

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Council
<b>Date of Meeting:</b>	28 January 2020
<b>Subject:</b>	Proposed Compulsory Purchase Action to Support Delivery of the Proposed West Cheltenham Development Scheme
<b>Report of:</b>	Head of Development Services
<b>Corporate Lead:</b>	Deputy Chief Executive
<b>Lead Member:</b>	Lead Member for Built Environment
<b>Number of Appendices:</b>	One

## **Executive Summary:**

The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) allocates land at West Cheltenham (Policy A7) for approximately 1,100 new homes and approximately 45 hectares of employment land to be focussed upon a cyber security hub. Since adoption of the JCS in December 2017 the following progress has been made in moving towards comprehensive delivery of development;

- £22m for infrastructure support via Gfirst LEP Growth Deal 3.
- Joint commissioning by the local planning authorities of Cheltenham and Tewkesbury of consultants to prepare a masterplan Supplementary Planning Document (SPD) for West Cheltenham (see Cyber Central Garden Community – Draft Supplementary Planning Document – Cabinet Paper 17 December 2019).
- Cheltenham Borough Council purchased c.112 acres of land within the strategic allocation.
- Award of Garden Communities status to West Cheltenham by Ministry Housing Communities and Local Government (June 2019).

In continued progress to deliver comprehensive development at West Cheltenham, this report considers whether compulsory purchase powers could potentially be used, if necessary, to support delivery.

At this stage of the process, the decision to use a compulsory purchase order would be an "in-principle" decision that would enable the Council to gather relevant information, carry out surveys, investigate land ownership and prepare, if appropriate, compulsory purchase order statement of reasons. Should this information gathering lead to the view that a compulsory purchase order would be necessary and in the public interest, then this would be subject to a further report to Council.

Based upon the policy requirement and desire for a comprehensive development, the red outline plan (see Appendix 1) for this order covers the West Cheltenham strategic allocation as defined in the JCS and includes the related safeguarded land at West Cheltenham, Hayden. Within this red outline area and within the Tewkesbury borough portion, three residential properties and their associated land are included. It is important to note however, that the power to compulsorily purchase land is a power of last resort and where possible the Council will seek to acquire land and rights by private treaty rather than by compulsory acquisition in line with best practice and Government Guidance.

The Hayden operational sewerage treatment works operated by Severn Trent Water is also located within the Tewkesbury borough portion of the site. This operational land of the statutory undertaker is afforded special protection under the Acquisition of Land Act 1981. Section 16 of the Acquisition of Land Act 1981 gives special protection to land held by statutory undertakers such as Severn Trent Water. A compulsory purchase order will not be confirmed so as to affect Severn Trent's sewerage treatment works if it would cause serious detriment to the carrying on of the undertaking (unless replacement land is available for the undertaking thereby avoiding any serious detriment). The Council will therefore need to work closely with Severn Trent to ensure there would be no serious detriment, and would need to investigate any mitigation measures that might be required.

However, in view of the risk that it may not be possible to acquire all necessary land by agreement, it is prudent for the Council to now take preparatory steps towards making a compulsory purchase order to support the comprehensive development of the site.

The administrative boundary between Tewkesbury and Cheltenham Borough Councils runs through the West Cheltenham strategic allocation north to south. The land in Cheltenham's area is subject to a separate report seeking a similar resolution. This report seeks authority only for the land within Tewkesbury's administrative area.

This Council will work with Cheltenham Borough Council to ensure a coordinated approach in the use of a compulsory purchase order, if deemed necessary to progress.

**Recommendation:**

- 1) To RESOLVE in principle, that for reasons set out in this report, the Council may need to use compulsory purchase powers to acquire the land within the area described in the report and shown edged red on the plan attached at Appendix 1 of this report to:**
  - a) secure delivery of the West Cheltenham development and its housing and job-creation objectives;**
  - b) facilitate the development of the site in partnership with an appointed developer by assembling the land interests within a reasonable timeframe and at a reasonable cost; and**
  - c) contribute to the promotion and improvement of the economic, social and environmental well being of the Tewkesbury and Cheltenham Boroughs.**
- 2) To request the Deputy Chief Executive to undertake any preparatory work required for the compulsory purchase order process in collaboration with Cheltenham Borough Council and noting that as an outcome of this preparatory work, if it is necessary and appropriate, for one or more compulsory purchase orders to be made, that a further report will be taken to Council seeking approval to the making of an Order.**

**Reasons for Recommendation:**

To agree this resolution in principle initiating the necessary process to commence preparatory work for a potential compulsory purchase order.

**Resource Implications:**

Costs associated with this report are estimated to be under £100,000 (equally shared with Cheltenham Borough Council). Tewkesbury's portion can be met from the Borough's growth reserve. In the event however of additional allocation being required to complete this stage of the compulsory purchase order process, a further report will be brought to Council.

If through this process a compulsory purchase order is subsequently deemed necessary to ensure comprehensive delivery of the scheme, again another report detailing this and the necessary resource implications will then be brought to Council for review.

**Legal Implications:**

The making and confirmation of a compulsory purchase order would enable the Council to compulsorily acquire third party land interests. Persons who are affected by a compulsory purchase order are entitled to compensation to make good the loss, calculated in accordance with the Statutory Compensation Code.

The exercise of a confirmed compulsory purchase order should be considered as a matter of last resort in the event that attempts to acquire land by agreement fail. However, guidance issued by The Ministry of Housing Communities and Local Government titled "Guidance on Compulsory Purchase and the Crichel Down Rules" (July 2019) (the Guidance) states that it may be sensible to initiate the formal compulsory purchase procedures in parallel with such negotiations.

The most appropriate compulsory purchase order enabling legislation in this case is likely to be Section 226(1)(a) of the Town & Country Planning Act 1990 (TCPA 1990) under which an Acquiring Authority has a general power to make a compulsory purchase order for the acquisition of any land in their area in order to facilitate the carrying out of development, redevelopment or improvement in relation to the land. In order to exercise the powers under section 226 of the TCPA 1990 the Acquiring Authority must demonstrate that the proposed development/improvement is likely to contribute towards any of the following objects, namely the promotion or improvement of the economic or social or environmental well-being of their area. As stated in the Guidance compulsory purchase is "intended to provide a positive tool to help Acquiring Authorities with planning powers to assemble land where this is necessary to implement their community strategies and Local Development documents".

If the Council decided to make a compulsory purchase order, the order would not take effect unless it is confirmed by the Secretary of State. Where there are objections to a compulsory purchase order the Secretary of State will hold an inquiry in order to consider whether there is a compelling case in the public interest for the compulsory purchase order. Objectors will have the right to be heard and challenge the Council's case. The Council will also be able to present its case and respond to objections at a public inquiry.

In deciding whether to make a compulsory purchase order (and in deciding whether to confirm it) the decision maker must be satisfied that the purposes for which it makes a compulsory purchase order sufficiently justify interfering with the human rights of those with interests in the land affected. Regard must be had to the protocols to the European Convention on Human Rights, the Human Rights Act 1998 and the Public Sector Equality Duty. The Inspector appointed to determine the matter will independently consider the case for the compulsory purchase order and report to the Secretary of State with a recommendation. For schemes of local rather than national importance, the compulsory purchase order is likely to be confirmed by the Inspector on behalf of the Secretary of State.

Legal advice has been obtained from Trowers LLP.

**Risk Management Implications:**

If the Council does not act to help facilitate the release of all the land parcels within the strategic allocation/safe-guarded land, then the ambitions for the Government backed Cyber Central development and overall West Cheltenham vision have the potential to be hindered or not achieved with negative economic and social impacts for Tewkesbury and Cheltenham.

To mitigate the risk of a land parcel within the site not being available to come forward for development in-line with the remainder of the strategic allocation/safe-guarded land, it is recommended that the compulsory purchase order process is started and at the same time negotiations continue with all land owners as per Government guidance. It must however be recognised that initiating later stages of the process will be a matter of last resort in line with the Guidance.

There is a risk of judicial review and/or objection to the compulsory purchase order process. The latter may trigger a public inquiry with consequential implications for staff time and resources.

**Performance Management Follow-up:**

Based upon the joint project management structure (with Cheltenham), management follow-up on this process will take place.

**Environmental Implications:**

As part of any planning application, any environmental implications will be considered and addressed accordingly.

**1.0 INTRODUCTION/BACKGROUND**

**1.1** To ensure the comprehensive and timely development of the strategic allocation and safe-guarded land at West Cheltenham (Cyber Central), it is necessary to initiate the compulsory purchase order process. This utilises the Council's powers to acquire land necessary to deliver the local plan and the initial step, an in-principle resolution, will start the process to evaluate which, if any land parcels are required.

**1.2** In line with the Guidance, at the same time as starting the compulsory purchase order process, negotiation continues with all landowners in the site area with the objective of acquiring any land by agreement rather than utilise the compulsory purchase order process.

**2.0 THE SCHEME**

**2.1** The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) was adopted by the three JCS Councils December 2017. Policy A7 formally designates land at West Cheltenham for approximately 1,100 new homes and approximately 45 hectares of B-class led employment space to be focussed upon a cyber security hub, high technology and other high GVA generating development.

**2.2** The safe-guarded land at West Cheltenham, is being considered for development as part of the Joint Core Strategy Review and was put forward as supporting documentation within the Issues and Options consultation November 2018 – January 2019. For this reason the red line associated with this report includes the safeguarded land identified in the JCS and the Issues and Options consultation. The Council notes the protections afforded to the statutory undertaker under section 16 of the Acquisition of Land Act 1981.

- 2.3** To support the comprehensive development, the overall site for the West Cheltenham Urban Extension has now also received Garden Communities status by the MHCLG (Ministry of Housing Communities and Local Government). This highlights the government support for the site and the need for a comprehensive development creating a sustainable community with attractive green space and public realm.
- 2.4** To further support the comprehensive development, Cheltenham Borough Council purchased c.112 acres of land within the strategic allocation.
- 2.5** Cyber Central has the potential to support up to 2m ft<sup>2</sup> of development and can accommodate up to 7,000 jobs and is the single largest employment site being developed in Gloucestershire.
- 2.6** The Cyber Central concept has significant central government backing, having secured £22m for infrastructure support via Gfirst LEP Growth Deal 3 and with the Department for Transport. The Cyber Park is engendering widespread interest from commercial and academic organisations and it is critical that this momentum is not stalled by the inability to assemble all necessary land interests.
- 2.7** Tewkesbury Borough Council and Cheltenham Borough Council have now jointly commissioned master planning consultants for the West Cheltenham (Cyber Central) project to support Garden Communities outcomes and provide a clear planning framework to guide the development management process of this key strategic allocation as defined by the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy.
- 2.8** To ensure the comprehensive and sustainable development of West Cheltenham, it is in the interest of the Council that there is certainty in each of the required land parcels coming forward for development in a desired timeframe. Although negotiations are taking place with landowners, there is no certainty all interests will be acquired by agreement within the necessary timeframe. Therefore to ensure that the overall timing of land availability accords with the wider plan, it is recommended to initiate work to support the making of a compulsory purchase order.
- 2.9** The investigative and any preparatory work that would be carried out should the Council approve this report, will include the following:
- Investigating land ownership and preparing a schedule of land interests;
  - Producing a property cost estimate (estimate market values of property within the defined scheme) so that the costs of delivering the scheme can be assessed;
  - Further developing the planning strategy for the site;
  - Refining the precise boundaries of the land that may need to be compulsorily acquired;
  - Working on a statement of reasons which would set out the full justifications for the use of compulsory purchase powers;
  - Preparing a draft order and statutory notices;
  - Developing an acquisition and delivery strategy and continuing with private treaty negotiations in conjunction with partners.

### **3.0 OTHER OPTIONS CONSIDERED**

- 3.1** Work to date has highlighted that landowners have varied opinions concerning their land release and there is therefore a risk that some land may not come forward, at a reasonable cost or within a reasonable timeframe, which has the potential to cause delays to the delivery of Cyber Central and the wider development including the delivery of housing.
- 3.2** In order for the authorities to meet their policy, corporate, and place making aspirations, it is paramount that West Cheltenham comes forward as a comprehensive, sustainable development – therefore the ability to utilise compulsory purchase powers may be required to assemble land in a reasonable timescales to achieve the overall vision of a comprehensive development. The Council will continue to seek to acquire all necessary interests by agreement prior to and in parallel with any compulsory purchase order process.
- 3.3** This resolution in-principle authorises the Council to initiate the investigative preparatory work to progress with a compulsory purchase order which will include obtaining access onto the land for ground investigations and undertaking surveys, obtaining detailed and up to date information relating to land ownership, and preparing the legal documentation that would be required in order to make a compulsory purchase order. It is critical that contractors have the ability to access land for necessary surveys to ensure there are no delays to development programme.
- 3.4** For this reason, it is recommended that the Council undertakes the preparatory work required to make a compulsory purchase order and only if a compulsory purchase is deemed necessary, then a further separate report will be taken to Council to seek approval to the making of one or more compulsory purchase orders.
- 3.5** If it is deemed necessary to make a compulsory purchase order, the report brought to Council for approval will include at this later stage, the necessary funding information for such a land acquisition and will clarify whether this be by a 3<sup>rd</sup> party, Government funding support or other means.
- 3.6** It is considered that in light of the planning policy framework and the complex land assembly challenges faced by the project together with the need to deliver a comprehensive development, there are compelling justifications in the public interest to pursue a compulsory purchase order.

### **4.0 CONSULTATION**

- 4.1** Members of the Council have been informed of the compulsory purchase order process and further to this approval ongoing and appropriate consultation will be required to continue this process as well as under the Guidance, discussions continue with the relevant landowners.

### **5.0 RELEVANT COUNCIL POLICIES/STRATEGIES**

- 5.1** The recommendation to initiate the process for a compulsory purchase order is in support of the adopted Joint Core Strategy (JCS) development plan and in particular the site allocation West Cheltenham A7 and the associated safe-guarded land at Hayden.

### **6.0 RELEVANT GOVERNMENT POLICIES**

- 6.1** The most relevant Compulsory Purchase Order enabling legislation is likely to be Section 226(1)(a) of the Town & Country Planning Act 1990 (TCPA 1990).

**7.0 RESOURCE IMPLICATIONS (Human/Property)**

**7.1** There are no additional human/property resource implications arising for the Borough Council in relation to initiating this preparatory work as within the West Cheltenham Cyber Central project, sufficient resources are available.

The costs estimated for the preparatory work including any on-site assessments and land searches total £100,000 equally shared between Cheltenham and Tewkesbury. In the event of further resource costs being necessary to complete this stage of the assessment, a report will be brought to Council at that time detailing the additional requirements.

Finally, if it is deemed necessary to start a compulsory purchase order, a detailed report with resource and financial implications will be brought to Council.

**8.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)**

**8.1** None as a direct result of this report.

**9.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)**

**9.1** The process seeks to ensure the fair and equitable treatment of all parties in acquiring land interests.

**10.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS**

**10.1** None.

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**Background Papers:** None.

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**Appendices:** 1 – Site area.