

Notice of Non-key Executive Decision

Subject Heading:	Rainham and Beam Park Housing Zone – Making of the CPO(s).
Cabinet Member:	Cllr Damian White, Leader of the Council. Cabinet Member
SLT Lead:	Neil Stubbings, Director Regeneration Programmes
Report Author and contact details:	Christopher Barter Regeneration Projects and Programmes Manager. Christopher.barter@havering.gov.uk X2614
Policy context:	Havering Housing Strategy, Havering Economic Development Strategy. Rainham and Beam Park Housing Zone submission. Rainham and Beam Park Housing Zone Overarching Borough Agreement. Rainham and Beam Park Planning Framework.
Financial summary:	Cabinet approved the Rainham and Beam Park Housing Zone – Making of CPO(s) on 10 th October 2018. Previously the Housing Zone Land Acquisition Strategy was approved by Cabinet on 10 th February 2016; this included the principle of using the Council's Compulsory Purchase Order powers to acquire land

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	interests. On 21 st February 2018 Cabinet agreed to use the Council's Medium Term Financial Strategy and in particular the capital programme to fund land acquisitions and CPO costs. There is an allocation from the GLA of Housing Zone funding of £12,010,000 to support the proposed scheme.
Relevant OSC:	Towns and Communities OSC
Is this decision exempt from being called-in?	Yes. a non-key decision by a member of staff.

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The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

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Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This executive decision seeks authority, delegated to the Director of Regeneration Programmes in consultation with the Leader of the Council and Deputy director Legal and Governance, to make the CPO or multiple CPOs to enable the acquisition of land, interest and rights within the CPO Red Line Plan; following the confirmation of the CPO(s) by the Secretary of State to secure vacant possession of all properties and proprietary interests located within the confirmed CPO Red Line.

- a. To make the London Borough of Havering (Rainham and Beam Park Housing Zone Regeneration Area) Compulsory Purchase Order (No. 1) 2019 or multiple CPOs to enable the acquisition of land, interest and rights within the CPO Red Line Plan as attached to this report at Appendix 1;
- b. Appoint surveyors, barristers and any other professionals required to promote the CPO(s) and to facilitate the vacant possession of interests located within the CPO Red Line Plan;
- c. Settle the final form and content of the CPO(s) and associated documentation to include the ;
 - CPO Red Line Plan; Appendix 1;
 - Draft Compulsory Purchase Order; Appendix 2;
 - Draft Schedule Freehold and Leasehold Interests Appendix 3;
 - Draft Statement of Reasons Appendix 4;
 - Draft Equalities Impact Assessment Appendix 5
 - Consultation Report Appendix 6
- d. Take all necessary steps to secure the making, confirmation and implementation of the CPO(s) including publication and service of notices and presentation of the Councils case at Public Inquiry, or Court should such representation be necessary;
- e. Take such actions so as to facilitate Notting Hill Genesis (on behalf of Rainham and Beam Park LLP) acquiring properties and proprietary interests within the CPO Red Line Plan by agreement, such actions to include; the relocation of businesses, residents and statutory undertakers apparatus or Communication Code Operators; and any other interests and setting out the terms for the withdrawal of objections to the CPO(s); and
- f. Amend the number of properties and leasehold acquisitions with the CPO Red Line Plan at Appendix 3, should such amendment be required to deliver the overall Rainham and Beam Park Housing Zone strategy.
- g. to take all necessary actions to secure the making and confirmation of a General Vesting Declaration (GVD) or multiple GVD's under the Compulsory Purchase and (Vesting Declarations) Act 1981 and /or to serve Notices to Treat and Entry (if required); and

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- h. to appropriate to planning / or housing purposes any parcel of land within the CPO Red Line Plan; and
- i. to transfer all properties and proprietary interests acquired pursuant to the CPO(s) to the relevant development partner in accordance with the Members Agreement and the Strategic Land Agreement dated 29 March 2018; and
- j. if necessary make representation of the Councils case such as at the Upper Tribunal (Lands Chamber) or court should such representation be necessary.

Background

In February 2016 Cabinet approved the implementation of the Rainham and Beam Park Housing Zone Land Acquisition Strategy. A further resolution on the same date delegated to the Leader of the Council, Cabinet Member for Housing Company Development & One Source Management and the Group Director Community and Resources the authority to approve the making of a Compulsory Purchase Order (“CPO”) and for confirmation (if subject to objections) by the Secretary of State.

At the Cabinet meeting of the 13th December 2017 the Council agreed to appoint Notting Hill Housing Trust (now known as Notting Hill Genesis – “NHG”) as the development partner to implement the first phases of housing delivery in the Rainham and Beam Park Housing Zone. Consequently, Cabinet gave approval to the Council entering into a joint venture Limited Liability Partnership (to be known as Rainham and Beam Park Regeneration LLP – “RBPR”) with Notting Hill Commercial Properties (a subsidiary of NHG) in which the Council became a Member on 29th March 2018.

On 21st February 2018 Cabinet agreed to use the Council’s Medium Term Financial Strategy and in particular the capital programme to fund land acquisitions and CPO costs. There is an allocation from the GLA of Housing Zone funding of £12,010,000 to support the proposed scheme.

At the Cabinet meeting of the 10th October 2018, having received a report setting out further details consequent to the original decision, Cabinet agreed to the Council making Compulsory Purchase Order(s) (CPO(s)) pursuant to the statutory powers contained in section 226(1)(a) of the Town and Country Planning Act 1990 (as amended), and section 13 of the Local Government (Misc. Provisions) Act 1976 and all other necessary action to acquire all property and other proprietary interests on the land, including where appropriate new rights, located within the outline on the CPO Red Line Plan , for the purpose of securing the regeneration of the Rainham and Beam Park Housing Zone.

Cabinet also agreed that the authority to make the CPO or multiple CPOs to enable the acquisition of land, interest and rights within the CPO Red Line Plan be delegated to Director of Regeneration Programmes after consultation with the Leader of the Council and Deputy Director Legal and Governance.

AUTHORITY UNDER WHICH DECISION IS MADE

3.3 Powers of Members of the Senior Leadership Team

Members of the Senior Leadership Team (SLT) have delegated authority to act as follows within the assigned service/portfolio of responsibilities, subject to the general provisions and limitations set out in section 3.1 above.

General powers

(a) To take any steps necessary for proper management and administration of allocated portfolios.

(b) To exercise all the powers delegated to them personally and those powers delegated to Second Tier Managers and other staff members in their directorate where circumstances require and so far as legally permissible. Exercise of such powers should be recorded where appropriate. Where possible, a SLT member should give notice to a relevant staff member that he or she intends to exercise a specified power that is delegated to that staff member.

STATEMENT OF THE REASONS FOR THE DECISION

The utilisation of the Council's CPO powers supports the delivery of the Rainham and Beam Park Housing Zone objectives, enabling the assembly of sites to catalyse and kick start comprehensive residential development.

OTHER OPTIONS CONSIDERED AND REJECTED

Not implementing CPO powers – Not Recommended. Without making use of its CPO powers, the Council will be unlikely to be unable to acquire all of the land necessary to promote comprehensive residential development along the A1306 and thereby achieve the regeneration benefits, which are sought. Without the intervention of CPO(s), the existing commercial land uses would remain in place and infrastructure would not be improved. It will also not be possible to facilitate comprehensive residential development. Any residential development that is brought forward is likely to be poor quality and piecemeal as is characterised by proposals from others that have been made to date. It will fail to deliver the required mix, tenures or typology necessary to meet the objectives of the Housing Zone.

If the CPO(s) is not made, then the only way of acquiring all of the land and interests needed to deliver the initial phases of housing development would be by agreement. It is clear however that unless a CPO is made and confirmed, it is unlikely that NHG (on behalf of RBPR) would be able to assemble the land and interests needed for the key first phases of housing development within a reasonable timescale and for a reasonable purchase price. The consequences of this would be that housing delivery

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would be delayed including the provision of much needed affordable housing.

Careful consideration has been given to the extent of the land and rights included in the CPO(s) and whether it is necessary to include all of these. All of the land shown on the plan at Appendix 1 is necessary to ensure that the Scheme is able to be delivered.

PRE-DECISION CONSULTATION

The consultation and community involvement activity for the land acquisition delivery strategy has been delivered so far as part of the wider Housing Zone community involvement and consultation. Details of the community engagement and consultation activity are set out in the Master Plan and Planning Framework Cabinet paper. Further public consultation was undertaken during March 2017, ahead of the planning application submissions being made for the proposed housing sites along the A1306 (New Road).

The results of the March 2017 public consultation on the Master Plan and Planning Framework indicated that 80% of the local stakeholders were in favour of the changes proposed in the area.

As part of the engagement with the A1306 businesses, Council Officers made contact with over 30 businesses. While many of the businesses expressed concern about business continuity they generally acknowledged and accepted the proposals for change in the area and were receptive to the reassurances Officers gave them about business and relocation support.

Following the March 2017 formal public consultation the Council have undertaken further engagement with landowners. Letters have been circulated to all affected business and residential property owners respectively, to keep them informed of the regeneration proposals and acquisition process. Landowners and local residents have also been consulted as part of the statutory planning process for the outline planning applications, which have been submitted. Ardent, working on behalf of NHG, have met with all of the affected landowners and business and residential occupiers.

An all-day information event was held on the 15th January 2019 at the Mardyke Centre for those landowners, businesses and residents affected by the proposals. Further events are planned and the project team are available to meet with business and residents one day a month at the Mardyke Centre

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name:

Designation:

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Signature:

Date:

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Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004), provides that a local authority shall, on being authorised to do so by the Secretary of State, have the power to acquire compulsorily any land in their area if they are satisfied that the acquisition will facilitate the carrying out of development, re-development or improvement and is necessary to the achieve proper planning on or in relation to the land ...”.

The power set out in s.226(1)(a) is subject to the limitation set out in s.226(1A) which provides that the exercise of the power under that subsection must not be exercised unless the authority thinks that the development, redevelopment, etc. “is likely to contribute to the achievement of one or more of the following objects:

- (a) the promotion or improvement of the economic well-being of their area;
- (b) the promotion or improvement of the social well-being of their area;
- (c) the promotion or improvement of the environmental well-being of their area.”

With regard to the objects set out subsection (1A), officers set out in the report that an intended purpose of the Scheme is to secure development to enable the delivery of homes, particularly the delivery of affordable homes. As such the subject scheme, would, as a matter of principle, be capable of fulfilling all three of the specified objects, and in particular the “promotion or improvement of social well-being”.

The Government’s advice on the use of compulsory purchase powers generally, and the use specifically of the power set out in s.226(1)(a) of the Town and Country Planning Act 1990 is set out in its “Guidance on the Compulsory Purchase Process and the Critchel Down Rules” (“the Guidance”). The Guidance represents the principal matters, which the Council, should it seek to acquire the site by use of CPO powers, will need to be in a position to demonstrate in evidence both when making and when seeking confirmation of that order.

In summary, the Council must be able to demonstrate, in addition to the legal requirements referred to above arising from the statutory enabling power:

- (a) that the development sought to be achieved on that land is in accordance with an up to date development plan or, a non-statutory planning framework adopted following public consultation;
- (b) that the scheme will further social, economic and/or environmental well-being;
- (c) that there are no reliable alternative means to deliver the scheme in the time period required; this requirement in practice will include demonstrating engagement with the landowners and occupiers to being forward the required form of development;

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- (d) that the acquisition of the land can be funded and the scheme can viably and physically be delivered with no impediments.

These matters have been addressed above.

The overarching principle is that the local authority in seeking to exercise powers of compulsory acquisition are able to demonstrate a compelling case in the public interest for the exercise of those powers. Evidence is also required to demonstrate that there is no impediment to enable the delivery of the development the proposed acquisition is intended to facilitate. These matter have been addressed above but, in summary,

- (a) 9 planning applications have been made and 6 permissions have been granted for the development. There are no obvious reasons which are likely to impede the grant of the outstanding consents (paragraph 2.9 above and paragraphs 3.19 to 3.21 in the Statement of Reasons);
- (b) Financial and physical resources are available to acquire the land and to deliver that scheme .The Joint Venture is operating with governance, funding and development phasing already in place (paragraphs 10.3 to 10.7 above and Section 3 in the Statement of Reasons);
- (c) The context of acquisition sought to be made being that the development proposed, is grounded in a “clear strategic framework” and “planning framework”, being the Rainham and Beam Park Planning and Regeneration Framework, to which the development of the land proposed and for which acquisition is required will facilitate (paragraphs 1.3 and 1.4 above and paragraphs 4.18 to 4.46 in the Statement of Reasons);
- (d) Negotiations have been undertaken with landowners and occupiers, with business and residential relocation strategies in place (sections 7 and 8 above and Section 7 in the Statement of Reasons);
- (e) The regeneration of the Rainham and Beam Park Housing Zone is a key deliverable for the Council as set out in the Local Plan, and the Submitted Local Plan, (paragraph 3.12 above and paragraphs 4.32 to 4.39 in the Statement of Reasons). The scheme seeks to avoid development in a piecemeal fashion and of a scale that can make meaningful contributions towards social infrastructure;
- (f) Through delivery of the Housing Zone Scheme the housing stock will be significantly improved with an increased supply of Affordable Housing located in the administrative area of the borough (paragraph 3.5 above and Section 3 in the Statement of Reasons); and
- (g) Construction phases of the development will include training and employment opportunities for residents within the borough and contribute to social infrastructure.

Consideration has been given to the provisions of the Human Rights Act 1998 including Article 8 (respect for private life and family life and home) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions) as set out in paragraphs 6.4 to 6.9 in the Statement of Reasons (and addressed further below). A decision to make Compulsory Purchase Orders must strike a fair balance between public interest in the regeneration of the land and interference with private rights. Bearing in mind the provisions for compensation to be payable and the compelling case in the public interest for the acquisition of the

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interest, it is considered that the interference with private property rights is proportionate and strikes a fair balance between the public interest and the interests of landowners and occupiers in compliance with Article 1 of the First Protocol.

By way of conclusion s.226(1)(a) of the Town and Country Planning Act 1990 represents a basis which would, in principle, be available to the Council to acquire the site. The Council will need to be satisfied that the statutory tests and policy tests set out in the Guidance for the making and confirmation of CPO(s) pursuant to that statutory power are met, including in that all occupier negotiations have been undertaken or there is a clear plan to undertake such discussions in a meaningful way prior to a request for confirmation. If the statutory grounds are made out then the above contained within the report is considered to form a rational basis upon which the requested decisions can be made.

FINANCIAL IMPLICATIONS AND RISKS

There are a significant number of private land interests to acquire within the scope of the proposed development.

Before development of the various sites can proceed, it will be necessary to obtain vacant possession. NHG are continuing to work to acquire the various land interests by private treaty. However, in order to minimise the risk of delays to the redevelopment programme it will be necessary to enact a CPO over the remaining land interests.

The Council has set aside a capital budget of £50m to acquire the various land interests on the sites via CPO, which was approved on 21st February 2018.

The budget allocation was a prudent estimate based on the assumption that none of the private land interests could be acquired in advance of enacting a CPO.

Under the terms of the Strategic Land Agreement with NHG, the Council will benefit from an indemnity from NHG, which will ensure the CPO costs are in effect funded by NHG.

The agreement also makes provision for a transfer of the land interests acquired by NHG to RBPR. The interests would be transferred at or before the agreed longstop dates.

The Council as a 50% partner in RBPR will be required to provide 50% of the necessary equity funding in order to facilitate the land transfers. On 21st February 2018 Council gave approval to provide the required equity funding contribution to RBPR. It should be noted the RBPR will also utilise GLA funding (£12.01 million) and at a later date net sale proceeds to fund the earmarked land transfers.

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A capital budget of £12.760 million has been set aside in the Council Capital Budget to fund the equity requirement from the Council, approved by Full Council on 27th February 2019.

Under the terms of the CPO Indemnity agreement, the Council will furnish NHG with monthly rolling estimates, with invoices issued monthly to recover costs. This will ensure that there is no impact on Council borrowing requirement. In effect, the Council will have to cover CPO outlay until invoices are settled.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The Regeneration Programmes Service will be required to dedicate resources to the programme management and delivery of the land assembly and compulsory purchase work stream. Additional time limited support may be required as the land assembly, CPO(s) and business relocation strategy work streams advance. Where this has been anticipated external funding for resources has been built into the overall project cost plan.

Delivering the Housing Zone Land Acquisition Strategy will at times require the input and resources of a number of Council services particularly, Housing, Planning, Highways, Legal and Property Services.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

In deciding whether to make CPO(s), the Council should be satisfied that there is sufficient justification for interfering with human rights of those with an interest

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in the land affected. In this respect the Human Rights Act 1998 incorporates certain provisions of the European Convention on Human Rights, namely:

- (a) Article 1 of the First Protocol – the right of everyone to peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.
- (b) Article 8 – private and family life, home and correspondence. No public authority can interfere with these rights except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic wellbeing of a country.
- (c) Article 14 – the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, or national or social origin.

In the case of each of these articles, the Council should be conscious of the need to strike a balance between the rights of the individual and the interests of the public.

The Council may decide that, in the light of the significant public benefit, which would arise from the proposed development, the use of compulsory purchase powers is necessary and proportionate taking into account the availability of compensation. In particular, the Council may consider that the CPO(s) would not constitute any unlawful interference with individual property rights. The CPO(s) process provides the opportunity for representations to be made and the holding of a public inquiry in the case of objections by affected parties.

The Council is committed to improving the quality of life and wider participation for all in the economic, educational, cultural, social and community life of the Borough. The Scheme will provide a much-needed mix of affordable and private sale properties. The new mixed tenure housing will improve the community cohesion in the area, as will be public realm enhancements proposed. It will provide increased choice and opportunity for Havering residents in a highly accessible and sustainable location. This supports the overall aim of the Council's Equalities Policy and the Council's duties under the Equality Act 2010.

At present the properties within the CPO Red Line area do not reflect a mixed and balanced community, with a heavy bias towards commercial and inappropriate mainly private tenanted housing stock. The Scheme proposals seek to address this imbalance through the delivery of a range of residential tenures across the site e.g. private housing, a new range of intermediate housing, wider range of unit sizes across all tenures and 10% of all residential units meeting Wheelchair Standards.

The public sector equality duty under section 149 of the Equality Act 2010 ("PSED") requires the Council to have due regard to: (i) the need to eliminate

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discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; and (ii) the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. 'Protected characteristics' are: gender, race and disability, sexual orientation, age, religion or belief, pregnancy and maternity and gender reassignment.

All landowners, commercial and residential occupiers who are located within the CPO red line area will be affected by implementation of the Compulsory Purchase Orders. The Council and NHG are and will continue to endeavour to reduce this effect by extensive consultation and through the relocation strategies. Consultation has and will continue to be undertaken with the commercial and residential owners and occupiers and wider community to ensure that the Scheme reflects local and borough needs.

An Equalities Impact Assessment (EqIA) in support of the CPO / Land acquisition Strategy has been prepared for the Council by external Consultants Mott Macdonald (Appendix 5) and any recommendations implemented prior to the CPO Order being made.

BACKGROUND PAPERS

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Proposal NOT agreed because

Details of decision maker

Signed

Name:

Director of Regeneration

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____