

## **Rother District Council**

Report to	-	Cabinet
Date	-	8 June 2020
Report of the	-	Executive Director
Subject	-	Residential Development at Blackfriars, Battle

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**Recommendation to COUNCIL:** That the Capital Programme be amended to reflect the new Housing Infrastructure Fund grant of £8.7m and additional uplift budget as outlined in Confidential Appendix 5, to be funded by borrowing as part of the overall development costs.

### **AND**

It be **RESOLVED:** That:

- 1) the Council seeks to exercise its power under Section 226(1)(a) of the Town and Country Planning Act 1990 through the drafting of a Compulsory Purchase Order to acquire interests in land to enable the construction of a spine road to serve a residential development, with vehicular access off Harrier Lane and The Spinney, with up to 220 dwellings and associated works;
  - 2) the Executive Director be authorised to commence the preparatory work required for the making of the Compulsory Purchase Order including (but not limited to) the completion of land referencing;
  - 3) all reasonable endeavours continue to be used to acquire, by negotiation, the various land interests affected by the Compulsory Purchase Order and delegated authority be granted to the Executive Director to complete the acquisitions and disposals of land as necessary within the budget outlined at Confidential Appendix 5; and
  - 4) to report back at a later date to seek a recommendation to Council for authority to secure the making, confirmation and implementation of the Compulsory Purchase Order.
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**Head of Service: Ben Hook**

**Lead Cabinet Member: Councillor Byrne**

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### **Introduction**

1. On 13 January 2020, Cabinet authorised the commencement of the compulsory purchase process for land at Blackfriars, Battle subject to a further report (Minute CB19/86 refers).
2. The issuing of a Compulsory Purchase Order (CPO) is a two-stage process. Cabinet must first resolve that the Council will seek to exercise its compulsory purchase powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire a number of interests in land to enable the construction of

a spine road to serve a residential development, with vehicular access off Harrier Lane and The Spinney, and the construction of up to 220 dwellings and associated works ('the Development').

3. Following the further actions as set out in this report, a CPO will be prepared for consideration by Cabinet and full Council.

### **Background and Planning Position**

4. The Planning Committee resolved to grant planning permission for the Development at Blackfriars in October 2019, subject to the completion of a planning agreement (Planning Application Reference: RR/2019/604).

5. The Development is described in the planning permission as:

**“Outline: Detailed proposals for a spine road to serve residential development, with vehicular access off Harrier Lane and The Spinney, with Master Plan for up to 220 dwellings and associated works”.**

6. The principal of residential development on the site off Harrier Lane and The Spinney known as Blackfriars (“the Site”) is long established. In 1967 part of the Site was allocated for housing in East Sussex County Council’s (ESCC) Battle Draft Town Plan, and in the 1972 Battle Town Plan and Town Centre Map.

7. The current Development Plan comprises the saved policies of the adopted Rother District Local Plan (2006) ('2006 Local Plan'), the Rother Local Plan Core Strategy which was adopted in September 2014 ('Core Strategy') and the Development and Site Allocations Local Plan (adopted December 2019) (“DaSA”).

8. The Site was allocated in the 2006 Local Plan to provide at least 220 dwellings. Policy BT2 of the 2006 Local Plan states:

**“Land at Blackfriars, Battle, as defined on the Proposals Map, is allocated for housing, education and open space purposes, to be brought forward through a comprehensive scheme.**

**Two areas, totalling approximately 7.3 hectares, would be allocated for residential use, providing at least 220 dwellings 40% of which would be affordable<sup>1</sup>... The development will be accessed by a new spine road, from the south from Hastings Road, off The Spinney, and from the north via Harrier Lane off Marley Lane.”**

9. Policy BA1 of the Local Plan Core Strategy identified a need for 475-500 new homes in Battle over the plan period (until 2028), assuming that a number of these homes would be delivered on this Site. The construction of the Development is a key element in the Council’s Corporate Plan (2014-2021), economic development and planning policies.

10. The most recent calculation of residual residential need for areas within the District demonstrates a requirement (post-permissions granted and housing completions) of 238 new homes for which Battle has resolved to undertake a Neighbourhood Plan. This means that housing allocations for Battle will be made in the Neighbourhood Plan and not included in the Council’s DaSA.

11. Planning permission for the Development will be granted following the agreement and signing of a Section 106 Agreement.

### **Reasons for Exercise of Compulsory Purchase Powers**

12. The road infrastructure which is required to enable residential development on the Site takes the form of a spine road, traversing the site from north (off Harrier Lane) to the south (off The Spinney). The Council has been negotiating to acquire interests in the land required for the spine road and the overall development over an extended period of time. The principle of commencing this process was authorised by Cabinet in 2018 (Minute CB18/27 refers).
13. Whilst the access point for the spine road at the north is entirely within the Council's ownership, the access point at the south is currently in third party ownership. Furthermore, whilst the Council owns more than 50% of the developable land, three further parcels of land, necessary to deliver the road and thus the housing, are not in the Council's ownership, as indicated on the plan included as Appendix 1. Appendix 2 is a parameters plan which demonstrates the developable area across the site; this was submitted as part of the outline planning application.
14. In order that the housing is delivered, there is a need to acquire the remaining land interests as set out below and shown in Appendix 1:
  - Taylor Wimpey (Shaded pink) Measuring 5.8ha
  - Piper Venture Battle Limited (Shaded blue) 9.5ha
  - Joyne Finance Corporation (Shaded yellow) 2ha
15. The Council will continue to seek to acquire all interests by negotiation but, in order to ensure that the development is not delayed any further, it is considered that there is no alternative to the use of compulsory purchase powers. In addition, Homes England (HE) has confirmed that it will make available a grant of £8.7m to fund the delivery of the spine road from the Housing Infrastructure Fund (HIF). The HIF allocation is subject to conditions, including a timescale and milestones which must be met for funding to be drawn down. If the land required for the Development is not acquired in sufficient time in order to allow the Development to proceed in accordance with the timetable set by HE there is a concern that the HIF allocation could be lost.
16. Furthermore, under the conditions of the HIF funding agreement, the Council is required to use all available powers including CPOs, to acquire the necessary land for the delivery of the road and housing should negotiations fail.
17. The decision to use compulsory purchase powers is as a last resort to ensure the delivery of the Development and secure the funding for the spine road. It is hoped that a resolution by Cabinet to proceed with the making of the CPO will encourage owners to reach appropriate settlements and transfers of their interest to the Council as soon as possible.

### **Powers of Compulsory Purchase**

18. It is proposed that the Council should use its powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the various land interests needed to deliver the Development. Under Section 226(1)(a) of the Act, the Council, on being authorised to do so by the Secretary of State, can acquire any land in their area:
- “if the authority thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in the land”.*
19. The exercise of the power also requires that the Council
- “thinks, that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:*
- *the promotion or improvement of the economic wellbeing of their area*
  - *the promotion or improvement to the social wellbeing of their area*
  - *the promotion or improvement of the environmental wellbeing of their area”*
20. It is considered that the making of this CPO will deliver much needed housing and therefore will contribute to the improvement of both the economic and social wellbeing of the area.
21. The alternative route for the delivery of the spine road would be for ESCC acting as highway authority to exercise its compulsory purchase powers under Section 239 Highways Act 1980. This route is not considered to be appropriate as there is no independent highways case for the construction of the spine road and it is not required to alleviate any specific congestion issues in the surrounding road network (although it may assist in alleviating congestion in Battle town centre). An additional factor that weighs against the use of Section 239 Highways Act powers is that only land that is required for the construction of the spine road would be permitted to be included within the CPO, and it would not be possible to include any land that is needed to deliver the residential development.

### **The use of Compulsory Purchase Powers and Process**

22. The Ministry of Housing, Communities and Local Government Guidance on Compulsory Purchase Process and the Crichel Down Rules sets out guidance for acquiring authorities in relation to the making of CPOs, including when it is appropriate for compulsory purchase powers to be utilised. The Guidance sets out the key tests which need to be satisfied before a CPO will be confirmed – these are considered by the Secretary of State prior to deciding whether to confirm the CPO and must be considered by the Council now prior to making the CPO. These tests are detailed in Appendix 3.
23. Following a resolution from Cabinet to proceed, officers will undertake a series of actions to prepare the CPO. A draft timetable is attached at Appendix 4). The CPO would list details of all occupiers and interests that are included within the red line identified on the attached plan or have or are believed to have an interest over the land which could include adjoining owners. All owners and tenants will be contacted as part of the land referencing process that precedes the making of the CPO. The land referencing exercise will be undertaken by an external specialist agent, the costs of which will be met by the Council.

24. This exercise will identify all owners, tenants, occupiers and others with a legal interest in the land affected by the CPO and/or who may become eligible for compensation. The Council will also issue requests for information from those appearing to have an interest in the land to be compulsorily acquired under Section 5A of the Acquisition of Land Act 1981 and/or Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
25. Once the land referencing exercise has been completed and the CPO and Map have been prepared, a further report will be submitted to a future meeting of Cabinet with a recommendation to full Council requesting authorisation for the making of the CPO. This report will identify the land to be covered by the CPO, the interests to be acquired and will be accompanied by a copy of the draft CPO and Map together with a Statement of Reasons, which will set out a full justification for the CPO being made.
26. Following Council approval, the CPO must be submitted to the Secretary of State for confirmation, notified to those persons affected by it and advertised in the local press.
27. Any party who wishes to object to the making of the CPO has 21 days within which to do so from the date of notification. All statutory objectors have a right to be heard at a public inquiry although it is possible for the Secretary of State to deal with objections in writing. Although any Inquiry will be held on the earliest possible date, typically this could be six months or more after submission of the CPO to the Secretary of State.
28. The Council cannot exercise its compulsory purchase powers until such time as the CPO has been confirmed by the Secretary of State, or the Secretary of State permits the Council itself to confirm the CPO. Following confirmation of a CPO, the Council has three years within which to exercise its compulsory purchase powers. Once the interests included in the proposed CPO have been acquired for planning purposes, the site will benefit from the operation of Section 237 of the Town and Country Planning Act 1990, which (subject to the payment of compensation on the statutory basis) extinguishes all existing third party rights that could prevent the development or use of the land from proceeding.

### **Financial Details**

29. In order to ensure that land negotiations can be progressed it is necessary for Cabinet to approve a budget. The Council has commissioned an independent land valuation for the whole site. Due to the ongoing nature of these negotiations, details of the land valuations and requested budget, including fees and costs related to the CPO, are contained within Confidential Appendix 5.
30. The funding for the spine road will be met through the £8.7m of HIF funding. The acquisition of land is not an eligible cost as part of the HIF funding and therefore will need to be met by the Council. The acquisition of land will be funded through borrowing and incur associated revenue costs as a result, all of which will be recouped as part of the overall development costs.
31. The Council is considering various options regarding the funding and delivery of the Development including joint venture arrangements with a development partner (potentially a Registered Provider) or delivery via the Council's Local

Housing Company. The Council's intended approach will be presented in the subsequent report that will seek authorisation for the making of a CPO.

32. The proposed budget for the land acquisition is set out in Confidential Appendix 5. A provisional budget and cash flow for the full housing development is currently being prepared and will be presented as part of the report to follow.

### **Human Rights**

33. The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrate that the use of compulsory purchase powers is in the public interest, and the use of such powers is proportionate to the ends being pursued.
34. It is acknowledged that the compulsory acquisition of the land included within the CPO will amount to an interference with the human rights of those with an interest in such land. These include rights under article 1 of the first protocol of the Human Rights Act 1998 (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions and no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law).
35. When the further report is presented for consideration by Members, it will be necessary for Members to consider whether there is a compelling case in the public interest for compulsory acquisition of the various interests referred to in the CPO which outweigh such rights, and whether the use of compulsory purchase powers in respect of the CPO land is proportionate.

### **Conclusion and Recommendations**

36. At this stage, Members need to be satisfied that it is still appropriate for the CPO to be made under Section 226 (1)(a) of the Town and Country Planning Act 1990.
37. It is clear from the rationale presented that, as it stands, in the event the Council is unable to acquire the proposed land through negotiation, any development of housing at this site is at serious risk. The benefits to the social and economic well-being of the area leading from this development are clear.
38. As such it is recommended that the Council pursues the issuing of a CPO and delegates the necessary authority to the Executive Director to commission the preparatory works.
39. Should negotiations with landowners be successful a budget, sufficient to complete on the transfers of land, is required. This budget is outlined in the Confidential Appendix 5. It is recommended that authority is delegated to the Executive Director to conclude these negotiations and complete the land transfers where possible.

Dr Anthony Leonard  
Executive Director

### **Risk Assessment Statement**

Not progressing the CPO process will put delivery of housing at the Blackfriars site at significant risk. The £8.7m HIF is reliant on the Council using its powers where necessary to ensure that the scheme can progress, this includes pursuing CPO powers. Should the Council not progress then this funding would likely be withdrawn. Failure to secure sufficient budget for land acquisition, as laid out in the Confidential Appendix 5, would result in the Council not being able to continue negotiations with the other landowners. This could mean that the CPO fails to be approved by the Secretary of State because of a failure to adhere to due process.