

Appendix 8

Justification for Compulsory Purchase

1. The use of CPO powers

- 1.1 In deciding to utilise its CPO powers, the Council must have regard to relevant statute and guidance, and should be certain that the case for CPO is both justified and robust. This appendix sets out a justification for the use of CPO powers in Ladywood in line with Section 226 (1) (a) of the Town and Country Planning Act 1990 (as amended) and the Government's published guidance on Compulsory Purchase Process and the Crichel Down Rules; February 2018.
- 1.2 It should be noted that this report seeks 'in principle' authority for the use of CPO powers, which will enable the preparatory work for to commence. As such, in some cases this appendix sets out how the Council intends to comply with the guidance, based on information from the preferred bidder and from Officer experience; this is subject to change. It is vital though that the eventual approach ensures compliance with statute and guidance, and Cabinet will be updated when a subsequent report seeks authority to Make a CPO, or at other times as appropriate.
- 1.3 Additional legal powers are contained in Section 17 of the Housing Act 1985 and Section 530 Education Act 1996. Whilst it is anticipated that any CPO will be made in line with Section 226 (1) (a) of the Town and Country Planning Act 1990, these additional powers are included to reflect the obligation on acquiring authorities to use the most specific power available for the purposes in mind. Further consideration of the scheme and needs of the area will determine which power will be used and this will be clarified when the full authority for the CPO is sought.

2. Town and Country Planning Act 1990

- 2.1 The Town and Country Planning Act provides the powers under which the Council is able to make a CPO. In this case it is currently proposed to do so under the powers provided in the amended section 226(1) (a), which 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.
- 2.2 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 Ladywood is expected to contribute to all three of these objectives in the following ways:

Economic

- a. More homes which help meet the housing need in the city, which in turn makes the city a more attractive place in which to live.

- b. Homes that cost less to heat and maintain, benefitting both owners, tenants, and landlords such as the Council and Registered Providers.
- c. A new local centre which brings new employment uses into the area.
- d. Affordable workspaces for start-ups, entrepreneurs, and established businesses.
- e. Better access to jobs and training as a result of better connectivity.
- f. New and improved education facilities – data indicates that new school buildings have a positive impact on learning outcomes.
- g. Attracting private sector investment into homes, jobs, and other facilities in the area.

Social

- h. Creating a mixed community with a variety of tenures including affordable, social, private rented, and sale, and to meet the needs of different groups such as later living and large families.
- i. Provision for rehousing within the scheme where existing communities wish.
- j. New schools which will also act as hubs for other community uses.
- k. Cultural, community, sports, and leisure uses for the local community and attracting visitors.
- l. Community gardens and spaces designed to facilitate social activity.
- m. Design of public space and buildings which contributes to a safer environment for all.
- n. Direct investment in increasing community capacity and engagement in the area, including in the scheme details.

Environmental

- o. A connected landscape with increased green open space including 2 new parks, community gardens and orchards, natural play, green streets and enhanced canal environments.
- p. New walking and cycling routes supporting a move to active travel
- q. Reuse and refurbishment of existing buildings

2.3 Given the phased approach to CPO proposed, each CPO brought forward will need to be justified in its own right. The Council is content that the phasing enables this to happen, and will include the justification for each phase in the relevant reports to Cabinet.

3. Compulsory Purchase Process and the Crichel Down Rules

3.1 DLUHC's Guidance includes advice which is relevant to all compulsory purchase orders, addressing 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 (Tier 1 advice), and that which is specifically relevant

to compulsory purchase orders made under the Town and Country Planning Act 1990 (Tier 2 advice).

Tier 1 advice

- 3.2 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. As the project develops alternatives to compulsory acquisition will be explored in all cases. This will include effective negotiation, relocation, and other mitigation. The Preferred Bidder's Site Assembly Strategy identifies the preference for acquiring by mutual agreement, and an approach to support this including:
- Acquiring properties on the open market where possible.
 - Initiating negotiations to acquire interests.
 - Making use of conditional contracts, options, leasebacks, or other mechanisms, rather than outright purchase, which can provide certainty for affected parties and increase the likelihood of reaching mutual agreement.
 - Working with affected parties to identify appropriate relocation opportunities.
 - Where appropriate, where mutual agreement cannot be reached, utilising alternative powers such as those under the Housing Act 1985 or Landlord & Tenant, pursuant to obtaining CPO powers.
- 3.3 The Guidance does, however, recognise 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 Council's approach at this stage, in seeking authority in principle, reflects this position.
- 3.4 Paragraph 12 of 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 economic, social, and environmental benefits which will be realised as a result of the regeneration of Ladywood are set out at 2(a)–(q) above.
- 3.5 The acquiring authority should also be sure that the purposes for which the compulsory purchase order is being made justify interfering with the human rights of those affected. This is addressed in Appendix 8, but it will be important that decisions ahead of and throughout the CPO process take account of the impact of CPO on affected parties and seek to mitigate that

impact – through negotiation, relocation, or other measures, such that infringement on human rights does not outweigh the public benefit.

- 3.6 The Minister confirming the order must be able to take a balanced view between the intentions of the acquiring authority, the concerns of those with an interest in the land that it is proposing to acquire compulsorily, and the wider public interest, but will consider each case on its merits.
- 3.7 Paragraph 13 of 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. Before Making a CPO there will be planning consent in place which defines the scheme to be delivered. The preferred bidder has developed proposals as part of the bidding process which will be subject to further development, consultation, and refinement before planning consent can be secured, but key elements are described in the Cabinet Report to which this is appended.
- 3.8 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; further detail at paragraph 14 notes that this should address sources and timing of funding. The Development Agreement with the preferred bidder will include provisions around the sources and timing of funding, and will allow for work to access grant funding, resulting in greater certainty on this point and enabling, in advance of Making, a clear case to be made that addresses this matter.
- 3.9 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. It is the intent of the Council and the preferred bidder that planning consent is in place before a CPO is made, and that any other barriers to delivery such as stopping up of highway, are appropriately addressed.
- 3.10 Paragraph 19 of the Guidance identifies other steps which should be considered to help those affected. Importantly, in recent cases where CPOs have failed the Inspector has cited paragraph 19 in relation to their decision, and in one case related this to human rights matters. This paragraph requires acquiring authorities to consider the following; the Council's intended approach is noted in each case:

- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; information should be in a format accessible to all those affected

The Council and Preferred Bidder will develop a communications strategy to provide information in varied and accessible formats, including holding events in person. This will be informed by a robust understanding of the parties affected. Information will be clear and up to date.

- appointing a specified case manager during the preparatory stage to whom those with concerns about the proposed acquisition can have easy and direct access

The Council and Preferred Bidder will establish a team and identify key contacts who can provide relevant support and information to affected parties. This will include targeted support, for example from our experienced housing team who can support with rehousing options.

- keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power

The proposed strategy sees a series of phases of CPO being carried out. This will enable the most efficient approach to statutory processes, as well as to engagement. The Council is experienced in acting as acquiring authority, and utilises its own expertise as well as Counsel advice as necessary to ensure that Orders are made correctly and under the correct enabling powers.

- offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber))

The Council and preferred bidder will establish a comprehensive Land Assembly Strategy which will inform the approach when negotiating terms for acquisition of any third party interest either by private treaty or to settle terms under the Compensation Code. The strategy will set out the approach for early acquisitions and the potential to enter into conditional contracts or take options in order to secure property interests.

- Offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where appropriate

A Relocation Strategy is proposed to be prepared, which will reflect the affected parties of different categories, and which will include the need to understand the relocation needs of different occupiers at the earliest possible opportunity. The Council's Option to Return policy will apply.

- providing a 'not before' date, confirming that acquisition will not take place before a certain time

The proposed phased approach will enable timescales to be well communicated, and the close involvement of the Preferred Bidder throughout the process will enable programme detail within phases to be refined; 'not before' dates will be entirely feasible therefore and will be utilised where appropriate.

- where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition

The Council and Preferred Bidder will consider any request to fund reasonable costs – those which would be compensatable under the Compensation Code – where this supports negotiations and where clear deliverable or milestones can be agreed.

Tier 2 advice

3.11 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.
- (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.
- (iii) Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means.
- (iv) The potential financial viability of the scheme for which the land is being acquired.

Each of these points is addressed in the following paragraphs.

Whether the purpose for which the land is being acquired fits in with the adopted planning framework

- 3.11.1 The Big City Plan (BCP) 2011 is a non-statutory masterplan for the future development of Birmingham City Centre. It identifies Ladywood as a *“housing estate of variable quality”* with issues of *“poor design and layout, under-utilised open spaces and poor pedestrian routes”*. As the strategic masterplan for the City Centre the BCP sets out a vision for Ladywood to become the home of new family living with well-balanced infrastructure, including private and communal open spaces, improved network of local walking routes and community facilities. It recognises that successful development will rely on the creation of a range of local facilities and amenities accompanied by new public spaces and recreational areas will be central to creating a well-connected desirable place to live. As part of the overall strategic approach to land use the BCP envisages the area becoming a higher density residential area.
- 3.11.2 Once adopted by the Council the Central Birmingham 2040 Framework will replace the BCP, providing a strategic vision for central Birmingham up to 2040 to create a liveable, green, distinctive, fair, and inclusive city. A draft framework is being produced as a non-statutory document to shape development within Central Birmingham and guide future investment. This framework builds on the consultation undertaken on the Our Future City Plan – Central Birmingham 2040 document in 2021. The draft framework will be published for public consultation in summer 2023.
- 3.11.3 The framework includes Ladywood Estate as one of the bold proposals for a Housing Action Area (HAA), reflecting the current plans for regenerating the housing stock, providing improved facilities, and delivering enhanced green spaces. The HAA will be taken forward in the emerging Birmingham Local Plan. This evolving framework will

therefore provide an up-to-date overarching strategy for the Ladywood Estate and the surrounding areas.

- 3.11.4 The Birmingham Development Plan (BDP) adopted in 2017 provides statutory policies for the whole of the city which seek to deliver the growth agenda to meet needs of the growing population including homes, jobs, and infrastructure. The BDP identifies Ladywood as an area that should become a vibrant mixed-use area combining the visitor, cultural, commercial, and residential offer into a dynamic well-connected area, which supports development in the Greater Icknield Growth area.
- 3.11.5 Further to this the BDP identifies the importance of Housing regeneration and the renewal of existing housing areas to ensure high quality accommodation and environment areas are provided. This aligns with the overall aim of the BDP to develop Birmingham as a City of sustainable neighbourhoods that are safe, diverse, and inclusive. The BDP has a strong focus on creating high quality development with an emphasis on place making. The opportunities for estate renewal are identified in the relevant policy along with provisions for other areas to come forward over the plan period with a proactive approach between the Council, delivery partners and residents being promoted.
- 3.11.6 The Council is currently in the process of working on a new Local Plan, which will guide how the city will develop in the future and provide policies to guide decisions on development proposals and planning applications up to 2042. Consultation on Our Future Birmingham City Plan Birmingham Local Plan Issues and Options took place in October 2022. Whilst only at the start of the plan making process, what is clear is that Birmingham is facing an unprecedented housing need. Based on the government's standard methodology the city needs to build over 7,000 homes every year for the next 20 years. The redevelopment of areas like the Ladywood Estate to optimise the delivery of high quality and high-density housing that helps to meet the city's housing need are therefore crucial. The Issues and Options document included reference to the Ladywood Estate regeneration ambition and recognised it as a new opportunity area that will to be reflected in the revised Local Plan. Adoption of the new Local Plan is timetabled for 2026.
- 3.11.7 The council is committed to delivering an efficient, fair, green, sustainable, and healthy transport system. The Birmingham Transport Plan, adopted in 2021, sets a vision for a sustainable, inclusive, travel anywhere network. This will be achieved through a fully integrated and accessible public transport system that will support sustainable and inclusive economic growth, tackle climate change and promote the health and wellbeing of Birmingham's communities. Connectivity via public transport will be improved, through new bus priority and investment in tram and rail. Active travel will become the mode of choice for short trips, as more destinations and activities become accessible by walking or cycling. The plans for Ladywood align with Birmingham Transport Plan as they include a bus priority route and several proposals that will make walking and cycling a realistic and desirable option for regular journeys.
- 3.11.8 Birmingham City Council declared a climate emergency in June 2019. The ambition was set for the council and city to become net zero carbon by 2030, or as soon as possible thereafter as a 'just transition' allows. A 'Call to Action' action plan, approved by Full Council in January 2021, set out an initial set of actions the council would take to achieve 'Route to Zero (R20)'. The regeneration of the Ladywood Estate provides opportunities to deliver a highly sustainable development that helps to deliver Route to Zero. The new homes and other buildings will be highly energy efficient and a key aim of refurbishing the existing tower

blocks is to also make these more energy efficient. The design and environmental quality of the redeveloped estate will help support active lifestyles, reducing car dependency. The enhanced open space will be designed to help mitigate against the impacts of climate change, along with helping to tackle the causes.

- 3.11.9 Overall, the Council has established strategic policies to bring forward estate renewal and regeneration across the City, with the Ladywood Estate area recognised as a location for major change. The proposals are therefore in accordance with existing planning policy, along with the emerging planning framework for the area.

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

- 3.12 Paragraph 2.2 provides detail on the ways in which the scheme will contribute to the economic, social, and environmental wellbeing of the area.

Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means

- 3.13 The regeneration of Ladywood delivers significant benefits which cannot be achieved by an alternative scheme. The change necessary to enable the number of new homes, new facilities, and green space proposed cannot be achieved without both Local Authority and private sector intervention on the scale proposed. The density of homes proposed could not be delivered in a sustainable way in a location that was less well-connected or with poorer access to facilities. Further, the scheme is unique to the location, designed around existing constraints, infrastructure, and with some buildings retained where it is feasible to do so.

The potential financial viability of the scheme for which the land is being acquired

- 3.14 The viability of the scheme is addressed in the FBC which forms Appendix 1 of this report, and phase viability will be assessed at various stages ahead of seeking authority for CPO powers.

4. Conclusions

- 4.1 There is a clear justification for the use of CPO powers to deliver the regeneration of Ladywood, and a robust case is being built. Further work following the granting of in principle authority will enable this case to be developed further.