

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET	
Report of:	Strategic Director of Economy	
Date of Decision:	20 September 2016	
SUBJECT:	ACQUISITION OF PRIVATE SITES AND EMPTY HOMES	
Key Decision:	Relevant Forward Plan Ref: 001959/2016	
If not in the Forward Plan: (please "X" box)	Chief Executive approved	<input type="checkbox"/>
	O&S Chairman approved	<input type="checkbox"/>
Relevant Cabinet Member(s) or Relevant Executive Member:	Councillor Peter Griffiths – Housing and Homes Councillor John Clancy – the Leader	
Relevant O&S Chairman:	Councillor Mohammed Aikhlaq, Corporate Resources and Governance Councillor Victoria Quinn – Housing and Homes	
Wards affected:	All	

1. Purpose of report:
<p>1.1 This report sets out proposals for the Council to acquire empty privately owned residential properties and vacant undeveloped sites. Any sites acquired will be developed with new homes by the Council through the Birmingham Municipal Housing Trust (BMHT).</p> <p>1.2 This report seeks approval from Cabinet to delegate the final decision to acquire the specific site or property to the Cabinet Member for Housing and Homes in consultation with the appropriate Strategic Director.</p> <p>1.3 This report seeks approval to use CPO powers in order to acquire both sites and individual properties.</p>
2. Decision(s) recommended:
<p>Cabinet is recommended to:-</p> <p>2.1 Delegate to the Strategic Director Economy and the Cabinet Member Housing and Homes, approval to authorise the acquisition under section 17 of the Housing Act 1985 or section 226 (1) (a) Town and Country Planning Act 1990, of any vacant/undeveloped sites in Birmingham suitable for new housing development by the Council through BMHT.</p> <p>2.2 Delegate to the Strategic Director Place and the Cabinet Member Housing and Homes approval to authorise the acquisition under section 17 of the Housing Act 1985 of any long term empty properties in Birmingham.</p> <p>2.3 Approve the use of CPO powers under section 17 of the Housing Act 1985 and section 226 (1) (a) Town & Country Planning Act 1990 to acquire vacant sites and empty homes.</p>

2.4 Following any acquisition of the sites, authorise the Strategic Director Economy to include the sites within the development programme of the Birmingham Municipal Housing Trust (BMHT) 2015-2020 and to apply for any planning permissions, stopping up orders or any other licences or consents or highways or other agreements as are necessary in order to develop the sites, the letting of construction contracts to be subject to Full Business Cases to be considered by the appropriate decision maker.

2.5 Authorise the Strategic Director Economy to apply for grant or loan funding to support the programme of acquisition of sites and empty properties from any available funding sources, including but not limited to, the Homes and Communities Agency, and the Local Enterprise Partnership.

2.6 Note that an annual report will be presented to Cabinet detailing any sites and properties acquired over the previous 12 months.

2.7 Authorise the Director of Property to negotiate terms for the acquisition of any sites or properties on a voluntary basis in advance of compulsory acquisition as well as to settle any CPO compensation.

2.8 Authorise the City Solicitor to take any steps/enter legal agreements needed to bring the above into effect including, but not limited, to:

- i) take all necessary steps to secure the making, confirmation and implementation of the compulsory purchase orders, including the publication and service of all notices to give effect thereto including High Court enforcement officer
- ii) if granted power to do so by the Secretary of State, to confirm the compulsory purchase orders

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3. Consultation

3.1 Internal

- 3.1.1 Ward members will be consulted as and when sites or properties are identified for acquisition within their wards. The (Acting) Strategic Director Place and other relevant Senior Officers from the Economy, and Place Directorates have been consulted and are supportive of the report proceeding for an executive decision.
- 3.1.2 Officers from City Finance, Legal Services and Birmingham Property Services have been involved in the preparation of this report.

3.2 External

- 3.2.1 Owners of individual sites and properties will be consulted and given reasonable opportunities to bring their sites back into use before CPO is actioned. If compulsory purchase is used to acquire these sites, owners will be provided with advice and guidance on that procedure.

4. **Compliance Issues:**

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1.1 The proposals set out within this report support the objectives of the Birmingham Development Plan to provide sufficient new homes within the city to meet the needs of its growing population.

The development of new homes for a growing city is a key objective of the Leader's Policy Statement 2016+. The development of new affordable housing within the City is in accordance with the following objectives of the Council's Business Plan and Budget 2016+:

Fairness - to tackle inequality and deprivation, promote social cohesion across all communities in Birmingham, and ensure dignity, in particular for our elderly and safeguarding for children – by providing new homes, apprenticeships and bursary programme placements.

Prosperity - to lay the foundations for a prosperous City, built on an inclusive economy – by stimulating the construction industry through the Council's housing building programme.

Democracy - to involve local people and communities in the future of their local area and their Public Services – by consulting communities about proposals for new development and ensure that new homes meet local needs and localised targeting of training, education and employment initiatives to complement the house-building Programme.

4.1.2 This proposal responds to the Birmingham Connected five core objectives;

Efficient Birmingham - Birmingham Connected will facilitate the city's growth agenda in the most efficient and sustainable way possible, strengthening its economy and boosting jobs.

Equitable Birmingham - Birmingham Connected will facilitate a more equitable transport system; linking communities together and improving access to jobs and services, by creating jobs and apprenticeships in the construction industry.

Sustainable Birmingham - Birmingham Connected will specifically reduce the impacts of air and noise pollution, greenhouse gas emissions and energy consumption. New homes constructed through the BMHT programme are energy efficient to Code 4 of the Code for Sustainable Homes.

Healthy Birmingham - Birmingham Connected will contribute to a general raising of health standards across the city through the promotion of walking and cycling and the reduction of air pollution, through use of energy efficient homes which reduce our carbon footprint.

Attractive Birmingham - Birmingham Connected will contribute to enhancing the attractiveness and quality of the urban environment in local centres, key transport corridors and the city centre.

4.2 Financial Implications

4.2.1 The acquisition of empty homes will be funded from specific resources available within the approved Empty Homes Strategy Capital budget (General Fund) for such purposes. The properties will only be acquired where owners do not take adequate steps to bring the dwellings back into use in a reasonable timeframe.

In the event that it is necessary to proceed with acquisition of empty properties, usually the properties will subsequently be sold, with any receipt being recycled back into the Empty Homes Strategy budget to allow for similar purchases to bring empty properties back into use in accordance with existing Council policy.

The acquisition of private sector sites will be utilised to develop new social and affordable homes through the BMHT programme. However, opportunities will also be explored to secure funding through the Local Growth Fund, HCA programmes, HRA borrowing and through the existing HRA Business Plan 2016+..

Any sites acquired through this programme will be developed through the Council's BMHT programme.

This programme will be managed to ensure that acquisition, development, and sales activities are managed to ensure delivery remains within the limit of resources identified for this purpose at all times.

The new homes built on the sites acquired through the programme will generate Council Tax income to the Council.

4.3 Legal Implications

4.3.1 Housing Compulsory Purchase powers are exercised under section 17 of the Housing Act 1985. Sections 17 and 18 of the Act authorises the acquisition and holding of the land for housing purposes. In some circumstances where the redevelopment of a vacant site would include ancillary non-housing uses, the acquisition of sites may be more appropriately made under section 226 (1) (a) Town & Country Planning Act 1990.

4.4 Public Sector Equality Duty

4.4.1 A level 1 Equality Impact Analysis (EA001339) concluded that the proposed programme results in no identifiable adverse impact upon equality. An equality impact analysis will be carried out prior to the decision to authorise each CPO that follows this report.

4.4.2 Information will be managed in line with the Council's Data Protection Policy.

5. Relevant background/chronology of key events:

5.1 The adopted Birmingham Development Plan identifies a need for 89,000 new homes by 2031, and to date sites for 44,000 have been identified within the city. At the same time demand for housing is growing in the city, with around 20,000 households on the housing waiting list and over 1,500 households living in temporary accommodation.

5.2 The supply of new homes in the city is increasing year on year, with 2015-16 figures showing an increase on 2014-15. This improvement is largely due to the Council's own development programme through the Birmingham Municipal Housing Trust, which has completed over 1,000 new homes in the last two years alone, and now accounts for around 28% of all new housing supply.

5.3 At the same time, there are currently in excess of 5,000 privately owned properties in the city which have been vacant for more than 6 months, with approximately 1,900 which have been empty for more than 3 years. When set in the overall context of the shortfall in housing in the city, it is clear that bringing these homes back into use could have a major positive impact on housing supply in the city.

5.4 Similarly, the Strategic Housing Land Availability Assessment (SHLAA) undertaken by the Council identifies sites which could accommodate over 8,000 new homes within the 44,000 quoted above and which have the benefit of full Planning Permission but which have not yet been built upon. This assessment includes vacant sites which could be acquired under the proposals set out in this report.

5.5 There is an opportunity for the Council to further expand the remit of the Birmingham Municipal Housing Trust and drive housing growth by the acquisition of privately owned sites. Over the last few years, the Council's new build programme has expanded not only in terms of the numbers delivered – 562 new homes in 2015-16 – but also in the scale of its ambition and the breadth of its activities.

- 5.6 As well as building new homes for social and affordable rent, the Council also builds new homes for sale, targeted at first time buyers, and its first Private Rented Sector scheme has just started on site. The development of a new housing archetype, the dormer bungalow, designed specifically to incentivise older households to move from a family home to a smaller property has been an outstanding success, and this approach is now being rolled out on sites across the city.
- 5.7 However, if the development programme is to expand yet further, a supply of good quality land is essential, and this report therefore seeks approval for the Council to acquire privately owned land to support its new build programme through the BMHT.
- 5.8 Over the last 6 years, the Council has been very successful in persuading owners to bring their empty properties back into use through a combination of provision of advice and guidance, warning of the potential use of compulsory acquisition powers and the actual exercise of those powers.
- 5.9 It is therefore proposed that the Council continue to roll out the practice of seeking to acquire empty properties and also to take the same approach to acquire sites in the private sector, preferably from willing vendors, but if necessary through compulsory purchase action.
- 5.10 The Council is ideally placed to take such action – not only does it have statutory CPO powers, but also through the BMHT the ability to develop out such sites itself. This approach could enable the expansion of the BMHT programme further and enable the Council to take on an even greater role in directly driving the supply of new high quality homes for the citizens of the city.
- 5.11 In order to allow speed of decision making in such cases, it is recommended that approval to acquire (using CPO powers if necessary) such sites and empty homes is delegated to the Strategic Director Economy and the Cabinet Member for Housing and Homes. Such acquisitions will be guided by the following criteria –
- Financial viability – a business case demonstrating that the proposed development is financially viable over a 30 year period;
 - Strategic fit – ensuring that the development of new homes in the location fits with the Council’s priorities;
 - Availability of funding – all proposals will be subject to funding being available (including for the development of any empty sites acquired);
 - Maximising the benefits to local communities – ensuring that sites which blight neighbourhoods are developed.
 - Evidence that owners have been given reasonable opportunities to bring their site or property back into use.
 - ensuring that in each case, before CPO is authorised, the guidance contained in the Department for Communities and Local Government’s CPO Guidance are met (see Appendix 1)

Following acquisition by the Council, owners are entitled to full compensation as required by statute.

6. Evaluation of alternative option(s):

- 6.1 Option 1 - Do Nothing – under this option the Council would take no action to acquire vacant privately owned sites and empty homes. The consequence of this course of action would be a that the Council would be unable to increase the number of new homes that it provides, and a failure to deal with those privately owned sites and empty homes which blight local neighbourhoods, and a lost opportunity to generate additional Council Tax income for the Council.
- 6.2 Option 2 - Acquire sites and empty homes on a voluntary basis only without use of CPO powers – this option would enable the acquisition of a lesser number of sites for the BMHT programme as it is dependent on a willing seller, but is unlikely to deal with the issue of vacant sites and empty homes.

7. Reasons for Decision(s):

- 7.1 The proposals set out in this report will enable the Council to further increase the scale of its new build programme through the BMHT in order to increase housing supply to meet the needs of a growing city.

Signatures

Cabinet Members

Date

Councillor Peter Griffiths
Cabinet Member for Housing and Homes

Councillor John Clancy
The Leader
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Chief Officer

Waheed Nazir
Strategic Director of Economy

List of Background Documents used to compile this Report:

Birmingham Development Plan
Council Business Plan and Budget 2016+
Housing Prospectus 2015
Intelligence, Strategy and Prioritisation Data

List of Appendices accompanying this Report (if any):

- 1. The case for CPO

The Case for CPO

DCLG Guidance on compulsory Purchase Process October 2015 provides advice to 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. All of these requirements will need to be met in each case before a CPO can be authorised for either an empty property or a vacant/undeveloped site

A CPO should only be made

1. where there is a compelling case in the public interest. Each case will need to be examined individually, however bringing vacant homes back into use, and bringing forward housing development schemes on undeveloped sites (thereby ensuring that sufficient homes are provided to meet the needs of the city's citizens) are clearly capable of being in the public interest.
2. the Council should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected. The Secretary of State confirming the order will take a balanced view between the intentions of the acquiring authority, the concerns of those with an interest in the land affected and the wider public interest. Each case will need to be examined individually, and CPO will only be authorised where the Council has balanced the various interests but considers that the use of compulsory purchase powers in that case is justified.
3. the Council should have a clear idea of how it intends to use the land which it is proposing to acquire. In respect of empty property CPOs that come forward, the Council may either retain the properties within its own housing stock, or auction them with a covenant that the new owner brings them back into use. In respect of undeveloped/vacant sites CPOs that come forward – the Council will obtain planning permission for housing development on the site (or make use of any existing planning permission) which is the subject of the CPO
4. resources are likely to be available within a reasonable time-scale to deliver the proposals - the Council has the funding available to fund the acquisition of empty homes and undeveloped sites. Details of the funding available for the specific CPO will be provided prior to the decision to authorise a CPO for a specific site or property.
5. the Council should show that the scheme is unlikely to be blocked by any impediments to implementation. Planning consent for residential use will likely already exist for empty properties and in the case of vacant sites will be sought for housing development if a suitable planning consent does not already exist.
6. CPO should be a last resort. CPO will only be sought after attempts to contact the owner and/or encourage them to bring the property/site back into use themselves have failed. The Council will endeavour to negotiate voluntary acquisition of a property or site, rather than acquire by CPO. Negotiations will continue after the CPO is made, and where an owner has credible evidence that they will bring the property back into use themselves, in an acceptable timescale, the Council may enter legal agreements or undertakings with the owner giving them opportunity to do so.
7. The CPO should only be made if it will provide qualitative or quantitative housing gain.
8. The CPO should be in accordance with national and local planning policy.
9. When using section 226 (1) (a) Town & Country Planning Act 1990 to justify CPO, 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 for which the acquiring authority has administrative responsibility

COMPULSORY PURCHASE - THE HUMAN RIGHTS ACTS 1998 AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Section 6 Human Rights 1998 Act prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights (“The Convention.”) There are 2 main articles of The Convention, which are applicable to the recommendations in this report.

ARTICLE 8

1. “Everyone has the right to respect for private and family life, his home and his correspondence.”
2. “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 1 of the FIRST PROTOCOL

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. “

Guidance

Article 8 applies where a local authority is considering disturbing residents’ private and family lives and removing them from their homes. It may also be relevant where residents who, although not directly affected by removal or dispossession, suffer significant disruption to their lives as a consequence of the authority’s actions.

Article 1 of the First Protocol applies where a local authority is considering the use of CPO powers to acquire private interests, and where it is proposing to dispossess residents of their homes.

The approach to be taken to give effect to rights under The Convention is also reflected in paragraph 12 of DCLG guidance on Compulsory Purchase Process October 2015:- “A Compulsory Purchase Order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which the Compulsory Purchase Order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention”.

The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”, i.e. compulsory purchase must be proportionate. Both public and private interests are to be taken into account in the exercise of the Council’s powers. Similarly, any interference with Article 8 rights must be “necessary in a democratic society” i.e. the proposed interference must be necessary. In pursuing a CPO, the Council has to carefully consider the balance to be struck between individual rights and the wider public interest having regarded also the availability of compensation for compulsory purchase.

Consideration of Human Rights Issues

Article 8(1) provides that everyone has the right to respect for his/her property but Article 8(2) allows the State to restrict the rights to respect for the property to the extent necessary in a democratic society and for certain listed public interest purposes e.g. public safety, economic well-being, protection of health and protection of the rights of others.

In considering Articles 8 and Article 1 of the First Protocol of The Convention in the context of dispossession and compulsory purchase, it is necessary to answer the following:

1. Does a right protected by these Articles apply?
2. Is the interference in accordance with law?
3. Does the interference pursue a legitimate aim?
4. Is the interference necessary in a democratic society?

Does a right protected by these Articles apply?

ARTICLE 1 of the FIRST PROTOCOL

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions...”

Clearly the dispossession of an owner of their property through CPO (and if relevant enforced rehousing) will impinge on this right. Also, as a tenancy is a possession under this provision, the rights of tenants must be taken into consideration. The Council must therefore consider all the possible justifications for this interference as detailed in considerations (b), (c) and (d) set out below.

ARTICLE 8

Article 8.1 provides that everyone has the right to respect for his/her private and family life, home and correspondence. Article 8.2 allows the State to restrict these rights to respect to the extent necessary in a democratic society and for certain listed public interest purposes.

The essence of this right lies in the concept of respect for the home as a right to privacy, in the same context as private and family life and correspondence. Article 8.1 does not concern itself with the person’s right to the peaceful enjoyment of their home as a possession; this is dealt with under Article 1 of the First Protocol.

Clearly Article 8 does apply and therefore it is necessary for the Council to consider the possible justifications for the interference (Article 8(2)) as follows:

Is the interference in accordance with law?

There is a clear legal basis for making the CPO under the Housing Act 1985.

Does the interference pursue a legitimate aim?

The CPO is necessary to ensure the supply of sufficient homes to meet the needs of a growing city.

Is the interference necessary in a democratic society?

This requires a balanced judgement to be made between the public interest and the rights of individuals, and the rights and freedoms of others.

Conclusion

The Council has considered the effect of the above articles of The Convention and decided that, on balance, it is in the general public interest and of benefit to the community to make the CPO over and above the interest of the individuals affected.

Interference with Convention rights is considered by the Council to be justified. The Council in making this Order has had particular regard to meeting the alternative housing needs of the affected households, and the rights of individuals to compensation in accordance with the Land Compensation Act 1973 (as amended.) and the Land Compensation Act 1961 and Compulsory Purchase act 1965 is considered to be both necessary and proportionate in that the land to be acquired is the minimum to achieve this Scheme’s objectives