

Appendix H

Legal and Resource Implications

Compulsory purchase must be a last resort when other possible actions have failed. The Council needs to be satisfied that it can achieve a gain in the number of units of housing accommodation or in the quality of the existing accommodation to justify Compulsory Purchase.

In seeking to exercise compulsory purchase powers the Council must have regard to the Human Rights Act 1998 (HRA) which came into force on 2 October 2000.

The Human Rights Act 1998 ("the Act") incorporated in UK domestic law the European Convention on Human Rights ("the Convention"). The Human Rights Act 1998 makes it lawful for a public body to act in contravention of the Act in certain specified circumstances.

The Convention includes provisions in the terms of the Articles the aim of which is to protect the rights of individual's (including companies). In this case the rights engaged are:-

The main articles of the Convention which are of importance in circumstances where the Council is considering making a compulsory purchase order are considered below.

In making a CPO, an acquiring authority must show that the acquisition is justified in the public interest.

Issues arising under Article 8 and Article 1 of Protocol 1

Article 8

Issues arise under Article 8 and Article 1 of Protocol 1.

Article 8(i) provides that everyone has the right to respect for his or her private and family life and 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 listed public interest purposes, e.g. public safety, economic wellbeing, protection for health and protection of the rights of others.

This property in Alma Vale Road is vacant at present and the owner lives elsewhere. .The acquisition of the property by CPO is an interference with these rights , however it is the view of your officers that this is justified on the grounds of public interest **Article 1 of Protocol 1**

This article provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law. However, the 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 rights under this Article. The right to compensation is an important factor in considering the balance between the two.

The Council will be aware that the owner will receive compensation for the market value of the property, and may be entitled to further compensation for the "basic loss" of the property.

With regard to Article 1 Protocol 1, the officer recommendation is that the interference is justified by the advantages accruing to the community by proceeding with the acquisition, in terms of the provision of good quality and much needed housing in the area, particularly taking into account the fact that there is a legal right to compensation for the property purchased.

Article 6 of the First Protocol: the right to a fair hearing

Representations will be possible before an Order can be confirmed. In addition objections will be heard if necessary by an Inspector appointed by the Secretary of State.

Compensation will be available to parties whose interests whose interest in land is directly affected through the acquisition of land or new rights.

Conclusion

In the light of the significant public benefit that would arise from the project being taken forward it is considered appropriate to make the Compulsory Purchase Order and to exercise those CPO powers .It is not considered that any unlawful interference with an individual's rights will occur as the interference will be in accordance with the law and, where property interests are affected directly, the compulsory purchase compensation code will apply.