
Meeting **Cabinet Resources Committee**

Date **16 December 2013**

Subject **West Hendon Regeneration Project**

Report of **Leader of the Council**

Summary Given the size of the West Hendon Regeneration Scheme, it is likely that up to four Compulsory Purchase Orders (CPOs) will be required to deliver the proposed scheme. The report seeks a resolution in principle from committee to make up to four Compulsory Purchase Orders in respect of all non-Council owned property and proprietary interests in the West Hendon Regeneration area as shown edged red on the attached plan.

Officer Contributors Abid Arai, Regeneration Manager Strategic Planning & Regeneration

Status (public or Public
exempt)

Wards affected West Hendon

Key Decision Yes

Enclosures Appendix 1 - Compulsory Purchase Order boundary plan

For decision by Cabinet Resources Committee

Function of Executive

Reason for urgency / Not applicable
exemption from call-in

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1. RECOMENDATION

That Cabinet Resources Committee agrees:

- 1.1 to authorise the making of up to four separate Compulsory Purchase Orders (CPOs) be made pursuant to the statutory powers contained in section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) and section 13 of the Local Government (Miscellaneous Provisions) Act 1976, to acquire all non-Council owned property and other proprietary interests (including as appropriate new rights over land) in the West Hendon Regeneration Scheme, as shown outlined edged red on Plan 716 00 SK 115;
- 1.2 that due to there being no scheduled CRC meeting in January 2014 and the restricted timescales for the making of the CPO for phase 1 (CPO1), the Leader grant the resolution to make CPO1 in January (following receipt of officer report setting out relevant details), with such resolution being reported to the next CRC meeting in February for information purposes;
- 1.3 that in the event that the Leader approves the resolution, the Director for Place or other officer as delegated by the Director for Place be authorised to issue and sign the order, notices and certificates in connection with the making, confirmation and implementation of CPO1;
- 1.4 that the Director for Place or other officer as delegated by the Director for Place be authorised to make General Vesting Declarations (GVDs) under the Compulsory Purchase (Vesting Declarations) Act 1981 and/or to serve notices to treat and notices of entry (if required) following confirmation of CPO1;
- 1.5 that the Director for Place or other officer as delegated by the Director for Place be authorised to issue and serve any warrants to obtain possession of property acquired by the Council following the execution of a GVD relating to CPO1 or service of a notice of entry if it was considered appropriate to do so;
- 1.6 that the Director for Place or other officer as delegated by the Director for Place be authorised to transfer all properties and proprietary interests acquired pursuant to CPO1 to the relevant development partners in accordance with the terms of the Principal Development Agreement dated 11 August 2006 (or such variation to that Agreement as may be agreed between the Council and the Development Partners);
- 1.7 that the Director for Place or other officer as delegated by the Director for Place be authorised to take any further necessary actions to secure the making, confirmation and implementation of CPO1;
- 1.8 that the Director for Place or other officer as delegated by the Director for Place be authorised to approve the service of demolition notices to suspend and/or terminate the exercise of the Right to Buy on properties due for demolition (as required for the delivery of the regeneration scheme) within the West Hendon Regeneration Scheme, pursuant to sections 138A and 138B and schedules 5 and 5A of the Housing Act 1985 (as amended);
- 1.9 that the Director for Place or other officer as delegated by the Director for Place be authorised to appropriate to planning purposes any parcel of land within the red line planning application boundary for the scheme (ref: H/01054/13) and/or the CPO Plan (attached) which is held by the Council for another purpose subject to obtaining any

necessary statutory consents required and/or compliance with any statutory procedures for such appropriation.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Planning and Environment Committee, 27 July 2005 (Decision item 8); Outline planning consent for the West Hendon Regeneration Scheme (W13937/04), subject to an agreed Section 106 Agreement.
- 2.2 Cabinet, 30 August 2005 (Decision item 5); West Hendon Regeneration Scheme – Approval to enter into a Principal Development Agreement.
- 2.3 Cabinet, 11 October 2005 (Decision item 7); West Hendon Regeneration Scheme – resolved that the final arrangements for entering into the Principal Development Agreement be subject to approval by the Leader of the Council.
- 2.4 Planning and Environment Committee, 25 January 2006 (Decision item 7) - approved amendments to Outline Planning Consent (W13937/04), to vary the Section 106 Agreement Heads of Terms by inclusion of additional planning obligations relating to Energy Strategy and Accessibility and Inclusive Design.
- 2.5 Cabinet, 3 April 2006 (Decision item 8) – approved the final arrangements for entering into the Principal Development Agreement for the West Hendon regeneration project.
- 2.6 Cabinet Resources Committee, 28 November 2006 (Decision item 15) – resolved to make a Compulsory Purchase Order for the acquisition of all non-Council owned property and other proprietary interests in the West Hendon regeneration area as shown on the attached plan and that the appropriate Chief Officers be authorised to take all necessary action to secure the confirmation and implementation of the Compulsory Purchase Order.
- 2.7 Planning and Environment Committee, 19 March 2008 (Decision item 8) - approved amendments to Outline Planning Consent (W13937/04) to vary phasing; reconfigure the central square; make general changes to the alignment of building blocks and vary the layout of block 'L' and surrounding road layout.
- 2.8 Planning and Environment Committee, 22 December 2008 (Decision item 8) - approved Reserved Matters Application to develop Phase 2A of the development.
- 2.9 Delegated Powers Report, 7 August 2009 (number 870) – the Leader of the Council approved and agreed a Deed of Variation to extend the expiry date on the Principal Development Agreement and to make amendments to the provisions for the TUPE agreement and information on the Master plan.
- 2.10 Delegated Powers Report, 15 February 2010 (number 993) – the Leader of the Council approved the extension of the Principal Development Agreement expiry date by four months to 15 June 2010, and to enter the Deed of Variation to the Principal Development Agreement for commencement of the Initial Phase (Pilot and Phase 2A).
- 2.11 Delegated Powers Report, 16 June 2010 (number 1092) – the Leader of the Council approved the extension of the Principal Development Agreement expiry date by six months to 15 December 2010.

- 2.12 Cabinet Resources Committee, 30 November 2010 (Decision item 7) - approved the extension of the Principal Development Agreement by twelve months to 15 December 2011 and authorised officers to grant a further extension of up to twelve months to 15 December 2012 (which has now been granted – see paragraph 2.13).
- 2.13 Delegated Powers Report, 3 October 2011 (number 1444) – the Interim Director of Environment, Planning and Regeneration approved an extension of the West Hendon Principal Development Agreement expiry date by 12 months to 15 December 2012 to review feasibility options.
- 2.14 Delegated Powers Report, 22 December 2011 (number 1524) – the Leader of the Council authorised that officers can undertake a mini tender competition to select external legal advisers for the West Hendon Regeneration Scheme. DLA Piper were the external legal advisors appointed under this tender exercise.
- 2.15 Cabinet Resources Committee, 28 February 2012 (Decision item 19) – approved that the Deputy Chief Executive be authorised to negotiate revised terms for the West Hendon Principal Development Agreement to enable the West Hendon regeneration scheme to progress with a new master plan that guarantees scheme viability, consulting relevant stakeholders as necessary and to report back to the Committee later this year on the result of these negotiations and any proposed changes.
- 2.16 Cabinet Resources Committee, 7 November 2012 (Decision item 7) – approved the extension to the Principal Development Agreement for a period of 6 months to June 2013.
- 2.17 Cabinet Resources Committee, 4 April 2013 approved the recommendation to conclude the Heads of Terms to the Principal Development Agreement and delegate authority to the Director of Place in consultation with the Leader for final approvals.
- 2.18 Planning and Environment Committee 23 July 2013; Approved Outline consent for construction of 2,000 homes, a two form entry primary school, nursery and new community facilities and detailed approval to phase 3a for the regeneration project.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The regeneration of the West Hendon estate supports the Corporate Plan 2013-2016
- To maintain a well designed, attractive and accessible place, with sustainable infrastructure across the borough.
 - To maintain the right environment for a strong and diverse local economy.
 - To create better life chances for children and young people across the borough.
 - To sustain a strong partnership with the local NHS, so that families and individuals can maintain and improve their physical and mental health.
 - To promote a healthy, active, independent and informed over 55 population in the borough to encourage and support our residents to age well.
 - To promote family and community well-being and encourage engaged, cohesive and safe communities.
- 3.2 The regeneration of the West Hendon regeneration estate also supports the Sustainable Community Strategy for Barnet 2010–2020 through the following objectives:

- A new relationship with citizens - the new developments will offer more choice and promote independence by providing a number of different housing options such as shared ownership to residents and to other people in the wider community.
- A one-public-sector approach - the Council is working together with other public sector partners to ensure the delivery of the schemes.
- A relentless drive for efficiency - the Council is working with development partners to ensure that the scheme is delivered in the most cost effective way.

3.3 **The regeneration scheme also complies with strategic objectives in the Council's Housing Strategy 2010-2025 which include:**

- Increasing housing supply, including family sized homes, to improve the range of housing choices and opportunities available to residents; and promoting mixed communities and maximising opportunities available for those residents wishing to own their own home.

4. **RISK MANAGEMENT ISSUES**

- 4.1 Ground 10A approval - a successful land assembly exercise which is required to facilitate the regeneration of the scheme area is partly dependent upon tenants relocating from their existing properties to other suitable alternative premises within an identified construction timetable. Any delays in achieving vacant possession could risk the deliverability of the scheme. In order to effect the Ground 10A process officers will need to seek Secretary of State approval. Consultation continues to be carried out with residents and consent from the Secretary of State will enable the Council to serve Ground 10A notices under the Housing Act 1985 to gain vacant possession of homes. In order to further mitigate this risk, it is also proposed that all tenures, including premises occupied under a secure tenancy on the estate, would be included within the proposed CPOs for the Scheme.
- 4.2 The Compulsory Purchase Orders will guarantee the delivery of the scheme in the event that proprietary interests and rights over the land necessary for the project cannot be obtained by private treaty.
- Requirement for up to four separate Compulsory Purchase Orders
- 4.3 This report seeks a resolution in principle for the making of up to four separate CPOs. Due to the overall programme length (17 years), it is practical to consider a number of Compulsory Purchase Orders for the project given that at this stage it is not possible to confirm details pertaining to acquisitions required for later phases of the scheme. The phased CPOs will broadly mirror the phases of implementation of the planning permission. Appendix 1 of this report shows of the area within which the acquisition of land and/or rights are likely to be required in in order to secure the delivery of the regeneration scheme.
- 4.4 Whilst it is hoped that all outstanding property interests can be acquired by negotiation, the project cannot proceed with the risk that negotiations may not prove successful in all cases given that the scheme must be delivered within a certain timescale. To avoid this potential risk to the financial viability of the scheme and its delivery it will be necessary to make up to four Compulsory Purchase Orders. Without these the project would be undeliverable. Consultation previously took place with the Department of Communities and Local Government on Compulsory Purchase Orders on the West Hendon estate.

CPO Indemnity Agreement

- 4.5 The Council's costs will be met by Barratt Metropolitan Partnership Limited ("the Developer") in accordance with the CPO Indemnity Agreement ("CPOIA"). The Council will be putting procedures in place to monitor costs against the agreed estimate. Costs will be approved by both the Developer and Re.
- 4.6 Once the CPO(s) has/have been made, the Council will be exposed to potential Blight Claims from owners of properties included within the relevant CPO(s). The CPOIA will indemnify the Council against any payments made following a blight notice.
- 4.7 The CPO when confirmed must be implemented within three years (this period can be extended to a further three years (making a total of six years) by the service of Notice to Treat and then a Notice of Entry on the proprietors of the relevant interests.
- 4.8 A continuing risk to the viability of the project is the possibility that secure tenants may exercise the Right to Buy. This leads to increased acquisition costs and could result in a delay to the overall programme which ultimately could threaten the financial viability of the project. The service of initial and Final Demolition Notices pursuant to the Housing Act 1985 (as amended), will mitigate against this risk by suspending the Right to Buy transactions within the scheme.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The Council is committed to improving the quality of life and wider participation for all in the economic, educational, cultural, social and community life of the Borough. The West Hendon Regeneration Scheme will provide a mix of affordable and private sale properties. The new mixed tenure housing will improve the community cohesion in an area with a highly diverse population. It will provide increased choice and opportunity for Barnet residents. This supports the overall aim of the Council's Equalities Policy and the Council's duties under the Equality Act 2010.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 On the 11 August 2006, the Council entered into a Compulsory Purchase Order Indemnity Agreement with Barratt Metropolitan Limited Liability Partnership. Under the terms of the Compulsory Purchase Order Indemnity Agreement Barratt Metropolitan Limited Liability Partnership is required to cover all of the Council's costs in relation to the making and implementation of the Compulsory Purchase Order. Whilst this agreement has been re validated through commercial negotiations with our Development Partners the principal points on cost recovery remain the same. These costs include the purchase price or any compensation for any land or interest which the Council has to acquire either pursuant to the Compulsory Purchase Order or in consequence of the service of valid blight notices, including all payments made pursuant to the Compulsory Purchase Act 1965 and the Land Compensation Acts 1961 and 1973; any statutory interest payable and the Council's reasonable and proper internal and external costs including legal and surveying and other professional costs covered by the indemnity agreement.
- 6.2 All compulsorily acquired interests will be transferred to the developer partners for the purposes of the regeneration scheme, enabling them to override encumbrances. Any

such interests transferred in advance of a development phase will be the subject of an option agreement enabling the Council to re-acquire the property for regeneration purposes if the Principal Development Agreement should be terminated.

6.3 Consultants will be assisting the Council with the preparation, making and progressing of the compulsory purchase order. Work carried out internally will be done within existing staffing resources with all costs recoverable through the indemnity agreement.

6.4 It is intended that the proposals set out in this report will be taken forward by means of a Council led procurement process for appointing a property Surveyor who will be negotiating the acquisition of properties/interests on behalf of the Council.

7 Performance and Value for Money

7.1 The Council and Barratt Metropolitan Limited Liability Partnership have agreed to adopt a transparent and open book approach to the management of the West Hendon Regeneration Scheme. The Council has the right to access management accounts and other relevant documentation to ensure that information being provided in connection with financial matters is accurate and accords with 'Value for Money' criteria.

7.2 The original Principal Development Agreement allows for the Council to appoint monitoring consultants to ensure performance and Value for Money of the regeneration project. This function will also be provided for in the Deed of Variation to the Principal Development Agreement. A new monitoring consultant will be appointed through a procurement exercise when the new masterplan enters the implementation phase.

8 Staffing, IT and Sustainability

8.1 There are no issues to report around, IT and sustainability.

9 LEGAL ISSUES

9.1 The Council has the power to dispose of land held for housing purposes under Section 32 of the Housing Act 1985. Further, the Council has the power to dispose of land which is not held for housing purposes under Section 123 of the Local Government Act 1972.

9.2 The Council has the power through various enactments, including the Planning and Compulsory Purchase Act 2004 to make Compulsory Purchase Orders and to apply to the Secretary of State for confirmation of those orders.

9.3 Section 226 (1) (a) of the Town and Country Planning Act 1990, (as amended by the Planning and Compulsory Purchase Act 2004), provides that a local authority shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area if they are satisfied that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. However the power must not be exercised unless the authority thinks that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area. Compulsory purchase will enable regeneration to take place in accordance with an agreed programme and will provide certainty for site assembly and the implementation of the scheme – thus enabling the Council's objectives to be achieved in respect of the land the subject of the Compulsory Purchase Orders.

9.4.1 The regeneration of the West Hendon Estate is a key priority for the Council. This is set out in saved policies from the London Borough Barnet UDP 2009, the Adopted Core Strategy 2012 and within the associated Development Plan Documents (DPDs). The estate was constructed in the late 1960s. Due to its design, layout and construction it is characterised by a number of issues such as:

- poorly defined public and private space;
- lack of orientation within the estate
- no clear connection between the estate and the Broadway and other surrounding streets;
- Unappealing entrances to blocks and poorly maintained internal communal areas;
- Building fabric in need of repair and upgrade to meet current environmental and building standards

9.5 Through the regeneration scheme the housing stock will be significantly improved to meet current building and construction standards, improving the environmental and social wellbeing of the area. It will also include training and employment opportunities for residents within the borough, as well as proposals for a new primary school, community centre, town centre and improved transport links, improving the economic, social and environmental well-being of the area.

9.6 As already stated, without these CPOs the regeneration scheme will be undeliverable. The CPOs are required to deliver the redevelopment of the West Hendon Estate.

9.7 Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides for the acquisition of new rights over land where such rights are not in existence when the order specifying them is made. In order to facilitate the redevelopment it may be necessary to acquire new rights over the land for purposes such as crane oversailing.

9.8 In using the enabling powers pursuant to section 226 (1) (a) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the Council is using the most specific powers available to it for the purposes of the redevelopment of West Hendon.

9.9 In seeking a resolution in principle to the making of up to four CPOs, the Council has had regard to guidance set out in Circular 06/2004 "Compulsory Purchase and the Crichel Down Rules". The regeneration of the West Hendon Estate provides a compelling case for the making of the CPOs. The existing housing stock is outdated and does not meet current environmental and building standards. The West Hendon regeneration proposals will improve the economic and social well-being of existing and future residents through the creation of training / job opportunities (e.g. during construction phases of development), updated housing stock, proposals for a new school and community centre and improved transport links. Without the guarantee of the CPOs the scheme will be undeliverable.

9.10 Consideration has been given to the provisions of the Human Rights Act 1998 including Article 8 (respect for private and family life and home) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions). A decision to make Compulsory Purchase Orders must strike a fair balance between the public interest in the regeneration of the land and interference with private rights. Bearing in mind the provisions for compensation to be payable and the compelling case in the public interest for the acquisition of the interest, it is considered that the interference with private property rights is proportionate and strikes a fair balance between the public interest and the interests of objectors in compliance with the requirements of Article 1 of the First Protocol.

- 9.11 Saved policies from London Borough Barnet UDP 2009, Adopted Core Strategy September 2012, adopted Development Management Policies (DMP) DPD September 2012 and the adopted London Plan July 2012 provide a strong planning policy basis to support the comprehensive mixed use regeneration of West Hendon Estate and West Hendon Broadway, prioritising high density housing to replace the existing stock, and improving West Hendon Broadway.
- 9.12 Planning permission (hybrid) for the scheme was issued on 20 November 2013 and the variation to the Principal Development Agreement and CPOIA are likely to complete shortly. At each CPO phase additional information will be provided about resource implications of acquiring the land and implementing the scheme for which the land is required.

10. CONSTITUTIONAL POWERS

- 10.1 Under the Council's Constitution - Section 4.6 of Responsibility for Functions - functions delegated to the Cabinet Resources Committee include (amongst others) "All matters relating to land buildings owned, rented or proposed to be acquired or disposed of by the Council".

11 BACKGROUND INFORMATION

11.1 Context and Background

- 11.2 As reported to Committee in February 2012, the original masterplan for the West Hendon Regeneration scheme was not financially viable. With the agreement of the Council, Barratt Metropolitan Limited Liability Partnership undertook a review of the masterplan, led by a professional team appointed in September 2011. The team was appointed to produce a strategy that could be supported by the Council for the viable and complete regeneration of the West Hendon Estate.
- 11.3 The masterplan review considered five options, of which Option '3' was recommended as the favoured option to be taken forward. This option included 1,977 new homes, retention of Ramsey Close, minimum Compulsory Purchase Order costs, creating a new town centre focus (but not redeveloping The Broadway commercial space) and highways junctions, highways capacity and pedestrian improvements. Following the Committee meeting, a public consultation event was held on 27 March 2012 on Option '3', whereby approximately 70 local residents, business owners and community group members attended the exhibition. The details of this proposal were also presented to members of the West Hendon Residents' Regeneration Forum.
- 11.4 Since February 2012 the professional team, in consultation with the Council, developed the design further which enabled the submission of a hybrid planning application for the regeneration of the West Hendon estate comprising a detailed planning application for the next phase of the development (approximately 358 new homes) and an outline planning application for the remainder of the West Hendon Regeneration Scheme (approximately 1,642 new homes). On the 15 March 2013 the Council received the hybrid planning application for the West Hendon estate REF H/01054/13

Resolution in Principle to make up to four Compulsory Purchase Orders

- 11.5 On 28 November 2006, Committee resolved to make a Compulsory Purchase Order for the acquisition of all non-Council owned property and other proprietary interests in the West Hendon regeneration area. Subsequent to the Cabinet Resources Committee meeting of 7 November 2012, regarding the West Hendon Regeneration Scheme, the developer submitted Planning Application ref: H/01054/13. The Council's planning and Environment Committee resolved at its meeting of 27 July 2013 to grant planning permission subject to the completion of a s106 agreement.
- 11.6 The planning application boundary comprises a slightly larger area of land than that appended to the CRC report of 7 November 2012. Attached at Appendix 1 is a plan showing the extent of the land to be included within the proposed compulsory purchase order(s), those additional parcels of land which did not fall within the 'previous CPO boundary' (reported on 7 November 2012) are shown [hatched red]. The attached boundary plan now includes land required for: highway improvements; public footpath and bridges, as detailed in the planning application. The CPO boundary also includes areas along West Hendon Broadway where it is not intended to acquire property, but where rights of crane over sailing may be required in order to deliver the scheme.
- 11.7 In order to meet the construction timescales for the next phase of development (Phase 3), the Council's development partner will require vacant possession of part of the land by 31 March 2015. The CPO can take 12 months (or longer in some cases) to complete. Officers have therefore identified late January / early February 2014 as a target date for the making of CPO1. Officers will seek a specific resolution for the making of each CPO. It has not been possible to provide this committee with all the relevant information relating to CPO1 due to the fact that the land referencing process has not completed.
- 11.8 The next CRC meeting is scheduled to take place on 25 February 2014. Unfortunately that date conflicts with the CPO programme and if officers have to wait until that date to obtain a resolution for the making of CPO1 it will introduce a delay which is likely to affect the ability to obtain vacant possession of relevant plots of land, which poses a risk to the construction timetable.
- 11.9 Officers therefore propose that the Leader approves a resolution to make CPO1. A report setting out all relevant facts and information will be reported to the Leader in January, with authority delegated to the Director for Place (or such other Chief Officer) to issue and sign CPO1, all notices and certificates required in connection with its making, confirmation and implementation. In the event that the Leader approves the resolution to make CPO1, that decision will be reported to CRC meeting on 25 February 2014, for information purposes.

12. LIST OF BACKGROUND PAPERS

11.1 None

Cleared by Finance (Officer's initials)	JH
Cleared by Legal (Officer's initials)	KH