

# Cheltenham Borough Council

11<sup>th</sup> February 2020

## Proposed Compulsory Purchase action to support delivery of the proposed West Cheltenham Development Scheme

<b>Accountable member</b>	<b>Cllr Steve Jordan, Leader of the Council</b>
<b>Accountable officer</b>	<b>Tracey Crews, Director of Planning</b>
<b>Ward(s) affected</b>	<b>Hesters Way, Springbank, St Marks , St Peters</b>
<b>Key/Significant Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) allocates land at West Cheltenham (Policy A7) for approximately 1,100 new homes and approximately 45 hectares of employment land to be focussed upon a cyber security hub. Since adoption of the JCS in December 2017 the following progress has been made in moving towards comprehensive delivery of development;</p> <ul style="list-style-type: none"><li>• £22m for infrastructure support via Gfirst LEP Growth Deal 3</li><li>• Joint commissioning by the local planning authorities of Cheltenham and Tewkesbury of consultants to prepare a masterplan Supplementary Planning Document (SPD) for West Cheltenham (see Cyber Central Garden Community – Draft Supplementary Planning Document – Cabinet Paper 17<sup>th</sup> December 2019)</li><li>• Cheltenham Borough Council purchased c.112 acres of land within the strategic allocation (see West Cheltenham, Property Acquisition – Cabinet Paper 14<sup>th</sup> May 2019)</li><li>• Award of Garden Communities status to West Cheltenham by Ministry Housing Communities and Local Government (June 2019)</li></ul> <p>To ensure progress to deliver comprehensive development at West Cheltenham, this report considers whether compulsory purchase powers (CPO) could potentially be used, if necessary, to support delivery.</p> <p>At this stage of the process, the decision to use CPO would be an "in-principle" decision that would enable the Council to gather relevant information, carry out surveys, investigate land ownership and prepare, if appropriate CPO statement of reasons. Should this information gathering lead to the view that a CPO would be necessary and in the public interest, then this would be subject of a further report to Cabinet. It should however be stressed that using CPO powers is very much a matter of 'last resort'.</p> <p>Based upon the policy requirement and desire for a comprehensive development, the red outline plan (see appendix 2) covers the West Cheltenham strategic allocation as defined in the JCS and includes the</p>

related safeguarded land at West Cheltenham. This mirrors the area included within the Draft SPD.

It is important to note that the red outline plan contains the area allocated in the Joint Core Strategy and the Safeguarded land which includes the Hayden operational sewerage treatment works. It should be noted that this works, operated by Severn Trent Water, comprises operational land of the statutory undertaker and is afforded special protection under the Acquisition of Land Act 1981. Section 16 of the Acquisition of Land Act 1981 gives special protection to land held by statutory undertakers such as Severn Trent Water. A CPO will not be confirmed so as to affect Severn Trent's sewerage treatment works if it would cause serious detriment to the carrying on of the undertaking (unless replacement land is available for the undertaking thereby avoiding any serious detriment). The Council will therefore need to work closely with Severn Trent to ensure there would be no serious detriment, and would need to investigate any mitigation measures that might be required. In addition, this land lies wholly within the administrative area of Tewkesbury Borough.

The administrative boundary between Tewkesbury and Cheltenham Borough Councils runs through the West Cheltenham strategic allocation north to south. The land in Tewkesbury's area is subject to a separate report seeking a similar resolution. This report seeks authority only for the land within Cheltenham's administrative area. There has been full engagement between the two councils in the drafting of these reports.

In view of the risk that it may not be possible to acquire all necessary land by agreement, it is prudent for the Council to now take investigative and preparatory steps towards making a CPO to support the comprehensive development of the site.

This Council will work with Tewkesbury Borough Council to ensure a coordinated approach in the use of CPO, if deemed necessary to progress.

## Recommendations

### **Cabinet is recommended to:**

- 1. Agree in-principle, for the reasons set out in this report, that the Councils may need to use compulsory purchase powers to acquire the land shown edged red on the plan, attached at appendix 2 of this report, in order to achieve the following:**
  - (a) Secure the delivery of the West Cheltenham development, its housing and job-creation objectives together with contributing to the promotion and improvement of the economic, social and environmental well-being of Cheltenham and Tewkesbury Boroughs in line with the emerging Cyber Central Garden Community Supplementary Planning Document,**
  - (b) Facilitate the development of the site by assembling the land interests within a reasonable timeframe and at a reasonable cost.**
- 2. Authorise the Director of Planning to undertake the investigative and preparatory work required for the compulsory purchase process in collaboration with Tewkesbury Borough Council. Cabinet notes that as an outcome of this recommendation, if it is necessary and appropriate, for one or more compulsory purchase**

orders to be made, that a further report will be brought to Cabinet seeking approval to the making of an Order.

3. **Accept that costs of up to £100,000 may be incurred. This cost is to be split equally between the two authorities (£50,000 contribution from Tewkesbury Borough Council).**

<b>Financial implications</b>	<p>At this stage, an in-principle decision to use CPO powers is being requested. Costs associated with this report are estimated to be under £100,000 (equally shared with Tewkesbury Borough Council). Cheltenham's portion can be met from the budget already allocated by Full Council for the delivery of Cyber Central. In the event however of additional allocation being required to complete this stage of the CPO process, a further report will be brought to Cabinet.</p> <p>If following conclusion of the investigatory steps referred to in this report it is considered that one or more CPO's are necessary to facilitate the comprehensive development of the whole site, a further cabinet resolution would be required.</p> <p><b>Contact officer:</b></p> <p><a href="mailto:paul.jones@cheltenham.gov.uk">paul.jones@cheltenham.gov.uk</a></p>
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<p><b>Legal implications</b></p>	<p>The making and confirmation of a CPO would enable the Council to compulsorily acquire third party land interests. Persons who are affected by a compulsory purchase order are entitled to compensation to make good the loss, calculated in accordance with the Statutory Compensation Code.</p> <p>The exercise of a confirmed CPO should be considered a matter of last resort in the event that attempts to acquire land by agreement fail. However, guidance issued by The Ministry of Housing Communities and Local Government titled “Guidance on Compulsory Purchase and the Crichel Down Rules” (July 2019) states that it may be sensible to initiate the formal compulsory purchase procedures in parallel with such negotiations.</p> <p>The most appropriate CPO enabling legislation in this case is likely to be Section 226(1)(a) of the Town &amp; Country Planning Act 1990 (TCPA 1990) under which an Acquiring Authority has a general power to make a CPO for the acquisition of any land in their area in order to facilitate the carrying out of development, redevelopment or improvement in relation to the land. In order to exercise the powers under section 226 of the TCPA 1990 the Acquiring Authority must demonstrate that the proposed development/improvement is likely to contribute towards any of the following objects, namely the promotion or improvement of the economic or social or environmental well-being of their area. As stated in the Guidance compulsory purchase is “intended to provide a positive tool to help Acquiring Authorities with planning powers to assemble land where this is necessary to implement their community strategies and Local Development documents”.</p> <p>If the Council decided to make a compulsory purchase order, the order would not take effect unless it is confirmed by the Secretary of State. Where there are objections to a compulsory purchase order the Secretary of State will hold an inquiry in order to consider whether there is a compelling case in the public interest for the compulsory order. Objectors will have the right to be heard and challenge the Council’s case. The Council will also be able to present its case and respond to objections in such inquiry.</p> <p>In deciding whether to make a compulsory purchase order (and in deciding whether to confirm it) the decision maker must be satisfied that the purposes for which it makes a CPO sufficiently justify interfering with the human rights of those with interests in the land affected. Regard must be had to the protocols to the European Convention on Human Rights and the Human Rights Act 1998 and the Public Sector Equality Duty. The Inspector will independently consider the case for the CPO and report to the Secretary of State with a recommendation. For schemes of local rather than national importance the CPO is likely to be confirmed by the Inspector on behalf of the Secretary of State.</p> <p><b>Legal advice has been obtained from Trowers LLP</b></p>
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<p><b>HR implications (including learning and organisational development)</b></p>	<p>There are no HR implications arising from the recommendations in this report at this time. Should the CPO progress then there will be an impact on resources within the relevant teams, in appointing and managing external consultants.</p> <p><b>Contact officer:</b></p> <p><a href="mailto:julie.mccarthy@publicagroup.uk">julie.mccarthy@publicagroup.uk</a></p>
<p><b>Key risks</b></p>	<p>If the Council does not act to help facilitate the release of this land then the ambitions for the government backed Cyber Central development and overall West Cheltenham vision have the potential to be hindered or not achieved with negative economic and social impacts for the town and wider region.</p> <p>To mitigate the risk of a land parcel within the site not being available to come forward for development in-line with the remainder of the strategic allocation/safe-guarded land, it is recommended that the compulsory purchase order process is started and at the same time negotiations continue with all land owners as per Government guidance. It must however be recognised that initiating later stages of the process will be a matter of last resort in line with the Guidance.</p> <p>There is a risk of judicial review and/or objection to the CPO process. The latter may trigger a Public Inquiry with consequential implications for staff time and resources.</p>
<p><b>Corporate and community plan Implications</b></p>	<p>The Cyber Central vision is a key priority of the Corporate Plan together with delivery of Policy A7 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy. Land acquisition will support the achievement of key corporate plan priorities including making Cheltenham the Cyber capital of the UK and increasing the supply of housing to build resilient communities together with wider community planning and delivery of the Cheltenham Place Vision.</p>
<p><b>Environmental and climate change implications</b></p>	<p>West Cheltenham has been allocated for development by the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy. Any emerging developments will be considered under the context of the Joint Core Strategy and the Cheltenham Plan which collectively form the statutory development plan for Cheltenham. These plans, together with the national Planning Policy framework incorporate policies that encourage sustainable development, economic growth and promote health, wellbeing and biodiversity.</p> <p>The site has now obtained 'Garden Communities' status which highlights the government support and the requirement for a comprehensive development creating a sustainable community with attractive green space and public realm. A Supplementary Planning Document to support the delivery of the Cyber Central Garden Community is well advanced and scheduled for adoption by Council April 2020.</p>

<b>Property/Asset Implications</b>	There are no CBC property portfolio implications arising from the recommendations in this report.  <b>Contact officer:</b>  <a href="mailto:harry.lea@cheltenham.gov.uk">harry.lea@cheltenham.gov.uk</a>
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## **1. Introduction**

- 1.1** To ensure the comprehensive and timely development of the strategic allocation and safe-guarded land at West Cheltenham (Cyber Central), it is necessary to initiate the compulsory purchase order (CPO) process. This utilises the Council's powers to acquire land necessary to deliver the local plan and the initial step, an in-principle resolution, will start the process to evaluate which, if any land parcels are required.
- 1.2** In line with the Guidance, at the same time as starting the CPO process, negotiation continues with all landowners in the site area with the objective of acquiring any land by agreement rather than utilise the CPO process.

## **2. Background**

- 2.1** The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) was adopted by the three JCS Councils December 2017. Policy A7 formally designates land at West Cheltenham for approximately 1,100 new homes and approximately 45 hectares of employment land to be focussed upon a cyber security hub, high technology and other high GVA generating development.
- 2.2** The safe-guarded land at West Cheltenham is being considered for development as part of the JCS Review and was put forward as supporting documentation within the Issues and Options consultation November 2018 – January 2019. For this reason the red line associated with this report includes the safeguarded land identified in the JCS and the Issues and Options consultation. The Council notes the protections afforded to the statutory undertaker under section 16 of the Acquisition of Land Act 1981.
- 2.3** The following progress has been made in moving towards comprehensive delivery of development;
  - Joint commissioning by the local planning authorities of Cheltenham and Tewkesbury of consultants to prepare a masterplan Supplementary Planning Document (SPD) for West Cheltenham (see Cyber Central Garden Community – Draft Supplementary Planning Document – Cabinet Paper 17th December 2019). The preparation of this SPD is now well advanced. Early engagement with stakeholders and local communities took place at the end of 2019; statutory consultation began on 13<sup>th</sup> January 2020 and will continue for 5 weeks. A final SPD will be presented to Council for adoption April 2020.
  - Cheltenham Borough Council purchased c.112 acres of land within the strategic allocation (see West Cheltenham, Property Acquisition – Cabinet Paper 14th May 2019)
  - Award of Garden Communities status to West Cheltenham by Ministry Housing Communities and Local Government (June 2019). This highlights the government support for the site and the need for a comprehensive development creating a sustainable community with attractive green space and public realm.
  - The Cyber Park concept has significant central government backing, having secured £22m for infrastructure support via Gfirst LEP Growth Deal 3 with the Department for Transport. This investment will deliver transport improvements to the A40 corridor (anticipated start on site summer 2020), with improved walking and cycling linkages to the train station.
- 2.4** Cyber Central has the potential to support up to 2m ft<sup>2</sup> of development and can accommodate up to 7,000 jobs and is the single largest employment site being developed in Gloucestershire and has significance both for Cheltenham and the wider region. Work to date is engendering widespread interest from commercial and academic organisations.

- 2.5** To ensure the comprehensive, sustainable development of West Cheltenham, it is in the interest of Cheltenham and Tewkesbury Councils that there is certainty in each of the required land parcels coming forward for development. Although negotiations are taking place with landowners, there is no certainty all interests will be acquired by agreement within the necessary timeframe. Therefore to ensure that the overall timing of land availability accords with the wider plan, it is recommended to initiate work to support the making of a compulsory purchase order (CPO).
- 2.6** The area of land subject of this report is that as defined within the Cyber Central Garden Community SPD (appendix 2). It is important to note that the red outline plan contains the area allocated in the Joint Core Strategy and the Safeguarded land which includes the Hayden operational sewerage treatment works.
- 2.7** The Hayden sewerage treatment works operated by Severn Trent Water lies wholly within the administrative area of Tewkesbury Borough. It comprises operational land of the statutory undertaker and is afforded special protection under the Acquisition of Land Act 1981. Section 16 of the Acquisition of Land Act 1981 gives special protection to land held by statutory undertakers such as Severn Trent Water. The Council is in close collaboration with Severn Trent Water with an open dialogue around the opportunities and constraints of the current facility. The Council will continue to work closely with Severn Trent Water together with Tewkesbury Borough Council. A CPO will not be confirmed so as to affect Severn Trent's sewerage treatment works if it would cause serious detriment to the carrying on of the undertaking (unless replacement land is available for the undertaking thereby avoiding any serious detriment).
- 2.8** This report seeks authority only for the land within Cheltenham's administrative area. Should Cheltenham Borough Council decide to make a CPO in the future, this would only authorise the compulsory purchase of land within the administrative area of Cheltenham Borough Council. All land in Tewkesbury's administrative area falling within the red outline plan is subject to a separate report seeking a similar resolution by Tewkesbury Borough Council.
- 2.9** The investigative and any preparatory work that may be carried out should the Cabinet approve this report may include the following:
- Investigating land ownership and preparing a schedule of land interests,
  - Producing a property cost estimate (estimate market values of property within the defined scheme) so that the costs of delivering the scheme can be assessed;
  - Further developing the planning strategy for the site;
  - Refining the precise boundaries of the land that may need to be compulsorily acquired;
  - Working on a statement of reasons which would set out the full justifications for the use of CPO;
  - Preparing a draft order and statutory notices;
  - Developing an acquisition and delivery strategy and continuing with private treaty negotiations in conjunction with partners.

### **3. Reasons for recommendations**

- 3.1** Work to date has highlighted that landowners have varied opinions concerning their land release and there is therefore a risk that some land may not come forward at a reasonable cost or within a reasonable timeframe, which has the potential to cause delays to the delivery of the strategic allocation.



- 3.2** In order for the authorities to meet their policy, corporate, and place making aspirations, it is paramount that West Cheltenham comes forward as a comprehensive, sustainable development – therefore the ability to utilise compulsory purchase powers may be required to assemble land in a reasonable timescales to achieve the overall vision of a comprehensive development. The Council will continue to seek to acquire all necessary interests by agreement prior to and in parallel with any CPO process
- 3.3** The recommendations of this report authorises the Council to initiate the investigative and preparatory work to progress with a CPO. This will include obtaining access onto the land for ground investigations and undertaking surveys, obtaining detailed and up to date information relating to land ownership, and preparing the legal documentation that would be required in order to make a compulsory purchase order. It is key that contractors have the ability to access land for necessary surveys to ensure there are no delays to the development programme. Therefore the ability to utilise CPO may be required to assemble land in a reasonable timescales.
- 3.4** If it is deemed necessary to make a CPO, a further report will be brought to Cabinet for approval. This report will need to set out the necessary funding information for such a land acquisition and will clarify whether this be by a 3rd party, Government funding support or other means.
- 3.5** It is considered that in light of the planning policy framework and the complex land assembly challenges faced by the project together with the need to deliver a comprehensive development, there are compelling justifications in the public interest to pursue a compulsory purchase order.

#### **4. Alternative options considered**

- 4.1** The alternative option is for the Council not to prepare for the use of CPO. If the Council did not proceed with the making of a resolution in principle to CPO, it would have less control in the development of the West Cheltenham strategic allocation and the ambition for the delivery of Cyber Central.
- 4.2** Should the Council not utilise its powers it runs the risk of significant delay to the project programme and/or budget, which could ultimately frustrate the comprehensive development of the site.

#### **5. Communication, consultation and feedback**

- 5.1** Lead members have been fully consulted in the drafting of this report. Full engagement has taken place with Tewkesbury Borough Council. Further to this approval on-going and appropriate consultation will be required to continue this process as well as under the Guidance, discussions continue with the relevant landowners. The rationale behind the recommendation meets the views of members as highlighted in previous decisions made on West Cheltenham.
- 5.2** Negotiations are on-going with key landowners and their advisers through the council's property team. During negotiations these landowners have been made aware of the likelihood of the Councils to seek CPO if agreement is not reached.
- 5.3** The Director of Planning wrote to all landowners within the administrative boundary of Cheltenham directly affected by this report on 17th January 2020. There are a total of 6 landowners. The letter summarised the recommendations in this report and encouraged them to engage in the consultation of the SPD.
- 5.4** At this stage, it is not possible to define the precise extent of the scheme or land interests which may be included in any CPO. This resolution will allow the necessary investigatory and preparatory work to be undertaken to enable refining and definition of any CPO boundary based on survey work and legal due diligence. To that extent some parcels have been included in this resolution where it may only be necessary to seek rights or parcels which ultimately may not be

included within any CPO. All landowners identified within the resolution boundary have been written to and afforded the opportunity to discuss this further.

**6. Performance management – monitoring and review**

6.1 Officers will continue to work in conjunction with legal representatives and real estate consultants to undertake the investigative and preparatory stages in the process.

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<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Red – outline plan</li></ol>

# Risk Assessment

## Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1	If the Council does not act to help facilitate land release there is a risk that the full potential of the West Cheltenham strategic allocation will not be realised, as well as delays in delivery timescales.	Tracey Crews	16/01/20	5	4	20	Reduce	Obtain a 'resolution in principle' to CPO.	February 2020	David Oakhill	Cyber Central programme risk register
2	On the making of a 'resolution in principle' to CPO there is likely to be queries raised by associated land owners.	Tracey Crews	16/01/20	2	4	8	Accept	Communications strategy in place to manage.	February 2020	David Oakhill	Cyber Central programme risk register

3	If preparatory stages of CPO start it is likely to be a strain on internal resource.	Tracey Crews	16/01/20	3	4	12	Accept	Real Estate Consultants will be appointed to assist officers.	February 2020	David Oakhill	Cyber Central programme risk register
4	There is a risk of judicial review and/or objection to the CPO process. The latter may trigger a public inquiry with consequential implications for staff time and resources.	Tracey Crews	16/01/20	3	4	12	Accept	Legal support will be appointed to lead this process	Spring / Summer 2020	David Oakhill	Cyber Central programme risk register