

APPENDIX D

FUTURE CHIPPENHAM COMPULSORY PURCHASE ORDER STRATEGY (DRAFT)

Note: 5th July 2021 - This document will require updating following agreement by Cabinet on the revised scheme, subject to the Local Plan review, masterplanning and agreement from Homes England.

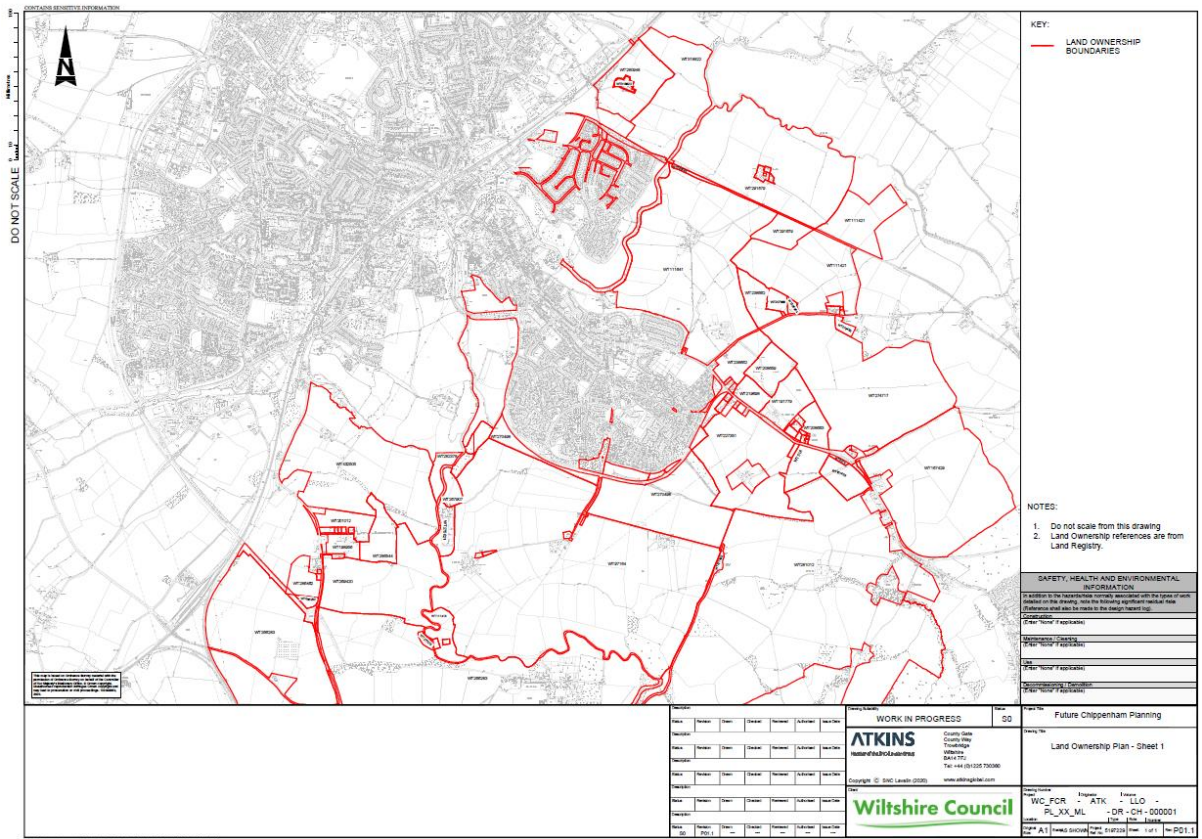
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FUTURE CHIPPENHAM CPO STRATEGY

1. Executive Summary

- 1.1 The Grant Determination Agreement (GDA) defines “CPO Strategy” as a plan for the proposed acquisition of any part of the Infrastructure Site by way of CPO (including details on expected timeframes) in a form satisfactory to Homes England. Schedule 7 paragraph 1.3 of the GDA requires Wiltshire Council (the Council) to provide to Homes England the Council’s CPO Strategy prior to the signing of the GDA.
- 1.2 This report sets out the Council’s strategy for the use of Compulsory Purchase powers to enable delivery of its aspirations for the Future Chippenham Development, if required. It includes a summary of the background and history of the proposed site, and the existing landowners and interested parties within the area.
- 1.3 The extent of the Infrastructure Site is shown below



- 1.4 The strategy assesses the issues involved in progressing an acquisition by agreement and/or a compulsory acquisition.
- 1.5 The strategy sets out the legislative basis for use of compulsory purchase powers, and the approach to be pursued by the Council in order to justify use of these powers.

1.6 In a Cabinet Decision dated 8 October 2019 the Council acknowledged that, where necessary, it will use its compulsory purchase powers in order to ensure that the Infrastructure Site is made available for the delivery of the Infrastructure Works. A Cabinet approval to acquire the land needed for the scheme will be obtained once the exact area of land required has been finalised. This strategy sets out the timetable for a CPO to be pursued alongside the negotiations with the landowners.

2. Introduction & Background

2.1 Wiltshire Council has been successful in securing £75m towards the cost of a new distributor road (Infrastructure Works) which will unlock a housing site to support housing delivery of up to 7500 homes by 2055 in the Chippenham Housing area.

2.2 The housing site is not currently allocated in the Local Plan. The Local Plan is being reviewed in accordance with the timetable set out in Table 1 below and Wiltshire Council as Landowners are making representations for development on the site which will become unlocked by the HIF funded road and more detailed representation on their owned land into the Local Plan. The WC Highways team will be supporting the Planning application for the distributor road.

TABLE 1 : Local Plan Review Timeline

	2020		2021				2022				2023		
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Gypsy and Travellers DPD													
Wiltshire Local Plan Review													

	Plan preparation including evidence gathering and refinement following consultation stages
	Informal consultation on the scope and content of the G & T DPD (Reg 18)
	Informal engagement of revised scope and emerging strategy
	Publication of the plan for pre-submission consultation (Reg 19)
	Submission to Secretary of State following Cabinet and Council approval (Reg 22)
	Examination process (including hearings and receipt of Inspectors report)
	Adoption by Council

2.3 Atkins (the Council's appointed consultants) are in the process of preparing a master plan for the proposed Future Chippenham Site and this will be submitted as part of the wider planning application for the Infrastructure Site and the housing site.

2.4 Atkins will demonstrate through the masterplan that the following can be delivered;

- Up to 7500 new homes
- improvements to local traffic congestion as a result of the scheme
- enhancements to the local cycle network and more sustainable travel options
- new local amenities including a new primary school, community centre, enhanced leisure offer, health centre
- expansion to the Country park and enhancements to the green and blue infrastructure around the site.

2.5 To date, no homes have been delivered within the masterplan area. Just 650 homes have planning permission on the Summix site.

- 2.6 The Council wishes to unlock the housing site to meet its future housing requirements, to accelerate the delivery of homes and increase the number of genuinely affordable homes in Wiltshire.
- 2.7 The strategy focuses on options to acquire the Infrastructure Site to support the road build and potential options in support of the delivery of housing, in the event of market failure.
- 2.8 The strategy sets the benefits of the use of compulsory purchase powers under s.226 of the Town & Country Planning Act 1990, including timing and control over delivery, together with the required statutory process including review of planning and other policy.
- 2.9 It also deals with a proposed proactive delivery strategy following a CPO including potential delivery options such as working with a private sector or registered provider partner / self-delivery within the Council or onwards sale to a developer.
- 2.10 In addition, the strategy provides an indicative process cost and programme for this proactive strategy, including how negotiations with landowners would fit within the programme, approach to negotiations and the best time to commence negotiations.

3.0 Approach to Land Assembly

- 3.1 The proposed site of Future Chippenham received full support from all landowners during the HIF Bid submission stage. Engagement with landowners is ongoing to secure the freehold and leasehold interests in the areas of land comprising the Infrastructure Site to facilitate the road build and where possible joint promotion of the site for housing.
- 3.2 This Council will seek to assemble the Infrastructure Site by agreement where possible. The use of CPO for these interests will only be implemented where purchase by agreement cannot be achieved.
- 3.3 At the time of writing this strategy, the road route for the Infrastructure Works has not been fixed and any route shown in this strategy is a high-level alignment only.
- 3.4 The Council will, where possible, enter into agreements with landowners/housebuilders to confirm deliverability of housing to the proposed trajectory by way of Master developer agreements, MOU, Sale Contracts LLP's, Land equalisation agreements etc.
- 3.5 The Council recognises that some landowners may not wish to enter into an agreement. Where this is the case, the Council will monitor delivery of housing against the proposed trajectory across these sites. In the event of market failure, the Council will consider the use of Compulsory Purchase Order to acquire any land that is failing to deliver which has been unlocked by the HIF funding.
- 3.6 The Council will at all times attempt to reach agreement with landowners for the acquisition of the Infrastructure Site by agreement. However, in order to ensure that Council can deliver the Infrastructure Works and the comprehensive delivery of the benefits that will follow from that, the Council will pursue a Compulsory Purchase Order in parallel with its voluntary acquisition strategy. This is required as a back-up to voluntary negotiations, and in order to

ensure that any unregistered land, third party interests and other unknown risks to delivery can be dealt with by the use of powers if required.

Wherever private treaty agreements for acquisitions are concluded, the Council will undertake not to use its CPO powers and to honour the agreements entered into. This is common practice in regeneration projects and de-risks the situation for both landowner and Council.

A report for CPO will be prepared and submitted to Cabinet in [month 2021] requesting approval to seek CPO powers to support delivery of the road where necessary. The proposed timeline is due to the need to meet the HIF Grant spend timeframe restrictions of March 2024.

3.7 Land Assembly Strategy

This CPO Strategy is supported by the Land Assembly Strategy. The Strategy outlines the options considered for assembly the land for the site and housing and the preferred option to proceed.

3.8 Head of Terms

The main purpose of heads of terms is to provide an element of clarity from the beginning of the transaction through to the end.

4. Use of s.226 Town and Country Planning Act 1990

4.1 It is the Council's intention to rely on its powers under section 226 of the Town and Country Planning Act 1990 to acquire the land needed for the Infrastructure & Housing site should a mutual agreement between the Council and other landowners not be reached.

4.3 Section 226 of the Town & Country Planning Act 1990 (TCPA 1990) is the most commonly used power by local authorities to deliver regeneration and development within their area. Guidance on the use of this power is set out in Tier 2 section 1 (para 94-106) of the February 2018 Ministry of Housing, Communities & Local Government Guidance on Compulsory Purchase Process and the Crichel Down Rules, (the 2018 Guidance).

Purpose of TCPA 1990 powers

4.4 The key purposes the powers may be used for:

- a) section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development (as defined in section 55 of Town and Country Planning Act 1990), 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
- b) section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

4.5 The purpose for which the powers are proposed to be used is also tested against a few other criteria.

- a) There must be a compelling case in the public interest for the use of the powers which outweighs the private loss. The delivery of the Infrastructure Works will provide vital road network which will unlock the housing site for the provision of much needed housing in Chippenham (7500 houses), thereby contributing to the housing delivery target for the entire administrative area covered by Wiltshire Council.
- b) The scheme would lead to any one or more of the following objectives, within the administrative area of Wiltshire Council:
 - i. the promotion or improvement of the economic well-being of their area,
 - ii. the promotion or improvement of the social well-being of their area;
 - iii. the promotion or improvement of the environmental well-being of their area.

4.6 As evident from paragraph 4.5 above, the benefit to be derived from exercising the power is not restricted to the area subject to the compulsory purchase order, as the concept is applied to the wellbeing of the whole (or any part) of the acquiring authority's area.

Justification of use of the powers

4.7 Para 104-106 of the 2018 Guidance provides further advice on the justification required to support an Order under these powers. This includes

- any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a).
- Adopted planning framework provides clear support and justification. Although the Infrastructure Site and the housing site are yet to be allocated by the Local Plan, the Council as landowner is working with other landowners to promote these sites as part of the ongoing review of the Wiltshire Local Plan. It is envisaged that the schemes for the road and the housing will have support in the emerging Local Plan. The intention is to pursue a planning application for the schemes along with the local plan review process.
- Whether the purpose for which the land is to be acquired can be achieved by any other means. There is clear indication that the road and housing schemes can only be delivered on the Infrastructure Site and housing site respectively, hence the need to assemble the land needed for this purpose.
- The potential financial viability of the Scheme for which the land is to be acquired, including general indication of funding intentions, commitments from third parties, any restrictions on timing of funding etc, in order to provide the Secretary of State with certainty that the Scheme will proceed. In addition to the HIF funding, the Council will be relying on other funding sources, including its own, to ensure that the Infrastructure Works are delivered.
- The extent to which the proposed Scheme will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area.

4.8 The Council is in negotiation with owners of various interests in the areas of land required for the Infrastructure Site in order to acquire the necessary land and rights by agreement, failing which CPO will be used.

CPO Process

- 4.9 Once the Council has satisfied itself on the requirements above, it will then need to commence the compulsory purchase process. The process is set out in Acquisition of Land Act 1981 and contains the following key steps.

Preparation of CPO

Making the Order and publicising

Public Inquiry

Confirmation

Notification

Implementation

- 4.10 On average the CPO process from start to finish takes between 18-24 months but this depends on the number and extent of objections and whether there is a Public Inquiry into the CPO.

5. Potential alternative compulsory purchase powers

- 5.1 As mentioned above, the Council will seek to rely on its Town & Country Planning Act 1990 section 226 powers, due to the nature of the schemes. However, where deemed necessary, the Council will consider whether any alternative compulsory purchase powers would be more suitable, such as for example, the Council's powers under the Highways Act 1980.

6. Overall CPO Programme

- 6.1 In order to create the best framework for the Council to make a CPO within 12 months, as a foundation to the Council securing the fastest possible delivery of the regeneration. The CPO programme is currently being updated.

7. Budget for process

Budget for process

- 7.1 In considering its options to proactively deliver its policy objectives for the land at Future Chippenham, the Council will need to consider the costs (internal costs and external advisers) of the necessary preparatory work, selection and securing of a delivery partner, compulsory purchase process and all associated specialist advice.

Budget area	Indicative Amount	Comments
Preparatory work	£150 – 200k	Resident consultation, initial masterplan, delivery structure, viability

CPO Process	£250,000-750,000	Legal and Surveyors Fees / Negotiations with affected parties and process. Assume public Inquiry required with objection pursued by ECPL. No objection from TfL / RBKC
Internal project lead	£150k	3 years costs
Specialist technical advice	£150	Planning / Viability / Development viability / transport and traffic etc
Selection and securing delivery partner	£500,000-750,000	Legal/commercial/property/accountancy support – JV process likely to be more expensive than DA
Further design / planning / technical work	£500 - £1m.	Dependant on structure of delivery
Total indicative budget	£1.7 - £3.0m	

7.2 The above budget will need to be regularly refined and updated as the Council progresses its plans but does provide an initial estimate in order to assist them in making its decisions on how to proceed.

7.3 Depending on the selected delivery route, the Council may be able to obtain reimbursement of these early stage costs, either through direct reimbursement, or through land value uplift or profit created by the scheme.

8. Special kinds of land

8.1 Land owned by certain statutory undertakers for the purposes of its undertaking (i.e. land is used for purposes directly connected with the undertaker’s statutory functions) is afforded protection under either section 16 or section 17 of the Acquisition of Land Act 1981 (“the ALA”).

8.2 Under s8(1) of the ALA, the definition of “statutory undertakers” includes (i) any railway, light railway, tramway etc.

8.3 Under Section 16 of the ALA, where land acquired by a statutory undertaker for purpose of its undertaking is included in any CPO, the statutory undertaker may make representations to the “appropriate Minister” (in this case the Secretary of State for Transport) before the expiration of the time within which objections to any CPO can be made.

8.4 A CPO in respect of which a representation has been made under s16 ALA 1981 cannot be made unless the appropriate Minister is satisfied and certifies “that its nature and situation is such (a) that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or (b) that if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment.

- 8.5 The burden of proof would be on the person acquiring the interest to show that the land could be taken without serious detriment.
- 8.6 Land which is held as open space, common land, or fuel or field garden allotment, is subject to special parliamentary procedure before it can be compulsorily acquired, unless a certificate is obtained from the Secretary of State pursuant to Section 19 of the ALA.
- 8.7 A certificate must be applied for at the same time as the compulsory purchase order, and any representations may be heard by public local inquiry.
- 8.8 Special protections also apply to National Trust land and land held by other local authorities – these are set out in MHCLG’s *Guidance on Compulsory Purchase Orders and the Crichel Down Rules*.

9. CPO and Covid19

- 9.1 On 13 May 2020 the Ministry of Housing, Communities and Local Government (MHCLG) published compulsory purchase guidance for acquiring authorities in response to COVID-19.
- 9.2 One of the recommendations is that acquiring authorities are encouraged to consider whether it would be appropriate to increase time periods for people to respond when requesting information about interests in land to be acquired or submitting objections to CPOs, given that due to COVID19 and the possibility of self-isolation, some people may not be able to reach a postbox, or responses may otherwise be delayed (due to illness or delays in the postal system).
- 9.3 There are also recommendations when implementing CPOS during this exceptional period whereby acquiring authorities should act responsibly in relation to both business and residential claimants, particularly in terms of the timing of vesting orders and compensation. Residents should not be evicted during his period in line with the Governments wider guidance on evictions.
- 9.4 The above guidance and the continued impact of COVID19 and any further guidance issued by MHCLG will need to be considered by the Council when implementing any compulsory purchase order and this may have an impact on the timescales for the scheme.

