide to exercise CPO powers.

### **Legal Implications**

21. The Council must follow a strict statutory process in order to exercise CPO powers. Preparation of a CPO requires attention to detail and strict adherence to statutory requirements.
22. It is important that the decision making process is correctly followed and documented to minimise the risk of judicial review proceedings being brought against the resolution to make the CPO. The Council's Legal Services will therefore have a central role.
23. Before a CPO can be implemented, the Council will have to justify it to the Secretary of State. In brief, the Council must be able to demonstrate, in respect of the CPO, that:
  - (i) 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. The provisions of the European Convention on Human Rights 1950 must form part of this assessment (although this may be reviewed following the referendum result to leave the European Union on 24 June 2016).
  - (ii) Adequate resources are (likely to be) available to implement both the CPO (within the statutory period following confirmation and the CPO scheme, within a reasonable time frame).
  - (iii) 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.

- (iv) There is no alternative site or alternative means of bringing about the objective of the CPO.
  - (v) The CPO is a measure of last resort and that negotiations for acquisition by agreement have been pursued but have proved fruitless.
24. Before submitting a CPO to the Secretary of State for confirmation, the acquiring authority must comply with the notice requirements set out in statute. In summary, the acquiring authority must serve notice of the CPO on persons with an interest in the CPO land, publish a notice for two successive weeks in one or more local newspapers and fix a site notice to a conspicuous object on or near the CPO land.
25. Once the acquiring authority has made the CPO and completed the notice requirements the authority must (so that the CPO can be confirmed) submit the CPO to the Secretary of State. The Secretary of State will need to confirm the order Council before it can be implemented. Therefore, there is no guarantee that the CPO can be implemented.
26. There is a process for parties to object to the implementation of the CPO by written representation or public enquiry.
27. Judicial review: there is a statutory mechanism for "any person aggrieved" to question the validity of a CPO in the High Court, on the grounds that there is no power in the enabling act to authorise the CPO.
28. Compensation: all parties with an interest in the land, or rights in respect of the land, will be entitled under statute to submit a claim for compensation to the acquiring authority. The principal purpose of compensation is to adequately compensate, at market value, those with interests in the land being acquired. However, compensation is not always limited to the value of the land. Additional heads of compensation, such as compensation for disturbance, may be claimed, including:
- (i) Any loss caused by losing possession of the land ("disturbance")
  - (ii) Compensation for damage to any land that is retained by the affected party caused by the exercise of the compulsory purchase powers of the acquiring authority or for loss of value of the retained land caused by the acquiring authority's scheme ("injurious affection" and "severance" respectively).
  - (iii) In addition, the reasonable costs (legal costs and other fees and expenses) of the claimant are met by the acquiring authority
29. If in due course the Council decides to exercise CPO powers in relation to land, it needs to make a formal resolution to use its compulsory purchase

powers. The resolution should identify: the CPO land; the CPO scheme and the purpose for which the land is required; and the justification for the use of the compulsory purchase powers.

30. The constitutional process for making a CPO can be reviewed as part of the review envisaged by this Report.

### **Options Considered**

31. The course of not being prepared for the use of CPO should it be required has been considered. This would result in delay and, potentially, additional costs as external resources may be needed to expedite the process.

### **Conclusions**

32. The use of CPO powers is a measure of last resort and should only be used when negotiations for the acquisition of land by agreement have been pursued but have proved fruitless.
33. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Uncertainty will also undermine investor confidence in the Council's plans and programmes. So the process for establishing the Council's position on pursuing CPO in a particular situation needs to be in place. This is sensible, given the amount of time required to complete the compulsory purchase process and the need for the acquiring authority to establish a clear, open and transparent process for carrying out CPO should it be required.

### **Alistair Cunningham**

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06 March 2017

### **Appendices**

None

### **Background Papers**

None