

## **Committee: Cabinet**

**Date: 21 March 2022**

Wards: Abbey Ward, Figges Marsh and Ravensbury

## **Subject: Merton Estates Regeneration Programme, Use of Compulsory Purchase Powers at High Path Estate Phase 2 and 3, Eastfields Estate Phase 1 and Ravensbury Estate Phase 2 to 4**

Lead officer: Director for Environment and Regeneration, Chris Lee.

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

Contact officer: future Merton Programme Manager, Tara Butler.

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### **Recommendations to Cabinet:**

- A To resolve to make three Compulsory Purchase Orders (the **2022 CPOs**) for the acquisition of land, interests and rights (other than those already in the ownership of Clarion Housing Group) over the Order Land shown shaded pink and blue on the Plans attached as Appendix 1 and described more fully in section 3 of each of the draft Statements of Reasons attached as Appendix 2.
- B To agree that the 2022 CPOs shall be, entitled:
- I. "The London Borough of Merton (High Path No1) Compulsory Purchase Order 2022";
  - II. "The London Borough of Merton (Eastfields No1) Compulsory Purchase Order 2022"; and
  - III. "The London Borough of Merton (Ravensbury No1) Compulsory Purchase Order 2022".
- C To agree that there is a compelling case in the public interest to justify the making of the 2022 CPOs to include specific interests that must be acquired to facilitate the redevelopment of the High Path Estate, the Eastfields Estate and Ravensbury Estate (the **Estates**) as part of the Merton Estates Regeneration Programme, for the reasons detailed in this Report and the draft Statements of Reasons.
- D To delegate to the Director of Environment and Regeneration the power to effect the making, confirming and implementation of the 2022 CPOs and to take all necessary steps to give effect to the 2022 CPOs in respect of the Order Land, but not limited to, the following procedural steps:
- I. making such amendments and additions to the draft Statements of Reasons as deemed necessary to properly reflect the Council's position

regarding the proposed 2022 CPOs so as to properly present the Council's case;

- II. making such amendments and additions to the Plans attached at Appendix 1 as deemed necessary to properly enable construction of phases 2 and 3 of High Path, phase 1 of Eastfields and phases 2 to 4 of Ravensbury;
- III. making the 2022 CPOs, the publication and service of any press, site and individual notices and other correspondence for such making;
- IV. monitoring of negotiated agreements with landowners or statutory undertakers as applicable, setting out the terms for withdrawal of any objections to the 2022 CPOs, including where appropriate seeking exclusion of land or new rights from the 2022 CPOs;
- V. seeking confirmation of the 2022 CPOs by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act 1981), including the preparation and presentation of the Council's case at any Public Inquiry which may be necessary;
- VI. publication and service of notices of confirmation of the 2022 CPOs and thereafter to execute and serve any General Vesting Declarations and/or notices to treat and notices of entry, and any other notices or correspondence to acquire those interests within the area;
- VII. acquiring title to and / or taking possession of the Order Land;
- VIII. transferring the title of the acquired land to Clarion Housing Group;
- IX. paying all costs associated with making the 2022 CPO, including the compensation payable to owners , noting that those costs will be reimbursed to the Council by Clarion;
- X. referral and conduct of disputes, relating to compulsory purchase compensation, at the Upper Tribunal (Lands Chamber); and
- XI. dealing with any matter relating to the implementation of the CPO Indemnity Agreement dated 7 February 2019 (and any subsequent amendments) including all financial checks with Clarion Housing Group and approval of the budget in relation thereto, and to agree amendments as necessary with Clarion Housing Group.

E To agree that the public interest in enabling the development of the Eastfields, High Path and Ravensbury Estates to proceed outweighs the interference with relevant rights under the European Convention on Human Rights as discussed at section 22 of this report.

**Cabinet is also requested to note:**

F It has been considered that compulsory acquisition would be necessary so that Merton Estates Regeneration Programme, can be delivered and achieve the following:

- Comprehensive regeneration of two housing estates (Eastfield and High Path) and partial regeneration of another (Ravensbury) (together the **Estates**);
- a significant contribution towards the Council's target for new homes over the coming years;
- the replacement of poor quality and outdated housing stock with modern, high quality accommodation;
- creation of new and distinct character neighbourhoods with public spaces, amenities and commercial and retail opportunities; and
- economic and employment benefits for the Council.

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## 1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 The purpose of this report is to request that Cabinet resolves to use its compulsory purchase powers for acquisition of land necessary for the delivery of the next phases of the Council's Estates Local Plan and the Merton Estates Regeneration Programme, in particular through the regeneration of the Estates.

1.2 Following previous reports to Cabinet and Council on 15 January 2018 and 7 February 2018 respectively an **in principle** decision was made to use compulsory purchase powers to support implementation of the Merton Estates Regeneration Programme. It was noted that further requests would be made to make and serve future Compulsory Purchase Orders only once the following conditions have been reached:

- the Estates Local Plan has been adopted;
- a resolution to grant planning permission has been made for the relevant planning permissions;
- an approach has been made to all landowners with a view to acquiring the land voluntarily and voluntary acquisition has not been successful;
- statement(s) of reasons setting out the justification of any CPO(s) has been prepared; and
- a CPO indemnity agreement has been duly executed between the Council and Clarion Housing Group.

1.3 Those conditions have now been satisfied in relation to the 2022 CPOs and the purpose of this report is to recommend that Cabinet resolve to make The London Borough of Merton (High Path No1) Compulsory Purchase Order 2022, The London Borough of Merton (Eastfields No1) Compulsory Purchase Order 2022 and The London Borough of Merton (Ravensbury No1) Compulsory Purchase Order 2022, to assemble the necessary land to enable the delivery of Phases 2 and 3 of the High Path Estate, Phase 1 of the Eastfields Estate, and Phases 2 to 4 of the Ravensbury Estate, part of the Merton Estates Regeneration Programme.

- 1.4 Outline planning consent has been granted for regeneration of all of the Estates, including variations in respect of High Path. A revised outline planning application is under consideration for Eastfields. Reserved matters have also been approved for High Path Phase 2 (in part) and Ravensbury Phases 3 to 4. Reserved matters for Eastfields Phase 1 was submitted on 14 December 2021, reserved matters of the Phase 2A of High Path was submitted on 16 February 2022 and reserved matters for High Path Phase 3 is due to be submitted in the Summer of 2022.
- 1.5 The 2022 CPOs will include the acquisition of specific land interests of with those parts of the Estates shaded pink and blue on the plans at Appendix 1 (“the **Order Land**”)
- 1.6 References are made to the draft attached Statements of Reasons (see Appendix 2) throughout this Report, and Cabinet are asked to read those alongside the content of this Report.
- 1.7 The draft Statements of Reasons for making the proposed 2022 CPOs are attached to this Report at Appendix 2 for each of the Estates. Although the Statements of Reasons are non-statutory, they are important documents and, if the 2022 CPOs are made, they will be served on relevant parties with the required statutory notices. The draft Statements of Reasons have been prepared in accordance with Guidance on Compulsory Purchase published by the Department for Levelling Up, Housing and Communities published July 2019 (the **CPO Guidance**). Should the Cabinet resolve to proceed with the CPO, the draft Statements of Reasons will be finalised to reflect matters as at the time the Order is made and this is reflected in the delegation sought for the Director of Environment and Regeneration in Recommendation D of this report.
- 1.8 This Report and the attached draft Statements of Reasons describe the factors which are relevant to any decision on compulsory purchase, including the applicable planning policy framework, matters relevant to deliverability of the regeneration of the Estates within a reasonable timeframe, impact on affected land owners/occupiers and whether the proposals could be achieved by other means. It includes matters for Cabinet's consideration in relation to the Council's statutory powers, the public sector equality duty and the implications for the Human Rights of third parties. It addresses the overall question of whether there is a compelling case in the public interest for compulsory acquisition.
- 1.9 The report covers:
- Background to the Merton Estates Regeneration Programme
  - The Eastfields Estate
  - The High Path Estate
  - The Ravensbury Estate
  - Order Land
  - Statutory Powers
  - The Case for Compulsory Acquisition
  - Efforts to Acquire by Agreement

- Impediments
- Delivery, Funding and the Developer
- Commitment to Residents and Residents' Offer
- Human Rights and Equalities

## 2 **Background to the Merton Estates Regeneration Programme**

- 2.1 When Clarion acquired responsibility for all of the Council's housing stock in 2010, they committed to improve the accommodation to improve the quality of life for residents. However, in working towards this goal, stock condition surveys identified that significant refurbishment and maintenance work as well as financial investment was required. Clarion therefore began a comprehensive review across all the estates to determine whether refurbishment was viable or whether it might be more beneficial and sustainable to replace homes in the poorest condition with new properties.
- 2.2 The outcomes of detailed analyses are that three existing housing estates **High Path Estate** (Abbey), **Ravensbury Estate** (Ravensbury) and **Eastfields Estate** (Figges Marsh), together known in this report as the **Estates** had the most viable regeneration potential and jointly, have the greatest need for replacement of the existing housing.
- 2.3 Clarion (and its predecessor entities) has been consulting with residents and homeowners on the Estates about the possibility of regeneration since summer of 2013. The Council took the in-principle decision to support regeneration subject to the agreement of Ten Commitments to tenants and homeowners. In September 2014, the Council and Clarion signed 'Ten Commitments' to ensure residents remain at the heart of decision-making. The Council has concluded that the regeneration of the Estates should be supported.
- 2.4 Since 2014 the Council has been exploring the regeneration of the Estates in consultation with residents, the Greater London Authority, Clarion, Transport for London and other interested parties. As well as engagement, the Council has analysed the evidence carried out by Clarion to support the case for regeneration.
- 2.5 The Council then undertook to prepare and consult on a new planning development plan document, the Estates Local Plan, to support the regeneration of the three neighbourhoods.
- 2.6 The Council's ambitions for more and improved housing, enhancements to the quality of people's homes and environment, better transport and employment across the borough have been reflected in numerous strategies for planning, housing and the economy. On 7 February 2018, the Council adopted the Estates Local Plan, which forms part of the Council's Local Plan alongside its Core Planning Strategy and Sites and Policies Plan. The Estates Local Plan guides redevelopment proposals for the Estates that come forward.
- 2.7 A key element of the Council's Core and Housing Strategies is to increase the housing stock and improve access to appropriate sized homes and develop access to affordable and intermediate housing. The Merton Estates Regeneration Programme directly reflects these objectives and the Council's support for these objectives is set out in the Estates Local Plan.

- 2.8 The proposed regeneration of the Estates in Merton will see the High Path Estate and the Eastfields Estate being replaced and Ravensbury being partially replaced. There will be no net loss of social/affordable housing and the number of social/affordable bed-spaces provided will increase as Clarion addresses historic overcrowding in the three neighbourhoods when rehousing the existing social/affordable tenants.
- 2.9 Clarion needs to acquire all of the leasehold and freehold interests within the regeneration areas to deliver the regeneration programme. To date, 229 homeowners have voluntarily sold their long leases or freehold interests to Clarion. There are a number of resident and non-resident homeowners who do not wish to sell voluntarily and will only sell their property once a compulsory purchase order is in place. Details of the numbers of leasehold and freehold interests It is currently estimated will need to be compulsorily acquired are set out in paragraph 13 of this report.
- 2.10 The redevelopment and regeneration of the Estates through the Merton Estates Regeneration Programme is the scheme underlying the compulsory acquisitions. Over a period of 10-15 years, the Merton Estates Regeneration Programme will provide up to 2,704 new homes, including the provision of modern homes for many existing residents; Clarion tenants and resident leaseholders and freeholders. The scheme will be brought forward primarily under separate outline planning permissions, with each of the Estates to be developed in phases. In addition full 'kickstart' consents for High Path and Ravensbury Estates have been granted to allow decant of residents. The kickstart Phase 1 for High Path has commenced pursuant to planning consent ref: 16/P3738 and is due to be completed by 2022. The kickstart Phase 1 for Ravensbury was completed in 2020 and High Path Phase 1 is due to be completed in April 2022. Ravensbury Phase 2 is already underway and is due to be completed in 2023.
- 2.11 It is proposed that Phases 2 and 3 of the High Path Estate Scheme, Phases 2 to 4 of the Ravensbury Estate Scheme and Phase 1 of the Eastfield Estate Scheme are brought forward together so forming the next stage in the Regeneration cycle (the **2022 Scheme**).

### 3 The Eastfields Estate

- 3.1 In relation to the Eastfields Estate, the Council has granted outline planning permission on 29 April 2019 (ref: 17/P1717) and a variation of the outline permission was registered on 2 December 2021 and is currently under consideration (ref: 21/P4078).The development comprises the demolition of all existing buildings and structures; erection of new buildings providing up to 800 residential units; provision of up to 275 sqm of non-residential floorspace (flexible use classes), provision of new public open space and communal amenity spaces including children's play space; new public realm, landscaping works and new lighting; cycle parking space (including within ground level podiums), together with associated highways and utilities works.
- 3.2 Reserved matters for Eastfields Phase 1 was submitted on 14 December 2021, for the construction of 201 new homes. A decision is expected in March/April 2022.
- 3.3 A draft Statement of Reasons for making the proposed CPO for Eastfields Phase 1 has been prepared and is attached to this Report at Appendix 2. Should the Cabinet resolve to proceed with the 2022 CPOs, the draft Statements of Reasons will be finalised to reflect matters as at the time the Order is made.

3.4 The scheme is described in more detail in sections 1 and 2 of the Eastfields draft Statements of Reasons. The scheme for Eastfields Phase 1 however, seeks to provide 201 new homes (an uplift from 152 existing homes). As at the end of February 2022, 47 freehold and leasehold interests need to be acquired to deliver Eastfields Phase 1.

#### **4 The High Path Estate**

4.1 In relation to the High Path Estate, the Council has granted outline planning permission on 29 April 2019 (ref: 17/P1721), which was subsequently varied on 21 January 2022 (ref 21/P2806). The development comprises the comprehensive phased regeneration of High Path Estate comprising demolition of all existing buildings and structures; providing up to 1570 residential units (C3 Use Class); provision of up to 9,900 sqm of commercial and community floorspace (including replacement and new floorspace, comprising: up to 2,700 sqm of Use Class A1 and/or A2, and/or A3 and/or A4 floorspace, up to 4,100 sqm of Use Class B1 (office) floorspace, up to 1,250 sqm of flexible work units (Use Class B1), up to 1,250 sqm of Use Class D1 (Community) floorspace; up to 600 sqm of Use Class D2 (Gym) floorspace); provision of new neighbourhood park and other communal amenity spaces, including children's play space; public realm, landscaping, lighting; cycle parking (including visitor cycle parking) and car parking (including within ground level podiums), associated highways and utilities works.

4.2 Reserved matters for the development of the majority of Phase 2 of the High Path Estate were granted on 3 October 2019 (ref: 19/P1852). Reserved matters for the Nelson Grove Road Garages, which will form part of a separate construction Phase 2A and does not form part of the proposed High Path CPO for Phases 2 and 3 as no CPO is required to deliver this sub-Phase, have been submitted and were validated on 16 February 2022 (ref: 22/P0085). Reserved matters applications for Phase 3 are expected to be submitted to the Council for approval in the Summer of 2022.

4.3 A draft Statement of Reasons for making the proposed High Path CPO has been prepared and is attached to this Report at Appendix 2. Should the Cabinet resolve to proceed with the CPO, the draft Statements of Reasons will be finalised to reflect matters as at the time the Order is made.

4.4 The scheme is described in more detail in sections 1 and 2 of the High Path draft Statement of Reasons. The scheme for High Path Phases 2 and 3 however, seeks to provide 482 new homes (an uplift from 166 existing homes). As at the end of February 2022, 37 freehold and leasehold interests need to be acquired to deliver these Phases.

#### **5 The Ravensbury Estate**

5.1 In relation to the Ravensbury Estate, the Council granted planning permission on 29 April 2019 (ref: 17/P1718). The development comprises the demolition of all existing buildings and structures; erection of new buildings ranging from 2 to 4 storeys providing up to 179 residential units; provision of replacement community centre; provision of new public realm, landscaping works and new lighting; cycle parking spaces (including new visitor cycle parking) and car parking spaces, together with associated highways and utilities works. Landscaping works are also proposed to the east of Ravensbury Grove and along Hengelo Gardens.

5.2 Reserved matters for the development of Phases 2 to 4 of the Ravensbury were granted on 9 December 2019 (ref: 19/P1845).

5.3 A draft Statement of Reasons for making the proposed Ravensbury CPO has been prepared and is attached to this Report at Appendix 2. Should the Cabinet resolve to proceed with the CPO, the draft Statement of Reasons will be finalised to reflect matters as at the time the Order is made.

5.4 The scheme is described in more detail in sections 1 and 2 of the Ravensbury draft Statements of Reasons. The scheme for Ravensbury Phases 2 to 4 however, seeks to provide 179 new homes (an uplift from 97 existing homes). As at the end of February 2022, only four freehold and leasehold interests need to be acquired to deliver these Phases.

## 6 **The Order Land**

6.1 The land and interests that may be subject to a CPO are those within the planning application boundary of the relevant phases that are not within the ownership of Clarion or the Council and which are required to facilitate the redevelopment. This is known as the **Order Land**.

6.2 In addition to the land interests that need to be acquired within the relevant phases, there are properties within the wider High Path and Eastfields Estates and around the perimeter of the High Path Estate which may have rights over the Order Land which may need to be acquired and/or over which new rights are required to undertake the development. These properties will not themselves form part of the Scheme and there is no need to acquire the land on which they lie.

6.3 The Order Land for each Estate is described fully in Section 3 of the relevant draft Statement of Reasons and shown shaded [pink] and [blue] on the Plans attached as Appendix 1.

## 7 **Statutory Powers**

7.1 Section 226(1)(a) of the Town and Country Planning Act 1990 (the **Act**) enables the Council to acquire land compulsorily in order to facilitate the carrying out of development, redevelopment or improvement on or in relation to land in its area.

7.2 Section 226(1)(a) is subject to sub-section (1A) which provides that the Council must not exercise the power unless it thinks that the proposed development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic and/or social and/or environmental well-being of its area.

7.3 The Cabinet is directed to Section 6 of each of the draft Statements of Reasons which set out how the proposed compulsory acquisitions are considered to fall within the provisions of Section 226 and deliver the well-being objectives required by Section 226(1A). In summary, it is considered that transformational change from the scheme, as well as the discrete benefits of the next phases of redevelopment of the High Path Estate, Eastfields Estate and Ravensbury Estate that shall be delivered will contribute to significantly improving the economic and social well-being of the Council's area.

## 8 **Relevant Considerations and Justification for a CPO**

8.1 The relevant considerations for the purposes of any resolution to use CPO powers are set out in this Report and the attached draft Statements of Reasons. The CPO Guidance also

sets out the considerations to be applied when making a resolution to exercise such powers and the factors which will weigh with the Secretary of State when deciding whether to confirm a CPO. These are set out in full within Section 7 of each of the draft Statements of Reasons.

8.2 On 15 January 2018 and 7 February 2018 respectively, Cabinet and Council resolved in principle that use of compulsory purchase powers to acquire the land at each of the Estates was necessary to support the delivery of the Merton Estates Regeneration Programme and the objectives of the Estates Local Plan. A report was subsequently noted at Full Council on 2 February 2022 that the decision on whether to make any CPOs was an executive function and that the decision on whether to make any CPOs would be taken by Cabinet only.

8.3 The reports in February 2018 noted that the Merton Estates Regeneration Programme would achieve:

- comprehensive regeneration of the Estates;
- a significant contribution to new homes within Merton over the coming years;
- The replacement of poor quality and outdated housing stock with modern, high quality accommodation;
- creation of new and distinct characterful neighbourhoods within public spaces, amenities and commercial and retail opportunities; and
- contribute to the promotion and improvement of the economic, social and environmental well-being of the Borough.

8.4 Since those resolutions, officers consider that no material circumstances have arisen which have altered the basis for that decision. In fact, the case for use of CPO powers has been strengthened with the granting of outline planning permission for each of the Estates, adoption of the Estates Local Plan which robustly supports the 2022 Scheme (including the use of CPO powers to deliver the 2022 Scheme) and signing a CPO indemnity agreement with the Clarion (which is currently being updated).

8.5 Planning policy support for the Scheme is strong in adopted policy, which is discussed in detail in Section 5 of the relevant draft Statement of Reasons and summarised below. The general justification for use of CPO powers is contained within section 7 of each of the draft Statements of Reasons, which demonstrate the economic, social and regenerative benefits that implementing the scheme will provide.

8.6 Therefore, the justification for the use of CPO powers has been determined in principle, however Cabinet will need to consider the specific use of those powers as recommended in this Report.

8.7 The specific need to acquire the Order Land and other interests is addressed in section 4 of each of the draft Statements of Reasons which set out the need for regeneration

## 9 **Planning Position**

9.1 Outline planning applications have been granted for each Estate, on 29 April 2019, with a variation for High Path granted on 21 January 2022 and the variation in respect of Eastfields awaiting determination. The outline planning applications support the CPO(s) for each Estate. The permissions govern the redevelopment of each Estate in the Merton Estates Regeneration Programme, guided in each case by the Estates Local Plan.

9.2 Details of the relevant national, London and local planning policies are set out in paragraph 5 of each the draft Statements of Reasons. In summary the 2022 Scheme is:

- in accordance with the Estates Local Plan, part of the Council's development plan. It sets out an overarching case in support of the scheme and the vision for the creation of sustainable, well designed safe neighbourhoods with good quality new homes, that maintain and enhance a healthy local community, improve living standards and create good environments;
- in accordance with the new London Plan and its strategic objectives. The London Plan 2021 increases London's housing delivery targets to 52,300 homes per annum. A significant number of new homes are needed in Merton over the coming years in order to meet existing and future housing need. The minimum delivery target set for Merton by the London Plan is 918 per annum. The 2022 Scheme and the wider Merton Estates Regeneration Programme will play key roles in achieving these targets; and
- consistent with the National Planning Policy Framework (July 2021) which requires local authorities deliver sustainable development and to consider the social, economic and environmental benefits of estate regeneration.

9.3 The 2022 Scheme provides a high quality residential led regeneration of the Estates. It generally accords with the development plan, which includes not only the London Plan but also the Council's Core Planning Strategy and Estates Local Plan, as well as other relevant planning policy and guidance documents as detailed in the draft Statements of Reasons.

## 10 **Contribution to the economic, social and environmental well-being of the area**

10.1 Details of the relevant national, London and local planning policies are set out in paragraph 5 of each of the draft Statements of Reasons. In summary High Path, Ravensbury and Eastfields have been recognised to have a distinct socio-economic profile as distinct from the wider London Borough of Merton.

10.2 In summary the key features of High Path, Ravensbury and Eastfields in comparison to the wider London Borough of Merton are as follows:

<b>High Path</b>	<b>Ravensbury</b>	<b>Eastfields</b>
A younger population/age profile	Relatively low rates of economic activity	A slightly younger population/age profile
Relatively low levels of incomes	A low qualifications and skills profile	Low level of educational attainment and income

High levels of youth unemployment	A high rate of child poverty, particularly in families with no adult in employment	High unemployment and a large proportion of residents in receipt of out-of-work benefits relating to poor health
A relatively low quality living environment with limited housing opportunities	A lack of affordable housing opportunities	Low quality housing and environments
A high reliance on public transport	High levels of deprivation in the living environment and concerns of child obesity	

10.3 Please see below for a summary table which presents how promotion or improvement of economic well-being will occur as a result of the High Path Phases 2 and 3, Ravensbury Phases 3 and 4 only (not including Phase 2 which is already being carried out) and Eastfields Phase 1 regeneration projects:

<b>Benefit</b>	<b>High Path</b>	<b>Ravensbury</b>	<b>Eastfields</b>	<b>Total</b>
<b>Construction impacts</b>				
Creation of temporary construction jobs per annum during the construction phase	130	60	60	250
Construction Gross Value Added	£42.5 million	£12.4 million	£19 million	£73.9 million
Construction Net Value added to Merton	£10.2 million	£3 million	£4.7 million	£17.9 million
<b>Economic impacts of housing</b>				
Net expenditure increase per annum	£7.5 million	£1.5 million	£1.1 million	£10.1 million
Additional Council Tax Revenue per annum	£880,000	£175,000	£135,000	£1.190,000

<b>Economic impacts of commercial development</b>				
Jobs Creation	115	n/a	n/a	115
Estimated gross added value per annum	£5.3m	n/a	n/a	£5.3m

10.4 Promotion or improvement of *social well-being* will be delivered by:

- 808 new homes which shall comprise 289 affordable homes (High Path Phases 2 and 3, Eastfields Phase 1 and Ravensbury Phases 3 and 4 only);
- the proposed housing development will reinforce the attractiveness of the Estate as a vibrant and balanced community; and
- increase the supply of high quality housing, creating an attractive living environment in the area and providing better quality affordable housing.

10.5 Promotion of environmental *well-being* will occur through:

- the redevelopment of a brownfield site;
- the provision of new, well-designed, energy-efficient homes that will meet the needs of residents now and in the future;
- the enhancement of the townscape through the replacement of outdated buildings with a contemporary and well-designed residential development;
- public realm improvements;
- provision of an efficient layout and a high quality public open space;
- provision of community, recreational and gym facilities; and
- replacement of poorly insulated properties by new, energy efficient homes.

## 11 **Delivery, Funding and the Developer**

11.1 Clarion has considerable experience and resources. It manages over 125,000 homes across 176 local authorities. It is the largest housing association in the UK with significant resources and is one of the country's leading housebuilders, set to build a high volume of high quality homes of all tenures during the next ten years.

11.2 Clarion has shared with the Council details of projected costs and revenues and its financial strategy for delivery of the 2022 Scheme as well as the Merton Estates Regeneration Programme as a whole pursuant to the planning permissions. At its meeting on 06 September 2021, the Cabinet agreed to waive the Council's entitlement to clawback in respect of homes disposed of by Clarion by way of private sale in order to support the Merton Estates Regeneration Programme as a whole, which as things stand is not viable, subject to clawback still being payable if Clarion achieves a profit in respect of the Merton

Estates Regeneration Programme. This was in recognition of the hugely significant increase in costs of delivering the Merton Estates Regeneration Programme since the scheme was first proposed.

- 11.3 The Council and Clarion have agreed heads of terms to vary the existing Stock Transfer Agreement dated 22 March 2010, in particular the Development and Disposals Clawback Agreement also dated 22 March 2010, to suspend clawback payments unless the Merton Estates Regeneration Programme achieves a surplus and negotiations are continuing in respect of a legal binding variation.
- 11.4 Clarion's board has reaffirmed its commitment to delivering the Scheme even though there is anticipated still to be a deficit between the costs of the Scheme and the income generated by the sale of the private units.
- 11.5 As part of the 6th September 2021 decision to suspend clawback payments across the Merton Estate Regeneration Programme until it achieves a surplus, the Cabinet report paragraph 2.110 stated:
- 11.6 "There will also be attached to the deed, a revised iteration of the financial viability appraisal that is currently run and reviewed under the section 106 agreement for the three estates. That will establish a baseline position (which is currently acknowledged to be unviable)."
- 11.7 The council therefore instructed its financial advisors SQW to undertake a review of the Merton Estate Regeneration Project updated (February 2022) financial viability model completed on behalf of Clarion
- 11.8 The scope of this review was focused on testing the robustness of principal inputs and assumptions. The model itself was not interrogated as this had been agreed previously via provisions contained within the S106 Agreement. A significant amount of analysis had also taken place over the preceding two years so the scope of this review was focused on a comparative analysis of the principal revenue and cost side assumptions and inputs and their corresponding impact on the viability position.
- 11.9 Appendix 4 (including annex 4.1) of this report summarises SQW's review. It states that fundamentally the Merton Estate Regeneration Project's viability position has not significantly changed since reported to Cabinet in September 2021. The overall reported deficit position has slightly worsened from c. -£65m to c. -£68.4m. This is not considered material in the overall scale of the Merton Estate Regeneration Project. The council is aware that the programme remains unviable and that Clarion have committed by Board resolution to proceeding with the Merton Estate Regeneration Project
- 11.10 The Council is satisfied that, having regard to the Clarion's resources, its standing as the UK's largest housing association, its reaffirmed commitment to the Scheme and the requirements of the CPO Guidance that the 2022 Scheme is deliverable and that there is a reasonable prospect that it will proceed.
- 11.11 Clarion has entered into an indemnity agreement with the Council dated 7 February 2019 which fully indemnifies and provides protection for the Council in relation to all costs associated and arising in the preparation and making of the Order, acquisition of Order Land and the payment of compensation arising from such acquisition. The council and

Clarion are revising the 2019 CPO Indemnity Agreement including to ensure that procedural issues are in place to facilitate back to back transfers.

11.12 Funding and development viability are addressed within Section 7 of each of the draft Statements of Reasons.

## 12 **Lack of Impediments**

12.1 Potential financial impediments have been addressed above. The Secretary of State will also wish to be satisfied that there are no physical or legal impediments to the Scheme proceeding.

12.2 As described above planning permission has been granted for the 2022 Scheme.

12.3 Investigations undertaken by Clarion to date have not revealed any physical factors which would impede development.

12.4 There are no "special kinds of land" within the Order Land, such as common land, open space or allotments.

12.5 Stopping up orders are required to facilitate redevelopment of the Estates pursuant to the 2022 Scheme. The orders shall be obtained pursuant to provisions within the Town and Country Planning Act 1990 having regard to the grant of planning permission. Licences under the Highways Act 1980 will be required for any scaffolding, hoarding or over-sailing on or over the highway required for the Scheme.

12.6 Taking account of the above factors, it is considered that there is a strong prospect of the Scheme proceeding if the Order is made. Impediments to delivery of the Scheme are discussed at Section 7 of each of the draft Statements of Reasons.

## 13 **Efforts to acquire by agreement and land acquisition to date**

13.1 The CPO Guidance makes clear that compulsory purchase is intended as a last resort in the event that efforts to acquire by agreement fail. However, the CPO Guidance also acknowledges that local authorities will need to consider when the land to be acquired will be needed and should plan a compulsory purchase timetable in parallel with conducting negotiations. The CPO Guidance recognises that, given the amount of time needed to complete the statutory procedures, it may often be sensible to initiate compulsory purchase in parallel with such negotiations.

13.2 Clarion has made substantial efforts in accordance with the Ten Commitments to negotiate and acquire the outstanding interests. Negotiations commenced by Clarion in 2015 and efforts in this regard are set out in Section 9 of each of the draft Statements of Reasons.

13.3 As at the end of February 2022, Clarion has acquired 229 freeholds and long leases across the Merton Estates Regeneration Programme area through voluntary sales under the terms of the 2015 residents offer. These consist of 130 freehold and leasehold interests at High Path, 88 at Eastfields and 11 at Ravensbury.

13.4 In order for the 2022 Scheme to be delivered, as at the end of February 2022 the following interests will need to be acquired:

- within Eastfields Phase 1 33 freeholds and 14 long leases will need to be acquired;
- within High Path Phases 2 and 3, 18 freeholds and 29 long leases have yet to be acquired; and
- within Ravensbury Phases 2 to 4, 3 freeholds and 1 long lease have yet to be acquired.

13.5 Although a large number of acquisitions have been completed or are in the process of being completed, it is clear that despite Clarion's significant efforts the acquisition by agreement of all the land required to facilitate the redevelopment proposals and delivery of the 2022 Scheme may not be possible within a realistic timeframe.

13.6 Given that the substantial efforts to date to acquire the outstanding land interests through negotiations have not been entirely successful (and applying the tests set out in the CPO Guidance), the Officers considers it prudent to progress the proposed CPOs in parallel with ongoing negotiations.

#### 14 **Human rights and Equalities Impact implications**

14.1 These are addressed in Section 10 of each of the draft Statements of Reasons and in paragraph 22 of this report (below).

14.2 In summary and in making this recommendation, officers have carefully considered the balance to be struck between individual rights and the wider public interest. Having regard to the matters set out above a compelling case in the public interest exists for the making and confirmation of the Order. Interference with Human Rights, to the extent that there is any, is considered to be justified in order to secure the economic, social and environmental benefits which the Scheme will bring, namely the creation of new, well designed, high quality neighbourhoods aimed at fundamentally improving the quality of life for existing and future generations living in the area. This coupled with the significant level of public consultation, and a robust, fair offer to residents in the Estates means the Scheme minimises the interference with the rights of those affected.

14.3 Due regard has also been had to the public sector equality duty and adequate equalities impact assessment have been carried out to understand the impact of the 2022 CPOs on those affected. This Equalities Impact Assessment is attached at Appendix 3 of this report.

#### 15 **Engagement, commitments to residents and residents offer**

15.1 The council acknowledges that when proposing large scale regeneration, there are considerable uncertainties and challenges for residents. The council and Clarion have undertaken significant consultation with residents over a number of years (see section 18 below). Furthermore, to support the Merton Estates Regeneration Programme and to ensure fairness for residents, the Council and Clarion agreed a series of promises to residents, known as the Ten Commitments and a robust Residents Offer. Details of the Ten Commitments are set out at Section 9 of each of the draft Statements of Reasons.

## 16 **Conclusion the case for compulsory acquisition**

- 16.1 A CPO in connection with the Merton Estates Regeneration Programme made under section 226 of the Act is likely to facilitate part of a regeneration project regenerating the Estates delivering significant benefits to the borough.
- 16.2 In accordance with the CPO Guidance a 'compelling case in the public interest' has been demonstrated for the use of CPO powers, and that the public benefits that will arise from the purpose for which the land is to be acquired (the 2022 Scheme) outweigh the impact on those affected.
- 16.3 The CPOs will enable a scheme which fits squarely within adopted development plan for the area. In this case the policy support from the Estates Local Plan presents robust and up to date policy support, which is also in line with national and regional policy. The Council's Estates Local Plan demonstrates a compelling case that the acquisition of the land and associated rights to facilitate the 2022 Scheme will be in the public interest. The Estates are key development sites within the Borough and have the capacity to deliver significant economic, social and environmental benefits to local residents and the wider area more generally.
- 16.4 There are no impediments to proceeding with the 2022 Scheme and the Council is satisfied Clarion has the resources and ability not only to pay compensation arising out of a CPO, but also to successfully deliver the 2022 Scheme underlying the 2022 CPOs. In this case, all costs and expenses of CPOs and the Merton Estates Regeneration Programme will be met by Clarion.

## 17 **Alternative options**

- 17.1 The alternative option is for the council not to use its CPO powers and for Clarion to bring forward the Merton Estates Regeneration Programme and 2022 Scheme independently.
- 17.2 However, it is evident that this piecemeal approach could not achieve the ambitious outputs in terms of residential units and job creation, or deliver the co-ordinated vision of creating the cohesive and distinctive neighbourhoods within Merton.
- 17.3 It is considered that the only way effectively to deliver the Merton Estates Regeneration Programme and vision set out in the Estates Local Plan on reasonable timeframes is for the Council to support land acquisition at the Estates, to enable Clarion, who will have sole responsibility for delivering the entire regeneration, to bring forward the development in a timely manner.
- 17.4 Negotiations to acquire land and property interests within the Estates have been pursued and will continue to be pursued notwithstanding any resolution of Cabinet to make the CPOs. It is anticipated however, that compulsory purchase powers will be required in order to guarantee that all land and other interests can be acquired, because it is unlikely that all such interests can be acquired by voluntary acquisition within a reasonable timescale.

## 18 **Consultation undertaken and key stages of the Merton estates regeneration programme**

The table below shows the timeline of the consultation undertaken and the decisions taken to date:

<b>London Borough of Merton</b>	<b>Date</b>	<b>Clarion</b>
Cabinet decision 11 <sup>th</sup> November 2013 Merton Priory Homes estate regeneration project	<b>2013</b>	Initial resident consultation on possible regeneration Summer 2013
Estates Local Plan – Issues and Options consultation Feb / March 2014  June 2014 report to Cabinet  July 2014 report to Council “Circle Housing Merton Priory Estate Regeneration Project”	<b>2014</b>	Appointment of master-planning architects March 2014
Masterplan		Masterplan developed in consultation with residents 2014-2015
Ten Commitments published between Merton Council and Clarion	<b>2015</b>	Residents offer published May 2015
MES market research survey	<b>Summer 2015</b>	
January report to Cabinet  Draft Estates Local Plan consultation Feb-March 2016	<b>2016</b>	
November report to Cabinet  November report to Council  Draft Estates Local Plan pre-submission publication Dec 2016 – Feb 2017		
Estates Local Plan submission to planning inspector – March 2017	<b>2017</b>	Clarion Board confirm decision to submit three outline planning applications March 2017
Phase 1 planning consent Ravensbury - May 2017		
Estates Local Plan examination July 2017		
Phase 1 planning consent High Path - Oct 2017		

Main modifications and consultation Sept – Nov 2017		Submission of outline planning applications
Council adopts the Estates Local Plan and report to support	<b>2018</b>	
Grant of outline planning consent for the Estates	<b>April 2019</b>	
Reserved Matters planning approval for Ravensbury Phases 2-4	<b>Dec 2019</b>	
Reserved Matters planning approval for High Path Phase 2	<b>April 2020</b>	
The Council agrees in principle to vary the clawback in respect of the Stock Transfer Agreement	<b>September 2021</b>	
Variation of Eastfields outline planning consent	<b>Submitted December 2021 – to be determined</b>	
Reserved matters planning approval of Eastfield Phase 1	<b>Submitted December 2021 – to be determined</b>	
Variation of High Path outline planning consent	<b>January 2022</b>	
Notices served under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 with online sessions held for residents	<b>January 2022</b>	
Reserved Matters for the remainder of High Path Phase 2 (Nelson Road Garages)	<b>Submitted February 2022 – to be determined</b>	
Submission of reserved matters for High Path Phase 3	<b>Summer 2022</b>	

- 18.1 In 2013 feasibility studies and summer consultation events encouraged residents to *join the conversation* about the future of their homes and introduced the idea of replacing homes in the three neighbourhoods.

- 18.2 In winter 2013 the decision to explore regeneration was taken based on feedback from consultation events. The (then) Merton Priory Homes Board decided that regeneration would be the best way of delivering long-term improvements in the three neighbourhoods.
- 18.3 In summer 2014 a series of consultation events were held including coffee mornings, drop-in events, design workshops, community events and one-to-one meetings. These events were held locally and focussed on:
- getting to know the architects and what their role would be;
  - walkabouts so the architects could get a better understanding of the neighbourhood from the residents' point of view;
  - visits to other regeneration schemes in London; and
  - gathering and presenting feedback from residents on the design ideas.
- 18.4 Landlords, homeowners and tenants were provided with specific information about what regeneration would mean for them and the choices available to them.
- 18.5 September 2014 – Ten Commitments. The Council and Circle Housing signed up to Ten Commitments to the residents of the three neighbourhoods (discussed in detail above).
- 18.6 October 2014 – Clarion presented draft master plans. Residents were shown potential layout for neighbourhoods and homes. Over 400 people attended these events to view the plans and look at the wide variety of housing types proposed. Three drop-in events were held on each neighbourhood (Saturdays and weekday evenings) and there were home visits to the elderly and vulnerable.
- 18.7 May 2015 - Master plans and Residents Offer. Clarion presented revised master plans to residents. The Residents' Offer (discussed above) was published setting out the guaranteed package of financial support that residents would be entitled to if regeneration were to go ahead. Three consultation events were held for residents of each Estate. Support was also provided by a dedicated member of staff from the Citizens Advice Bureau to provide residents with free, impartial and confidential advice.
- 18.8 June 2015 - Independent residents' survey. An independent survey was carried out by Membership Engagement Services. There was a 52.5% response rate achieved with the views of 634 residents collected. Overall 50.5% of respondents agreed that regeneration would be the best for their household and 58.4% agreed that the regeneration would be the best for their neighbourhood overall.
- 18.9 October 2015 - decision to proceed with initial planning applications. Circle Housing's Management board gave its approval for the submission of initial planning applications.
- 18.10 January 2016 - consultation on draft designs for first new homes. Residents of High Path and Ravensbury were invited to a series of events throughout January to view proposals for the first new homes on their neighbourhoods.
- 18.11 May 2016 – consultation on revised designs for first new homes. Residents of High Path and Ravensbury were invited to a series of consultation events to view revised proposals for the first new homes.

- 18.12 July/August 2016 – scaled models of some of the proposed typologies as well as exhibition boards and 1:1 model of a 1 bedroom flat were displayed at a series of events.
- 18.13 October to December 2016 – master plan consultation. Consultation events in each neighbourhood were held to discuss the latest master plan proposals. These included designs for the neighbourhoods, house types and phasing plans, ahead of outline planning applications being submitted.
- 18.14 February 2017 - design training workshops took place in February 2017 to assist residents in understanding technical drawings and what makes good design and newsletters were issued in Winter 2017 to confirm that the outline planning application had been submitted to the Council along with a planning guide to the Eastfields outline planning application aimed at residents.
- 18.15 October 2017- revised indicative phasing consultation was undertaken on High Path.
- 18.16 October 2018 – consultation event on High Path Phase 2 proposals and the updated residents offer was issued to residents of the Eastfields Estate along with newsletter updates confirming outline planning permission was granted.
- 18.17 February 2019 – further consultation event on detailed design High Path Phase 2 proposals.
- 18.18 April and October 2019 – design consultations were held in respect of the detailed designs for phase 1 of the Eastfields Estate regeneration with architects available to answer residents' queries and to present options for landscaping, ball court facilities, a possible gardening project and opportunities to get more involved in the regeneration as part of a steering group.
- 18.19 June 2019 – consultation events held on the design and layout of High Path Construction Phase 2.
- 18.20 Summer 2020 – High Path regeneration newsletter and Eastfields regeneration newsletter was sent to residents to update them on Kickstart Phase and Phase 2 of High Path and Phase 1 of Eastfields respectively.
- 18.21 In addition, statutory consultation has been carried out as part of the Estates Local Plan process and each outline planning application will have public consultation in accordance with the legislative requirements.
- 18.22 Further consultation will take place on the detailed design of each phase of each Estate at the appropriate time.
- 19 **Outline of the CPO procedure**
- 19.1 The procedures for compulsory purchase under planning powers are mainly governed by the Acquisition of Land Act 1981, the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965. Compensation for affected parties is governed by a number of statutes including, in particular, the Land Compensation Acts 1961 and 1973, the Compulsory Purchase Act 1965 and a considerable body of case law.

- 19.2 In outline, if Cabinet resolves to authorise the making of the 2022 CPOs the main steps which will be taken include:
- making the Orders;
  - notification of persons affected and publicity for the making of the Orders and the Council's intention to submit it to the Secretary of State for confirmation;
  - submission of the Orders to the Secretary of State;
  - a period for Objections to be lodged;
  - public local inquiry in the event of any statutory objections;
  - inspector's report to the Secretary of State;
  - Secretary of State's decision on confirmation;
  - notification and publicity for the Secretary of State's decision;
  - six week challenge period (if Order confirmed);
  - acquiring/taking possession of the Order Land (if Order confirmed); and
  - payment of compensation to holders of interests acquired (if Orders confirmed) including potential referral to the Upper Tribunal (Lands Chamber) if compensation cannot be agreed.
- 19.3 After a final decision is made to make the 2022 CPOs, the orders can be made. A CPO is a formal document which lists all the plots of land and interests and rights proposed to be acquired and the names of all persons having interests in those plots (so far as can be ascertained) together with a map (or maps) which shows all the plots of land. Interests to be acquired are contained in the schedule of interests and include land ownership interests, rights of light as well as third party rights over land such as rights of light and rights of way. The 2022 CPOs would be "made" by the sealing of the 2022 CPOs following a resolution by Cabinet authorising such.
- 19.4 Notice of the making of the 2022 CPOs would then have to be served on all those having interests in the land and published in newspapers. The notice would make clear that anyone wishing to object may do so within a specified time limit (minimum 21 days). The Orders along with the respective Statements of Reasons will be submitted to the National Planning Casework Unit, which handles CPO applications on behalf of the Secretary of State.
- 19.5 If any objections are made and not withdrawn, a public inquiry would usually be held (even if there is only a single objection). The inquiry would be held by a planning inspector. The acquiring authority and objectors would present evidence to the inquiry in support of their respective positions and this would be subject to cross examination from the opposing side, and questions of clarification from the Inspector. Following the public inquiry, the inspector would write a report to the Secretary of State.

- 19.6 The decision whether or not to confirm the 2022 CPOs (with or without modifications) would rest with the Secretary of State. Following the Secretary of State's decision there is a six week period within which the decision could be legally challenged.
- 19.7 Once the 2022 CPOs have been confirmed (and free from legal challenge), the Council would have power to acquire the land and other interests included in the 2002 CPOs. In order to exercise that power, it would be able to choose between two possible procedures: notice procedure or general vesting declarations.
- 19.8 Compensation will need to be paid in respect of any land or other interests acquired pursuant to the 2022 CPOs. Payments must be in accordance with the principle that such amounts should ensure that the relevant owner is paid neither less nor more than their loss. Compensation where land is taken often include various elements, broadly as follows:
- the market value of the interest taken;
  - disturbance payments for losses caused by reason of losing possession of the land and other losses not directly based on the value of the land (e.g., cost and expenses of moving to a replacement property); and
  - loss payments relating to the need to sell and relocate from the property not at a time of their choosing.
- 19.9 If compensation cannot be agreed, then the dispute can be referred to the Upper Tribunal (Lands Chamber) for determination.

## 20 **Financial, resource and property implications**

- 20.1 The council and Clarion have entered into the Indemnity Agreement date 7 February 2019 which confirms that all costs of the CPO process will be met by Clarion who has agreed to fully indemnify the Council in respect of all costs associated with and arising from the preparation and making of the 2022 CPOs, acquisition of Order Land and the payment of compensation arising from such acquisition. Clarion and the council have agreed to revise the Indemnity Agreement to ensure that the Council's liability for costs are fully covered and on the understanding that the Council will continue to be put in funds by Clarion before it is required to make payments to homeowners whose interests have been acquired. The Council and Clarion are in discussions to ensure procedural arrangements are in place to facilitate back to back transfers when properties are actually acquired and such arrangements may be captured through a variation of the Indemnity Agreement or a side letter.
- 20.2 The approved and indicative capital programme includes the following provision for Clarion CPOs, assuming full funding by Clarion:

<b>Narrative</b>	<b>Budget 2021</b>	<b>Budget 2022-23</b>	<b>Indicative Budget 2026/27</b>	<b>Indicative Budget 2028/29</b>	<b>Total</b>

Compulsory Purchase Order*	4,079,460	2,421.840	6,119,190	3,459,770	16,080,260
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\*Please note the is expected that the actual costs incurred will vary around these estimates

20.3 Officers will need to ensure that costs are accurately recorded and invoiced to Clarion as soon as possible to minimise the impact on Merton’s cashflows, given the impact of Covid 19 on Merton’s Financial Position.

20.4 The council cannot expressly claim for any loss of interest it incurs. However, as stated above, the intention is that the council shall be able to require payments from Clarion in advance of the Council expending money.

## 21 Legal and statutory implications

21.1 The council is empowered under section 226(1)(a) of the Act as amended, to acquire any land in its area if it is satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council may make a compulsory acquisition under section 226 of the TCPA (a) if it thinks the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land or (b) 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. In order to make an acquisition under (a), the council must also consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of its area. According to the CPO Guidance the Council's area includes part of its area.

21.2 The Acquisition of Land Act 1981 (the **1981 Act**) governs the procedures which apply to such an acquisition, the Compulsory Purchase Act 1965 governs post-confirmation procedures and the Land Compensation Act 1961 governs the amount and assessment of compensation.

21.3 The Council may dispose of the land under section 233 of the Act for the purpose of bringing it forward for development or otherwise facilitating development. Any such disposal must be for the best consideration that can reasonably be obtained, unless the Secretary of State’s consent is obtained. By a combination of sections 226 and 233 of the Act, it is open to the Council to compulsorily acquire land for planning purposes and then transfer it to a developer partner i.e., Clarion.

21.4 The 1981 Act provides that the authorisation of a compulsory purchase is to be conferred by a CPO. A CPO is required to be made in a prescribed form and must describe by reference to a map the land to which it applies. If the Council makes a CPO, it must submit the CPO to the Secretary of State for confirmation. Prior to submission to the Secretary of State, the Council must publish notice of the making of the CPO specifying that the order has been made, describing the land and the purpose for which it is required, naming a place where the order and map may be inspected and specifying a time which (and the manner in which) objections may be made. The Council must also serve a notice in prescribed form on affected owners, lessees, tenants or occupiers (if any exist) of the land allowing them the opportunity to object. The procedure for confirmation is specified in the 1981 Act and may require the conduct of a public inquiry if there are objections.

- 21.5 As an acquisition under the Act will extinguish third party rights, the Council will need to ensure that it does not contravene the rights of individuals under the European Convention on Human Rights (the **ECHR**). Section 6 of the Human Rights Act 1998 makes it lawful for the Council to act in any way which is incompatible with a right under the ECHR. Pursuant to Article 1 of the First Protocol to the ECHR, every person is entitled to the peaceful enjoyment of his or her possessions and no one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. In order to avoid contravening individual human rights by making a CPO, it must be demonstrated that the CPO is in the public interest and that it is necessary and proportionate to make the CPO.
- 21.6 The CPO Guidance provides guidance to acquiring authorities in England on the use of compulsory acquisition powers, although is guidance only and may be adapted to the particular circumstances. The CPO Guidance has been referred to, as appropriate, in the preparation of this report and the draft Statements of Reasons.
- 21.7 Before making a CPO, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not. Some form of equality analysis will be required which is proportionate to the potential impact of the CPO on individuals or communities.
- 21.8 The making of a CPO is an executive function, by virtue of section 9D of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Consequently, the decision to make a CPO rests with Cabinet, and not full Council. Full Council acknowledged on 2 February 2022 that their further ratification is not required to make this CPO or future orders in line with the statutory framework governing the making of CPOs under S.226 of the Town and Country Planning Act 1990 and the Council's constitution. Pursuant to section 9E(2) of the Local Government Act 2000, the Cabinet may arrange for the discharge of an executive function by an officer of the authority.
- 21.9 Once a CPO is confirmed the Council can then take steps to acquire land either by serving a notice to treat and notice of entry in accordance with the 1981 Act or by serving a general vesting declaration under the Compulsory Purchase (Vesting Declarations) Act 1981. Consideration would need to be given to the most appropriate route and the procedure set out by legislation must be followed.
- 21.10 Persons having interests in the land acquired compulsorily will be entitled to compensation. Although the liability to pay compensation will arise only after the Council has exercised its power to acquire land following confirmation of the CPO, it is important that some consideration is given to compensation at this stage.
- 21.11 Payment is in accordance with the 'compensation code' which is the law as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law.
- 22 **Human rights, equalities and community cohesion implications**
- 22.1 The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrate that the use of compulsory purchase powers is in the public interest and that the use of such powers is proportionate to the ends being pursued.

- 22.2 When the Cabinet decides to make a CPO, it will need to be sure that the purpose for which the land is required sufficiently justifies (or can be sufficiently justified in due course) interfering with the human rights of those with an interest in the land affected. It is acknowledged that the compulsory acquisition of the land in the Estates will amount to an interference with the human rights of those with an interest in the land. These include rights under Article 1 of the First Protocol of the European Convention on Human Rights (**ECHR**) (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides that everyone has the right to respect for his private and family life, his home and his correspondence).
- 22.3 When preparing the CPO, officers will keep in mind and in due course advise the Cabinet about the need to balance the public interest and the individual's rights and that any interference with these rights will be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim. As part of the investigations that will be undertaken ahead of making any CPO will be an investigation into the effect on landowners and leaseholders of the CPO, and this will be fully taken into account before a final decision is made as to whether or not to put forward a resolution for the making of a CPO.
- 22.4 The Public Sector Equality Duty (the **Duty**) is a responsibility laid on the Council by the Equality Act 2010 (the **Equality Act**). It consists of a general equality duty and specific duties, which help authorities to meet the general duty. In summary, those subject to the Duty, must in the exercise of their functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act;
  - advance equality of opportunity between people who share a characteristic and those who don't; and
  - foster good relations between people who share a characteristic and those who do not.
- 22.5 The Duty covers age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation (these are the 'protected characteristics').
- 22.6 The Equality Act sets out that having due regard for advancing equality involves:
- removing or minimising disadvantages suffered by people due to their protected characteristics;
  - taking steps to meet the needs of people from protected groups where these are different from the needs of other people; and
  - encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 22.7 The Equality Act states that meeting different needs involves taking steps to take account of the impact of different experiences (for example, addressing different forms of disability). It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the Duty may involve treating some people more favourably than others.

- 22.8 The Equality Act requires the Council to have a 'continuing and ongoing regard' for this Duty. It can show this regard in a range of ways as the Equality Act is not prescriptive on this matter, but the most common is to conduct Equalities Impact Assessment (**EqIA**) at key decision points.
- 22.9 In preparing the Estates Local Plan, officers carried out an EqIA (contained within the Sustainability Appraisal).
- 22.10 EqIAs (dated March 2022) have also been undertaken to re-examine the equalities impacts of the Scheme as a whole, with specific assessments carried out for each Estate forming part of the 2022 Scheme. The EqIAs are attached this report at Appendix 3.
- 22.11 The EqIA concludes broadly that the impacts of the Scheme will be positive:
- it provides an opportunity to reduce overcrowding amongst its tenanted households. Overcrowding is proportionately more likely to affect households from the BAME community and so the regeneration provides an opportunity to address inequality in this area. Significant amenity and size improvements will be provided for residents, with all new homes built to current space standards with private outdoor space; and
  - the regeneration is an opportunity to provide new lifetime homes for all tenants, this will enable older tenants (and homeowners) to remain independent in their own homes for longer. New homes can be adapted to meet the specific needs of disabled residents, 10% of all new homes will be fully accessible and adaptable for wheelchair users.
- 22.12 Steps are being taken to ensure that the acquisition and relocation processes are applied in a fair and non-discriminatory way. However, it is acknowledged that the process of redeveloping the Estates itself is likely to have a negative impact on older, disabled and vulnerable residents, due to the requirements to move house, potentially more than once, if temporary accommodation is necessary during the construction period. The greatest impact on equalities will be the mechanics of the Estates' regeneration including: the residents' offer; moving existing residents into new homes; addressing overcrowding; and minimising disruption during this extensive process.
- 22.13 Clarion has committed to designing the construction phases to minimise the need to "double decant" and where at all possible older, vulnerable or disabled tenants will only be asked to move once, straight into a new home. Help will be provided to assist with such moves.
- 22.14 In promoting the Order and delivering Phase 2 and 3 of the High Path Estate Scheme, Phases 2 to and 4 of the Ravensbury Estate Scheme and Phase 1 of the Eastfields Estate Scheme, the Council and Clarion will seek to keep the existing community together with existing residents having a guaranteed right to return to a new home in their regeneration neighbourhood. The Ten Commitments and Residents Offer (discussed in section 10 above) provide a strong mechanism to achieve this.
- 22.15 The EqIA will be monitored and reviewed throughout the progression of the proposals in order to ensure that any future impact can be measured and mitigated against as necessary.

22.16 To conclude, steps are being taken to ensure that the acquisition and relocation processes are applied in a fair and non-discriminatory manner. Steps will also be taken to minimise the adverse effects on protected groups during construction and any such effects suffered by surrounding ethnic minority businesses. The proposals will bring a range of benefits to disabled and other protected groups including in relation to enhanced access, housing provision, lifetime homes.

### 23 **Crime and disorder implications**

23.1 The process of making a CPO will not itself have Crime and Disorder implications.

23.2 Development of the Merton Estates Regeneration Programme will be secured by the outline planning permissions which accord with the Estates Local Plan. The sustainability appraisal of the Estates Local Plan considers each of the policies against social, environmental and economic objectives, including those relating to crime and disorder.

23.3 The Estates Local Plan does not require a specific planning policy relating to Crime and Disorder but instead incorporates a number of policies which enhance safety and perceptions of safety in the public realm and in residential areas.

23.4 Collectively these policies support an approach of 'secure by design', creating places where people feel and are safe at all times of day and night, whether on foot, cycle or car, and both inside their homes and in public space.

23.5 The design principles include:

- blocks arranged so the fronts face outwards protecting residents' privacy, creating a more 'legible' layout where people do not get lost or find it so easy to hide, building in natural surveillance and security;
- active frontages on the street which also enhance surveillance and create more activity at street level;
- well-designed public or communal amenity space: will be well lit, while providing both privacy and surveillance, as well as providing easy and convenient access for all potential users;
- defensible space between the back of the footway and building frontage will support better perimeter blocks and frontages; and
- legible and accessible layouts with convenient and accessible layouts encourage walking and cycling and hence more active streets where community cohesion flourishes.

23.6 These principles are reflected in the estate-specific policies contained within the Estates Local Plan and will support an improved quality of life for current and future residents. The Police and other key stakeholders are consulted on the outline planning applications to ensure that crime and disorder issues are fully considered in the design and planning process.

### Risk management and health and safety implications

Risks are listed below with a red/amber/green rating based on an assessment of their likelihood and impact, together with the anticipated mitigation. They are categorised as risks related to developing the plan and emerging housing policy, those related to renegotiation of agreements, and those relating to the delivery of the regeneration programme itself.

Risk	R/A/G Rating	Mitigation
The Council's case in support of a CPO may not be successful at the Public Inquiry and the CPO therefore not confirmed. In this scenario it is likely the Council would have to pay the costs of successful objectors. This would be an extremely serious outcome but with low-moderate likelihood. Serious because without a CPO Clarion cannot deliver the key transport and service infrastructure, nor deliver the full developments or retain overarching control of phasing.		The Council can mitigate the risk of an unsuccessful outcome by proceeding as far as possible with acquiring land ahead of serving a CPO and undertaking as much preparatory work as possible (valuation, due diligence, legal preparation etc.) and not making the CPO until confident that it will be successful.
Risk of liability for costs of preparing and making CPO's as well as paying compensation. These costs are likely to be significant		Financial risk to the Council has been mitigated by entering into the Indemnity Agreement with Clarion to ensure the council's costs are fully covered and working on revisions to ensure procedural issues are in place to facilitate back-to-back transfers.
Communications risk in relation to residents within the Estates who oppose a CPO		Continue communicating intention with local stakeholders and residents and engage in ongoing consultation to take all concerns into account.

### Appendices – the following documents are to be published with this report and form part of the report

Appendix 1 Plans of the order land

Appendix 2 Draft Statements of Reasons

Appendix 3 Equality Impact Assessments

Appendix 4 SQW review of Clarion's updated financial viability appraisal of the Merton Estate Regeneration Programme

Annex 4.1 – Summary of MERP Viability Position

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**Background papers**

- [2013 November Cabinet report "Merton Priory Homes estate regeneration project"](#)
- [Merton Council and Clarion Housing Group 10 Commitments](#)
- [2014 July council report Circle Housing Merton Priory Estate Regeneration project](#)
- [2018 February council report – adoption of Merton's Estates Local Plan](#)
- [2018 Merton's Estates Local Plan](#)
- [2018 February council report "Delivering Clarion's Estate Regeneration](#)
- [2021 Sept Cabinet report on clawback](#)
- [2021 London Plan](#)
- [2011 Merton's Core Planning Strategy](#)
- [2021 National Planning Policy Framework](#)

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