

East Herts Council Report

Executive

Date of Meeting: 6 Oct 2020

Report by: Councillor Linda Haysey, Leader of the Council

Report title: Use of Compulsory Purchase Powers (CPO) in the Gilston Area

Ward(s) affected: Hunsdon

Summary

RECOMMENDATION FOR EXECUTIVE:

- (a) That the Executive recommend to Council that, in principle, (and subject to Harlow District Council resolving to follow the same course of action) the Council be prepared to use powers available to it under section 226(1)(a) of the Town and Country Planning Act 1990 to compulsorily purchase land in the Gilston area, as generally shown on the plans at Appendix 1, to enable the construction of transport infrastructure to support the delivery of the Gilston Area allocation in the East Herts District Plan (The Gilston Area Allocation) and the achievement of the wider strategic planning benefits referred to in the report.**
- (b) That the Executive delegate authority to the Head of Legal and Democratic Services, in consultation with the Head of Planning, to enter into a Compulsory Purchase Order Indemnity Agreement (CPO IA) in relation to this matter, on behalf of the Council.**
- (c) That the Executive and Council note that Officers will undertake the work needed to prepare for a possible Compulsory Purchase Order (CPO) together with the**

associated documentation and, if necessary, will bring a further report back to the Executive and Council seeking authority to make a CPO.

1.0 Proposal(s)

- 1.1 It is proposed that the Council determine, in principle, that it will make use of the compulsory land purchase powers available to it, under section 226(1)(a) of the Town and Country Planning Act 1990, in order to secure land to deliver transport infrastructure in the Gilston area, to support the delivery of the Gilston Area Allocation and the achievement of the wider strategic planning benefits referred to in this report. If agreed, this is a decision for Council (rather than a decision that can be taken by a meeting of the Executive).

2.0 Background

- 2.1 The principle of development of land in the Gilston Area has been established by the East Herts District Plan. Development in this location will form part of the Harlow and Gilston Garden Town (HGGT).
- 2.2 As part of the allocation of the land, the District Plan identified the need for significant supporting infrastructure (policies GA1 and GA2). Two key elements of this are
 - the expansion of the existing A414 road crossing over the River Stort between the Gilston area and Harlow to provide dedicated sustainable transport capacity, and
 - the creation of a new crossing over the River Stort (either to the east or west of the existing).In this report these two elements of infrastructure are referred to as 'the Transport Infrastructure'.
- 2.3 The owner of the majority of the land which comprises the Gilston Area Allocation, Places for People (PfP) (the Applicant) has submitted three related planning

applications (the Applications) to the Council for parts of the Gilston Area Allocation, as follows:

- Outline planning application for a residential-led mixed use development of 8,500 homes across six distinct villages directly north of the A414 and Eastwick Road, with all matters reserved except for three 'Strategic Accesses' into the Gilston Park Estate (Village Development) (ref 3/19/1045/OUT)
- Full planning application for enhancements and widening of the existing vehicular crossing over the River Stort (Central Stort Crossing) (ref 3/19/1046/FUL); and
- Full planning application for a new crossing over the River Stort (Eastern Stort Crossing) (ref 3/19/1049/FUL).

The last two include the Transport Infrastructure element.

- 2.4 The two full planning applications have also been submitted to Harlow District Council (HDC) as the application sites straddle the boundary between East Herts and Harlow Council areas (the two Local Planning Authorities).
- 2.5 Members should be aware at this stage that the determination of the three planning applications (and any future planning applications for the Gilston Area Allocation) is a separate and distinct matter for the Local Planning Authorities to consider in due course. Any decision made on the use of CPO powers at this stage cannot influence any decision to be made on the planning applications, which will be determined on their planning merits.
- 2.6 The Applicant controls the land required to implement the Village Development (if planning consent is granted) However, the Applicant is not in control of all of the land which is required in order to be able to deliver the Transport Infrastructure (again if planning consent is

granted) . The Applicant is seeking to conduct ongoing negotiations with the owners of land outside its control to seek to acquire the land required for that by agreement. In addition to land located in the East Herts district, implementing the Transport Infrastructure may also require for land in the Harlow District area to be acquired compulsorily. If that is necessary, the same powers would be utilised by Harlow District Council.

- 2.7 This report is submitted to set out the current position and to seek authority, in principle and where negotiation to acquire land by agreement is not successful, for the use of CPO powers available to the Council.
- 2.8 The Council first considered the possible use of CPO powers in the lead up to the adoption of the District Plan in 2018. Through engagement with landowners at that stage, it became aware of potential land ownership constraints which may impact on the delivery of the Transport Infrastructure. A report in relation to the matter was presented to the 21 Sept 2017 meeting of the District Plan Executive Panel. The report sought agreement 'in principle' to the use of Planning Act CPO powers. The recommendation in this respect was agreed and was subsequently endorsed by the Executive at its meeting of 16 October 2017 and Council of 18 October 2017.
- 2.9 It is appropriate for the Council to consider this matter again now as, in the course of the last three years, development proposals for the first elements of the Gilston Area Allocation have been crystallised in the three planning applications and there is now clarity over the land take required to accommodate the Transport Infrastructure.
- 2.10 Turning to the issue of CPO powers, Section 226(1)(a) of the Town and Country Planning Act 1990 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. The wide power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility.

- 2.11 The latest version of the MHCLG Guidance on the compulsory purchase process (The Guidance) includes the following guidance on the use of this power: -
- “This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate”*
- 2.12 The Guidance confirms that compulsory purchase is intended as a last resort measure to secure the assembly of all the land needed for the implementation of projects and acquiring authorities will be required to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the CPO by agreement.
- 2.13 The Guidance also includes key policy tests which need to be satisfied before a CPO can be confirmed. Crucially, before progressing a CPO, members must be satisfied

that there is a compelling case in the public interest for making and promoting a CPO, that the use of the powers is necessary and proportionate, and that the public benefits associated with the proposals will clearly outweigh the interference with the rights of those affected. These matters are referred to below, and will be considered further in detail in any future report to the Executive and Council to seek authority for a CPO to be made.

- 2.14 Taking into account this guidance and following on from the October 2017 'in principal' resolution, it is considered that the use of Planning Act powers would be appropriate as a last resort measure to assemble land to implement proposals in the Local Plan, secure the delivery of the Transport Infrastructure and facilitate the delivery of the Gilston Area Allocation and the achievement of the wider strategic planning benefits referred to below.
- 2.15 Turning to the public benefits associated with the delivery of the Transport Infrastructure, these include the following benefits referred to in the East Herts District Plan and in the HGGT Vision:
- Supporting and accelerating the delivery of a significant quantum (10,000) of the new homes required to be delivered in the District in the period up to 2033. The new homes to be delivered will include a mix of house sizes and types to cater for all including those most in need and the next generation of residents who want the opportunity to stay and work in the area.
 - Significant housing and employment growth in the immediate area around Harlow and the wider London-Stansted-Cambridge Innovation Corridor.
 - New transport routes that will provide genuine alternatives to car travel within the Garden Town and help to tackle congestion, air quality impacts and support healthy lifestyles for current and future

residents.

- Enable the transport priorities and aspirations of the Garden Town partners to be achieved, prioritising healthy and active travel over other modes and seeking to achieve targets of 60% of all journeys undertaken by those residing in the Gilston area development and 50% of all journeys of those residing in the wider Garden Town by healthy and active modes.
- Provide new and improved crossings across the River Stort to link new communities to existing communities and provide better access to the Stort Valley.
- Enable the delivery of new homes and neighbourhoods built around self-sufficient local centres.
- Enable the delivery of appropriate levels of new social infrastructure and public services including schools and health services.
- Enable the creation of a network of green open spaces to include walking and cycling links across the Garden Town and connecting out to the wider countryside and Stort Valley.
- Enable the creation of new green 'wedges' between communities to help ensure individual identities for new and existing communities and villages.

3.0 Reason(s)

- 3.1 As set out above, this report relates to the potential requirement for the use of CPO powers to acquire land in the Gilston area necessary for the implementation of transport infrastructure to support the Gilston Area Allocation and to deliver wider strategic planning benefits referred to in this report.
- 3.2 The planning applications referred to above, if permitted, will comprise the majority of the development anticipated in the Gilston area through the allocation of

the site in the East Herts District Plan. The outline application proposes the development of 8,500 new homes across 6 distinct villages. Each of these villages will be provided with and supported by relevant transport, social and other necessary infrastructure.

- 3.3 A further outline planning application, also under consideration, has been submitted by a separate landowner (Briggens Estate no 1/CPP). It proposes a further 1,500 new homes and further supporting infrastructure. The two proposals together comprise the total 10,000 new homes to be delivered as part of the Gilston Area allocation. The separate proposals submitted by CPP also require delivery of the Transport Infrastructure to enable them to be implemented.
- 3.4 The two full applications comprise, as indicated, the Transport Infrastructure. In relation to the existing (or Central) A414 river Stort crossing, the proposal is to expand the current road carriageway by an additional lane in each direction. The additional capacity will be provided for sustainable transport modes only, buses and any future innovative transport provision which may be implemented, between the Gilston area and Harlow. Dedicated provision will also be made for walking and cycling.
- 3.5 The application proposals also include for the development of a new bridge over the current Eastwick Road to enable walking and cycling provision to connect directly with the new development in the village to be implemented closest to Harlow (village 1). Changes are also proposed to the existing Eastwick junction roundabout, to enable a direct, sustainable transport modes only junction to be created to access the new development. A separate all vehicle access to the new development will also be created to the east of this junction.
- 3.6 The application for the additional river Stort road

crossing (the eastern crossing) proposes a single carriageway road way which will leave the current alignment of Eastwick Road to the east of the Eastwick roundabout and pass through the current gap between development at Terlings Park and Pye Corner. The road will be routed south eastwards to a new junction with a new northward leg (see below), then curve south over the river to join up at a new junction with River Way in Harlow. River Way allows an onward connection to be made to Edinburgh Way, the east-west route of the A414 in Harlow.

- 3.7 The additional northward leg, referred to above, will make a connection back to Eastwick Road at a point north east of Pye Corner, effectively forming a by-pass to this existing area of development.
- 3.8 Should planning permission be secured, the development in the area will comprise part of the Harlow and Gilston Garden Town (HGGT). The Garden Town partners¹ (Partner Councils) have been working together to support the successful implementation of development to deliver the combined Vision for the Garden Town. As part of the combined work and as a result of land constraints identified at various sites across the Garden Town, the Partner Councils commissioned consultants (Cushman and Wakefield) to draw up a land acquisition strategy.
- 3.9 In respect of the Gilston Area and its infrastructure requirements, the strategy of the Partner Councils is, in the first instance, to allow the Gilston area landowners/ developers to negotiate with third party landowners, as necessary, to acquire by agreement any additional land which is required in order for the Transport Infrastructure to be delivered. This role has been taken up by the Applicant as they are the majority landowner in the area and have submitted the associated planning

¹ East Herts DC, Epping Forest DC, Harlow DC, Essex CC and Herts CC

applications.

- 3.10 If the outcome of those negotiations are unsuccessful, the strategy is then to revert to the use of powers available under the Town and Country Planning Act 1990 to compulsorily purchase the land required. The Guidance makes it clear that it is sensible to progress preparatory work on CPO action in parallel with negotiations with landowners so that valuable time is not lost.
- 3.11 The land which is likely to be required for the development of the Transport Infrastructure is shown on the plans attached as **Appendix 1**. Together with the associated ownership schedules, these plans set out which organisations or private individuals are currently in control of land required to enable the delivery of the Transport Infrastructure.
- 3.12 Members will note that the land required is located both within the East Herts District Council area and the Harlow District Council area. Neither Council is able to exercise the CPO powers available to it in relation to land that is located outside of its administrative area. As a result, if acquisition by use of compulsory powers is required in relation to land in both Council areas, then both Councils will need to exercise their CPO powers. In this respect a parallel report on this matter is being submitted to the Cabinet and Council at Harlow Council. Members will note that the recommendation to this report is provisional on Harlow District Council also resolving to proceed with the use of powers available to it.
- 3.13 In relation to the Transport Infrastructure referred to here, and wider transport infrastructure across the Garden Town, Herts CC led a bid for government funding under the Housing Infrastructure Funding (HIF) programme. The bid was successful, albeit under the separate Housing Investment Grant (HIG) scheme. The successful outcome has led to the availability of funding,

to a value of £172m, for the implementation of wider transport infrastructure. This delivery programme for the use of that funding includes the transport infrastructure referred to in this report.

- 3.14 HCC are now in negotiation with central government, through Homes England, to resolve the contractual arrangements relating to the use of the HIG funding. An important element of that for all involved, is the programme of delivery. HIG funding has been awarded on the basis that it will accelerate the delivery of housing in the Gilston and wider Garden Town area.
- 3.15 HIG programme arrangements remain to be resolved. The broad elements of the programme see a construction timescale of not less than 2 years. It is not possible to commence construction until all the land required to implement it is under the control of either the Applicant or the Council(s). In that respect, if the use of CPO powers is necessary, the Partner Councils consultants advise that a period of not less than 2 years should be also be allowed for this. This gives a combined programme timescale of 4 years. Given the objective of the HIG funding is to accelerate delivery timescales, it is therefore appropriate to commence CPO action, if required, without delay.
- 3.16 This report is submitted to set out the current circumstances in relation to this matter. It seeks authority, in principle, for the use of CPO powers available to the Council. The Applicant will continue to negotiate with third party landowners to seek to acquire land, as required, by agreement. If that process is unsuccessful, then a further report will be submitted to the Executive and Council to seek authority to commence CPO processes.
- 3.17 Undertaking CPO action has the potential to result in budget implications for the Council. These implications range from the modest, eg officer time involved in

preparing reports and other background work, through to the more substantial, eg if the powers are utilised successfully and compensatory payments are required to be made for land acquired.

- 3.18 As a result, the Council has sought an Indemnity Agreement (the CPO IA) with the Applicant, such that it (the Applicant) will cover all costs incurred by the Council. The Agreement is currently in preparation. Authority is also sought through this report to finalise the terms of the CPO IA and, once satisfactory, to enter into it. No further work in relation to this matter will be undertaken until the Agreement is concluded and all further costs incurred by the Council are indemnified.

4.0 Options

- 4.1 The alternative options to the use of CPO powers are either to continue to seek to acquire the necessary land for the Transport Infrastructure by negotiation (with no potential for subsequent CPO activity) or to pursue alternative infrastructure delivery arrangements.
- 4.2 In relation to the first of these (continue to seek to acquire by negotiation with no potential for subsequent CPO activity), the information provided by the Applicant indicates that action to seek to acquire the necessary land by agreement has been undertaken. Given the timescales referred to above in relation to the HIG funding, pursuing this option, with no quantifiable prospect of certainty of outcome, is considered to represent a significant risk to the delivery of the infrastructure.
- 4.3 If Members agree to the approach set out in this report, negotiation to seek to acquire by agreement will continue during the course of any CPO action. The option of ruling out the use of CPO powers at this stage is not considered realistic however.
- 4.4 The second option referred to above relates to the

possibility of identifying other options for the delivery of transport infrastructure which would only require land already in the control of either the applicants, the Council or another party that would allow it to be acquired by agreement.

- 4.5 Policy GA2 of the East Herts District Plan requires the delivery of an additional River Stort crossing either to the east or west of the existing crossing. The route to the east has been preferred by ECC because it better mitigates the impact of the Gilston development in relation to traffic flows within Harlow.
- 4.6 No detailed proposals are before the Council in relation to any alternative additional crossing. In the absence of any alternative proposals and given delivery timescales it is considered that there is no reasonable prospect of any alternative option coming forward, which does not have its own land ownership constraints, in an acceptable timescale.
- 4.7 In addition, this would not resolve any land acquisition requirements which may be necessary in relation to the enhancement of the existing A414 river crossing. Because this is an enhancement of the existing facility, it is not possible to avoid land acquisition issues which may be related to this as the infrastructure cannot be located anywhere else.

5.0 Risks

- 5.1 There are risks associated with undertaking CPO action. Any such action is subject to scrutiny through public inquiry and decisions are subject to legal challenge. However, given the requirement to acquire the necessary land to deliver the Transport Infrastructure to support the delivery of homes, such risks are considered to be outweighed by the need to ensure that housing development takes place and the public benefits associated with the delivery of the Transport Infrastructure are realised.

- 5.2 Budgetary risks are considered to be mitigated subject to the completion of the necessary indemnity Agreement as referred to above.

6.0 Implications/Consultations

- 6.1 Owners of land of which acquisition has been sought will be aware of the circumstances set out in this report because of the negotiations between themselves and the Applicant. No separate consultation arrangements are required.

Community Safety

No implications

Data Protection

No specific implications. All information required and utilised in undertaking any CPO activity will be used and safeguarded in accordance with normal data protection protocols.

Equalities

All public sector acquiring authorities are bound by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. This means that they must have 'due regard' or think about the need to:

- eliminate unlawful discrimination
- advance equality of opportunity between people who share a protected characteristic and those who don't
- foster or encourage good relations between people who share a protected characteristic and those who don't

Having 'due regard' means public authorities must consciously consider or think about the need to do the three things set out in the PSED.

In exercising their compulsory purchase and related powers (e.g. powers of entry) acquiring authorities must have regard to the effect of any differential impacts on groups with protected characteristics.

To date, equality implications have been considered through the undertaking of an Equalities Impact Assessment.

In progressing the Orders and carrying out any further consultations the Council will take into account the needs of persons with protected characteristics and the requirements of the PSED.

Environmental Sustainability

The transport infrastructure being enabled by the acquisition of land is that considered necessary to support the Partner Councils Garden Town Vision. A key element of this Vision is to achieve a target of 60% of journeys undertaken by residents in the new garden communities by active, healthy and sustainable modes. Delivery of the infrastructure has significant implications in relation to the transport sustainability of the new development.

Financial

As set out above, it is anticipated that any budgetary impacts will be mitigated by the action of securing an Indemnity Agreement

Health and Safety

None

Human Resources

None

Human Rights

Whilst this report only seeks an 'in principle' decision from the Council that it is prepared to authorise the use of CPO powers, officers would provide the following guidance at this stage on the human rights implications of pursuing CPO action. The Guidance confirms that an acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European

Convention on Human Rights (ECHR) (right to the peaceful enjoyment of property) and, in the case of a dwelling, Article 8 of the ECHR (right to respect for private and family life, home and correspondence. Before deciding whether to authorise a CPO, the Council will need to consider the balance and compatibility between the compulsory powers sought and the rights enshrined in the ECHR and whether there is a compelling case for a CPO in the public interest which means that the acquisition of land to enable the scheme to proceed, brings benefits to the area, which could not be achieved without the use of compulsory purchase powers.

Legal

All actions will be taken within and ensuring that full legal requirements are met.

Specific Wards

Yes - Hunsdon

7.0 Background papers, appendices and other relevant material

7.1 Appendix 1 – plans and associated details of ownership

The information set out in Appendix 1 is exempt from publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 in that it provides details of the owners of land to which this report relates.

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