

**PURPOSE:** Key decision

**MEETING:** Cabinet

**DATE:** 02 April 2019

<b>TITLE</b>	<b>Bath Road West of Totterdown Bridge</b>		
<b>Ward(s)</b>	<b>Windmill Hill</b>		
<b>Author:</b> Miles Reynolds	<b>Job title: Senior Development Surveyor (Housing)</b>		
<b>Cabinet lead:</b> Cllr Smith	<b>Executive Director lead:</b> Colin Molton		
<b>Proposal origin:</b> <i>BCC Staff</i>			
<b>Decision maker:</b> Cabinet Member			
<b>Decision forum:</b> <i>Cabinet</i>			
<b>Purpose of Report:</b>			
<ol style="list-style-type: none"> <li>1. To note the issues associated with bringing forward the Bath Road Site, West of Totterdown Bridge (<b>‘Bath Road Site’</b>) as edged red on plan at Appendix A (<b>Plan A</b>) for a high density residential development with workspace and retail development on the ground floor.</li> <li>2. To seek approval to enter into a contract to remove Japanese Knotweed from the Bath Road Site and to chemically treat Japanese Knotweed on the land shown hatched blue on Plan A in advance of disposing of the Bath Road Site to our delivery partners.</li> <li>3. To seek authority to make a Compulsory Purchase Order (<b>‘CPO’</b>) for (i) the land shown hatched blue on Plan A (<b>“CPO Land Part A”</b>) and (ii) any interests or rights in the land shown hatched green on Plan A (<b>“CPO Land Part B”</b>) forming part of the Bath Road Site which the Council does not already own (together referred to as <b>“the CPO Land”</b>) and to compensate any owners and pay appropriate compensation due to affected parties entitled to the same.</li> <li>4. To seek approval to underwrite our Delivery Partners’ costs, up to the confirmation of the CPO at a value of up to £1,100,000.</li> <li>5. To seek approval to appropriate the Bath Road Site and the CPO Land for planning purposes save for such parts as Highways require to be retained as highway land to enable maintenance of Totterdown Bridge and effect improvements to Bath Road.</li> <li>6. To seek approval to the exercise of powers under s203 of the Housing and Planning Act 2016 to ensure that covenants or rights affecting the Bath Road Site that might restrict or hinder the development cannot be enforced or exercised.</li> <li>7. To seek approval to sell the Bath Road Site and such parts of the CPO Land Part A and CPO Land Part B as are needed to ensure that the Delivery Partners will own all the land required for the proposed development but excluding such parts as Highways require to be retained as highway land.</li> </ol>			
<b>Evidence Base:</b>			
<ul style="list-style-type: none"> <li>• In 2018, Bristol City Council (the <b>‘Council’</b>) undertook a competitive marketing process and invited Homes West Partners to submit bids to acquire the Bath Road Site and bring it forward for residential development.</li> <li>• Yarlington Housing Group and their joint venture partner Change Real Estate were selected as the preferred bidder for the Bath Road Site (together the <b>‘Delivery Partners’</b>). Title to that part of the CPO Land Part A, is unregistered and it has not been possible to identify its owners.</li> <li>• The CPO Land Part B is owned by the Council but the title shows that it is subject to annual rent charges which need to be extinguished whether by CPO or otherwise.</li> <li>• The bid from Yarlington and Change Real Estate included a part of the CPO Land Part A which is unregistered and lies to the north of the Council’s existing landholding within the Bath Road Site, which part was not included in the land offered for sale by the Council. Attached as Plan B to Appendix A is a drawing numbered</li> </ul>			

18006 L010 P1 which shows with blue edging the Delivery Partners' interpretation of the extent of the land now in the Council's ownership and with red edging the extent of their proposed development.

- The proposed development is likely to increase the flow of pedestrians in the area and it is desirable to create a new footpath link along the southern bank of the River Avon to serve that development and any other developments which may occur to the east of Totterdown Bridge. To the west of the Bath Road Site is an existing footpath leading from Bath Road to a footbridge attached to a railway bridge over the River Avon. It would be desirable for a new footpath leading from the development to connect into that existing footpath; the route of the new footpath would need to be laid on the CPO Land Part A
- Japanese Knotweed is growing on parts of the CPO Land Part A to the north of the Bath Road Site and this knotweed is capable of migrating onto the Council's landholding and consequently requires eradication if the Bath Road Site is to be made suitable for development
- There are various covenants shown on the title to the Bath Road Site which pose a risk to any developer of the Bath Road Site and the Delivery Partners are unwilling to acquire the Bath Road Site if those covenants were still potentially enforceable
- In order to bring the Bath Road Site forward for development the Council needs to;
  - Acquire the CPO Land Part A and extinguish the rent charges on the CPO Land Part B,
  - Appropriate the majority of the Bath Road Site (including the CPO Land Part B) from highways purposes to planning purposes,
  - Appropriate the CPO Land Part A for planning purposes, and
  - exercise the powers under s203 of the Housing and Planning Act 2016 to ensure that the covenants and rights affecting the Bath Road Site that might restrict or hinder the development cannot be enforced
- The Delivery Partners are keen to progress with the development, however the fact the Council does not control all the land needed for the site and needs to acquire a legal interest in the CPO Land Part A either by agreement (which is very unlikely as ownership has not been ascertained to date) or by compulsory purchase without which would present a significant risk to our Delivery Partners.
- The Delivery Partners require a marketable title to the development site and in particular that the land acquired is not subject to any rent charges. As it has not been possible to establish that the rent charges which affected the land shown hatched green on Plan A (CPO Land Part B) have been extinguished or to establish whether any persons may still claim an interest in them it is recommended that any third party interests in those areas of land are acquired by a CPO
- In order to move the development forward and avoid a delay of up to 18 months, authority is sought to underwrite the Delivery Partners' potentially abortive fees up to the earlier of the grant of detailed planning consent or the confirmation of the Compulsory Purchase Order to the value of £1,100,000
- In the unlikely event that the CPO is not confirmed, the Council would be assigned all of the surveys, ground investigation, ecology and all other expert and professional reports and copyright to all drawings prepared or commissioned by the Delivery Partners in connection with the proposed development
- In accordance with the intended terms of the contract with the Delivery Partners, the Council would be required to remove Japanese Knotweed from the Bath Road Site in advance of development and to commence and continue chemical treatment of the Knotweed on the land shown hatched blue on Plan (CPO Land Part A)A. The estimated value of the contract is between £600-700k which again triggers a Key Decision.

### **Justification for the CPO**

The acquisition of the CPO Land is necessary to enable the delivery of the development of the Bath Road Site and create the pedestrian linkages need from and to the Bath Road Site once developed and, subject to the Secretary of State's confirmation (if applicable), the necessary power is available to the Council under s226(1)(a) of the 1990 Act

Section 226(3) of the 1990 Act also allows the Council to acquire adjoining land that is required to facilitate or is incidental to the development of land which is being acquired pursuant to the power in s226(1) of the 1990 Act.

The whole of the CPO Land Part A is in unknown ownership although a thorough investigation of title has been undertaken and the Council now believes that development of the Bath Road Site will not proceed within a reasonable timeframe without the promotion of compulsory acquisition powers.

## The Planning Position

The Government's latest National Planning Policy Framework (NPPF) was revised February 2019, part 11 of the NPPF entitled "Making effective use of the land" the NPPF states:

*"119 local planning authorities ..... should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on Brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help bring more land forward for meeting development needs and/or secure better development outcomes".*

The committee is invited to form the view on behalf of the Council that the use of compulsory land assembly powers to acquire the CPO Land Part A (and extinguishment of the rent charges on the CPO Land Part B), will enable a better development of the Bath Road Site to be brought forward now. Since ownership of the CPO Land Part A is unknown, it is unlikely that the Bath Road Site could be developed to its full potential without the use of compulsory purchase powers for the following reasons:

- (i) The Bath Road Site cannot accommodate a full width service road so that either (i) any new service road would need to be narrower which would impact on the amenity of the development or (ii) the size and/or layout of the Bath Road Site would need to be revised resulting in a smaller development with fewer residential units.
- (ii) The Council's Urban Living Supplemental Urban Living SPD at page 22 (adopted November 2018) states that *"Development proposals should make the most efficient use of land by delivering an optimum density for its site and location i.e. developing land to the fullest amount consistent with all relevant planning objectives"*. The SPD recommends *"Working in partnership with adjoining properties and land owners to maximise development potential and land efficiency"*. A development of the Council's existing landholding together with the CPO Land Part A and extinguishment of the rent charges on the CPO Land Part B would accord with that principle
- (iii) Parts of the CPO Land Part A have Japanese Knotweed growing in them. Any development of the Bath Road Site can only proceed if that knotweed is eradicated due to the risk of migration to the Bath Road Site, and would also risk damage to any new service road; eradication can only be done by repeated chemical treatments and due to a steep slope the knotweed cannot safely be dealt with by removal of soil; access to the CPO Land Part A is vital and, as ownership is unknown, acquisition of the CPO Land Part A would ensure such access.
- (iv) The landscaping of any parts of the CPO Land Part A not needed for the new service road would preserve the amenity of this area for the future occupiers of the Bath Road Site Development; without the acquisition of the CPO Land Part A this enhancement to its amenity value could not be undertaken;
- (v) The Bath Road Site has been subject to unlawful occupancies which pose a risk to the amenity of the Bath Road Site. The development could be adversely affected by rough sleepers or other unlawful occupants setting up camp on any land adjacent to the Bath Road Site and this risk includes the CPO Land Part A so that control of this land is important to minimise this risk ;
- (vi) The creation of a new footpath link along the southern side of the River Avon, and a cycle path to facilitate and improve pedestrian and cycle flows, would lead from the proposed development on the Bath Road Site and connect to the existing footpath to enable access to the footbridge attached to the railway bridge; without the CPO Land Part A the optimum scheme could not be achieved and so could present issues for pedestrian flow and cyclists from the new development on the Bath Road Site;
- (vii) Without acquisition/extinguishment of any rent charges or third party rights which may affect the areas of land within the CPO Land Part B the marketability of any development carried out would be significantly prejudiced.

## Funding

The costs associated with the acquisition of the CPO Land, including those associated with the progression of a

Compulsory Purchase Order will be borne by the Council.

**Cabinet Member / Officer Recommendations:**

**That Cabinet**

1. Authorise underwriting the Delivery Partners' potentially wasted costs up to either the grant of detailed planning consent or confirmation of the Compulsory Purchase Order up to a value of £1,100,000. The figure of £1,100,000 is a budget for fees and surveys that are required to progress the project agreed between the Delivery Partner and the Council.
2. Authorise the procurement of a specialist contractor to treat and remove the Japanese Knotweed and delegate authority to the Executive Director, Growth & Regeneration to enter into a contract with the winning bidder.
3. Authorise the Executive Director, Growth & Regeneration in consultation with Cabinet Member for Housing, to progress Compulsory Purchase Order(s) for the acquisition of the CPO Land pursuant to powers pursuant to powers under section 226(1)(a) and section 226(3) of the Town and Country Planning Act 1990 ("**1990 Act**"), and the Acquisition of Land Act 1981 to enable the development and improvement of the CPO Land including (if and when required) as follows:
  - 3.1 Serving of all requisite notices on all persons with an interest in the CPO Land relating to the making, publicising and confirmation of the CPO Order
  - 3.2 Seeking to acquire for the Council by agreement any interest in land wholly or partly within the limits of the CPO Land in respect of which a blight notice has been validly served in parallel to the CPO process;
  - 3.3 Authorising the negotiation and payment of compensation to any person with a legal interest in the CPO Land; subject to independent valuation
  - 3.4 If any part of the CPO Land shall become occupied removing all occupants from the CPO Land subsequent to the CPO Order;
  - 3.5 Authorising the acquisition by agreement of all existing interests in and over the CPO Land under Section 227 of the 1990 Act before and after confirmation of the Order and in respect of any new rights required for the development or use of the CPO Land and/or the Bath Road Site; and
  - 3.6 Authorising the use by the Council of its powers under sections 203-205 of the Housing and Planning Act 2016 to override third party rights and covenants within the Bath Road Site on the basis that the land is required for the Council's planning purposes and is no longer required for its existing purpose.
4. Authorise the Executive Director, Growth & Regeneration in consultation with Cabinet Member for Housing where necessary, to appropriate for planning purposes under section 122 of the Local Government Act 1972 of all interests in the CPO Land and the Bath Road Site and secure possession of and title to the CPO Land using whatever powers are available and appropriate.
5. Authorise the sale of the majority of the Bath Road Site and such parts of the CPO Land as officers consider best suited to ensure the optimum development site at market value for best consideration. The site will be disposed of under delegated authority (Scheme of Delegations, GROWTH AND REGENERATION, v7, July 2018.)

**Corporate Strategy alignment:**

1. This will support delivery of the Fair & Inclusive Key Commitment: contribute towards the Mayoral target of ensuring that 2,000 new homes – 800 affordable – are built in Bristol each year by 2020.

**City Benefits:** The proposal will increase the supply of housing and affordable housing which will be of benefit to the whole city.

**Consultation Details:**

<b>Revenue Cost</b>		<b>Source of Revenue Funding</b>	Housing Delivery Budget
<b>Capital Cost</b>	<b>£1.1m Underwriting</b>	<b>Source of Capital Funding</b>	Capital Receipts from residential land disposals if required
	<b>£900k Enabling Budget</b>		One Public Estate 6 and Housing Delivery Budget
<b>One off cost</b> <input checked="" type="checkbox"/>	<b>Ongoing cost</b> <input type="checkbox"/>	<b>Saving Proposal</b> <input type="checkbox"/>	<b>Income generation proposal</b> <input checked="" type="checkbox"/>

<b>Required information to be completed by Financial/Legal/ICT/ HR partners:</b>
<p><b>1. Finance Advice:</b> The CPO will facilitate the disposal of a valuable site securing a significant capital receipt for the Council which could not otherwise be achieved. The progress of the CPO will be carefully monitored to minimise the Council’s risk exposure. In the event the guarantee is called in the cost will be met from the Housing Strategy and Commissioning allocation in the approved Capital Programme (PL30). This has a total £61m allocation from 2019/20 through to 2023/24</p>
<p><b>Finance Business Partner:</b> Paul Cook 22 March 2019</p>
<p><b>2. Legal Advice:</b></p> <p><b>Procurement</b></p> <p>Whenever the Council procures services (such as the removal of Japanese Knotweed) where the value is over £181k, it must procure these services via a tender procedure that complies with the Public Contracts Regulations 2015 unless an exemption is available.</p> <p>The relevant officers must ensure the agreement to transfer the interest in land to the Delivery Partners is not a “works contracts” as defined under the Public Contracts Regulations 2015 i.e. it must not contain a binding obligation on the Delivery Partners to build any works. Provided the agreement does not contain such an obligation and is an exempt land transaction rather than a works contract, it will not contravene the Public Contracts Regulations 2015 (which require all works contracts to be procured via a compliant tender process).</p> <p><b>Compulsory Purchase:</b></p> <p>On the facts it would appear that the proposed compulsory purchase of the CPO Land would be made appropriately under section 226(1) (a) of the Town and Country Planning Act 1990.</p> <p>Acquisition by the Compulsory of the CPO Land Part A is understood to be necessary to “facilitate the carrying out of development, re-development or improvement on or in relation to the land” as required under s226(1)(a)(i) as it will (i) enable the development of a new access road (required for the proposed residential development on the Bath Road Site) (ii) enable the Council to improve the land by chemically treating the Japanese Knotweed growing on it and (iii) enable a new footpath link to be created to serve the development.</p> <p>Use of the power of compulsory purchase in respect of the CPO Land Part B with the objective of extinguishment of any remaining rent charges would facilitate the carrying out of the development of the Bath Road Site by cleansing the title to the CPO Land Part B of interests which could impede the delivery of the Bath Road Site.</p> <p>To comply with statutory and policy requirements, the design and functional relationship between the CPO Land and the wider scheme for the Bath Road Site need to be demonstrated and its anticipated benefits which is set out in the justification for the proposed exercise of CPO powers above.</p> <p>It is noted that the proposed development does not currently benefit from planning permission but this report anticipates that obtaining a satisfactory planning permission to develop the Bath Road Site could be obtained as the site is allocated under the Bristol Local Plan (BSA1101) and is suggested for mixed-use development incorporating housing and business.</p>

Reasonable steps should be taken to seek to secure land by negotiation (if owner(s) can be identified) before exercising CPO powers. As the land to be acquired (i) has not been built upon so that there are no rating records, (ii) is unoccupied and (iii) has an unregistered title it has not been possible to identify the owners and in the circumstances the only way to proceed to acquire it within a reasonable timescale or at all is by making a CPO.

### Equalities

The Council must comply with the requirements of the Public Sector Equality duty when making any decisions. The duty requires the decision maker to consider the need to promote equality for persons with “protected characteristics” and to have due regard to the need to i) eliminate discrimination, harassment, and victimisation; ii) advance equality of opportunity; and iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. In order to do this the decision maker must have sufficient information about the effects of the proposed decision on the aims of the Duty. The Equalities Impact Check/Assessment is designed to assist with compliance with this duty. Its purpose is to assess whether there are any barriers in place that may prevent people with a protected characteristic using a service or benefiting from a policy. The decision maker must take into consideration the information in the check/assessment alongside the general Public sector equality duty before taking the decision.

**Legal Team Leader:** Procurement – Sinead Willis, Commercial and Governance Team, 14 February 2019  
Gillian Dawson, Planning Property Transport Team, 1.3.19 2019

**3. Implications on IT:** There are no identifiable IT implications in this proposal

**IT Team Leader:** Ian Gale 8 February 2019

**4. HR Advice:** No HR implications are evident

**HR Partner:** Celia Williams, HR Business Partner – Growth and Regeneration

### Background Documents:

<b>EDM Sign-off</b>	Colin Molton	6 February 2019
<b>Cabinet Member sign-off</b>	CLlr Paul Smith	11 February 2019
<b>For Key Decisions - Mayor's Office sign-off</b>	Mayor's Office	4 March 2019

<b>Appendix A – Site Plans</b>	<b>YES</b>
<b>Appendix B – Details of consultation carried out - internal and external</b>	<b>NO</b>
<b>Appendix C – Summary of any engagement with scrutiny</b>	<b>NO</b>
<b>Appendix D – Risk assessment</b>	<b>NO</b>
<b>Appendix E – Equalities screening / impact assessment of proposal</b>	<b>NO</b>
<b>Appendix F – Eco-impact screening/ impact assessment of proposal</b>	<b>NO</b>
<b>Appendix G – Financial Advice</b>	<b>NO</b>
<b>Appendix H – Legal Advice</b>	<b>NO</b>
<b>Appendix I – Exempt Information</b>	<b>NO</b>
<b>Appendix J – HR advice</b>	<b>NO</b>
<b>Appendix K – ICT</b>	<b>NO</b>

