

Report to Cabinet

16 November 2022

Subject:	Land at Grove Lane, Smethwick – Compulsory Purchase Order
Cabinet Member:	Cabinet Member Regeneration and Growth, Councillor Peter Hughes
Director:	Director of Regeneration & Growth, Tony McGovern
Key Decision:	Yes
Contact Officer:	Planning Regeneration Team Leader, Hayley Insley Hayley_insley@sandwell.gov.uk

1. Recommendations

That Cabinet authorise:

1.1 The Director – Monitoring Officer:

- (a) to make a Compulsory Purchase Order under Section 226 (1) 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 (Cranford Street, Smethwick) Compulsory Purchase Order, in respect of approximately 1.67 hectares of land bounded by land to the south of Cranford Street as shown edged red on the attached Drawing SAM/12980/005 or such lesser land as may be deemed necessary and also including the air space above an area lying to the north and south of the development during the construction as shown on Drawing SAM/12980/005.



- (b) to use the Council's Compulsory Purchase powers to acquire land and property required for the Grove Lane Towns Fund project at Cranford Street, Smethwick.
- (c) 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 of evidence and the presentation of the Council's case at any public Inquiry.
- (d) in the event of the Compulsory Purchase Order being unopposed, and the Council thereby being granted powers to do so by the Secretary of State for Levelling Up, Housing & Communities, to confirm the above order and serve all necessary notices to implement the Compulsory Purchase Order, including the issuing of sheriff warrants.
- (e) to prepare and seal the necessary documents in connection with the CPO and submit the CPO to the Secretary of State for Levelling Up, Housing & Communities to confirm.
- (f) to enter into any licences, undertakings or other agreements to facilitate the Compulsory Purchase Order, on terms to be agreed by the Director of Regeneration & Growth.
- (g) in the event of the Compulsory Purchase Order being confirmed by the Secretary of State for Levelling Up, Housing & Communities, to serve all necessary notices to implement the powers of compulsory acquisition, including the making of General Vesting Declarations; notices to treat; notices of entry; and to take all other requisite steps to obtain possession of the properties; and, where possession has not been given, to obtain a Sheriff's Warrant for possession of any lands.
- (h) to 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.



- (i) to enter into, or execute under seal, any documentation in relation to award of the contract and/or development/partnership agreement, licence, undertaking, framework joining agreement and any other agreements with the procured contractor/s as may be deemed necessary to facilitate development of the site, on terms and conditions to be agreed by the Director of Regeneration and Growth.
- (j) in the event of the council being successful with the submission to the Levelling Up Fund, or securing other appropriate funding source(s), to prepare a Compulsory Purchase Order for the area around Grove Street, Halberton Street and land north of Cranford Street, as set out on plans SAM/12980/004 & SAM/21160/001 attached to this report, and the Director of Regeneration & Growth present a more detailed report to Cabinet at a later date.

1.2 The Director of Regeneration & Growth to make minor amendments to the (Cranford Street, Smethwick) Compulsory Purchase Order and, more particularly, marked "Map referred to in Borough Council of Sandwell (Cranford Street, Smethwick) Compulsory Purchase Order" prior to it being made and submitted for confirmation.

1.3 The Service Manager – Strategic Assets & Land to enter into negotiations and to acquire land and property within the proposed Order lands, on terms to be agreed by the Director of Regeneration & Growth, in advance of confirmation of the Compulsory Purchase Order by the Secretary of State, and subject to the availability of finances.

1.4 The Director – Finance:

- (a) to allocate adequate investment from the Smethwick Towns Fund to fund acquisition of site, demolition of buildings and remediation of land, in order to facilitate a clear site for redevelopment, which is approximately 1.67 hectares of land off Cranford Street, and to cover the CPO administration and execution costs.
- (b) (subject to 1.4(a) above) to grant funding (when secured) from the Town Fund Grove Lane Programme (administered by Sandwell Council), and to allocate adequate resources to fund the first phase of the development.



2. Reasons for Recommendations and Purpose of report

- 2.2 The site, which is currently derelict former industrial land, lies between Cranford Street and the canal arm adjacent to the new Midland Metropolitan University Hospital. The site of 1.67 ha has been identified for potential residential use since 2008 when it was included in the Smethwick Area Action Plan, now incorporated into the Site Allocations and Delivery DPD.
- 2.3 The Smethwick to Birmingham Corridor Framework and Grove Lane Masterplan were prepared during 2021 and concentrated on identifying sites and opportunities for development within the regeneration corridor between Smethwick and Birmingham City Hospital. Following public consultation, both documents, were approved at Cabinet in February 2022. Their approval further emphasised the vision for comprehensive redevelopment in this area for housing purposes.
- 2.4 The Towns Fund bid initially centred on sites to the south of Grove Street, within four separate ownerships, which would all need to be acquired. After submission of the Outline Business Case to MCHLG (now DLUHC) in October 2020, the council was made aware that a site at Cranford Street, previously considered unavailable, was intended to be marketed. Throughout the development of the Towns Fund bid and following a change request, focus was directed to bringing forward this single site for housing as part of the Towns Fund project, subject to acquisition. This was considered a better site given it was in one sole ownership and likely to become available once the hospital was complete in 2023.
- 2.5 The submission for Towns Fund to support the acquisition and remediation of a site in the Grove Lane area has been approved by the Department for Levelling Up, Housing & Communities in May 2022 to the sum of £4.35m. The timeframe for delivery of the project (including acquisition, demolition and remediation of land) is tight, with funding to be spent by 2025/26.
- 2.6 The purpose of this report is to seek approval for the making and submitting of a Compulsory Purchase Order (CPO) for the site south of Cranford Street, in order to prepare the site to achieve a comprehensive redevelopment scheme. The proposed CPO will enable the promotion and contribute to the achievement of the



economic, environmental and social well-being of the Grove Lane area.

- 2.7 Development of this project 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.
- 2.8 The sum of £4.35m is provided to acquire a site identified south of Cranford Street and to remediate the land sufficiently to enable planning permission to be granted to accommodate residential development. The Towns Fund bid indicated approximately 145 homes could be provided, including 25% affordable homes and one commercial unit.
- 2.9 The land is currently owned by a London based property asset company who is leasing out the land to the Sandwell and West Birmingham NHS Hospitals Trust up to 2023. It has been a derelict site for many years and despite the Council attempting to engage in previous years to assist in bringing the site forward for development, no positive response was received. The site is being utilised as a compound and office base for the new Midland Metropolitan University Hospital build and once this is complete the council understands the site may be marketed.
- 2.10 The council appointed surveyors to undertake a valuation of the site and to subsequently engage with the landowner's agents to seek acquisition by agreement. However, following several months of negotiation, the landowner's agents have indicated that their client requires significantly more for the site than the sum offered by the council and therefore would not dispose of the site unless their own valuation was matched.
- 2.11 The Towns Fund Grove Lane project cannot go ahead without a site. The funding has been provided to acquire the site and remediate ready for development. Although negotiations have stalled, every attempt will be made to reignite discussions with the landowner to progress this project. However, in the event that this negotiation is unsuccessful to acquire by agreement, we need to commence Compulsory Purchase Order proceedings. Failure to secure the site would result in clawback of £4.35m to DLUHC.







- 2.12 This report sets out the Council's considered efforts to acquire, by negotiation, those remaining legal interests.
- 2.13 Should the Levelling Up Fund bid be successful, and should the council fail to acquire (by agreement) the sites required within the area identified, this report seeks approval from Cabinet to undertake a further CPO to acquire land and premises within the area identified as the Grove Lane Levelling Up submission,
- 2.14 For the Levelling Up Fund submission, three sites are being considered for acquisition and remediation, in order to facilitate shovel ready sites suitable for residential development. The Levelling Up Fund bid was for just over £18m grant funding, including land at Grove Street and Halberton Street, as well as a site north of Cranford Street opposite the site which is the subject of the Towns Fund bid. It is possible the council will be informed in the late Autumn whether the Levelling Up bid has been successful, but, as with Towns Fund, there is a limited time in which to deliver the scheme.
- 2.15 Initial contact has been made with the landowners via a letter requesting their thoughts on disposal of their sites to the Council. One landowner has confirmed that they would wish to retain their landholding whilst the council is working with another landowner to find alternative premises to facilitate their move out of one of the units. The other landowners have not responded. However, further attempts to engage with these landowners will continue.

3. Compensation

- 3.1 Compensation will be payable to any landowner or right-holder whose rights are compulsorily acquired. Compensation will be assessed as the value of land to the owner, although any increase in value, attributable solely to the development of the Order Land for the Council's scheme, must be discounted.
- 3.2 The Council has obtained a report from an expert valuer on the likely value of the Order Land if acquired by compulsory purchase.
- 3.3 Compensation will be payable from the Towns Fund grant. The compensation liabilities will be underwritten by the Council, as acquiring Authority.



4. How does this deliver objectives of the Corporate Plan?

	<p>Strong resilient communities Objective C2 within the Corporate Plan (2012-2025) states that 'We will deliver the Towns Investment Plans in West Bromwich, Smethwick and Rowley Regis secured through £64.5m of Town Deal Funding'. This project contributes £4.35m of that funding if delivered.</p>
	<p>Quality homes in thriving neighbourhoods Objective H1 within the Corporate Plan (2021-2025) is: We will deliver much needed new homes across the borough, especially affordable homes, on our own land and other viable sites in order to help meet the demand for affordable housing in our communities. This proposal will ensure that over 145 new homes are provided to meet the current housing need, including 25% affordable housing.</p>
	<p>A strong and inclusive economy Objective E4 is 'We will work proactively with our partners at the Local Enterprise Partnership, West Midlands Combined Authority and in central government to take maximum advantage of funding opportunities to secure additional funding for Sandwell regeneration projects'. This project is part of the Town Deal project attracting £4.35m of investment for Smethwick. Objective E6 is 'We will deliver the agreed Town Deals in collaboration with our partners across Rowley Regis, Smethwick and West Bromwich</p>
	<p>A connected and accessible Sandwell This project is one of many in the Grove Lane area that will assist in connecting existing with new development, access to the local public transport services and canal corridor.</p>



5. BACKGROUND AND MAIN CONSIDERATIONS

- 5.1 The area surrounding the new Midland Metropolitan University Hospital has been identified for regeneration since 2008, when allocations for residential and mixed use were included and adopted in the Smethwick Area Action Plan. A site to accommodate the new hospital facility was also included at that time. This facility, albeit delayed due to the failure of the previous construction company, is now nearing completion.
- 5.2 The Smethwick area is one of the council's main regeneration areas, alongside West Bromwich Town Centre and Friar Park. The area has historically been industrial, but over time, the age and lack of investment in some of the buildings has resulted in poor quality premises with low value uses.
- 5.3 The Smethwick Area Action Plan (2008) identified new uses for the Grove Lane area including a new employment site (which is currently being developed out for a new hospital), with mixed use and residential for the remaining sites. Furthermore, in 2016, this site, together with Friar Park was granted Housing Zone status, given the capability of accommodating over 1500 new homes.
- 5.4 Between 2016-2021, Sandwell has a housing delivery deficit of 8,650 dwellings against a target of 16,950 across the whole borough. The contribution of over 800 new homes within the Grove Lane area will assist with reducing this deficit over the next few years.
- 5.5 However, due to the fragmented land ownership, development within the corridor has been slow in coming forward. Development of over 140 new homes has been completed on a site north of Cranford Street and adjacent to the canal. This development of modular build homes is now fully developed and occupied.
- 5.6 In addition, for a site adjacent, there is planning approval for a mixture of new houses and apartments which is awaiting commencement. This proves that there is an appetite for development at Grove Lane and



Cranford Street. The West Midlands Combined Authority has also invested in acquiring land within the area to bring forward for residential.

- 5.7 The area surrounding the hospital has historically been industrial in nature, but over time, the buildings have become run down, with many in a poor state of repair, fire damaged or vacant. Those that are being used, however, include such uses as furniture storage/distribution; motor repairs/tyre sales; food cash and carry; and a number of other small, local employment uses. One unit on Grove Street currently holds a temporary planning permission for use as a mosque.
- 5.8 In October 2020, an Outline Business Case for a site near Grove Street was submitted to Ministry of Housing, Communities and Local Government. The project involved the acquisition and demolition of several industrial buildings and remediation of the land ready for residential development.
- 5.9 In March 2021, Government announced a funding package of £23.5m to support the projects within the Smethwick Town Deal, subject to Full Business Cases being prepared within the next 12 months. As a result, the site at Grove Street was allocated £4.35m.
- 5.10 Whilst working up the Full Business Case, it was discovered that another site in the area, that had previously been discounted for the Towns Fund project, was likely to be marketed in the near future. The site, located off Cranford Street, is adjacent to the Midland Metropolitan University Hospital and is being used as a compound for the hospital build. This site is in one ownership and likely to become vacant once the hospital development is complete. For this reason, a change request was submitted to the Towns Fund for the revised site.
- 5.11 Council officers engaged with other partner agencies such as Homes England and West Midlands Combined Authority to request their assistance in acquiring this new site on the council's behalf. Unfortunately, partners were not in a position to assist in this exercise.



- 5.12 In September 2021, therefore, the Council procured a Chartered Surveyor to provide a valuation on the land. This was to understand the value of the site, in line with the council's Financial Regulations, should the council set out to acquire it. The Surveyor was also commissioned, on the council's behalf, to undertake negotiations and come to an agreed price for the acquisition of the site.
- 5.13 The landowner has a price in mind that he would like to receive for the site. However, this is based upon the only recent land purchase in the locality, which, at this time is considered to exceed true land values for this area of Smethwick. The council's independent valuation took into account the demolition of buildings and the significant remediation required as a result of past industrial workings, potential asbestos and underground tunnels.
- 5.14 The offer from the Council fell short of the landowner's expectations. Following several months of negotiation, and bearing in mind the strategic importance of acquiring the site, the Council made a final, increased offer, but has been unable to agree acquisition by agreement.
- 5.15 The site is required to further the Towns Fund project for the Grove Lane area. Its acquisition will enable the site to be cleared and remediated ready for residential development to come forward. This will result in at least 145 new homes, including 25% affordable homes, which is in line with its allocation in the local plan and the Grove Lane Masterplan approved by Cabinet in February 2022.
- 5.16 It is proposed, therefore, that the best route would be to acquire the land via a Compulsory Purchase Order (CPO). The council has an excellent record in winning CPO cases in the past, and it is considered that the regeneration benefits of undertaking this action, with the investment of £4.35m from Towns Fund, and the delivery of much needed homes, will be a key component in the statement of case. The council can also evidence that it has tried to acquire the site by agreement.



5.17 The Towns Fund grant is required to be spent by 2024/25, and whilst the CPO process may take some time, it is considered that the delivery of the Towns Fund project of acquisition, clearance and remediation would still be achievable within the timescale.

5.18 Compulsory purchase is intended as a last resort in order 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".

6. THE CURRENT POSITION

- 6.1 With regards the site on Cranford Street, the council has not been able to agree to a mutual price for the site with the current landowners. Despite negotiations taking place over several months, the landowners are not willing to accept the council's independent valuation of their site and have intimated that further engagement with the council is not welcome.
- 6.2 It has therefore been necessary to seek authority from Cabinet to undertake a CPO for the land at Cranford Street. During the process the Council will continue to attempt to negotiate with the landowners.
- 6.3 In addition, the Council submitted an application to the Levelling Up Fund in August 2022, seeking funding to assist with the acquisition of sites and remediation of the land ready for development. We are expecting an announcement as to whether this funding has been successful or not in Autumn 2022. Should the application be successful, further negotiation with the occupiers will be required to ascertain if they are willing to dispose of their land by agreement. Initial contact with those affected by this proposal has only received one landowner declining. The council is currently working with another landowner to find alternative premises. The remaining landowners have not responded.



- 6.4 The Council will therefore continue to seek to negotiate the purchase of these 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.

7. LEGAL POWER AND JUSTIFICATION FOR UNDERTAKING A CPO

- 7.1 S.226 of the Town and Country Planning Act 1990 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.
- 7.2 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.
- 7.3 The Council can show that justification for this proposed a CPO is clearly in the public interest, This is based upon the number of benefits that will arise in releasing land which, in its current state, is underutilised and of poor quality. This will enable development of much needed housing, including 25% affordable housing, as well as improving the environmental quality of land around the new hospital development.
- 7.4 The benefits of the scheme are almost 2 hectares of remediated land (which is currently significantly contaminated), at least 145 new homes (of which 25% will be affordable), improved environment, and access to the wider area and green spaces. This will considerably improve the economic, social and environmental wellbeing of the area in the wider public interest. This is primarily through the removal of the long-term public eyesore, created by the current vacant industrial units fronting Cranford Street, and the remaining units on site adjacent to the new hospital development.



8. Alternative Options

- 8.1 Option 1: Not progress with the CPO and not deliver the Towns Fund project leading to clawback of £4.35m to DLUHC. Reputation of the council at risk.
- 8.2 Option 2: Identify another site that could achieve the Town Fund project and submit another change request. There are no other sites in the area that could be considered at this stage given the timescales for the funding to be spent.

9. Implications

Resources:	The acquisition of the site and remediation of the land will be resourced from the Towns Fund allocation of £4.35m.
Legal and Governance:	<p>Section 226 (1) of the Town and Country Planning Act (as amended by Section 99 of the Planning and Compulsory Purchase Act 2004) lays the basis of local authorities' positive planning powers. These provisions grant the authority the power to acquire any land compulsorily under section, if they think the acquisition will facilitate the carrying out of development, redevelopment, or improvement</p> <p>The details set out of this report under respective priority headings together with the planning application show that the redevelopment scheme will improve the economic, social and environmental wellbeing of the area.</p>
Risk:	<p>Those affected by the making of a CPO have rights that are protected by the Human Rights Act 1998, particularly Article 8 and Article 1 and the European Convention on Human Rights.</p> <p>In making a CPO an acquiring authority must show that the acquisition is justified in the public interest. 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</p>



	<p>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.</p> <p>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.</p> <p>The making of a Compulsory Purchase Order may attract objection from the current landowner, In certain circumstances if land is blighted by the proposed scheme the owners of the land in question may serve a Blight Notice on the Authority.</p> <p>Not progressing with a CPO for this site would result in the clawback of £4.35m of Towns Funding by MLUHC.</p>
Equality:	<p>An initial screening was undertaken as part of the Full Business Case development for this project. There was an indication that certain groups may be affected by the proposal and a resolution made to undertake a full EqIA once the project was more developed. When undertaking a full EqIA, any element of the proposal that may have an impact on existing residents or stakeholders would result in mitigation measures to be included to ensure that any impacts are reduced or removed as far is reasonably possible.</p>
Health and Wellbeing:	<p>The acquisition of this site and remediation of the land ready for residential development will enable the provision of new homes, including affordable homes, close to public transport routes and access to the green and blue network of open space and the canal network. More sustainable routes for walking and cycling and access to open space will improve resident's health and wellbeing.</p>



Social Value	<p>As part of the Full Business Case submission to government, a monitoring and evaluation plan was included outlining the opportunities for apprenticeships, new construction jobs and other outcomes that would contribute to social value targets for this project.</p> <p>The construction of new homes would also lead to increased spend within the local area by the new residents.</p>
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10. Appendices

Draft Compulsory Purchase Order Map - Drawing No. SAM/12980/005
Draft Plan for Levelling Up Fund sites SAM/12980/004 & SAM/21160/001

11. Background Papers

Grove Lane Masterplan 2022
Smethwick Town Investment Plan 2020

