

Appendix 3

JUSTIFICATIONS FOR COMPULSORY PURCHASE ORDER

Section 226 (1) (a) Town and Country Planning Act 1990 (as amended)

1. The powers provided in the amended section 226(1) (a) enables acquiring authorities to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired.
2. The acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area. The proposed redevelopment of Birmingham Smithfield will contribute to all three of these objectives in the following ways:

- **Economic**

The proposed redevelopment is estimated to contain circa 300,000 sq.m of commercial floorspace, and over 2,000 new homes creating an estimated net total of approximately 3,000 jobs, the gross value added as a result of which is estimated at £470m.

Given the scale and nature of the proposed development along with its infrastructure links, it is also forecasted to boost the local economy through significant agglomeration economies. It will also create training and employment pathway opportunities for local residents, targeting areas of high unemployment and groups facing disadvantage, whilst attracting new residents and increasing the pool of skilled labour in Birmingham.

- **Social**

The proposed redevelopment will produce more than 2,000 homes across a range of types and tenures. It will also include major new civic spaces including Festival Square, Smithfield Walk and Smithfield Gardens. Other key facilities will include a major Cultural Building and Family Leisure Venues.

The proposed development aims to build capacity by supporting community organisations with resources and expertise in areas of the city with the greatest need, and to improve and sustain local facilities with a particular focus on Arts and Cultural facilities across the city. It will include a Two Form Entry primary school and a creche. It will also aim to reduce crime through 'designing out crime' principles.

- **Environmental**

The proposed development aims to be environmentally sustainable, meeting or exceeding the best practice measures set out in the Birmingham Zero Emissions City Framework. It will create a new green heart for Birmingham, containing over 1,000 new trees – a net positive increase in natural capital and green space.

New development will be energy efficient and over the life of the development, will aim to reduce CO₂ emissions by circa 70% compared to 2013 Building Regulations. Similarly, it is planned for a minimum of 60% of operational waste to be recycled, A minimum BREEAM rating of “Excellent” will be achieved on all non-domestic buildings, and all homes will target a minimum of 4 stars under the Home Quality Mark. The project will aspire to achieve Living Building Certification (the world’s most ambitious sustainable building standard) on one commercial building.

Department for Communities and Local Government Guidance on Compulsory Purchase Process and the Crichel Down Rules for the Disposal of Surplus Land Acquired by, or under the Threat of, Compulsion; February 2018 (updated July 2019)

3. In tier 1 advice relevant to all compulsory purchase orders the Government guidance advises acquiring authorities in the preparation and submission of compulsory purchase orders and the matters that the Secretary of State can be expected to take into consideration when reaching a decision on whether to confirm an order.
4. The guidance states that acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest. The proposed redevelopment will bring substantial economic, social and environmental benefits to the local area. 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. Accordingly, the City Council considers that it can present a comprehensive justification for the acquisition of the land in the public interest. Owners of interests in the site will receive financial compensation in accordance with the compensation code for their interests and LendLease and the City Council will work to relocate those affected.
5. The guidance provides that compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. Nevertheless, it is recognised that valuable time will be lost if the acquiring authority waits for negotiations to break down before starting the compulsory purchase process. It is also noted that initiating the compulsory purchase process will make the seriousness of the authority’s intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

The City Council is committed to the comprehensive re-development of the Smithfield masterplan and, supported by its Development Partner Lendlease, will follow a twin-track approach for land outside the City Council’s ownership. The approach will comprise market negotiation alongside pursuing compulsory purchase order(s) under Section 226 of the Town and Country Planning Act 1990 to ultimately acquire the required land. Public consultation with key stakeholders (including the market traders) has already commenced since the appointment of Lendlease as preferred development partner in January 2019, and meetings have also been held with a number of landowners with interests within the red line of the Smithfield masterplan area. Once the contractual documents have been entered into, the land assembly process will formally

commence with land referencing, negotiation of the relocation agreements with market traders, along with the negotiation with 3rd party landowners to acquire by agreement. The City Council will endeavour to acquire outstanding interests voluntarily before making the compulsory purchase order.

6. At paragraph 13 the guidance states that the acquiring authority should have a clear idea of how it intends to use the land which it is proposing to acquire.

Further to the 2010 Big City Plan and subsequent Smithfield Visioning document, the BCC 2016 Masterplan established the City Council's vision and framework for the site to inform the procurement of a development partner and guide the comprehensive development of the site, setting out the five Big Moves below:

- **Vibrant markets and leisure:** This will be at the heart of Birmingham Smithfield and see an enhanced offer of market shopping attracting new and existing customers and a range of leisure uses. New uses will extend the city's existing leisure and visitor offer and will be supported by cafes, independent shops, restaurants and hotels. The new home for the markets will become a destination in its own right, with a mix of activity across a multi-layered building bringing life throughout the day and night. The building will capture the markets' distinct character and reflect the rich history of its location, on which a market has been held since 1166. Innovative design and servicing will support its long-term operation. A mix of family friendly leisure uses such as museums, cultural attractions, cinemas, bowling and recreation/sporting activities which have a national and international appeal will complement the markets, providing attractions and activities that will draw more people into the area throughout the day and evening
- **Festival Square:** The square will be a major new public space for the city that is a lively hub for cultural, community and arts events, activities, festivals and an attractive place for people to meet and relax
- **Pedestrian boulevard:** A wide, green pedestrian boulevard will transform pedestrian connections into the site allowing people to easily walk through the area along pleasant green streets and reach it from other parts of the city centre
- **Integrated public transport:** Metro, bus and sprint (rapid transit bus) will run through the site in dedicated greened public transport corridors providing people with a quick and efficient way of getting around the area and linking to the wider city and beyond
- **Residential neighbourhood:** A mixture of new, modern sustainable homes in a green setting supported by a range of community facilities will create an exemplar residential neighbourhood that will be one of the most desirable places to live in the city centre. At the heart of the residential neighbourhood will be a major new park creating a setting and location for amenity assets for the whole area

Once completed it is anticipated that the scheme will deliver over 300,000 square metres of commercial space including markets, leisure, retail, office and cultural space, extensive new public realm including Festival Square and the new public park, and in excess of 2,000 new homes.

7. Paragraph 13 continues that the acquiring authority should be able to show that all necessary resources are likely to be available to achieve its proposals within a reasonable timescale.

Due to the scale of the redevelopment, the City Council recognised the need to partner with an investor/developer to bring appropriate finances and expertise to deliver the comprehensive development of the Birmingham Smithfield scheme, and on 25 July 2017 Cabinet approved the procurement Strategy to procure a Development Partner through OJEU Competitive Dialogue procedure. Final Tender Submissions were received on 23 July 2018, with Lendlease being formally selected as Preferred Development Partner on 11 December 2018.

Lendlease's proposals were evaluated by the City Council to deliver the best and most economically advantageous outcomes for the City Council in meeting the City Council's vision for Smithfield, and Lendlease has a proven track record in designing, funding and delivering large scale, mixed-use regeneration schemes regionally, nationally and internationally.

During the Preferred Bidder period, the City Council and Lendlease have been working closely to refine and optimise the final tender proposal, confirm commitments and develop a Business Plan, Outline Business Case, and Legal Agreements for the Council's approval. The legal agreements that will be entered into by City Council and Lendlease include a Joint Venture Agreement, Phase Development Agreement, Phase Lease and Site Assembly Agreement, under which Lendlease as Development Partner agrees to pay the City Council for the costs of making and obtaining the confirmation of the CPO (and any related orders), and the costs of acquisition/compensation by the Council of all property and third party interests in the Development Site. The formal appointment of Lendlease as the Smithfield Development Partner will take place following Cabinet approval on 17th March 2020.

8. At paragraph 15 the acquiring authority is also required to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. At this point in time only approval in principle to the making of a CPO is being sought. In due course a planning application will be submitted for the development proposals as outlined in the Smithfield Masterplan. A further report to authorise the making of a CPO will follow later.
9. The MHCLG Guidance also contains Tier 2 advice, which is relevant to compulsory purchase orders made under the Town and Country Planning Act 1990. guidance at paragraph 106 sets out factors to which the Secretary of State can be expected to consider when deciding whether to confirm an order made under section 226(1)(a). These include:
 - (i) *Whether the purpose for which the land is being acquired fits in with the adopted planning framework.* Initially identified by the Big City Plan; established in policy by the Birmingham Development Plan (BDP); and recognised as a key project in delivering the City Council Plan (2018-2022), the City Council's 2016 Smithfield Masterplan presented an overarching vision and 5 Big Moves for Smithfield, derived from the visioning consultation undertaken in 2015. Policy GA1.2 of the BDP makes reference 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.”

- (ii) *The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area.* The redevelopment has potential to deliver with respect to each of these elements as outlined above. See paragraph 2 of this Appendix for this detail.
- (iii) *Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means.* The Council believes there are no other alternative schemes of a similar scale which could deliver the wholesale transformation of the Smithfield locality. Additionally, a scheme of such size is only likely to be taken forward by the Council (and its partner) given its existing substantial land ownership in the area, and its expertise of projects of a similar scale. In due course the CPO will be 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 benefits that it will bring to the City and wider region.
- (iv) *The potential financial viability of the scheme for which the land is being acquired.*

The site forms part of the Greater Birmingham and Solihull Local Enterprise Partnership (GBS LEP) Local Enterprise Zone and has been allocated substantial capital funding from the 2019 EZ Investment Plan (EZIP) to support the development of the site, with an outline business case submitted in January 2020.

There is a sound and robust viability and funding case for the delivery of the scheme, and the approach to viability and funding was a key component of the evaluation criteria assessed as part of the OJEU Competitive Dialogue Procedure used for selecting the Development Partner. During the Preferred Bidder period, the City Council and Lendlease have been working closely to refine and optimise the Final Tender proposal, with Lendlease committing significant resources (at a cost of several £m) to ensure the successful set up of the joint venture partnership and the robustness of the due diligence undertaken.

Lendlease will secure private sector funding to deliver the proposed scheme, which in addition to the EZ funding will require in excess of £1.5bn of private investment over the life of the development.

The Development Agreement and associated documents have been structured so as to ensure flexibility to introduce third party capital at a variety of levels, ensuring that appropriate capital solutions can be deployed. Lendlease has identified a number of potential funding approaches which will combine Lendlease investment, third party capital and bank finance; these will be refined through engagement with prospective capital partners.

In light of the above, the Council is confident that there is a reasonable prospect that the scheme will proceed.