

Birmingham City Council

Report to Cabinet

15th December 2020



Subject: Birmingham Smithfield – Compulsory Purchase Order(s)
Report of: Acting Director, Inclusive Growth
Relevant Cabinet Member: Councillor Ian Ward, Leader of the Council
Relevant O &S Chair(s): **Councillor Sir Albert Bore – Resources**
Councillor Lou Robson – Economy and Skills
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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Bordesley and Highgate		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	No <input type="checkbox"/>
If relevant, add Forward Plan Reference: 007443/2020		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1 Executive Summary

- 1.1 To seek approval in principle, for the Council to make a Compulsory Purchase Order (CPO) to acquire land and new rights at, the Birmingham Smithfield site, as shown on attached plan in Appendix 1, for the purpose of securing vacant possession of the site to facilitate a major city centre regeneration project in accordance with the Smithfield Masterplan.

2 Recommendations

- 2.1 Approves in principle, subject to the completion of the agreement at paragraph 2.2 below, the making of a Compulsory Purchase Order under section 226(1)(a) of the Town and Country Planning Act 1990, and the acquisition of new rights

under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 in respect of the land edged black on the Plan at Appendix 1 (the 'Order Land'), in order to facilitate a major city centre redevelopment in accordance with the Smithfield Masterplan.

- 2.2 Authorises the City Solicitor to complete an indemnity agreement (including surety/parent company guarantee if required) under which all costs, expenses and compensation arising from the CPO are met by Lendlease Smithfield Development LLP (subsidiary of Lendlease Europe) to ensure that the Council is fully indemnified for all costs and acquisition costs/formatting arising from the CPO.
- 2.3 Authorises the Assistant Director of Property to negotiate the acquisition of all interests in land outlined on the plan at Appendix 1 (which shows the maximum anticipated extent) in advance of, and alongside, the making of a Compulsory Purchase Order(s) (CPO) and where appropriate, to pay statutory home loss, basic loss and negotiate disturbance compensation to all qualifying owners and tenants.
- 2.4 Authorises the City Solicitor (or their delegate) to negotiate, execute and complete any documents required, including the appointment of land referencers to give effect to the recommendations in this report.

3 Background

- 3.1 Birmingham Smithfield covers approximately 17 hectares of land in the heart of the city centre that brings together a comprehensive site including the former wholesale market, the Bull Ring Markets, Moat Lane gyratory and land to the south extending to Rea Street. The Council owns approximately 10.2 hectares of the site. The wholesale market was relocated in April 2017 to new premises within the city at The Hub in Witton. This relocation provided the opportunity to comprehensively plan and redevelop this area and will create a once in a lifetime opportunity to create an exciting new destination for the city. Birmingham Smithfield is on the doorstep of many significant sites including the Bullring, New Street Station, Grand Central, Rea Valley Urban Quarter, Digbeth Creative Quarter, and its proximity to the future location of HS2 Curzon Station. Its redevelopment will reconnect the area with its surrounding and create new activities and environments.
- 3.2 The Birmingham Smithfield Masterplan September 2016 will be used to guide planning and delivery. In order to comprehensively develop the site, the masterplan has been supported by a series of baseline and technical studies covering Highways, Infrastructure and market specification. The Masterplan sets out the following: (1) the vision for the area including details of the "Big Moves" to bring about major transformation; (2) principles for redevelopment that will be central to creating a high quality, sustainable place; and (3) a strategy for delivery.

- 3.3 Delivering Birmingham Smithfield will also be central to unlocking a much wider area for transformation along the River Rea corridor. Alongside the activity underway for Birmingham Smithfield, there is work to deliver new residential communities and employment opportunities along the river corridor, with master planning work commenced in partnership with the Environment Agency for the 70 hectares termed the, 'Rea Valley Urban Quarter'. This will deliver a significant boost to the local economy and unlock new jobs, skills and innovation. The development will provide a significant platform for investment focusing on improving the lives of the local community and support the long-term sustainability and growth of the region.
- 3.4 On 11th December 2018 Cabinet approved the selection of Lendlease Europe as the Council's preferred bidder for the Birmingham Smithfield development. to deliver the transformation of the site. Lendlease will enter into a contractual joint venture with the Council, this is the subject of a report, scheduled to Cabinet on 15th December 2020. The vision for Birmingham Smithfield is to create a new destination in the heart of the city centre, including new cultural and leisure attractions, and vibrant retail markets and spaces for new and existing small businesses, as well as a residential neighbourhood with a high-quality public realm and integrated public transport links to the wider city centre.
- 3.5 The site is within the Enterprise Zone and funding is being sought from the GBSLEP to deliver critical infrastructure and public realm works.
- 3.6 At this point in time approval in principle to make a CPO is sought while further work is undertaken, such as seeking planning permission and finalising various financial approvals.

4 Options considered and Recommended Proposal

- 4.1 A range of alternative options were assessed as part of the process of developing the Masterplan for the Smithfield area based on key criteria such as strategic fit and requirements. The long-list included, for example, the size of the identified area and whether the mix of uses should be residential or office-led, as well as delivery options including a market-led approach involving direct sale of land for development. The resulting Masterplan has provided the basis for the procurement process to identify a preferred development partner.
- 4.2 The option of 'do nothing' was considered, however if the site is not acquired and regenerated, the opportunity to expand the city core in a planned, coherent manner and realise the vision and maximise the opportunity to deliver: (1) vibrant market and leisure uses; (2) a major new public space; (3) a pedestrian boulevard to reconnect the area; (4) integrated public transport that will allow Metro to be brought into the area; and (5) an exemplar residential neighbourhood will be lost. This would mean that this part of the city centre would fall behind other parts in terms of the quality of development and in addition, the existing leasehold structure would still exist, and so the same

adverse delivery issues faced now would continue. Without the CPO, this area would remain poorly connected to other parts of the city centre and therefore less appealing to investment. Future piecemeal development would fail to deliver the social, economic and environmental benefits.

- 4.3 Therefore, the CPO is necessary to provide certainty that the scheme can be implemented and all of the interests within the CPO are required to bring forward and implement the redevelopment scheme in a timely manner and secure the significant public economic, social and environmental benefits that it will bring to the City and wider region.
- 4.4 Given there are significant freehold interests and long leasehold interests in the Birmingham Smithfield Boundary Area (Appendix 1), the comprehensive regeneration proposals and significant infrastructure required cannot be brought forward without all those interests being acquired.
- 4.5 The Council has commenced preliminary discussions with third party landowners and will continue to negotiate alongside the CPO process with the aim of acquiring the interest by agreement. In order for BCC to obtain Secretary of State Approval a comprehensive site assembly strategy is required – this forms part of the Joint Venture Agreement suite of documents.

5 Consultation

- 5.1 Formal public consultation took place on the Birmingham Smithfield Masterplan. The Masterplan's Visioning Document started with an 8-week public consultation in March 2015. This consultation commenced the debate on the future of Birmingham Smithfield, enabling ideas to evolve and the masterplan to develop. The resulting masterplan was launched in March 2016 accompanied by another 8 week public consultation. This consultation sought views on the masterplan's vision, development principles and delivery strategy. The masterplan received significant support for its vision and approach, with respondents agreeing with the Big Moves and the inclusion of the markets in a new facility at the heart of the site. The responses received informed the preparation of the final version of the masterplan. Lendlease has also commenced engagement with a variety of stakeholders including landowners, market traders and other community organisations.

6 Risk Management

- 6.1 The Council will appoint an external professional team to work with its in-house officers to monitor and deliver the work relating to land assembly and CPO. As part of the Joint Venture Agreement there will be an indemnity agreement to cover the Council's staff resources to support the CPO.
- 6.2 A risk register will be maintained by the project team to identify any potential risks and appropriate mitigations.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The proposed CPO(s) would enable development that is in accordance with the aims of the Birmingham City Council Plan: 2018-2022. This sets out a vision for the city and forms the basis for all other strategies. The proposed CPO(s) would enable development that is in accordance with the vision and aims of 'Birmingham Smithfield Masterplan (September 2016). The vision will see the area radically transformed creating a major cultural and leisure destination that extends the city's existing offer with new vibrant retail markets, family entertainment, museums and galleries. As an exemplar sustainable development, it will create a distinctive place with high quality architecture, public spaces and squares and a dynamic mix of uses including a new residential offer. It will reconnect this part of the city centre through new streets, public transport accessibility and pedestrian and cycle priority.
- 7.1.2 The proposals are in accordance with national and local planning policy specifically the National Planning Policy Framework 2019, the Birmingham Development Plan 2017 (and Unitary Development Plan saved policies 2008) (BDP), and the Big City Plan (2011) which support the expansion of the city core. The Big City Plan, sets out a 25-year vision to grow the city centre by more than 25 per cent. Policy GA1.2 of the Birmingham Development Plan refers to the "comprehensive redevelopment of the wholesale markets site" and states that "residential development will be supported as part of the future mix of uses."
- 7.1.3 As one of the areas of transformation, Birmingham Smithfield will directly contribute to the city's exciting growth agenda for delivering 51,000 new homes, 100,000 jobs and billions of pounds worth of investment in infrastructure to support the city's growing population. The vision for Birmingham Smithfield is to create a new destination in the heart of the city centre, including new cultural and leisure attractions, and vibrant retail markets and spaces for new and existing small businesses, as well as a residential neighbourhood with a high quality public realm and integrated public transport links to the wider city centre.

7.2 Legal Implications

- 7.2.1 The relevant legal powers for the CPO are contained in section 226(1) (a) Town and Country Planning Act 1990 (as amended) and section 13 Local Government (Miscellaneous Provisions) Act 1976 in respect of acquiring new rights. In considering whether to make a Compulsory Purchase Order, the Public Sector Equality Duty and Human Rights considerations apply and regard must also be had to the Government's Guidance on CPO (February 2018 and updated July 2019). Appendices 2, 3 and 4 provide further information in this regard. The proposed compulsory acquisition will be in

accordance with the requirements of the Department of Communities and Local Government, (DCLG) Compulsory Purchase Process Guidance February 2018 (updated July 2019) which governs the use of Compulsory Purchase Powers.

7.3 Financial Implications

7.3.1 An indemnity agreement between the Council and the developer will be completed to ensure that all the costs associated with the CPO – including progressing of the order, all the costs of site acquisition and all compensation, will be borne by the developer.

7.3.2 The project commercial offer and financial model have been fully reviewed by BCC's advisers Bevan Brittan and Cushman and Wakefield. The viability of the financial model has been tested and confirmed that the scheme is viable and contractual arrangements will be agreed with the Joint Venture Partner to allow funding to be in place to acquire land interests when required.

7.3.3 Tax Issues

7.3.3.1 Deloitte have not identified any tax costs that are likely to be considered significant enough to prevent commercial negotiations being completed.

7.3.3.2 The contractual structure being used i.e. a contractual partnership where BCC procures a development partner (Private Sector Partner, "PSP") with delivery arrangements governed by a JV Development Agreement ("JVA") between the parties and by a Phase Development Agreement ("PDA"). It is unlikely to result in significant issues from a tax perspective, but advice will be sought where necessary by phase in advance.

7.3.3.3 BCC is exempt from corporation tax but will incur Corporation Tax, Stamp Duty Land Tax (SDLT) (and possibly VAT) on the purchase of land from third parties unless any SDLT reliefs are available, e.g. on land purchased under a compulsory purchase order to facilitate development by another person. Any SDLT due will be payable on the VAT inclusive amount payable for the land concerned.

7.3.3.4 BCC has opted to tax the Smithfield site to secure and protect BCC's VAT recovery position. BCC will need to consider if there is any risk of its option to tax being disapplied in respect of any lettings/disposals of the site. This risk is not currently considered to be significant.

7.4 Procurement Implications

- 7.4.1 The engagement of external professional services to support the project will be carried out in accordance with the Constitution and the Procurement Governance Arrangements.

7.5 Human Resources Implications

- 7.5.1 There are no human resources implications for this report.

7.6 Public Sector Equality Duty

- 7.6.1 This report relates to the authority in principle for making a CPO under the Town and Country Planning Act 1990 (as amended). An initial equalities impact assessment has been undertaken reference number EQUA484. Birmingham Smithfield aims to meet the needs of a diverse population and is not intended to bring benefit to a singular customer group, staff or community of place, interest or identity. Based on the current understanding of who will be affected by the CPO, it is considered that there is no evidence at this stage to suggest that any protected groups will be disproportionately affected. As part of the CPO process, there will be continuous review and assessment of any impact as more detail about affected properties (and their occupiers/users) becomes known, and this will be reported at the appropriate times. Our current assessment is that the Smithfield development will contribute towards equality of opportunity for all by delivering new homes, commercial floor space and significant new employment opportunities.

8 Appendices

- 8.1 Appendix 1 – Updated Black Line Boundary Plan (December 2019)
- 8.2 Appendix 2 – Human rights considerations
- 8.3 Appendix 3 – Justification for use of CPO
- 8.4 Appendix 4 – Smithfield Development Equality Impact Assessment

9 Background Documents

- 9.1 Birmingham Smithfield Masterplan (March 2016)
- 9.2 Birmingham Development Plan (January 2017)
- 9.3 Big City Plan (July 2011)