

**Meeting of the Cabinet - 29th October 2008**

**Joint Report of the Directors of Adult Community and Housing Services and Law and Property**

**No's 13-51 Orchard Street Brierley Hill Regeneration Project**

**Purpose of Report**

1. To consider the use of compulsory purchase powers, if necessary, to facilitate the implementation of the Orchard Street Regeneration Project.

**Background**

2. The Cabinet at its meeting on 11<sup>th</sup> June 2008 considered a report of the Director of Adult, Community & Housing Services regarding the proposed regeneration of 13-51 Orchard Street. The site consists of twelve houses and eight site plots where the former properties have been demolished. Nine of these properties and all the site plots are in the ownership of the Council. Three properties are privately owned initially having been bought under the right to buy. They can be identified on the attached map as hatched.
3. The report recommended that Cabinet give approval to declare the land at 13-51, Orchard Street, Brierley Hill surplus to be disposed of for the purposes of social housing, suspend tenants' right to buy, give tenants affected by the clearance a re-housing priority, pay home loss and disturbance allowances and commence the acquisition by agreement of property and rights. The recommendation was approved by Cabinet.
4. Progress on the project since June has included a meeting to update residents regarding the development plans and to discuss housing options advice. The project has also moved forward to a position where residents' individual housing needs are now being considered through the completion of Housing Options interviews and an on-going commitment to provide timely information, taking into account residents' views through on-going dialogue has been given.
5. There has been contact with two of the three owners regarding the acquisition of their properties. Contact with the third owner has proved

difficult. The Council will need to acquire these properties in order for the full regeneration to go ahead and it is our intention that we acquire these owner occupier properties through negotiation.

6. We do recognise, however, that as with any negotiation arrangement, we may not be able to acquire all properties through negotiation and we must therefore assume from the outset that we may ultimately have to use compulsory purchase powers. This process can take a significant amount of time to achieve and it is important that we formulate and seek a compulsory purchase resolution and order early in the process to ensure that the project is not delayed unnecessarily.

### **Consultation**

7. There has been on-going consultation with the local community regarding the proposals for the regeneration of Orchard Street.

### **Need for Compulsory Purchase**

8. The Council wishes to proceed on the basis of negotiation with individual owners but in the absence of any CPO individual owners could prevent the full regeneration of the area. CPO powers are needed as a last resort if the negotiations fail to secure the whole of the site within the timescales required to ensure delivery of the project.

### **Finance**

9. The passing of a resolution to use CPO powers does not in itself commit the Council to acquire premises or proceed to make the actual order. It is, however, a statutory event which permits the service on the Council of Blight Notices by owners of qualifying premises. If a Blight Notice is upheld then the Council will be forced to acquire the premises and any lack of funds is not a valid reason to refuse to accept a Blight Notice. However, it is considered extremely unlikely that a Blight Notice could be served other than by the owners of the premises that the Council is proposing to acquire. It is anticipated that the premises will be acquired by Black Country Housing Group, the Council's partner in this project, so there will be no direct budgetary impact. Should the Council have to use its CPO powers to acquire the premises, the costs will be recouped from Black Country Housing.

### **Law**

10. Section 226 (1) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 gives a local planning authority power to acquire compulsorily any land or acquire new rights in their area if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land, and if they think that the development, re-development or improvement is likely to

contribute to the promotion or improvement of the economic, social and environmental well-being of their area.

11. Section 227 of the 1990 Act also confers specific but widely drawn powers on a land planning authority to purchase by agreement any land which is required for development or other planning purposes, as defined by section 266.
12. Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides for the creation of new rights to facilitate development or the acquisition of existing rights.
13. The Human Rights Act 1998 implements the European Convention on Human Rights where Article 1 of the First Protocol states;

“Article 1 Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

14. It has been shown in various decided cases that UK compulsory purchase law is compatible with human rights legislation provided that the correct procedures are followed. The right of an individual to peaceful enjoyment of his possessions under that Article is a qualified, rather than an absolute right and it involves a balancing exercise between the public interest and the individual's right whereby any interference with the individual's right must be necessary and proportionate.

### **Equality Impact**


15. It is intended that the regeneration of Orchard Street will create a mixed, sustainable community providing a wider range of housing tenure and property types than currently provided. This will help to meet both a wider range of housing need and aspirations.

### **Recommendation**

16. It is recommended that:-
  1. The Council resolves to make a Compulsory Purchase Order(s) under Section 226 (1) (a) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of the land shown on the

Plan attached, or the acquisition of new rights, for the purpose of regenerating Orchard Street.

2. The Directors of Adult, Community and Housing Services and of Law and Property, in consultation with the Cabinet Members for Economic Regeneration and Housing be authorised to:-
  - (i) take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order(s) including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry;
  - (ii) negotiate and acquire interests in land and new rights within the compulsory purchase order(s) either by agreements or compulsorily;
  - (iii) settle all compensation claims and ancillary claims fees and costs arising as a direct consequence of the CPO; and
  - (iv) approve agreements with land owners setting out the terms for the withdrawal of objections to the Order, including where appropriate seeking exclusion of land or new rights from the Order and/or making arrangements for relocation of occupants.
3. Any cost of acquisition of properties be included in the Capital Programme.



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