


REPORT TO CABINET

4 March 2020

Subject:	Carrington Road/School Road/Friardale Close, Wednesbury – Compulsory Purchase Order and Phase 4
Presenting Cabinet Member:	Councillor Ali – Cabinet Member for Resources and Core Services
Director:	Executive Director - Neighbourhoods - Alison Knight Executive Director – Resources – Darren Carter Director – Housing and Communities – Alan Caddick Director – Regeneration and Growth - Amy Harhoff
Contribution towards Vision 2030:	
Key Decision:	Yes
Cabinet Member Approval and Date:	Councillor Hadley Councillor Ali
Director Approval:	Dr Alison Knight
Reason for Urgency:	The decision is not urgent
Exempt Information Ref:	Exemption provisions do not apply
Ward Councillor (s) Consulted (if applicable):	Cllr Simon Hackett Cllr Geoff Lewis Cllr Karen Simms
Scrutiny Consultation Considered?	Scrutiny consultation not required.

Contact Officer(s):	<p>Tammy Stokes Growth and Spatial Planning Manager tammy_stokes@sandwell.gov.uk</p> <p>Joshua Singh Planning Officer – Regeneration Joshua_singh@sandwell.gov.uk</p> <p>George Gurcha Surveyor – Strategic Assets and Land George_gurcha@sandwell</p> <p>Alan Martin Housing Partnerships Business Manager Alan_Martin@sandwell.gov.uk</p>
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DECISION RECOMMENDATIONS

That Cabinet authorise:-

- 1 (a) The Director – Law and Governance and Monitoring Officer to make a Compulsory Purchase Order under Section 226(1)(a) of the Town and Country Planning Act 1990 as amended by Section 99 of the Planning and Compulsory Purchase Act 2004, Acquisition of Land Act 1981, and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to be known as the Borough Council of Sandwell (Carrington / School Road, Wednesbury) Compulsory Purchase Order, in respect of 0.88ha (entire site boundary) of land bounded by the Carrington Road, School Road and Friardale Close as shown on (Appendix A) or such lesser land as determined necessary prior to making the Order.

- (b) The Director – Law and Governance and Monitoring Officer prepare and seal the necessary documents in connection with the Compulsory Purchase Order (CPO) referred to in (a) above and submit the CPO to the Secretary of State for Housing, Communities and Local Government.

- (c) In the event the Compulsory Purchase Order is unopposed and the council is granted powers to do so by the Secretary of State for Housing, Communities and Local Government, the Director – Law and Governance and Monitoring Officer to confirm the above order and serve all necessary notices to implement the Compulsory Purchase Order including the issuing of sheriff warrants

- (d) The Service Manager – Strategic Assets & Land to enter into negotiations and to acquire, on terms to be agreed by the Director of Regeneration and Growth, land and property within the proposed Order lands, in advance of confirmation of the Compulsory Purchase order by the Secretary of State.
- (e) Director – Law and Governance and Monitoring Officer to enter into any licences, undertaking or other agreement to facilitate the Compulsory Purchase Order to enter into any licences, undertaking or other agreement to facilitate the Compulsory Purchase Order on terms agreed by the Director of Regeneration and Growth.
- (f) Director – Law and Governance and Monitoring Officer to take all necessary action to secure the making, confirmation and implementation of the Compulsory Purchase Order and if objections are received to the Compulsory Purchase Order to make arrangements for public inquiries including instructing external Counsel and Consultants to assist in the preparing evidence and the presentation of the Council's case at any public Inquiry.
- (g) That in the event that the Compulsory Purchase Order is confirmed by the Secretary of State, the Director – Law and Governance and Monitoring Officer to serve all necessary notices to implement the powers of compulsory acquisition, including authorisation to make General Vesting Declarations, notices to treat and notices of entry to take all other requisite steps to obtain possession of the properties and to obtain a Sheriff's Warrant for possession of any lands where it has not been given.
- (h) Director – Law and Governance and Monitoring Officer acquire the necessary interests in the land and property included in the confirmed Compulsory Purchase Order on terms to be agreed by the Director of Regeneration & Growth or as ordered by the Lands Tribunal.

2.

- (a) Executive Director – Resources to allocate adequate investment from the Housing Revenue Account capital investment programme to fund construction of Phase 4 of the scheme development, which is approximately 0.158 hectares of land off Carrington Road, Friar Park, including the demolition of 38a, 38, 40, 42 Carrington Road shown for identification purposes only at Appendix B (Phase 4) with a new-build council housing scheme.
- (b) Executive Director – Resources to allocate adequate investment from the Housing Revenue Account capital investment programme to cover the CPO administration and execution costs.

- (c) Subject to 2(a) above, and to grant funding from New Ways of Working Programme administered by Homes England or allocated resources from the Right to Buy one for one replacement being secured, the Executive Director – Resources to allocate adequate resources to fund Phase 4 of the development.
- (d) Subject to (a,c,) above, the Director – Regeneration & Growth or Executive Director of Neighbourhoods, in consultation with the Executive Director – Resources (Section 151 Officer), Director of Housing and Communities to prepare tendering documentation, and to procure and award a contract, in accordance with the public procurement rules, the Council's procurement and financial regulations a contractor/contractors to develop, on behalf of the Council, Phase 4 of the proposed development scheme to enter into or execute under seal any financial agreement in relation to the Homes England grant (if required) on terms and conditions to be agreed by the Executive Director - Resources;
- (e) subject to (a,b,c,d above) the Director – Law and Governance and Monitoring Officer enter into or execute under seal any documentation in relation to award of the contract and/or development/partnership agreement, Homes England developer status, licence, undertaking, framework joining agreement and any other agreements with the procured contractor/s and with Homes England, as may be deemed necessary to facilitate development of the site (Phase 4); on terms and conditions to be agreed by the Director of Regeneration and Growth;
- (f) subject to (a,b,c, d, e above) and following practical completion of each property, the Director – Housing and Communities be authorised to let and manage the residential accommodation outlined in Phase 4 in accordance with the Council's existing housing allocations policy;
- (g) to implement the following action points identified from the strategic appraisal:
- Review the proposals to ensure that the project will deliver the Council's objectives in the most cost-effective manner
 - Review cost estimates for reasonableness.
 - Produce cost estimates for potential compulsory purchase orders to ensure that the total cost of the project remains reasonable.
 - Keep cost estimates for demolition and construction under review to ensure that the project can be delivered without

excessive increases in costs. The project risk register will capture these actions and is monitored by the project team.

1 PURPOSE OF THE REPORT

1.1 This report follows on from a report to Cabinet on 16th May 2018 - (see Minute No. 75/18) - The Redevelopment of the Carrington Road/School Road area, Friar Park which approved the first three phases (listed below) of the proposed comprehensive redevelopment Carrington Road, School Road and Friardale Close:

Phase 1 - Acquisition of the outstanding head leasehold interests on Carrington Road to bring the development site into the complete freehold ownership of the Council

•Phase 2 - The construction of 12 bungalows and associated improvements to the public realm on Friardale Close.

•Phase 3 - The demolition of 16a / 18 School Road and the construction of the new retail block to deliver 225 sq m of retail accommodation with associated first floor council apartments and parking court on School Road.

1.2 The purpose of this report is to seek approval for the making and submitting of a Compulsory Purchase (CPO) in order to achieve a comprehensive re-development scheme. The proposed CPO will enable the promotion and contribute to the achievement of the economic, environmental and social well-being of the Friar Park area and will also facilitate the wider proposals for Carrington / School Road.

1.3 Costs relating to the CPO of the remaining long leasehold interests across the development site will be earmarked from unallocated resources within the HRA capital investment programme approved by cabinet on 18th October 2017.”

1.4 Whilst the Council is the freehold owner of the subject land there are more legal interests in it. Comprehensive redevelopment cannot take place until the all of the relevant land and interests are assembled into council ownership in respect of all phases of the development scheme.

1.5 Approval is also sought to allocate funding for the construction of Phase 4 of the whole development scheme outlined in this report and the demolition of 38a / 38 / 40 / 42 Carrington Road.

- 1.6 This report sets out the Council's considered efforts to acquire those remaining legal interest by negotiation and where it has not proved possible, in respect of all of them to do so.
- 1.7 With regard to the progress of the scheme, it should be noted that a planning application DC/19/63723 – Proposed 10 No. bungalows, 20 No. 2 bedrooms flats and 1 No. commercial shop has been submitted and validated on 02 December 2019 for the whole redevelopment if the site which is also covered by the Order Land.
- 1.8 The next phase, Phase 4, in respect of the whole development scheme will be the construction of a three-storey block of apartments - 17 x 1 and 2 bed apartments including accessibility flats and amenity space following the Compulsory Purchase of the remaining interests.
- 1.9 The apartment block will provide a key feature of the Carrington Road scheme in the heart of the Friar Park area.
- 1.10 The approved Housing Revenue Account Business Plan (21 November 2013) includes a requirement for growth of a number of high quality council owned housing stock to replace stock lost under the Right to Buy. This phase will in total provide 17 new council owned affordable homes that meet Building Regulations and current housing requirements.
- 1.11 Sandwell's Housing Management Team have provided housing demand data in relation to bidding activity for different property types in the area which shows the demand for all proposed property types.
- 1.12 Allocation of the newly provided homes to the residents will be undertaken by Neighbourhood Services and in accordance with the Council's Allocation Policy

2 **IMPLICATIONS FOR THE VISION 2030**

- 2.1 The proposals in this report contribute to achieving the council's ambitions set out under the Vision 2030 as follows:
- 2.2 ***People, Ambition 3 – Our workforce and young people are skilled and talented, geared up to respond to changing business needs and to win rewarding jobs in a growing economy.***
- 2.3 The development of this scheme will support this ambition for people and jobs through the creation of apprenticeships and training opportunities within the contractual arrangements and the council's social value policy for new construction projects.

- 2.4 ***Ambition 5 – Our communities are built on mutual respect and taking care of each other, supported by all the agencies that ensure we feel safe and protected in our homes and local neighbourhoods***
- 2.5 The re-use of underutilised land and the rebuilding of new council homes at this location of Friar Park will address longstanding anti-social behaviour issues would remain if the site is left as it is currently. Redevelopment here, as proposed, would have a positive impact on the social, economic and environmental well-being of this deprived neighbourhood. The visual transformation will also create a new sense of place which has been lacking for many years from Carrington Road area thus offering a better environment for local residents and remove the opportunities for the anti-social behaviour attributed to dereliction and vacant land.
- 2.6 ***Place Ambition 7 – We now have many new homes to meet a full range of housing needs in attractive neighbourhoods and close to key transport routes.***
- 2.7 The redevelopment of the site for council housing in a key housing area within the heart of Friar Park will give residents access to new housing accommodation in proximity to key transport routes including the M6, A4031 - Walsall Road and Tame Bridge Parkway Rail station.
- 2.8 The redevelopment of this under-utilised site with modern residential accommodation will improve the immediate area, public realm, street scene and the asset base of the borough by providing much needed affordable housing.
- 2.9 The provision of this proposed scheme will provide Homes that meet people's needs in accordance with the local need. Sandwell's population is growing and people need quality housing that fits their individual requirements.
- 2.10 The development of this site will be in accordance with adopted planning policy. This will seek to achieve a development of a quality that's sets the highest architectural standards and which provides energy efficient buildings.
- 2.11 ***Ambition 8 – Our distinctive towns and neighbourhoods are successful centres of community life, leisure and entertainment where people increasingly choose to bring up their families***

2.12 The transformation of Carrington Road, part of the Friar Park neighbourhood, through this redevelopment proposal will contribute to creating a more sustainable community. The removal of the long-term eyesore that is created by the current buildings and vacant land in this location will deliver a more vibrant area for the local residents and offer an improved environment to local residents. A new retail unit will also enhance local facilities within the neighbourhood and contribute to delivering an inclusive local economy and social environment.

3 BACKGROUND AND MAIN CONSIDERATIONS

3.1 The condition and appearance of the Carrington Road / School Road area has been a concern for a number of years with action taken historically to demolish vacant, dilapidated units within full council ownership. The area is still blighted by shop units in various stages of disrepair. Deterioration over time and lack of investment from the long leasehold owners and shop tenants all contribute to the poor visual amenity of the area. The remaining land although secure is subject to periodic fly-tipping and associated misuse of illegal substances.

3.2 The comprehensive redevelopment of this area is required and essential to delivering the aims of social, economic and environmental improvements outlined by Sandwell's 2030 vision. The transformation as proposed will create a new sense of place which has been lacking for many years from Carrington Road thus offering a better environment for local residents to operate within and removing the anti-social behaviour attributed to dereliction and vacant land. The redevelopment of the whole site will not only improve the appearance of the area, but also reduce anti-social behaviour, improve the quality of local convenience provision through providing modern retail units and provide new much needed council house accommodation.

3.3 The earlier report presented to Cabinet on 16th May 2018 (75/18) - The Redevelopment of the Carrington Road/School Road area, Friar Park (Key Decision Ref. No. SMBC16176) gave an overview of the regeneration proposals to deliver a mix of council owned bungalows, apartments and retail accommodation and approval was gained to deliver the first three phases of this redevelopment scheme.

3.4 That report also outlined that further approvals would be sought from officers outlining detailed project design and costs for Phase 4 of the scheme and the redevelopment 0.158 hectares with council owned accommodation due to site investigations and final design work not being finalised.

- 3.5 This additional detailed design work has been completed and Phase 4 build costs have been estimated and included for funding approval including the demolition of 38a / 38 / 40 / 42 Carrington Road.
- 3.6 It was also noted in that report that, should acquisition of the interests in respect of any of the site required for redevelopment [by agreement fail, then a further report would be presented to Cabinet outlining further options and potentially seeking authority to commence the making of a CPO.
- 3.7 As noted above, an application DC/19/63723 – Proposed 10 No. bungalows, 20 No. 2 bedrooms flats and 1 No. commercial shop has been submitted and was validated on 2 December 2019 for the whole redevelopment site. This application, if approved and following acquisition of the outstanding legal interests allow for the delivery of the development scheme.
- 3.8 The Council owns the freehold interest across the whole development site. In order to facilitate the comprehensive redevelopment however the acquisition of the remaining long leasehold interests are still required in respect of: 38a, 38 Carrington Road and 40 Carrington Road (Appendix C)
- 3.9 38 Carrington Road is subject to an occupational sub lease in favour of 3 businesses and for the residential accommodation at first floor level. It has been subdivided such that it now comprises, a very small lock up shop and a local convenience store and a 2 bedroom flat on the first floor (having a separate ground floor entrance). The building comprised of 38 Carrington Road is in a poor state of repair, this is evidenced through the Schedule of Dilapidations (June 2016).
- 3.10 In addition, but within the curtilage of the property (38 Carrington Road) is an annexed area which can only be accessed via the next door property (40 Carrington Road) and is let to that occupier as part of its demised business area.
- 3.11 40 Carrington Road comprises of Lays Wholesale Meats (Lays), that was once a butcher's shop which has cutting rooms and preparation areas at the rear. Lays used to run a butchers shop at the premises but this has been closed for a number of years. These rear areas have been extended over time and yard areas enclosed to create a space with a collection of deep-freezers and chillers for the needs of the incumbent business. Lays now only operates as a meat packing business and has been the subject of a number of longstanding complaints from existing neighbouring owners / occupiers in respect of noise and nuisance from deliveries received from the meat packing firm.

- 3.12 Initial contact by the Council's agent with the all the leasehold interests took place in September 2017 in order to undertake a valuation exercise. Formal negotiations were commenced in June 2018 following the previous Cabinet approval for acquisition on a willing vendor basis.
- 3.13 Despite clear attempts on the Council's part, acquisition of the remaining interests by agreement have however failed to date so this report now seeks authority to acquire the interest through compulsory powers by means of making and promoting a Compulsory Purchase Order ('CPO').
- 3.14 The justification for the exercise of powers and relevant enabling statutory provision is s.226 of the Town and Country Planning Act 1990 for CPO. This required the demonstration by the acquiring authority to show a number of benefits that will arise in the public interest as a consequence of exercising this power, that is, the promotion or improvement of economic well-being; social well-being and environmental well-being of the area.
- 3.15 As set out below, there will be on environmental and amenity improvements, given the current appearance of the buildings, secondly there will be social and thirdly economic benefits given the need to deliver a comprehensive redevelopment for the wellbeing of the community. These benefits and improvements would not be possible without the land required for this Phase of the development scheme.
- 3.16 It should be noted that the total area proposed for redevelopment is already within the Council's freehold ownership with only these few leasehold interests identified above being held by third parties.

4 THE CURRENT POSITION

- 4.1 An independent valuation report was undertaken by GVA on behalf of the council in July 2017 in respect of the market value of the remaining leasehold interests including 38 / 40 Carrington Road. This has provided guidance on the likely costs of acquiring the premises.
- 4.2 Following the recommendations outlined in the previous Cabinet report; the Council's appointed agent commenced negotiations with the lessee of 40 Carrington Road and head tenant of 38 Carrington Road.
- 4.3 Approximately 18 months of negotiations between parties has taken place to date.

4.4 **LEGAL POWER AND JUSTIFICATION FOR UNDERTAKING A CPO**

- 4.5 Currently not all interests in the development land have been acquired so this report seeks authority to make and promote a Compulsory Purchase Order (CPO) pursuant to s.226 of the Town and Country Planning Act 1990.
- 4.6 S.226 provides the Council with the power to acquire land compulsorily for development and other planning purposes as defined in section 246(1) of the 1990 Act.
- 4.7 This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist.
- 4.8 The Council can show that justification for this proposed CPO is clearly within the public interest based upon the number of benefits that will arise. Those benefits are that the redevelopment proposal will considerably improve the economic, social and environmental wellbeing of the area in the wider public interest.
- 4.9 This is first through the removal of the long-term public eyesore created by the current shop buildings which are dilapidated and the vacant land in this location . The redevelopment will create a more vibrant area for the local residents in Friar Park and offer a new positive environment to attract new residents into the area through the provision of new residential units. A new retail unit will also enhance local facilities within the neighbourhood and contribute to delivering an inclusive local economy and social environment.
- 4.10 Part of the parade of shops fell vacant in 2002 and a number of the units in the middle part of the shop parade due to their poor structural condition were demolished in 2010/11 by the local authority to prevent ongoing vandalism and the on-going negative impact on the visual amenity of the area. The council have already acquired the ground lease in respect of No. 16a School Road this was completed on 17 March 2017 and the council secured full ownership of 18 School Road at auction on 20 January 2015 (subject to tenancy) with vacant possession obtained following the surrender on 12 January 2016.

- 4.11 The general appearance of the remaining units is now one of decline. The properties are solid brick construction with issues of dilapidation apparent on both properties including evidence that the flat roofs on one of the smaller properties has failed at various times as ceilings have been stripped back to repair defects but the ceilings not made good. The pointing to the external walls is loose, soft and falling out. The overall impression is that the fabric of the buildings is approaching the end of functional life.
- 4.12 The land between 42 Carrington Road and 18 School Road is vacant and fenced off with paladin fencing, however, it is subject to fly-tipping and also evidence of drug use has been found at the site.
- 4.13 There are approximately 6000 people on the Council's Housing Register seeking affordable homes. The building of these units will assist in addressing these needs, reducing both the number of people on the Housing Register and the number of people who are homeless.
- 4.14 The Council has identified a need for more affordable housing to address issues such as homelessness, overcrowded households and people living in unsatisfactory accommodation.
- 4.15 There are also approximately 245 under-occupied council homes in the Friar Park ward. The Council has a strategic priority to re-house these households to more suitable accommodation and as such, they are entitled to 'Band One Priority' to either bungalows or 2 bedroom flats or houses.
- 4.16 The provision of the new flats will assist in reducing the number of people on the Council's Housing Register, the number of people who are homeless and contribute towards the Council tackling the under-occupation of family houses in Wednesbury, thus making the best use of Council's existing housing stock.
- 4.17 The approximate length of the unexpired lease terms of the premises is 13 years. Without intervention the functional use of the premises are in danger of being truncated and their economical lifespan is also diminishing. Given their existing condition the likelihood is that they will continue to have on-going maintenance and repair issues.

38 Carrington Road (pertaining to the long leasehold interest only)

- 4.18 The council has been negotiating with the head tenant as outlined above for at least 18 months.

- 4.19 To date an offer, which those advising the Council consider to be reasonable and justified has been made to the head leaseholder. The offer accords with the compensation code under CPO legislation and also takes into consideration the entitlement to Basic Loss Payment and disturbance elements such as legal and surveyor fees.
- 4.20 Despite this offer being made, the head tenant has not agreed for the sale to proceed.

40 Carrington Road (leaseholder in full occupation)

- 4.21 The council has been working with the leaseholder of this premises to identify potential alternative premises for it to re-locate to during the negotiation period.
- 4.22 The Business Engagement team, following an outline of property requirements by the leaseholder have been assisting by identifying and circulating potentially suitable sites for consideration by the lessee.
- 4.23 This assistance commenced in September 2018 and an evidence base has been built to outline what assistance the local authority business engagement team has provided on a periodic basis via email, telephone and site visits.
- 4.24 At this point in time we are still in negotiation with the leaseholder and we are being advised that Lays have identified a suitable premise however there is no formal agreement in place.
- 4.25 Despite an offer being verbally accepted by the tenant's appointed agent in regard to the market value of the leasehold interest, no agreement has been reached in connection with the compensation amount due to disturbance costs.

20 School Road (land / buildings to the rear of the property)

- 4.26 Part of the rear yard of 20 School Road is required to enable comprehensive redevelopment.
- 4.27 Officers have entered into detailed discussions with the long leaseholder to acquire this area via the appointed agent but no formal legal agreement is in place at this point of time.
- 4.28 With regards to potential access rights across the site, these will be extinguished as part of the CPO process should agreement not be achieved.

Continuing Negotiation

- 4.29 Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, the Government's guidance on CPO "*Guidance on Compulsory purchase process and The Crichel Down Rules*" (July 2019) states that_ "*if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost*".
- 4.30 The Council will therefore continue to seek to negotiate the purchase of these leasehold interests and come to an agreement however as recognised by the CPO guidance which states "*given the amount of time required to complete the compulsory purchase process and to also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations*" the formal approval and planning of a CPO can encourage the resolution of such negotiations.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 Consultation with residents took place in October 2017 at a local venue the Millennium Centre in respect of the entire redevelopment of the area. The overall consensus from the local community as reflected in a briefing note produced for the Cabinet Member for Regeneration & Growth on 1st November 2017 was shown to be one of clear support for the regeneration of this underutilised area as long as it provides an improved retail element together with much needed Council properties.
- 5.2 Residents and the public have also been consulted as part of the recent planning application process and any issues will be taken into consideration as part of that decision-making process.

6 ALTERNATIVE OPTIONS

Option Analysis – Alternative actions to taking CPO action

Option A – Do not proceed with Phase 4 Scheme

Without acquiring the remaining interests through a CPO the land will not be available to deliver the planned and much needed comprehensive regeneration of the area as reflected in the redevelopment scheme, the subject of the planning application.

A piecemeal development on land where no acquisition issues arise would not address the concerns and issues of the local community and will result in a partially derelict site remaining. Acquiring the interests and bringing forward the final phase would deliver a comprehensive development with the attendant benefits of economic, social and environmental wellbeing in the public interest.

Option B – Take enforcement action under the terms of the ground leases by issuing interim Schedule of Dilapidations by way of s.147 Notices under the Law of Property Act 1925

The Council has powers to enforce under the terms of the ground leases by issuing interim Schedule of Dilapidations by way of s.147 Notices under LPA 1925 in an effort to bring the properties back into a satisfactory state of repair and reinstatement. The Council has considered using these powers in respect of the subject properties however this would not deliver a comprehensive redevelopment and would again leave this area of the scheme out of keeping with the proposed other phases which can proceed to be redeveloped.

In addition, consideration was given to the existing buildings' remaining economic life, with the external assessment and opinion suggesting that the properties will continue to have on-going maintenance and repair issues.

It is correct that residential development could be delivered on the other parts of the redevelopment site the subject of the planning application at Friardale Close where no issues in respect of acquisitions of interests arise but this would not address the environmental, social and economic concerns created by the buildings fronting Carrington Road, and would not enable the delivery of housing along School Road.

In addition, further complications would arise with this option as No.40 Carrington Road has a legal right of access to the rear of their property, across what would have to be a new residential parking for both sets of apartments in Phase 3 and 4, there would also be a continuation of the current environmental issues as to noise and nuisance from the delivery vehicles impacting on the wider residential area.

In light of these matters, this is not a recommended option.

OPTION C – Take Planning Enforcement Action under Section 215 of Town and Country Planning Act 1990

The council has powers to enforce against buildings which adversely affect the amenity of local neighbourhoods. Consideration has been given to the use of S215 powers however the council as freehold owners of the property would effectively be serving enforcement action on itself which would not be an appropriate use of the legislation.

In addition, this option would also conflict with the aim of delivering a comprehensive redevelopment with the attendant benefits. It would not also address the complications arising from the rights of access and limiting the car parking spaces for both Phase 3 and 4 by leaving the existing shops in situ.

7 STRATEGIC RESOURCE IMPLICATIONS

- 7.1 The project costs of delivering the new council homes as part of Phase 4 and the costs relating to the CPO of the long leasehold interests across the development site are included within approved HRA capital investment budgets as approved by cabinet on 18th October 2017.
- 7.2 30% of the development and CPO costs can be met from available 1-4-1 receipts generated through the sale of council homes under the Right To Buy programme. A bid for funding can also be made to the New Ways of Working Programme administered by Homes England. Due to the balance of 1-4-1 receipts being time limited, the most advantageous option to the council will be considered when allocating resources from either of these funding sources.
- 7.3 The rents charged on these properties will be affordable rents, which are 80% of market rent. This is in line with the recommendations approved by cabinet on 8th January 2020.
- 7.4 Detailed financial modelling has been developed for phase 2 of this proposal based on the standard assumptions used by Homes England for affordable housing. The financing of the scheme would be through Prudential Borrowing (which would leave the council with a debt to carry over the repayment period and beyond) either Homes England grant funding or 1-4-1 receipts. This modelling shows that the debt that the council is exposed to without grant becomes a surplus around 44 years after initial borrowing and investment. The modelling also shows that the debt that the council is exposed with a grant on an assumed figure per unit becomes a surplus around 36 years after initial borrowing and investment. In the context of overall value of the scheme, these payback periods appear to present a reasonable risk.

7.5 A full appraisal has been undertaken by Strategic Finance. The appraisal process recorded a score of 67%. Some risks have been identified as a result of the appraisal and action points recommended to mitigate these risks. These actions are:

- Review the proposals to ensure that the project will deliver the Council's objectives in the most cost-effective manner
- Review cost estimates for reasonableness.
- Produce cost estimates for potential compulsory purchase orders to ensure that the total cost of the project remains reasonable.
- Keep cost estimates for demolition and construction under review to ensure that the project can be delivered without excessive increases in costs. The project risk register will capture these actions and is monitored by the project team.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

Compulsory Acquisition Powers

8.1 As noted above section 226 of the Town and Country Planning Act (as amended by Section 99 of the Planning and Compulsory Purchase Act 2004) together with sections 227 to 246 lays the basis of local authorities' positive planning powers. These provisions grant the authority the power to acquire any land compulsorily under section 226 (or by agreement under section 227), if they think the acquisition will facilitate the carrying out of development, redevelopment, or improvement provided they think that the development, redevelopment or improvement is likely to contribute to one or more of the objects specified in subs.(1A).

8.2 In addition, they may acquire any land which is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area sets out the justification for proceeding with a CPO for the purposes of acquiring private interests for development purposes.

8.3 Section 226(1A) sets out what are known as the 'well being' powers. It confirms that the Local Authority should not exercise the power under section 226 unless it considers that the development the subject purpose of the exercise of the power will achieve the promotion or improvement of one or more of the following:

- economic wellbeing and/or
- social wellbeing and/or
- environmental wellbeing
of their area.

- 8.4 The details set out at paragraph 3 and 4 of this report under respective priority headings together with the planning application show that the redevelopment scheme will improve the economic, social and environmental well being of the area.

Equalities and Human Rights

- 8.5 A Compulsory Purchase Order should only be made as a last resort where there is a compelling case in the public interest that is considered to outweigh the human rights of the owners and occupiers affected.
- 8.6 Compulsory purchase powers can deprive individuals of their legal right to their possessions and may also interfere with their private and family life. These rights are protected by the Human Rights Act 1998. Particularly Article 8 and Article 1 and the European Convention on Human Rights.
- 8.7 The Human Rights Act 1998 (HRA) came into force on 2 October 2000. Provisions of the HRA which are relevant in relation to the CPO are:
- a) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe. Whilst the United Kingdom was instrumental in drafting the Convention it was never incorporated into United Kingdom law.
 - b) The HRA still does not incorporate the Convention into United Kingdom law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.
 - c) The main articles of the Convention which are of importance in circumstances where the Council is considering making a compulsory purchase order are Article 8 – the right to respect for private and family life and his/her home and Article 1 of Protocol 1 – the protection of property.
- 8.8 In making a CPO an acquiring authority must show that the acquisition is justified in the public interest. Article 8 is clarified below.
- a) Article 8(1) provides that everyone has the right to respect for his/her home but Article 8(2) allows the State to restrict the rights to respect for the home to the extent necessary in a democratic society and for certain
 - b) listed public interest purposes for example; public safety, economic well-being, protection of health and protection of the rights of others.
- 8.9 When considering Article 8 in the context of a CPO the Council needs to ask the following questions:
- i. Firstly, does a right protected by Article 8 apply – to which the answer is "yes".
 - ii. Secondly, has an interference with that right taken place or will take place as a result of the compulsory purchase being made - to which the answer is again "yes".

- 8.10 The answers to these two questions being in the affirmative confirms that Article 8 applies and it is therefore necessary to consider the possible justifications for the interference under Article 8(2). There are 3 questions for the Council to consider:
- i. Firstly, is the interference in accordance with the law? The answer is “yes”, there being a legal basis for making the CPO under section 226(1)(a) of the Town and Country Planning Act 1990.
 - ii. Secondly, does the interference pursue a legitimate aim? The justification for the CPO is that the scheme seeks to improve the economic and social well-being of Watford in the public interest.
 - iii. Thirdly, is the interference necessary in a democratic society? Here the council must make a balancing judgment between the public interest and the rights of the individual – the CPO must be both necessary and proportionate.
- 8.11 Article 1 of Protocol 1 provides that:
- (i) Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
 - (ii) No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.
- 8.12 However, the above rules shall not prevent a State enforcing such laws as it deems necessary to control the use of property in accordance with the general interest. The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is an important factor in considering the balance between the two.

Recommendations Relating to the Human Rights Act:

- 8.13 With regard to Article 8 it is considered that in balancing the rights of the individuals who would be affected by the proposed CPO against the benefit to the wider public, economic and social well-being of local residents, visitors and stakeholders of proceeding with the CPO, the making of the CPO and the interference with the individuals' rights is justified in the interests of the community in order to effect the improvements.
- 8.14 With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the property taken and rights extinguished under the CPO.

- 8.15 The case law of the European Court of Human Rights shows that these articles do not forbid compulsory purchase of homes and other property. Rather, in deciding whether to exercise compulsory purchase powers, it is necessary to consider Article 8(2) in the case of homes (which include not only dwellings, but also professional offices) and the public interest and other factors mentioned in First Protocol Article 1 in the case of all property.
- 8.16 In this instance it is considered that to ensure the successful environmental, social and economic improvements upon the current circumstances which exist in this area and the provision of new residential properties and retail facility will outweigh the rights of particular individuals. In addition, individuals are entitled to statutory compensation for losses they incur as a consequence of CPO.
- 8.17 In addition, the Council should be aware that in certain circumstances if land is blighted by a proposed development scheme the owners of the land in question may serve a Blight Notice on the Authority. Thereafter and if valid, could force its acquisition of the land prior to a Compulsory Purchase Order being confirmed by the Secretary of State.
- 8.18 The definition of blighted land is contained within schedule 13 Town and Country Planning Act 1990. Whilst the likelihood of any valid Blight Notices being received is considered low, it should be noted that this is a risk as part of the CPO process.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 In addition to Human Rights, the council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:
- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Any new build will comply with regulations in relation to access for people with disabilities.
- 9.3 The planning application process will ensure that the development complies with both the Equalities Act 2010 and relevant Building Regulations.

- 9.4 An Equality Impact Assessment screening exercise has been carried out and a full Equality Impact Assessment is not required.0

10 DATA PROTECTION IMPACT ASSESSMENT

- 10.1 The requirements of the General Data Protection Regulations will be observed in the management of any data collected during the preparation of the CPO and SRO and, once made, resulting from the statutory objection periods relating to them.

11 CRIME AND DISORDER AND RISK ASSESSMENT

- 11.1 The current application and any subsequent planning application for residential development in respect of the subject land will be referred to the Police Architectural Liaison Officer for review. However, it is considered that increasing activity in the area and removing a derelict site through the introduction of new homes would reduce the opportunity for crime, disorder and anti-social behaviour.
- 11.2 In the scheme design, emphasis will be given to improving lighting and using quality materials within the development. A clear focus on improving the street scene and providing additional street lighting to improve visibility on Friardale Close will be prioritised along with further public realm improvements.

12 SUSTAINABILITY OF PROPOSALS

- 12.1 The proposal to bring forward a council house build project along with re-providing retail units on Carrington Road will add to the council's property stock. This will provide housing in line with the government's agenda for new homes and the creation of sustainable communities
- 12.2 The income generated from the rent from Phase 4 residential properties will go back into the Housing Revenue Account.
- 12.3 The development of the site brings back into use a long-term derelict site, which has been an eyesore for some years and subject to frequent fly-tipping and a focal point for anti-social behaviour as well as crime.
- 12.4 The new homes will be built to current Building Regulations which will be energy efficient and sustainable in the longer term.

13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

- 13.1 This redevelopment project will allow us to make best use of vacant Council owned land. This project will remodel redundant problematic space and improve an area within the heart of a deprived neighbourhood removing the liability and costs to the council for clearance of fly-tipping and maintenance.
- 13.2 The positive addition of new housing stock to the Council's asset bases in Wednesbury North Ward will bring clear improvement to those in need of housing.
- 13.3 Social Value will be considered to ensure that as consequence of the construction build, there will be demonstrable and measurable social value commitment. Therefore, creating employment and skills opportunities, engaging with the local supply chain and bringing a positive impact on the social, economic and environmental wellbeing for the local area.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

- 14.1 The land is within the ownership of the council and is split between Housing Revenue Account (HRA) and the general fund. There will be a requirement to appropriate the land dependent on the final scheme allocation.
- 14.2 Whilst there are no direct links to the Corporate Landlord Strategy the scheme helps bring forward undeveloped land supporting council demand for new housing.
- 14.3 Completed properties will be managed within existing resources from Neighbourhood Services
- 14.4 There will be a positive addition of new housing stock to the Council's asset bases in Wednesbury North Ward.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 15.1 The comprehensive redevelopment of the whole site comprising 10 No. bungalows, 20 No. 2 bedrooms flats and 1 No. commercial shop cannot be implemented and achieved without the acquisition of the remaining leasehold interests and demolition of those properties.

- 15.2 Whilst considerable efforts have been made to acquire the necessary property and rights through negotiation with the relevant owners and other interested parties over the last 18 months these have failed to date in respect of the few remaining interest holders and the Council's offers, whilst reasonable have thus far been rejected. It is therefore now more than likely that a Compulsory Purchase Order is needed to secure all of the property and rights required in order to avoid further delay to the achievement of the redevelopment scheme. That scheme DC/19/63723 was submitted in November 2019 and is currently being considered.
- 15.3 Therefore, authority is sought to make the CPO and to acquire and take possession of the Order property and rights using appropriate planning related powers.
- 15.4 Neglect over time has led to the decline this parade of shops, the Council has intervened and demolished vacant units within its ownership where, the remaining poor quality units added to the vacant council land has contributed to on-going anti-social behaviour impacting on the lives of residents in this area.
- 15.5 Council intervention and investment is required to tackle this derelict site and dilapidated shops within Friar Park ward in a comprehensive way.
- 15.6 The project cannot be implemented without the acquisition of the remaining leasehold interests. Whilst the majority of these interests relate to the final phase of construction of the proposed development, the benefits of the comprehensive development cannot be achieved without the re-development of this final phase and the apartment block and associated car parking.
- 15.7 As noted the Council's reasonable efforts to acquire the necessary property and rights through negotiation with owners and other interested parties, have failed to date. It is therefore necessary to seek to acquire these rights through Compulsory Purchase Order action to secure all of the property and rights required in order to avoid further delay to the achievement of the redevelopment scheme. That scheme again as noted was submitted to the council in its capacity as local planning authority in November 2019 and is currently being considered.
- 15.8 The project costs of delivering the new council homes as part of Phase 4 and the costs relating to the CPO of the long leasehold interests across the development site are included within approved HRA capital investment budgets as approved by cabinet on 18th October 2017 and following approval of the recommendations of this report can be allocated to proceed.

15.9 Therefore, authority is sought to make the CPO and to acquire and take possession of the Order property and rights using appropriate powers.

16 BACKGROUND PAPERS

Appendix D - The Redevelopment of the Carrington Road/School Road area, Friar Park (Key Decision Ref. No. SMBC16176)

17 APPENDICES:

Appendix A- Compulsory Purchase Order Plan

Appendix B – Phase 4

Appendix C – Leasehold Plan

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