Appendix B CABINET AUTHORITY: HIGHWAY SCHEMES: HUMAN RIGHTS APPENDIX

COMPULSORY PURCHASE – THE HUMAN RIGHTS ACT 1998 AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Section 6 of the Human Rights Act 1998 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 affect 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 2 of the Ministry of Housing, Communities and Local Government's "Guidance on Compulsory purchase process and The Crichel Down Rules" as updated July 2019, which states that

"a Compulsory Purchase Order should only be made where there is a compelling case in the public interest… When making and confirming an order, acquiring authorities and authorising authorities 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".

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 regard also to 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 enforced rehousing if residential property is affected will impinge on this right. Also, as a tenancy is a possession under this provision, the rights of the tenants must be taken into consideration. The Council must therefore consider all the possible justifications for this interference as detailed in the considerations 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 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 if residential property is affected by the CPO 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 sections 239 and 240 of the Highways Act 1980

Does the interference pursue a legitimate aim?

The CPO is necessary to implement a highways scheme to which there is no impediment to implementation.

Is the interference necessary in a democratic society?

This requires a balanced judgment 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 households in any residential property affected and the rights of individuals to compensation

in accordance with the Land Compensation Act 1973 (as amended), the Land Compensation Act 1961 and the Compulsory Purchase Act 1965. Compulsory purchase is considered to be both necessary and proportionate in that the land to be acquired is the minimum to achieve this Scheme's objectives.