

## Council

**Date: 02 February 2022**

## **Subject: Compulsory Purchase Orders**

Lead officer: Chris Lee Director of Environment and Regeneration

Lead member: Councillor Martin Whelton, Cabinet Member for Housing, Regeneration and the Climate Emergency.

Contact officer: James McGinlay, Assistant Director, Sustainable Communities

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### **Recommendations:**

- A. To note that the decision whether to make compulsory purchase orders in respect of properties on the Ravensbury, Eastfields and High Path Estates, support of the Merton Estates Regeneration Programme, will, in accordance with the statutory framework, be taken by the Cabinet; and
  - B. To note that no report will be brought to Council prior to such a decision being made.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. In February 2018, full Council considered a report from the Cabinet setting out proposals to support Clarion Housing Group's (Clarion) estates regeneration programme by agreeing in principle to make compulsory purchase orders ('CPOs') in respect of those properties where vacant possession would be required and this could not be secured voluntarily.
- 1.2. Although the Council did not expressly resolve that the final decision on making CPOs should be made by full Council, there was an indication in the report that a further report would be brought to full Council seeking such a decision once a number of conditions had been fulfilled.
- 1.3. After further consideration of the statutory framework governing the making of CPOs under section 226 of the Town and County Planning Act 1990, it has become clear that making a CPO is an executive function and therefore the decision to make it rests with the Cabinet.
- 1.4. The preconditions set out in the 2018 report have now been met and officers are in the process of preparing a report for Cabinet on 21 March 2022 recommending that the Director of Environment and Regeneration be authorised to make and serve CPOs on the basis of a detailed statement of reasons which will be appended to that report.

## **2 DETAILS**

- 2.1. The report of 7 February 2018 set out the rationale for seeking an in principle agreement to the making of compulsory orders in respect of

interests in properties on the Ravensbury, Eastfields and High Path estates (the Estates), should it not be possible to acquire the relevant interests voluntarily. Since that time, significant progress has been made and the conditions outlined in the February report for making a final decision have been fulfilled.

- 2.2. Outline planning consent has been granted for regeneration of all three Estates. Ravensbury estate has full planning permission with all reserved matters approved; Phase 1 has been built and is occupied and demolition work is currently underway prior to construction of Phase 2. At High Path, Phase 1 is finishing construction and partly occupied. Reserved matters have also been approved for High Path Phase 2 and Ravensbury Phases 3 and 4. Reserved matters for Eastfields Phase 1 were submitted on 13 December 2021 and reserved matters for High Path Phase 3 are due to be submitted in the summer of 2022.
- 2.3. Those residents and owners who will be affected by the making of CPOs are aware that they (i.e. the CPOs) are due to be made, as such people have already been approached over some years by Clarion with a view to voluntary acquisition of their interests. Clarion has acquired many properties by negotiation and is continuing negotiations. In the last few weeks, remaining owners (on the estate and remote landlords) have been formally served with notices under section 16 of the Local Government Miscellaneous Provisions Act 1986 asking them to provide details of all those people who may have an interest in the properties. This will assist in ensuring that contact is made with all such people.
- 2.4. Although in February 2018 a view was taken that it would be prudent to seek formal agreement from full Council to the 'in principle' making of CPOs, such agreement is not legally required. The power to make CPOs in these circumstances is contained in section 226 of the Town and Country Planning Act 1990, supplemented by procedural requirements set out in the Acquisition of Land Act 1981. These provisions have to be read in conjunction with the legislation governing local government decision making, which in the case of councils operating executive arrangements, such as Merton, is contained in the Local Government Act 2000 ('the 2000 Act'). Section 9D of that Act states that, subject to any provision to the contrary in legislation passed after the 2000 Act, any function of the local authority "*is to be the responsibility of an executive of the authority under executive arrangements*". In other words, there is a presumption that all local authority powers are vested in the executive in the absence of an express provision which says they are not.
- 2.5. There is nothing in the Town and Country Planning Act or the Acquisition of Land Act (which in any event predate the 2000 Act) stipulating that the function of making a compulsory order is not to be an executive function. Regulations have been made under section 9D(3) of the 2000 Act setting out which functions may not be functions of the executive and those which may, but aren't required, to be. The latter are known as local choice functions. Schedule 1 of The Local Authorities (Functions and Responsibilities) Regulations 2000 lists a number of functions under the Town and Country Planning Act 1990 which are not to be executive functions. They relate

mainly to the granting of planning applications and do not include the making of CPOs under section 226. Neither are CPOs included in the list of local choice functions included in schedule 4 to those regulations.

- 2.6. Accordingly, despite the report to full Council in 2018, the actual legal responsibility for deciding whether to proceed to make a CPO rests with the Cabinet. There is no requirement for full Council to approve this decision. Any decision made by the Cabinet in March will be subject to call in and that is the appropriate mechanism by which non- executive members may scrutinise the decision.

### **3 ALTERNATIVE OPTIONS**

- 3.1. Given the statutory scheme described above, it is not possible for full Council to be the final decision making body in relation to the making of a CPO.

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. This report has been discussed with group leaders. As this is only a procedural report, there is no requirement for public consultation although clearly the substantive question of the redevelopment of the Estates has been and will continue to be the subject of extensive consultation with residents.

### **5 TIMETABLE**

- 5.1. It is currently proposed that a full report setting out the rationale for making CPOs will be considered by the Cabinet on 21 March 2022.

### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. There are no specific financial implications arising from this report; the report to Cabinet will include detailed financial implications.

### **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The legal implications are set out in the body of the report. Although there was no formal resolution to bring the final decision back to full Council and, as explained above, the decision to make a CPO is not a function of full Council, given the wording in the body of the February 2018 report the advice of Leading Counsel jointly instructed by the Council and Clarion. is that it would be prudent for full Council to note and endorse the revised position.

### **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. None specifically arising from this report. There are extensive implications arising from the making of a CPO which will be addressed in detail in the full Cabinet report.

## **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. None

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. As set out in the body of this report.

## **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- None

## **12 BACKGROUND PAPERS**

- [Council 7<sup>th</sup> February 2018 – Delivery of Clarion’s Estate Regeneration project](#)
- [Council 7<sup>th</sup> February 2018 – adoption of Merton’s Estates Local Plan](#)
- [Minutes of 7<sup>th</sup> February 2018 council meeting](#)