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Portfolio	Corporate & Resources
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The Rochdale Borough Council (Stott Lane, Middleton) Compulsory Purchase Order 2017

Executive Summary

1. Cabinet is requested to authorise the making and promotion of a Compulsory Purchase Order ("the CPO") under the Highways Act 1980 ("the Act") to acquire two small areas of land forming part of Stott Lane, Middleton, to enable the construction and subsequent dedication as public highway of a proposed vehicular road and a proposed public cycleway.

Stott Lane passes through a development site to the east of Hollin Lane, Middleton. The site has the benefit of outline planning permission for up to 205 dwellings together with roads, a cycleway and public open space ("the Development"). Taylor Wimpey (UK) Limited ("the Developer") is the developer for the Development.

The internal roads serving the Development are intended to be dedicated as public highway maintainable at the public expense. Also, a public cycleway is to be created, and it is also intended that this will be dedicated as highway maintainable at the public expense.

One of the proposed vehicular roads which will serve the Development, and the proposed public cycleway, cross Stott Lane. Currently, the Developer would not be in a position to dedicate the Order Land as public highway because it does not own the freehold.

The Developer has been unable to identify the owner(s) of the freehold of either part of the Order Land. As such, to enable the Order Land to become adopted highway, the Council has been requested to use its compulsory purchase powers under section 239 and section 250 of the Act.

If the Order Land is not acquired and subsequently adopted as public highway, it will leave responsibility for the maintenance and management of some estate roads serving the Development with a management company and/or the future residents. It is clearly in the public interest for all of the roads to be public highway, maintainable by the local highway authority, as this will

ensure that the roads are built and maintained to the appropriate standard, and that they become part of the local highway network

Recommendation

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| 2. Cabinet is requested to consider this Report and to approve: |
| 2.1 That a compulsory purchase order ("CPO") be made pursuant to the powers in section 239 and section 250 of the Highways Act 1980 for the acquisition of the land needed for the road and proposed cycleway and the acquisition of the rights needed to facilitate the construction of the road and cycleway shown shaded pink and blue respectively on the plan at Appendix 1 ("the Order Land"). |
| 2.2 That the Director of Legal Governance and Workforce be authorised to negotiate and agree an indemnity agreement under which all costs of preparing and promoting the CPO, and any compensation resulting from it, are covered by Taylor Wimpey (UK) Ltd. |
| 2.3 That the Director of Legal Governance and Workforce be authorised to settle the final form and content of the CPO and associated documentation, including the statement of reasons, and take all action needed to promote the CPO and secure its confirmation. |
| 2.4 That the Director of Legal Governance and Workforce be authorised, following the confirmation of the CPO, to implement the CPO powers and acquire title to the Order Land. |
| 2.5 That the Director of Legal Governance and Workforce be authorised, if required, to acquire by agreement the Order Land. |

Reason for Recommendation

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| 3. As explained above, the Order Land is required to facilitate: (1) the construction and dedication for adoption of a proposed area of public highway for part of one of the estate roads within the Development, and (2) the construction and dedication for adoption of part of the proposed public cycleway. |
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The proposed area of the public highway crossing Stott Lane will form part of the primary spine road through the Development, and will be built to current adoptable standards. It will be surrounded by a landscape node containing a ring of ornamental planting in front of a native hedgerow to provide all year round colour and texture. The footpaths either side of the highway will be diverted away from the highway at this point. The road will link into the surrounding routes, as required by the Council's Residential Design Guide SPD.

The proposed cycle route will provide an attractive interface between town and country and will reflect the landscape context of the area. It will pass through the green corridors and link to the existing public rights of way so that

pedestrians can walk or cycle through the entire site and on towards other cycle routes and footpaths. This will help to contribute towards the achievement of the Council's development plan objective of creating a network of public cycle and walking routes.

Whilst the Developer enjoys rights over the Order Land, it does not own the freehold of the relevant land. This means that although it can construct the road and cycleway, and use them, it may not dedicate the relevant parts as public highway. The ownership of the Order Land is unknown. As such, it is necessary for the two small areas of land to be acquired using compulsory purchase powers and made available to the Developer to construct the road and cycleway, and to then dedicate them as public highway maintainable at the public expense. The Developer will also require rights to be acquired over the land shaded blue on the plan needed for temporary working space whilst the road and cycleway are being constructed. This land will be vacated once the works are complete.

The dedication and adoption of the Order Land would prevent the responsibility for the maintenance and management of the road serving the Development resting with a management company or the future residents of the Development. It will ensure that the public highway authority have the ability to ensure that it is maintained for public use. Furthermore, it would ensure that the cycle route is secured and maintained to an adoptable standard for use by the local residents and the community. It is clearly in the public interest for all of the roads serving the Development, and the public cycleway, to be public highway maintainable by the local highway authority.

Key Points for Consideration

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It is proposed that once the relevant part of Order Land has been acquired by the Council, it will transfer the land to the Developer. The parties will enter into an agreement pursuant to section 38 of the Act which will identify the works to be carried out on both parts of the Order Land; specify the technical design standards that will apply; set out the process to be followed to sign off the works as properly completed, and the mechanism under which the land will be dedicated as public highway maintainable by the local highway authority.

Following the completion of the works to an adoptable standard at its own cost, the Developer will dedicate the relevant part of the Order Land and the Council, acting in its capacity as highway authority, will adopt the relevant part of the Order Land as highway maintainable at the public expense.

The Developer controls the land on either side of Stott Lane for the Development, but the ownership of the sub-soil of Stott Lane itself is unknown and is not registered at HM Land Registry. It has undertaken a review of the adjoining titles to seek to establish ownership of the sub-soil of Stott Lane but has been unsuccessful. Whilst the Developer will continue to seek to establish ownership of the sub-soil to this part of Stott Lane, it is considered unlikely that the owner will be identified.

However, if the owner is found the Developer has confirmed that it will seek to negotiate the acquisition of the land by private treaty rather than relying on the Council to exercise its CPO powers. It is recommended therefore that the CPO is promoted and made in parallel with such negotiations.

Prior to the CPO being made, the Developer will be expected to enter into an indemnity agreement with the Council to cover all of the costs and liabilities it might incur in connection with the CPO, including the costs of preparing and promoting the CPO and any compensation liability resulting from it. Government Guidance sets out guidance for acquiring authorities regarding the making and confirmation of CPOs in its document “Guidance on Compulsory Purchase Process and The Crichel Down Rules ...”

Paragraph 2 of the Guidance states that a CPO should only be made where there is a compelling case in the public interest. It also states that a CPO should only be promoted where such public interest outweighs the interference with the rights of those affected.

It is considered that the public benefits associated with enabling all of the roads serving the Development to be dedicated as public highway, and the creation of a publicly-adopted and maintainable high quality cycle link, would meet the test in the Guidance, especially as the (unknown) ownership of the land in question is effectively a sub-soil interest which is already subject to highway rights and private rights of way.

Paragraph 2 of the Guidance refers to the taking of steps by an acquiring authority to acquire land by agreement where possible before resorting to the use of compulsory powers.

Whilst the Developer will continue to try to identify the landowner(s), it is clear that, unless the Order is confirmed, responsibility for the maintenance and management of the link road and some estate roads serving the Development may be left with a management company or the future residents of the Development, will not become part of the local adopted highway network, and will not be maintainable by the local highway authority.

Accordingly, the Council considers that the relevant tests in the CPO Guidance are satisfied and that there is a compelling case in the public interest for the confirmation of the Order.

Alternatives Considered

- 4.1 If the decision is made not to make the CPO, then the Development roads (or at least some of them) will not be highway maintainable at the public expense i.e. private. This means that the roads will be open and used by the public, particularly the residents in the Development, but that the roads will not be subject to the Local Highway Authority’s usual maintenance and management regime.

Costs and Budget Summary

5. Prior to the making of the CPO, the Developer will enter into an appropriate indemnity agreement with the Council in respect of all of the costs and liabilities it might incur in connection with the use of its compulsory purchase powers, including the costs of preparing and promoting an order and any compensation liability that flows from it

Risk and Policy Implications

6. In determining whether or not to confirm the CPO, the Secretary of State must have regard to any interference with human rights, the provisions of the Human Rights Act 1998 and the European Convention on Human Rights. The Secretary of State must consider whether, on balance, the case for compulsory purchase justifies interfering with the human rights of the owner(s) of the Order Land.

Article 1 of the First Protocol to the Convention states that "...Every natural or legal person is entitled to peaceful enjoyment of his possessions" and "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law...". Any acquisition pursuant to the CPO will accord with the Highways Act. The CPO would be pursued in the public interest as required by Article 1. The public benefits associated with the CPO are set out above. It is considered that the CPO would strike a fair balance between the public interest in the dedication of the Order Land as highway maintainable at the public expense, and any private rights affected by it – irrespective of whether the owners of the Order Land are found.

Article 6 of the Convention provides that: "In determining his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". If an owner of the Order Land is found, he/she will be able to make representations or objections to the Secretary of State for Transport, and will have the right to be heard at a public inquiry. This process complies with Article 6.

Any owner of the Order Land who is traced will be entitled to compensation under the Compulsory Purchase Compensation Code. This includes the reasonable surveying and legal fees incurred by those affected. The Code complies with Article 1 of the First Protocol to the Convention.

The Council has to carefully consider the balance to be struck between the effect of acquisition on individual rights and the wider public interest. In carrying out that balancing exercise, the Council can take into account that the owner(s) of the Order Land (irrespective of whether they are found) own land which is already subject to private and public rights of way, which cannot be developed or put to a use that is inconsistent with the enjoyment of such rights.

Those who are currently entitled to use Stott Lane will continue to be able to do so if the CPO is confirmed and the Order Land is dedicated as public

highway.

Interference with Convention rights must be considered by the Council to be justified, as above, in order to secure the public benefits which the acquisition of the Order Land will deliver.

In addition to the requirements of the Human Rights Act 1998 and the Convention, Cabinet must also consider that there is a compelling case in the public interest for the CPO to be promoted. It must consider that interference with the rights of those affected would be lawful, justified and proportionate

Consultation

7. Not Applicable

Background Papers	Place of Inspection
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