

REPORT TO: Scrutiny & Overview Committee 7 October 2020

LEAD CABINET MEMBER: Councillor John Williams,
Lead Cabinet Member for Finance

LEAD OFFICER: Liz Watts, Chief Executive

Compulsory Purchase Order Policy

Executive Summary

1. To consider the establishment and adoption of a policy that sets out the approach, circumstances and conditions under which the Council will consider the use of compulsory purchase powers to acquire land and property interests for the purpose of carrying out development, re-development or improvement where there is a compelling case in the public interest for doing so.
2. This is a not key decision as the report seeks to establish a policy framework for the consideration of the use of compulsory purchase power; a decision to use these powers would be subject to a separate report to outline the resource implications.

Recommendation

3. The Committee is invited to consider the adoption of the Compulsory Purchase Order Policy, attached at Appendix A, as the basis for considering the use of compulsory purchase powers to acquire land and property interests for the purpose of carrying out development, re-development or improvement where there is a compelling case in the public interest for doing so.

Reason for Recommendation

4. To determine an appropriate policy framework that sets out the approach, circumstances and conditions under which the Council will consider the use of compulsory purchase powers.

Details

Policy Framework

5. Local authorities are able to make use of statutory compulsory purchase powers (CPO) in order to acquire land and land interests in order to progress projects within their area where there is a compelling case in the public interest for doing so.

6. There is clear Government guidance covering the powers of CPO vested in local authorities, entitled "Compulsory purchase process and The Crichel Down Rules" and this has been referred to in preparing a draft CPO policy. The guidance notably includes the following words: "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 for doing so".
7. The use of compulsory purchase powers should be a last resort to secure the assembly of land and a local authority considering the use of such powers is expected to seek acquisition of land by negotiated settlement prior to and concurrently with commencing the CPO process.
8. The Government guidance specifically states that: "The confirming authority (Secretary of State) will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:
 - plan a compulsory purchase timetable as a contingency measure; and
 - initiate formal procedures. This will also help to 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".
9. The adoption of a CPO Policy would provide a consistent approach and transparent policy and framework and, as a consequence, demonstrate justification as part of its decision-making process.
10. The draft CPO Policy is attached at Appendix A and will be reported to Cabinet at its meeting on 19 October 2020 for consideration.
11. It is proposed that the policy will be reviewed on a regular basis and updated when required. Reports on individual applications to pursue a compulsory purchase will be submitted for Cabinet approval when necessary.

Options

12. The option of not adopting the CPO Policy is not considered to be appropriate. Local authorities are accountable to their communities for the management of resources and local politicians and officers operate within local governance frameworks of checks and balances to ensure that decision-making is lawful, informed by objective advice, transparent and consultative.

13. Good governance means that proper arrangements are in place to ensure that the Council's intended objectives are achieved and determining an appropriate framework for the consideration of the use of CPO powers must be a key commitment to ensure that the Council has regard to its obligations and that it responds efficiently and effectively to service needs.

Implications

14. In the writing of this report, taking into account the financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered:

Policy

15. The report seeks to determine an appropriate policy framework that sets out the approach, circumstances and conditions under which the Council will consider the use of compulsory purchase powers.

Legal

16. Due regard has been given to detailed Government guidance that has been issued in relation to the potential use of CPO powers vested in local authorities.

Financial

17. There are no direct financial implications arising from this report. The detailed reports to Cabinet on the potential pursuance of a compulsory acquisition will provide full details of the financial consequences of the development opportunity.

Risk

18. The proposed policy seeks to protect the Council from the risks associated with the use of CPO powers and defines the approach, circumstances and conditions under which the Council will consider the use of compulsory purchase powers.

Environmental

19. There are no environmental implications directly arising directly from the report.

Equality Analysis

20. The report is exclusively a support or administrative process and has no direct relevance to the Council's duty to promote equality of opportunity, promote good relations and eliminate unlawful discrimination.

Background Papers

Where the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require documents to be open to inspection by members of the public, they must be available for inspection:

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

Appendices

A Compulsory Purchase Order Policy

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**South
Cambridgeshire
District Council**



Compulsory Purchase Policy

September 2020

Introduction

1. South Cambridgeshire District Council (SCDC) has powers to use compulsory purchase powers where it is expedient to do so, and will only do so in line with legislation and guidance, and where there is a compelling case in the public interest.
2. This policy sets out the approach, circumstances and conditions under which the Council will consider the use of compulsory purchase powers to:
 - (a) acquire a property from a freeholder or leaseholder, or the tenant(s) of a freeholder or leaseholder, for the purpose of carrying out of development, re-development or improvement on or in relation to the land.
 - (b) acquire, in certain circumstances, the acquisition of a community asset.
3. SCDC will only seek to acquire land in accordance with legislation, to secure the proper planning of its area and provided that the Council is satisfied that the development, redevelopment or improvement of the area promotes or improves the economic, social or environmental wellbeing of its area.
4. SCDC recognises the huge impact any such move may have on resident's lives, especially where the move is not through choice. This policy aims to provide residents with a clear understanding of the general approach to be adopted; what level of compensation (if any) that might be offered; and the practical guidance and support that the Council can provide to those affected.
5. Compulsory purchase is intended as a last resort to secure the assembly of land and property for development; to bring empty properties into housing use or to improve sub-standard or defective residential and commercial properties. SCDC will always seek a voluntary agreement on the terms of the acquisition, however, where appropriate to support and enable the proposed timetable for the project, the Council may carefully plan a compulsory purchase timetable as a contingency measure and initiate formal procedures alongside activity to come to a voluntary agreement with the freeholder or leaseholder. This will also help to make the seriousness of the Council's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

Legislative Context

6. Compulsory purchase powers enable public bodies on which they are conferred to acquire land compulsorily. Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of

business – leading to improvements in quality of life. The compulsory purchase of land requires the approval of a confirming minister.

7. Compulsory purchase powers should be used where it is expedient to do so, but only where there is a compelling case in the public interest. The acquiring authority will be expected to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.
8. The following specific legislative provisions are relevant to compulsory purchase:
 - (a) Section 17 of the Housing Act 1985 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.
 - (b) The Land Compensation Act 1961 includes provisions relating to the compensation payable for the compulsory acquisition of an interest in land;
 - (c) The Compulsory Purchase Act 1965;
 - (d) The Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004).
9. Section 246(1) of the Town and Country Planning Act 1990 specifically provides that Councils can acquire land compulsorily for development and other planning purposes. This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can, therefore, be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate. This power should not be used in place of other more appropriate enabling powers and the statement of reasons accompanying the order should make clear the justification for the use of this specific power.
10. Section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development (as defined in section 55 of Town and Country Planning Act 1990), redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement.
11. Section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of this power is broad; it is intended to be used primarily to

acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme.

12. Section 226(3) provides that an order made under either section 226(1)(a) or (b) may also provide for the compulsory purchase of (a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or (b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment.
13. The wide power in section 226(1)(a) is subject to the restriction under section 226(1A). This provides that 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 wellbeing of the area for which the acquiring authority has administrative responsibility.
14. Detailed guidance on the compulsory purchase process is provided at the link: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817392/CPO_guidance_-_with_2019_update.pdf.
15. This includes reference to the Crichel Down Rules that guide how public authorities should dispose of land previously acquired by compulsory acquisition, or land acquired under the threat of compulsory purchase. They are to be applied by any public body disposing of land that was acquired for a purpose for which the authority had compulsory purchase powers at the time of acquisition, whether or not those powers were relied on to acquire the land.

Consultation

16. Owners and residents will be provided with information regarding the proposal to acquire the land and property as early as possible by the Council, in order to allow time to reach an agreement on the acquisition of the property. SCDC will, wherever possible, ensure that any information provided to people living in the same block, scheme or street will be provided simultaneously, or as close to simultaneously as is reasonably possible.
17. The Council will carry out a full and adequate consultation with all owners, residents and other people affected and, in particular, will comply with its general management functions pursuant to S20, 21 and 27 of the Housing Act 1985.
18. Once a decision to proceed has been made with the acquisitions of the properties concerned, the first option will be to come to a voluntary agreement with the owners concerned. If voluntary agreement does not prove possible, then the Council will pursue a compulsory purchase of the owners/resident's interests in the property.
19. Where the Council determines to pursue a Compulsory Purchase Order (CPO), the Council will comply with legislative requirements and process.

20. Property in the process of being, or waiting to be, decommissioned, with people still living on the affected site, will be provided with reasonable appropriate security measures to keep tenants, residents, and the property itself as safe and secure as is reasonably possible.

Acquisition of the Property

21. SCDC will seek to reach a voluntary agreement with leaseholders or freeholders on the value of their property (the amount for which it will be acquired) and the date when the purchase will be completed with vacant possession. The Council will notify residents in advance, giving as long a period as possible of the need to move home as is reasonably possible. If a voluntary agreement cannot be reached, SCDC will take appropriate legal action to obtain possession of the property.
22. SCDC will negotiate with the leaseholder or freeholder of the property to purchase the property under a voluntary agreement at the current open market value (See "Valuation of the Property" section below). If a voluntary agreement cannot be reached, then the Council will seek to make a CPO, and the property will be compulsory purchased at market value.
23. The Council will be the purchaser of the land or property. It may then dispose of, or sell on, that land or property to a third party such as a developer undertaking the redevelopment of the site.
24. If there is an outstanding mortgage or loan secured on the property, then the mortgagee (usually a bank or building society) will be paid off first. If the value of the property is less than the outstanding debt on the mortgage, then none of this money will be paid to the owner. The lender will still have the right to pursue the owner for any monies outstanding even after the payment for the property is made.
25. The amount paid for the purchase of the property concerned will not affect the amount of home loss or disturbance allowance, or disturbance payments, paid to affected owner-occupiers.

Valuation of the Property

26. The Council's offer will be at open market value; this is what the Council Surveyors, directly employed or contracted, perceive to be the true market value of the property. The market value will be based on the fundamental principle of equivalence; this means in terms of the value of a property in a regeneration area, that the owner of the property should not be better or worse off than before the regeneration proposals.
27. The Council will arrange for a surveyor to carry out a valuation of the property. Following this valuation, the surveyor will then send written notification of the open market value of the property to the owner, as well as details of any

Home Loss and Disturbance Payments to which the owner is entitled. The valuation is valid for a 3 month period from the date of the Valuation Letter.

28. The Surveyor will consider the various matters in assessing the market price of the property including:
 - (a) The internal condition;
 - (b) Any internal improvements to the property such as new bathrooms and kitchens;
 - (c) The location of the property and amenities within the area such as transport links, shops and services;
 - (d) The housing market in the immediate area, including recent sale prices.
29. If the homeowner disagrees with the Council's valuation of the property, they are encouraged to obtain an independent valuation completed by a RICS qualified Chartered Surveyor or Valuer. If the independent Valuer does not agree with the Council's valuation, there may be a negotiation between the two surveyors. If the property is subject to a CPO and they cannot agree upon a valuation, leaseholders and freeholders can appeal to the Upper Tribunal (Lands Chamber).
30. The sale ("disposal") of a property by the owner in accordance with, or in advance of, a CPO, will be classed as an "exempt disposal", and in cases where the property was purchased by the freeholder or leaseholder using a Right to Buy discount, the discount will not be due to be repaid.

Tenanted Properties

31. If the owner of the property or leasehold wishes to sell voluntarily in advance of a CPO, the owner shall have the overall responsibility for gaining vacant possession of their property from their tenant. This should be undertaken in accordance with the timeframe for vacancy agreed through the voluntary agreement between the owner and the Council.
32. However, if a voluntary agreement is not reached, the Council will make a CPO covering that property. A copy of this order will be served both on the occupier(s) and the owner(s) of the property.

Compensation Payments

33. Home Owners are entitled to compensation for the acquisition of the property at market value. In addition to the market of the property, the homeowners may be entitled to additional compensation as outlined below.

Home Loss Payments – Freeholders and Leaseholders

34. A Home Loss payment is a sum paid to a resident to reflect and recognise the distress and discomfort of having to move out of their home. As such this is paid in addition to any disturbance allowance or payments made. A Home Loss payment is paid as a lump sum, and is only paid once.

35. Residents may qualify for a Home Loss Payment if:
- (a) They are the owner of the freehold of the property;
 - (b) They are the owner of a lease with at least three years unexpired
 - (c) They have qualifying interests in the property, as set out in the Land Compensation Act 1973.
36. Unauthorised occupants and squatters will not be paid home loss compensation.
37. Owners who do not live in the affected property they own, for example if they rent it to tenants, will not receive Home Loss payment compensation. Any concerns about whether or not a tenant is living at a property as their only or principal home will be verified by relevant enquiries.
38. Home Loss Payments will be made to qualifying residents if a Compulsory Purchase Order is issued, at a rate of 10% of the market value of the property, up to a maximum amount payable prescribed in The Home Loss Payments (Prescribed Amounts) (England) Regulations 2019 (as amended from time to time) - £64,000 as at July 2019. This payment is paid to the owner, and only one payment is made to joint owners. It is paid once only.
39. If there is no CPO in place, then the Home Loss payment is considered discretionary, as the Council is not obliged by law to offer Home Loss compensation.
40. The time limit for claiming Home Loss compensation is the statutory limitation of six years.
41. The Home Loss compensation is subject to the resident vacating the property and, as such, it will only be payable once the resident has given vacant possession and full ownership.

Home Loss Payments – Private Tenants of Freeholds and Leaseholders

42. A private tenant of a leaseholder or freeholder acquired under CPO will qualify for Home Loss compensation if:
- (a) They have occupied that accommodation as their only or main residence for a minimum period of one year, and
 - (b) They have to move out of the property permanently, either because of improvement or development works that we will be carrying out, or because their home is being demolished.
43. A Home Loss payment must be claimed in writing, unless the applicant is unable to submit in this format. The amount paid is laid down in national law; for a tenant the amount payable as a Home Loss Payment is currently £6,400 (and is subject to review from time to time). It will be paid only once, and will be paid to the statutory tenant. Only one payment is made to joint tenants.

44. The time limit for claiming Home Loss compensation is the statutory limitation of six years. A home loss payment will be paid within three months of the tenant making an application for it, and provided the household has moved from the original property.

Basic Loss Payments

45. Those who are not entitled to a Home Loss Payment, such as leaseholders and freeholders who do not occupy the property as their primary residence (e.g. landlords) may be entitled to a Basic Loss Payment, or other compensation if a CPO is issued against the property.
46. Basic Loss Payments or other forms of compensation may be applicable if the resident has a qualifying interest in the property as set out in the Land Compensation Act 1973, and is not entitled to a Home Loss Payment. Basic Loss payments will be made at a rate of 7.5% of the value of the individual's interest in the property, up to a maximum of £75,000.

Disturbance Compensation

47. Disturbance compensation is a payment that owners or residents of a property being acquired are entitled to, to compensate for certain costs which may be incurred because SCDC needs to acquire the property or land.
48. Disturbance compensation is issued to meet the reasonable expenses of the person entitled to the payment in moving from the property which is being acquired by the Council. If the resident was carrying out a legitimate trade or business on the property, Disturbance may also cover the loss sustained by reason of the disturbance of that trade or business caused by the requirement to move to a new property.
49. Disturbance costs for any reasonable expenses related to the requirement to move will be considered, and may include:
- (a) Removal costs;
 - (b) Redirection of mail;
 - (c) Disconnection and reconnection of appliances and services;
 - (d) Incidental costs of acquiring new property;
 - (e) Stamp Duty;
 - (f) Other costs as considered reasonable by SCDC and in line with legislation.
50. Disturbance compensation will be paid to the resident at the point at which vacant possession of the property is provided to the Council.

Community Assets - Specific Provisions

51. Local authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which

may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area.

52. The policy applies where SCDC is not the developer and where the CPO power facilitates bringing an asset into community ownership. Where applicable the Council will be guided by its Investment Strategy, Asset Management Plan and Transfer of Community Assets Policy as well as other relevant plans, policies and strategies.
53. SCDC will consider all requests from third parties, but particularly voluntary and community organisations, and commercial groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.
54. In accordance with the Council's commitment to transparency, reasonable steps will be taken to notify an owner that it is in receipt of a request to use CPO powers.
55. SCDC will ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.
56. To assist the Council in assessing if the request is in the public interest and is a last resort, the Council will only consider requests from applicable third parties if the request includes evidence of:
 - (a) attempts to acquire the asset by negotiation that have failed;
 - (b) the value of the asset to the community or effect of bringing it back into use;
 - (c) the perceived threat to the asset;
 - (d) a business plan for future use of the asset, including proposed ownership, management and governance arrangements;
 - (e) any planning issues; and
 - (f) how the acquisition will be financed.
57. The Council will only seek to acquire an asset that has a clear and viable use and where the full costs, including staff time, legal advice, compensation and liabilities are covered by a legal undertaking between a third party and the Council.
58. Local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the CPO process either from their own resources, or with a partial or full contribution from those making the request.

59. CPO powers will not ordinarily be used to acquire community assets where a planning decision made by the local planning authority has prompted the request from the community or local body to acquire the asset.

Bringing Empty and Derelict Properties Back into Use

60. Empty and derelict properties are a wasted asset for the owner and the community. They can attract vandalism, become a magnet for anti-social behaviour, become a depreciating asset and have a negative impact on their immediate surroundings. There is a commitment, therefore, to bring empty properties back into use and to improve sub-standard or defective residential and commercial properties. In times where the demand for affordable housing significantly exceeds supply, bringing empty and derelict homes back in to use is even more critical.
61. The Government is committed to increasing the number of empty properties that are brought back into use as a sustainable way of increasing the overall supply of housing, and to reduce blight on neighbourhoods. The Government wants builders, investors and local councils to increase the supply repurposed empty properties.
62. The Council will, therefore, consider the compulsory purchase of an empty property where it is satisfied that the property is in a poor state of repair, is unlikely to be brought back into use by the owner and a clear public benefit would be achieved. Such a benefit would include the provision of affordable housing, improving the appearance of the neighbourhood and reducing crime and anti-social behaviour that dilapidated buildings can often attract.

Governance

63. The Head of Housing Services is the lead officer accountable for ensuring that the purchase of land and property by the Council is undertaken in a manner that is at all times compliant with this policy.
64. This policy sets out the minimum standards and services which SCDC will provide to freeholders and leaseholders in cases where the Council requires to purchase their property. The Council retains the right to act outside the provisions of this policy to provide additional support or compensation on a discretionary and case by case basis, provided the services and provisions are at least in line with the minimum standards set out in this policy.