

East Herts Council Report

Executive

Date of meeting: 19 April 2022

Report by: Councillor Linda Haysey, Leader of the Council

Report title: East Hertfordshire District Council (The Strategic Infrastructure Works (SIW) East Hertfordshire) Compulsory Purchase Order 2022

Ward(s) affected: Hunsdon and Sawbridgeworth

Summary

In October 2020 Full Council and Executive resolved, in-principle, to be prepared to exercise compulsory purchase powers to compulsorily purchase land in the Gilston area. The resolution was subject to officers referring the matter back to Executive to seek authority to make a compulsory purchase order. This report sets out the relevant considerations for Executive to determine whether or not to proceed with the use of compulsory purchase powers in relation to land in the Gilston area.

RECOMMENDATIONS FOR Executive

- (a) East Herts District Council approves the making and sealing of a compulsory purchase order under the powers conferred by sections 226(1)(a), 226(3)(a) and 226(3)(b) of the Town and

Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to:

- (i) acquire all that land shaded pink and edged red on the four plans attached at **Appendix 1**, including the area of Open Space which is shown more particularly (shaded green) on the plan at **Appendix 2**;
- (ii) acquire all those rights (or interfere with existing rights) over the land shaded blue and edged on the four plans attached at **Appendix 1**,

the interests in which are described in the schedule of interests, attached at **Appendix 3** (collectively known as the Order Land).

- (b) The Head of Planning and Building Control in consultation with the Head of Legal and Democratic Services be authorised to take all steps, and to enter into all documentation, on behalf of East Herts District Council in connection with the making, confirmation, submission or implementation of the compulsory purchase order, including in respect of any public inquiry, appeal or legal challenge concerning the same
- (c) The Head of Planning and Building Control in consultation with the Head of Legal and Democratic Services be authorised to make amendments to the compulsory purchase order or other connected document (e.g. to make amendments to the Order Maps and to the boundary of the Order area to align with the Works and the land and rights requirement once the boundary is finalised), provided that the proposed amendments do not

significantly alter the scope of the compulsory purchase order as presented to Executive by this report.

(d) The Head of Planning and Building Control in consultation with the Head of Legal and Democratic Services be authorised to take all steps to:

(i) negotiate agreements with any landowners, leaseholders or occupiers of land included within the compulsory purchase order; and / or

(ii) negotiate agreements with any party with an interest in or right over any land included within or affected by the compulsory purchase order,

such agreements to include the acquisition of land or interests in land, payment of compensation or any other arrangements needed to facilitate the delivery of the SIW (such as crane over sailing licences) and to assemble the land and interests identified in the compulsory purchase order

(e) The Head of Planning and Building Control in consultation with the Head of Legal and Democratic Services be authorised to take all steps in respect of any open space land affected by the compulsory purchase order, such authorisation to extend to:

(i) making an application to the Secretary of State seeking a certificate under section 19(1) and/or paragraph 6 of Schedule 3 of the Acquisition of Lands Act 1980 in connection with a site or sites to be identified, as being a suitable replacement/exchange site for the open space

land that is to be acquired or affected by the compulsory purchase order;

- (ii) exercising its powers under section 203 of the Housing and Planning Act 2016 to override any easements and rights over the open space land identified at Appendix 2;
- (iii) the acquisition of the selected exchange land site/s and subsequent disposal or vesting of any rights in it, following the implementation of any necessary works and improvements to the same, so to ensure that the selected exchange land site is equally advantageous to the persons and public that use the existing area of open space land.

1.0 Proposal(s)

- 1.1 The exercise of powers conferred by sections 226(1)(a) and 226(3)(a) and 226(3)(b) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to compulsorily acquire land in the Gilston Area.

2.0 Background

(All capitalised terms in the remainder of this report are defined in the glossary appearing at the end of this report.)

- 2.1 On 6 October 2020 Executive considered the Report at **Appendix 4.**

- 2.2 Pursuant to the Report, Executive recommended to Full Council that, in principle, the Council should be prepared to use the powers available to it under section 226(1)(a) of the Act to compulsorily purchase land within the District to enable the construction of the Works. The Executive further resolved that where it was considered necessary to make a compulsory purchase order, the Head of Planning and Building Control would bring the matter back to Executive to seek further authority. These recommendations were approved by a meeting of Full Council on 21 October 2020.
- 2.3 Since the date of the Report, the HGGT Scheme has continued to progress. Homes England has entered into a grant funding agreement with HCC to procure delivery of the Works (together with other works). HCC has, in turn, entered into an agreement with Places for People (PfP) in order to passport up to £129million of the grant funding to PfP for PfP to procure the delivery the Works and other agreed infrastructure projects.
- 2.4 The Council's Development Management Committee resolved to grant planning permission for the Works on 22 February 2022 pursuant to applications 3/19/1046/FUL (relating to the Central Stort River Crossing) and 3/19/1051/FUL (relating to the Eastern Stort River Crossing). The planning permissions were granted on 18 March 2022.
- 2.5 Appended to this report are the Report (**Appendix 4**) and the latest draft Statement in support of the proposed CPO (**Appendix 5**). The Report and the Statement contain all the factual background to the CPO, the HGGT Scheme, the

Wellbeing Benefits and the Works and should be read in conjunction with this report.

3.0 Reason(s)

3.1 The use of compulsory purchase powers is a significant step and one which the Council should not promote lightly. The Council / Executive should be assured that the exercise of compulsory purchase powers is in accordance with the relevant provisions of the Act and the Guidance.

3.2 The remainder of this report considers those factors.

Statutory power to compulsory purchase

3.3 Section 226(1)(a) and s226(1A) of the Act state that (condensed by author for ease of reading):

“A local authority...shall...have power to acquire compulsorily any land in their area...if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land,

But a local authority must not exercise the power...unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:

(a) the promotion or improvement of the economic well-being of their area;

- (b) *the promotion or improvement of the social well-being of their area;*
- (c) *the promotion or improvement of the environmental well-being of their area."*

3.4 Paragraphs 95 and 103 of the Guidance on the use of s.226(1)(a) provide that:

"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." (95)

"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." (103)

3.5 For the purposes of s.226(1)(a) of the Act:

- (3) the Council is an authority to which s.226 of the Act applies;
- (b) the Order Land is within the District;
- (c) the Works will constitute development on or in relation to the Order Land. The HGGT Scheme contains further

development as described in this report and the Statement.

- 3.6 For the purposes of s.226(1A), the Works will contribute to the achievement of the Wellbeing Benefits.

The most specific power

- 3.7 When undertaking a compulsory purchase, an acquiring authority is expected to use the most specific power available.

- 3.8 Paragraph 96 of the Guidance relates to the use of s.226 of the Act where other powers might be available and states:

“This power should not be used in place of other more appropriate enabling powers. The statement of reasons accompanying the order should make clear the justification for the use of this specific power. In particular, the Secretary of State may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.”

- 3.9 There are compulsory purchase powers available under the Highways Act 1980, exercisable by the local highway authorities, which could be deemed suitable for the acquisition of the land and rights needed for the delivery of the highway infrastructure such as the Works. However, in this case the local highway authorities, HCC and ECC, have declined to exercise those powers because they consider planning compulsory purchase powers under the Act are more

appropriate. Those planning compulsory purchase powers under the Act are more restricted in their use than those under the Highways Act 1980 and so the justification required for the CPO under the Act will be more demanding.

A compelling case in the public interest

3.10 Paragraph 12 of the Guidance states that: *“A compulsory purchase order should only be made where there is a compelling case in the public interest.”*

3.11 The use of compulsory purchase powers is justifiable and that there is a clear and compelling case in the public interest to acquire the Order Land, as set out below.

Justification for the CPO within the context of the HGGT Scheme

3.12 The Council is committed to the HGGT Scheme and is working in partnership with Harlow District Council, Epping Forest District Council, HCC and ECC to bring forward transformational growth as part of the HGGT Scheme. The HGGT Partners (which include the Council) approved the HGGT Vision on 19 December 2018 which seeks to ensure that any plans related to the HGGT Scheme support sustainable living and a healthy economy and provide good quality of life for existing and future residents.

3.13 Section 4 of the Statement sets out the need for the CPO and the Works but in summary:

- (a) The Order Land is required for the construction of the Works. The Works are an essential element of the HGGT Scheme and, without the Works, the HGGT Scheme could not be delivered in full as set out in the HGGT Vision and the EHDC and HDC development plans.
- (b) The Works will provide transport capacity improvements to facilitate growth within the HGGT Scheme, achieve the sustainable transport objectives and address existing congestion. The planned housing and growth of the HGGT Scheme gives rise to the need for the Works.
- (c) The Works are vital components of the proposed sustainable transport corridors within the HGGT Scheme and will contribute to the achievement of the mode share targets as the sustainable transport corridors will support active travel (cycling and walking) as well as a mix of affordable, rapid and high quality public transport options.
- (d) The Works will improve and increase transport capacity on the existing network to enable the delivery of the strategic growth areas within the HGGT Scheme.
- (e) The Works are considered critical infrastructure to the District and have been designated as such by the HGGT Board via the Harlow and Gilston Garden Town Infrastructure Delivery Plan of April 2019 (HGGT IDP). They will facilitate the delivery of the growth planned at the HGGT Scheme, which is necessary for the regeneration of the District. It will also deliver the

northern section of the proposed sustainable transport corridor to Harlow town centre and will enable the Council to meet its objective, set out in the HGGT Transport Strategy, of having 60% of all journeys from the new development in the Gilston Area made by walking, cycling or public transport rather than private vehicles.

3.14 Further details of the current deficiencies within the District's infrastructure network are set out at paragraph 7 of the Statement. Paragraph 7.5 summarises the housing need within the District.

Planning policy context

3.15 The planning policy context in support of the Works is set out in section 9 of the Statement. However, in summary:

- The Works have been identified as strategic infrastructure in the adopted development plans of the Council and in the HGGT IDP. The EHDC District Plan was adopted in October 2018.
- A comprehensive appraisal of the planning policy relevant to the Works is set out in the report to the Councils' Development Management Committee on 22 February 2022.

3.16 The adopted East Herts District Plan sets out the framework to guide and shape development in the District to 2033 and beyond. The District Plan acknowledges in policies GA1 ("the Gilston Area"), GA2 ("the River Stort Crossings") and DPS4 ("Infrastructure Requirements") that the Spatial Development Strategy will be underpinned by the phased provision of infrastructure necessary to support development in the District

and the wider housing market area so to ensure that capacity is provided and impacts are satisfactorily mitigated in a timely manner. Policy DPS4 and GA2 of the District Plan identify the following 'strategic infrastructure' (which is described as being infrastructure which meets more than site-specific needs and which supports the overall level and pattern of growth outlined in the Development Strategy at paragraph 3.3.21 of the District Plan) as being needed over the plan period to support the growth and meet the objectives of the District Plan:

- (i) the widening of the existing River Stort crossing (part (c) of policy DPS4 and the first bullet of GA2);
- (ii) the provision of a second River Stort crossing (part (c) of policy DSP4 and the second bullet of policy GA2)

3.17 The CPO is necessary to implement the proposals of the East Herts District Plan, as envisaged by paragraph 3.3.13 of the District Plan and that there are strong planning justifications for the use of CPO powers as proposed.

3.18 The Works are in accordance with the strategic objectives of national and local policies set out in the planning policy documents.

3.19 As stated above, the Council's Development Management committee resolved to grant planning permissions for the Works at its meeting of 22 February 2022.

The Wellbeing Benefits

3.20 The Wellbeing Benefits are set out in full at paragraphs 11.1 – 11.20 of the Statement. Executive is referred to those paragraphs. However, in summary only the Works will deliver the following benefits to the District:

- (a) improve / expand / enhance transport capacity which will unlock and support housing development and employment opportunities in the Gilston Area
- (b) help facilitate the provision of a sustainable transport corridor which will improve accessibility and connections between the Gilston Area and the District more generally with the key areas in Harlow as well as promote sustainable transport options;
- (c) facilitate additional housing of different sizes and types, including affordable housing.

Paragraphs 11.13 to 11.21 of the Statement set out the full benefits of making the CPO, which include the benefits in the District and the delivery of the HGGT Scheme.

Financial viability

3.21 Paragraph 13 of the Guidance states that:

“If an acquiring authority does not: have a clear idea of how it intends to use the land which it is proposing to acquire; and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale it will be difficult to show conclusively that the compulsory acquisition of the land

included in the order is justified in the public interest, at any rate at the time of its making."

- 3.22 The Council has a clear idea of how it intends to use the Order Land; for the delivery of the Works.
- 3.23 The necessary resources are available for the acquisition of the Order Land and the completion of the Works, as set out below.
- 3.24 Paragraph 14 of the Guidance advises that, when preparing its justification for an order, the acquiring authority should address the sources and timing of funding. Paragraph 106 of the Guidance provides that a general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed.
- 3.25 All costs associated with the Works and the CPO are to be met by PfP. The Council is satisfied that the necessary resources are likely to be available to achieve the intended use of the Order Land within a reasonable timescale by reference to:
- (a) the indication of PfP's financial standing and development standard as set out at paragraph 11.47 of the Statement;
 - (b) the indemnity against costs associated with the assembly of the land for the Works (including any costs resulting from blight notices) and the making of the CPO given to the Council by PfP by way of an indemnity agreement dated 14 April 2021;

- (c) HCC has agreed to make up to £129 million of the Homes England grant funding (£171,800,000) available to PfP to forward fund the delivery of the Works. HCC has agreed to passport this funding to PfP via a contract dated 31 March 2021. The contract with PfP provides that PfP forward fund the full costs of the Works including any cost overruns, regardless of the amount of funding it receives from HCC;
- (d) PfP and the developer of Village 7 will be required to repay the funding used to deliver the Works and other infrastructure. The funding that is repaid will create a rolling infrastructure fund (RIF) which will be administered by the HGGT Board and used to fund other infrastructure needed to support the HGGT Scheme
- (e) the planning agreement for the development of the Gilston Area, including the Gilston Park Estate, (an area of land within the Gilston Area and HGGT Scheme that is owned by PfP and intended for residential development) will require PfP to deliver the Works by set triggers that have been modelled and agreed with the highways authority, relative to the delivery of housing (which shall be restricted) in the Gilston Area and planned surrounding growth. Furthermore, those Works which PfP are to deliver will form the subject of a planning obligations that will bind PfP and any successors in title to the current PfP residential development land.

Expedience

3.26 The grant funding from Homes England is time limited, with a requirement to spend the funds by 31 March 2025. This places an additional imperative on the Council to pursue the CPO, as any delay in acquiring the Order Land will threaten the ability to draw down the funding for the Works and the establishment of the RIF which will assist with funding the HGGT Scheme. Homes England are supportive of the HGGT Scheme and the Works and are working with HCC to ensure the full amount of grant can be drawn down and committed within the required timescales.

3.27 In light of the above, it is expedient to pursue the CPO now and there are sufficiently compelling reasons for the powers to be sought at this time.

Open Space

3.27a Within the Order Land there is an area of amenity greenspace, calculated as being 3,639sqm, that amounts to an area of "open space" (as defined by s19(4) of the Acquisition of Land Act 1981). Whilst the majority of the open space will be capable being returned following the completion of the ESC (and the Council will offer to return the land to the Terlings Park Management Company free of charge), some will be permanently affected and it is not possible to acquire land or rights on a temporary basis under the Act.

3.27b PfP, has identified three (3) suitable sites of "exchange land" which, it considers, satisfy the statutory tests in s19(1) of the Acquisition of Land Act 1981 and can be provided to compensate the persons and public that will be affected by the

existing area of open space being acquired by CPO. These, and any further potential exchange land sites, will be subject to further assessment and once the preferred exchange land site has been identified by PfP and the Council, a separate application will be made to the Secretary of State, if appropriate, seeking confirmation (by way of a certificate) that the proposed exchange land site satisfies the relevant statutory provisions and there is no need for the open space acquisition to be approved by a special parliamentary procedure.

3.27c Delegated authority is sought from the Executive to enable officers to continue to work with PfP to undertake the necessary actions to identify suitable exchange land.

Other considerations

3.28 The Development Management Committee granted consent for the Works on 18 March 2022.

3.29 The CPO and the Works are dependent upon a parallel compulsory purchase order being made by HDC. A report identical (as far as reasonably possible) to this was presented to HDC's Cabinet at its meeting of 24 March 2022. The recommendations set out in that report, consistent with those set out in this report, were endorsed by the HDC Cabinet at that meeting.

3.30 Both ECC and HCC, as relevant highway authorities, will need to secure appropriate bridging orders in respect of those aspects of the Works affecting the River Stort. The orders are to ensure that the structures will not interfere with the navigation rights

of existing users. There is nothing that currently suggests there is likely to be any difficulty in obtaining these orders. Notably, the Canal and River Trust did not object to the planning applications for the Works or suggest that they have any concerns about a potential interference.

3.31 The Executive should note that the Council would not seek to exercise the powers sought pursuant to this report unless the HDC compulsory purchase order could progress in tandem.

3.32 The proposed Order Land is of significant size and of differing types. However, there are no known physical or legal impediments to suggest that the Works are unlikely to be implemented.

3.33 Although the CPO will, if confirmed, authorise the acquisition of land and rights for the Works only, pursuant to Sections 5 Rule 2 and Section 6A of the Land Compensation Act 1961, the HGGT Scheme is the scheme of development underlying the CPO that is to be disregarded for the purposes of assessing compensation in the "no-scheme world".

3.33a When assessing compensation, one of the key principles is that compensation payable for compulsory acquisition is based on the 'principle of equivalence' (ie that the owner should be paid neither less nor more than their loss). The value of land taken is the amount which it might be expected to realise if sold on the open market by a willing seller (Land Compensation Act 1961, section 5, rule 2), disregarding any effect on value of the scheme of the acquiring authority (known as the no scheme' principle). Under the 'no scheme principle' (the Land

Compensation Act 1961, section 6A) any increases or decreases in value caused by the scheme or the prospect of the scheme must be disregarded. In this instance the HGGT Scheme is the scheme of development underlying the CPO that is to be disregarded for these purposes. The Executive should note that PfP has agreed to indemnify the Council against the costs of compensation, regardless of the amount or how it is ultimately assessed.

3.34 Paragraph 2 of the Guidance states that the acquiring authority will be expected

“...to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.”

All reasonable steps to acquire the land and rights have been taken, albeit with all negotiations and offers to date having been undertaken by PfP, acting on behalf of the Council and / or HDC. Details of the steps taken in this regard to date are set down at paragraph 12 of the Statement. Reasonable steps have been made and will continue to be made to acquire the land by agreement.

3.35 It is considered that, as at the date of this report, all statutory procedures relevant to the CPO have been followed correctly.

4.0 Options

4.1 Paragraph 106 of the Guidance states that the Secretary of State can be expected to consider “whether the purpose for

which the acquiring authority is proposing to acquire the land could be achieved by any other means”, including alternative proposals and alternative locations, when deciding whether to confirm an order under section 226(1)(a) of the Act.

- 4.2 As outlined at paragraph 11.21 – 11.41 of the Statement, there has been a comprehensive investigation of the purpose of the Works and the appropriateness of other options necessary to facilitate the HGGT Scheme and it has been determined that the Works, including their design, location and extent as proposed, are the only means to achieve the planning policy and HGGT Vision objectives, including the sustainable mode share targets. The Council can be satisfied that the overall need for the Works and the specific reasons for their scale and location are justified. The Council can also be satisfied that the land and rights included in the CPO are no more than is necessary to achieve the objectives of the CPO.

5.0 Human Rights and the Public Sector Equality Duty

- 5.1 The Council remains committed to agreeing voluntary acquisition of the Order Land where possible and such negotiations will continue alongside the CPO.
- 5.2 The Order Land is owned by numerous persons (including some in the ownership of PfP, HDC, ECC and HCC). A brief summary of the land ownership position is set out at section 5 and Schedule 1 of the Statement.
- 5.3 All known owners, occupiers and users affected by the CPO have been contacted by Montagu Evans, agents of PfP, acting

on behalf of the Council and / or HDC, with a view to progressing negotiations to acquire interests by agreement. All parties have been provided with information about the SIW, the likely timescales for acquisition and the intention to use CPO powers. All parties have been informed that private treaty negotiations will be based on the compensation which would be payable if their interests were compulsorily acquired. PfP has offered to pay the reasonable fees for the appointment of CPO advisors.

- 5.4 PfP have sought to enter into negotiations with all persons having an interest in the Order Land, with a view to acquiring all required interests for the HGGT Scheme voluntarily. Further details of which are included within the Statement.
- 5.5 Some of the negotiations have been favourable and it is expected that some of the required interests for the delivery of the Works will be purchased by way of agreement. However, it appears likely that not all of the rights and land necessary to deliver the Works will be capable of being secured by way of agreement, in the time required or at all, which is why there is a need for the CPO.
- 5.6 It is approved practice for a CPO to proceed in parallel with negotiations to purchase the Order Land voluntarily and the Council shall, via PfP, continue to pursue negotiations.

Human rights

- 5.7 Paragraph 2 of the Guidance states that

“when making...an order, acquiring authorities...should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.”

5.8 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. In order to avoid contravening individual human rights by making a CPO, it must be demonstrated that the CPO is in the public interest and that it is necessary and proportionate to make the CPO. Provided the requirements of section 226 (1) and (1A) of the Act have been fulfilled (i.e. the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of the local authority's area), this will provide a very substantial basis upon which to make the case that the scheme is policy based and is consistent with statutory objectives

5.9 Paragraph 13 of the Guidance states that:

“The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest.”

5.10 Articles 6 and 8 and Article 1 of the First Protocol are the main potentially relevant Articles and Section 13 of the Statement gives fuller details as to how human rights may be affected. It is considered that the purposes for which the compulsory purchase order is to be made justifies interfering with the

human rights of those who use or occupy the land or have an interest in it for the following reasons:

- (a) compulsory purchase of land is not contrary to the European Convention on Human Rights if it is undertaken in the public interest and in accordance with the law and procedures laid down by statute;
- (b) None of the plots within the Order Land contain residential properties;
- (c) There are no businesses situated within or operating from the Order Land that would be unable to continue operating during or after the completion of the Works except for temporary periods of one to two days duration during construction.
- (d) Efforts have been taken to minimise the detrimental impacts and interference upon certain landowners through the design of the Works and reduction of the land falling within the Order Land.
- (e) There has been a significant programme of dialogue with existing business and nearby residents to understand and appropriately mitigate any detrimental impacts upon them both during construction and permanently as a result of the Works and further efforts will be taken as part of the discharge of planning conditions to minimise the disruption and level of impacts on them.

- (f) Affected owners and occupiers will have the benefit of all applicable compensation provisions, whether by reference to legislation concerning compulsory purchase or otherwise.

Public Sector Equality Duty

- 5.11 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. Throughout the compulsory purchase process acquiring authorities must have due regard to the PSED.
- 5.12 An Equality Statement ("EqS") has been prepared by Quod (acting on behalf of PFP) to provide information to both HDC and EHDC in relation to their use of compulsory purchase powers.
- 5.13 Attached to this report is an equalities impact assessment ("EqIA") which details the matters relevant to the Council's consideration of the public sector equalities duty.
- 5.14 Whilst the use of a CPO is a serious and significant step, it is considered justified on the basis of the compelling need in the public interest.
- 5.15 The EqS and the EqIA concluded that there would be no direct negative equality impacts against any protected characteristics.

- 5.16 The EqS and the EqIA also acknowledge significant potential positive impacts of the HGGT Scheme which be made possible as a result of the CPO.
- 5.17 It is considered that due regard has been given to the impact of the CPO on all relevant groups with protected characteristics. In progressing the CPO the Council will continue to take into account the needs of those with protected characteristics and its PSED obligations.

6.0 Ongoing Land Ownership

- 6.1 It is anticipated that the majority of the Order Land will be dedicated as highway maintainable at the public expense, with the Council retaining the subsoil. It may be that the Council retains ownership of small areas of land which are not adopted by HCC following the completion of the Works, subject to the normal requirement to transfer any unused Order Land back to the original owner in accordance with the relevant provisions of the Guidance.
- 6.2 Where the Council is required or requested to undertake any land transactions related to the CPO or the Works, such transaction shall be in accordance with the Council's constitution and any applicable legislation.

7.0 Conclusion

- 7.1 In accordance with sections 226(1)(a) and 226(3)(a) of the Act the Council can be satisfied that the proposed CPO:

- (a) will facilitate the carrying out of development, redevelopment or improvement on or in relation to the Order Land, namely the construction of the Works (which have been granted planning permission).
- (b) will, as a result of the Works, deliver the Wellbeing Benefits to the District.
- (c) will contribute to the progress and delivery of the HGGT Scheme which is the scheme underlying the CPO.

7.2 Whilst it is acknowledged that the use of compulsory purchase powers is a measure of last resort, it is considered that there is little prospect of all of the Order Land, as required for the Works, being acquired through negotiation within a reasonable timeframe, or at all, and that any delays to delivering the Works could jeopardise part of the funding and the establishment of the RIF. The Works have a high likelihood of being delivered if the Order Land can be acquired. The Wellbeing Benefits are dependent on acquiring the Order Land, as is the success of the HGGT Scheme.

7.3 The Council can therefore be of the firm view that the use of compulsory purchase powers is justifiable, that there is a clear and compelling case in the public interest to acquire the Order Land and that there is a reasonable prospect of the Works proceeding should the Order Land be acquired.

7.4 In summary, Council officers are confident this is a workable and viable proposal for the CPO and invite Executive to make the resolutions detailed above.

8.0 Risks

- 8.1 As stated above, the use of compulsory purchase powers is a significant step and, as such, the process is complex. There is a risk that the Council does not properly satisfy the tests required pursuant to the process, meaning the CPO would not be approved by the Secretary of State. To mitigate against this risk, the Council is being supported by a range of professional advisers working across this proposed CPO and the parallel HDC decision.
- 8.2 Given the scope and complexity of the HGGT Scheme, the CPO and the Works it is anticipated that objections will be received from persons affected by the CPO. The Council will, together with its professional advisers, seek to negotiate with the objectors with a view to having the objections withdrawn. However, where objections remain a public inquiry will be triggered. There is a risk that the CPO is not approved via the inquiry. In mitigation, the Council is being supported by a range of professional advisers working across this proposed CPO and the parallel HDC decision.
- 8.3 In the event that the CPO is confirmed, there is a formal legal process that the Council would need to follow in order for the acquired land and rights to vest in the Council. The Council will be guided on this process by its professional advisers. Once the land has vested in the Council all liabilities in relation to the land will pass to it as owner and the consent of the Council will need to be obtained before any person passes onto the land or carries out any works in relation to the delivery of the Works.

The Council would operate within the scope of existing delegations in this report and within its constitution in granting the necessary rights of access for the Works. The Council would also ensure that all statutory obligations are met.

- 8.4 There are risks in acquiring and holding land. If the CPO is successful, the Council becomes a land owner in relation to the site for the Works, where it currently has no land ownership interests. Part of the land to be acquired by CPO comprises a former landfill site. There are risks in holding this land and further risks will arise once land investigations and/or development commences on the land. The land will be remediated to the extent considered necessary for the proposed Works as part of the discharge of the planning conditions and the development of the Works. Once the works have been completed the contamination risk will be largely resolved, subject to ongoing monitoring.
- 8.5 The second risk in owning land that is needed to deliver the Works is that the Council would have a default liability for any the infrastructure that is built on it until it has been dedicated as highway and adopted by the Highway Authority. These risks include PfP being unable to complete the Works or the relevant Highway Authority not being willing to adopt any of the infrastructure if it has not being completed to the required specifications/standards.
- 8.6 The covenant strength of PfP mitigates this risk considerably as will the safeguards and step-in rights in the highways agreement which will ensure that the Highway's Authority carefully monitor performance and delivery. After completion

of the Works, the Council will have little to no on-going requirement in relation to the underlying freehold of any land that has been built upon as part of the Works once it has dedicated the relevant components as highway. This is because the Highways Authority will be responsible for ongoing maintenance.

- 8.7 It is possible that the Council may also retain within its ownership small areas of land acquired by CPO that are surplus to requirements (i.e. the land is not required for the ongoing operation of any new highway) and which the previous owners do not wish to be transferred back to them.
- 8.8 There are a range of additional risk mitigation measures that are available to the Council to minimise its liability following the vesting of the CPO land. These include:
- (a) consideration of the current information available to the Council with respect to the former landfill site as well as conditions in the new planning permissions to control how the Works can be carried out and monitored by the Council as Local Planning Authority;
 - (b) early provision of Licence Agreements with PfP as developer to enter Council owned land and through which the Council can be indemnified in relation to risks that arise on the acquisition of the land and whilst development is being undertaken;
 - (c) becoming a party to Agreements under s38/278 of the Highways Act, that will be sought by HCC and which

provide indemnities in the circumstances where development is not completed or not completed to an acceptable standard;

- (d) ongoing engagement with HCC and PfP and involvement in decisions to be taken with respect of the dedication of the roads (as developed) for highway purposes and their maintenance at public expense thereafter
- (e) identifying appropriate long term custodianship for any land for which the Council may remain the freehold owner but which is not dedicated or adopted.

8.9 Given the above range of mitigating actions it is considered that risk impact, should any of the above outcomes occur, is minor.

8.10 If the CPO process fails, the impact is likely to be largely reputational with some adverse media coverage. As indicated, the Council has a CPO Indemnity Agreement in place that will cover any costs exposure.

8.11 Finally, there are risks if the Council were to decide not to proceed with CPO action. This would primarily relate to the inability to ensure that the necessary land was available in order to implement the Works. The works comprise a significant element of the enabling infrastructure to deliver growth in both the Gilston Area and the wider Garden Town. Inability to deliver the growth would put into question the ability of the Council to implement its District Plan and to work with its HGGT partners to deliver the planned growth across the HGGT area. In the absence of the use of CPO powers and

given the experience of the outcome of negotiations with third party landowners to date, it must be considered probable that this risk will occur if the decision was made not to proceed with the CPO.

8.12 The impact of such an outcome would be considered significant, given the availability of government funding referred to earlier in this report and the national profile of the Garden Town in this respect.

9.0 Implications/Consultations

9.1 Community Safety

Yes – it will be necessary to undertake normal and appropriate land management and security procedures if the Council acquires land in the area – from the date of acquisition and during the development phase.

9.2 Data Protection

Yes – personal data will be handled through the exercise of any CPO processes. The data will be handled in accordance with appropriate data protection procedures.

9.3 Equalities

Yes – a separate Equalities Impact Assessment has been undertaken to comply with the Public Sector Equality Duty.

9.4 Environmental Sustainability

Yes – the delivery of the Works enabled by CPO action does have environmental sustainability implications. These were fully considered by the Development Management committee when determining that planning permission could be granted for the Works. A range of controls are in place through conditions on the planning permission for the Works to mitigate against any environmental sustainability impacts.

9.5 Financial

No – as indicated, an Indemnity Agreement is in place between the Council and PfP as the developer which indemnifies the Council in respect of costs.

9.6 Health and Safety

No

9.7 Human Resources

No

9.8 Human Rights

Yes – an assessment of the human rights impacts have been carried out as explained in this report. In making this Order, the Council considers that there is a compelling case in the public interest which overrides the interference with human rights arising from the CPO.

9.9 Legal

Yes – it will be necessary to ensure that all appropriate legal requirements are met in exercising powers in relation to CPO. The Council will continue to be advised by the legal advisors appointed on behalf of the HGGT partners.

9.10 Specific Wards

Yes – Hunsdon and Sawbridgeworth

10.0 Background papers, appendices and other relevant material

10.1 The Guidance

[CPO guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

10.2 HGGT Vision

https://647.f4f.myftpupload.com/wp-content/uploads/2019/08/190128_Vision-document_HIGH-RES.pdf

10.3 Reports relating to the planning permissions for the Works

<http://democracy.eastherts.gov.uk/ieListDocuments.aspx?CId=118&MId=4103&Ver=4&J=3>

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APPENDICES

Appendix 1– Plans showing Order Land and rights to be acquired

Appendix 2 – Plan showing the areas of open space to be acquired

Appendix 3 - Schedule of Interests

Appendix 4 – the Report

Appendix 5 – the latest draft Statement

Appendix 6 – EqIA

Appendix 7 – EqS.

Glossary of terms/abbreviations used in this report

Act: the Town and County Planning Act 1990.

Council: East Herts District Council.

CPO: the East Herts District Council (The Strategic Infrastructure Works) East Hertfordshire) Compulsory Purchase Order 2022.

District: the East Herts administrative area.

ECC: Essex County Council.

Executive: the Executive of the Council.

Full Council: the full council meeting of the Council.

Gilston Area: the area of land identified in Policy GA1 of the East Herts District Plan for the development of 10,000 new homes and associated supporting infrastructure

Guidance: the guidance “Guidance on compulsory purchase process and the Crichel Down Rules” (July 2019 edition) (a hyperlink of which is included above with the Background Papers section).

HCC: Hertfordshire County Council.

HDC: Harlow District Council

HGGT Board: the informal strategic board concerned with the HGGT Scheme and constituted by representatives of HDC, HCC, ECC, Epping Forest District Council and the Council.

HGGT Scheme: means the Harlow and Gilston Garden Town that is comprised of the following developments shown on the map in the HGGT Vision:

- 16,500 homes in the strategic growth areas (collectively referred to as the new Garden Communities) known as:
 - Gilston, located in East Hertfordshire District – 10,000 units across seven distinct villages, with at least 3,000 to be delivered by 2033;
 - East of Harlow, located in Harlow and Epping Forest Districts – 3,350 units;

- Water Lane Area, located in Epping Forest District – 2,100 units. Water Lane Area is broken down into two separate areas known as West of Katherine’s (1,331 homes) and West Sumners (807 homes);
- Latton Priory, located in Epping Forest District – 1,050 units; and
- Employment related development at the following allocated sites to deliver the equivalent of 25-29ha of new employment across the Garden Town by 2033, in addition to Harlow Town Centre:
 - 4.6ha within Harlow Business Park, at the Pinnacles for B1 uses
 - 14.2ha within the Enterprise Zone at London Road, for B1 uses
 - 8ha within the Enterprise Zone at East Road, Templefields for replacement industrial floorspace
 - 1 ha at Dorrington Farm, Latton Priory for B1 uses
 - 1h at the new Garden Community at Latton Priory
 - 5ha the new Garden Community in the Gilston Area for B1, B2 and B8 uses
- Two primary Sustainable Transport Corridors (STCs) that will support active travel as well a mix of high quality public transport options. These STCs will run north to south and east to west connecting the central area of Harlow with the new Garden Communities in Gilston, East of Harlow, Latton Priory and Water Lane.

HGGT Vision: the Harlow Gilston Garden Town Vision Document of November 2018, a hyperlink to which is included above.

Homes England: the trading name of the Homes and Community Agency.

Order Land: all that land shaded pink and edged red on the plans attached at Appendix 1 together with all those rights (including interference with existing rights) over the land shaded blue and edged red on the plans attached at Appendix 1, the interests in which are described in the schedule of interests, attached at Appendix 3.

PfP: Places for People Developments Limited (company number 04086030).

Report: a report entitled "Use of Compulsory Purchase (CPO) Powers in the Gilston Area" dated 6 October 2020.

Secretary of State: the Secretary of State for Levelling Up, Housing and Communities.

Statement: the statement of reasons in support of the CPO.

Wellbeing Benefits: the economic, social and / or environmental wellbeing benefits accruing to the District as more particularly described in the sections 11.17 – 11.20 of the Statement.

Works: those infrastructure works more particularly described in the Statement (section 2) but being in summary:

- The central Stort crossing proposal which comprises, in broad terms, alterations to the existing Fifth Avenue road/rail bridge, and creation of new bridges to support the widened highway to west of the existing structure to create the Central Stort Crossings, including embankment works, pedestrian and cycle

facilities, a pedestrian and cycle bridge over Eastwick Road, lighting and landscaping works and other associated works (East Herts Council Reference: 3/19/1046/FUL & Harlow Council Reference: HW/CRB/19/00220); and

- The eastern Stort crossing which comprises, in broad terms, erection of a new road, pedestrian and cycle bridge; replacement of an existing rail bridge at River Way; alterations to the existing local highway network; lighting and landscaping works; listed building works to Fiddlers Brook Bridge; and other associated works (East Herts Council Reference: 3/19/1051/FUL and Harlow Council Reference: HW/CRB/19/00221).