

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:

CABINET

Report of:

Corporate Director, Economy

Date of Decision:

13th February, 2018

SUBJECT:

AXIS BUILDING – COMPULSORY PURCHASE ORDER

Key Decision: **No**

If not in the Forward Plan:
(please "X" box)

Relevant Cabinet Member

Relevant O&S Chair:

Wards affected:

Relevant Forward Plan Ref:

Chief Executive approved

O&S Chair approved

Councillor Ian Ward - Leader

Councillor Zafar Iqbal – Economy, Skills and Transport

Ladywood

1. Purpose of report:

- 1.1 To seek approval for the Council to make a Compulsory Purchase Order (CPO) to acquire third party interests in, and new rights at, the Axis Site, Birmingham, 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 approved development proposals.

2. Decision(s) recommended:

That Cabinet:

- 2.1 Approves, 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 outlined on the Plan at Appendix 1 (the 'Order Land'), to be entitled, 'The Birmingham City Council (Axis Building, Holliday Street, City Centre) Compulsory Purchase Order' (the 'CPO'), in order to facilitate a city centre redevelopment.
- 2.2 Authorises the City Solicitor to complete an Indemnity Agreement under which all costs, expenses and compensation arising from the CPO are met by the developer, London and Continental Railway Limited (LCR) and negotiate and obtain a form of security to ensure that the City Council is fully compensated for all acquisition costs.
- 2.3 Authorises the City Solicitor to take all necessary steps including the execution of documents as required, to secure the making, confirmation and implementation of the CPO including instruction of the High Court Enforcement Officer, as well as publication and service of all necessary notices, and (if granted power to do so) to confirm the CPO. This includes preparation of the s16 notice allowing notices to be served on parties with an interest in the land.
- 2.4 Authorises the Assistant Director Property, if the opportunity arises, in liaison with LCR to negotiate for and acquire the third party interests in the land in advance of, and alongside, making the CPO.
- 2.5 Authorises the City Solicitor to negotiate, execute and complete any documents required to give effect to the recommendations in this report.

Lead Contact Officer:

Rod Chapman - Planning and Development

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3. Consultation

3.1 Internal

Consultation has taken place with the Leader of the Council, the Deputy Leader, and Cabinet Member for Transport and Roads; all are supportive of this report proceeding to Cabinet.

3.1.2 Officers in Legal and Governance and Finance have been involved in the preparation of this report.

3.2 External

Statutory public consultation took place on the details of the planning applications. LCR have also been in discussion with those whose interests are required for the development.

4. Compliance Issues:

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

4.1.1 The proposed CPO would enable development that is in accordance with the vision and aims of 'Birmingham 2026 Our Vision for the Future'. This sets out a vision for the city and forms the basis for all other strategies including the Big City Plan and the Birmingham Development Plan 2031 (BDP). It is consistent with the Council's Vision and Priorities 2017 to 2020 report; specifically the regeneration of the Axis Site to provide high quality redevelopment, incorporating Grade A office floorspace, that will contribute to the Council's priority of supporting jobs and skills; through encouraging a strong, growing economy that creates and keeps jobs in the city, and provides for growth in the sectors where the city has competitive strengths.

4.1.2 The proposals are in accordance with national and local planning policy specifically the National Planning Policy Framework 2012, 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 proposals also have been granted planning permission by the Council. The increase in office floorspace would support the proposed targets identified in the BDP and the addition of retail/food and beverage space is in accordance with the BDP policy to support the creation of a vibrant mixed-use offer within the Westside and Ladywood Quarter. The creation of a new public square and attractive environment, and the creation of new pedestrian connections, will also contribute to the regeneration of the area.

4.2 Financial Implications

4.2.1 An indemnity agreement between the City Council and the developer will be completed to ensure that all the costs associated with the CPO – including progressing of the order and all the costs of site acquisition, and all compensation, will be borne by the developer, LCR. LCR's ultimate holding company is the Secretary of State for Transport, so is financially secure, however a form of security will be obtained in the event that a future appeal on land values or if for any other reason the Council is left exposed to additional CPO costs.

4.2.2 Solicitors acting on behalf of the developer have provided an undertaking to pay, on an indemnity basis, to cover City Council officer time and disbursements in order to pursue the acquisition of the site, up until completion of the indemnity agreement. The indemnity agreement has been prepared for signature following approval of this report.

4.3 Legal Implications

The relevant legal powers for the CPO are contained in section 226(1) (a) Town and Country Planning Act 1990 (as amended) (in respect of acquiring third party interests in the land), 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 Human Rights Act 1998 applies, and regard must be had to the Government's Guidance on CPO (October 2015). Appendices 1, 2 and 3 provide further information in this regard. The proposed compulsory acquisition is in accordance with the requirements of the Department of Communities and Local Government, (DCLG) Compulsory Purchase Process Guidance October 2015 (updated 2017) which governs the use of Compulsory Purchase Powers.

4.4 Public Sector Equality Duty

This report relates to the Authority for making a CPO under the Town and Country Planning Act 1990 (as amended). An initial equalities assessment has been undertaken and it is considered that a full Equality Assessment will not be required (see Appendix 3).

5. **Relevant background/chronology of key events:**

- 5.1 The Axis site lies on the edge of the city core, between the Mailbox and the emerging Arena Central development on the south side of Broad Street. It is also close to the major Paradise redevelopment, which is itself transforming the city centre. Full planning consent for the development of a phase 1 building was granted in April 2017 following the signing of a Section 106 agreement (2016/09735/PA). Outline planning consent for Phase 2 was granted in October, 2017, following the signing of a Town and Country Planning Act 1990 Section 106 agreement (2017/01882/PA). The schemes comprise the redevelopment of the site with the provision of high quality Grade A office floor space, in the form of 4 office-led mixed-use buildings, including active ground floor uses and redefined street frontages, around a new high quality public square. Up to 114,380 sq.m Office Space and 3,900 sqm of Retail Space will be created around the development.
- 5.2 The 4.2 acres site is currently dominated by the eleven storey, 'T' shaped low density Axis office building, built in the 1970's. As the consented proposals demonstrate, the existing use of the site is extremely inefficient and the site is under-utilised. The site's urban design and environment are very poor for the public and pedestrians, and the existing configuration acts as a barrier to movement. The current building no longer meets the requirements expected by those seeking Grade A office space. Rather than complement the wider regeneration of the City Centre, this key and prominent site detracts from it.
- 5.3 The implementation of the planning approvals through comprehensive redevelopment of the Axis Site will deliver significant regeneration benefits, supporting the economic growth and prosperity of the City and enhancing the overall environmental quality and pedestrian connectivity between destinations and new surrounding developments. The approved proposals will transform this key site acting as a catalyst for continued transformation of this part of the City Centre with its strategic location, positioned between the established City Core and the Westside area that includes Brindley Place, the Library of Birmingham, Arena Central and the Mailbox. The consented schemes will deliver a range of social, economic and environmental benefits including:

- Significant increase in office accommodation with floorspace growing from 16,095 sqm up to over 114,380 sqm to enable the city to compete for inward investment and retain existing businesses and jobs. The scheme will create a net figure of around 8,000 permanent new jobs and 300 temporary ones during the construction.
- Regeneration of existing site to provide sustainable development with the creation of high quality public realm with hard and soft landscaping around the site and a new public square at the heart of the development
- Forecast of £19million employee spending in the local economy and a £287million a year contribution to the wider community. (Source of this information is the access and design statement which accompanied the planning applications for the development.)
- Better connectivity for pedestrians and more attractive and safer routes for users making visually clear and attractive pedestrian routes enhancing Navigation Street through to Holliday Street, and linking key destinations in this part of the city, including New Street Station.

5.4 In order to implement the planning consents, the developer (LCR) requires possession of a few private interests in the site – all of a leasehold nature; the developer has been unable to acquire despite its best efforts. Compulsory purchase is therefore essential in order to secure the land and premises needed for the approved development scheme to proceed. Appendix 1 shows the extent of the proposed CPO, including new rights (such as oversailing).

5.5 The Town and Country Planning Act, 1990, section 226, requires at least one of three well-being benefits to be met. They are: social, economic and environmental. This CPO meets all three. The social benefits being job creation and improved connectivity. The economic benefit is the job creation, new floorspace and investment into the economy. The environmental benefit that the redevelopment will bring includes improved connectivity of the site through the design and layout of new publicly accessible streets and squares, connecting into the surrounding area and becoming a welcoming location in its own right. The scheme includes significant tree planting, which will result in more trees than before and also includes elements of soft and hard landscaping.

5.6 Following approval of this report, the indemnity agreement will be finalised and completed and a form of security will be obtained. It is expected that the City Council will be in a position to make the CPO shortly thereafter. The CPO will be prepared and sealed with all qualifying persons receiving notification and submitted to the Ministry of Housing, Communities and Local Government for confirmation.

6. Evaluation of alternative option(s):

6.1 Do Nothing. If the site is not acquired and regenerated, the opportunity to expand the city core with a large scale office led, mixed use, sustainable development (and the associated public benefits) will be lost. The scheme would significantly increase the city core's office floorspace offer and provide it in a setting that complements neighbouring developments; notably Paradise and Arena Central, whilst in design, built form and layouts, continuing the city centre feel outwards allowing this site to become part of the city core. Further, the chance to regenerate this site to encourage movement in this part of the City Centre and particularly between Navigation Street and Holliday Street 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 accommodation offer, particularly in terms of office floorspace. In addition, the existing leasehold structure would still exist, and so the same delivery issues faced by LCR now, would continue to apply at that point.

- 6.2 Given the existing structure of long leasehold interests in the Axis Building, and the existence of several occupational tenancies, the comprehensive regeneration proposals cannot be brought forward without all of those interests being acquired. 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 benefits that it will bring to the City and wider region. LCR has sought to acquire the interests by agreement, and will continue to negotiate with the relevant third parties alongside the CPO process with the aim of acquiring the interests by agreement.

7. Reasons for Decision(s):

- 7.1 To provide authority for the making of a CPO for the third party interests in the Axis Site so as to facilitate the comprehensive regeneration of the site and the achievement of the significant public benefits associated with the proposals. The scheme will have a positive effect on equality of opportunity by providing a major redevelopment scheme for the city with much needed additional employment space that will bring about more jobs and economic growth.

Signatures

Date

Councillor Ian Ward
Leader of the Council

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Waheed Nazir
Corporate Director, Economy

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List of Background Documents used to compile this Report:

Birmingham Development Plan (BDP)

Big City Plan (BCP)

Planning Applications:

Ref: 2016/09735/PA - Detailed planning permission was granted in April 2017

Ref: 2017/01882/PA - Outline planning permission was granted in October 2017

Birmingham 2026 Our Vision for the Future Sustainable Community Strategy

List of Appendices accompanying this Report (if any):

1. Appendix 1 - Site plan
2. Appendix 2 - Human rights consideration
3. Appendix 3 – Equality Analysis

Report Version

Dated

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

- 1 The Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) Tackle prejudice, and
 - (b) Promote understanding.
- 5 The relevant protected characteristics are:
 - (a) Marriage & civil partnership
 - (b) Age
 - (c) Disability
 - (d) Gender reassignment
 - (e) Pregnancy and maternity
 - (f) Race
 - (g) Religion or belief
 - (h) Sex
 - (i) Sexual orientation