



City of Westminster

Cabinet Report

Meeting:	Cabinet
Date:	13 July 2020
Classification:	General Release
Title:	Ebury Bridge Estate Renewal – "In Principle" Compulsory Purchase Order Resolution
Ward Affected:	Churchill Ward
City for All:	<p>The proposed comprehensive renewal of the Ebury Bridge Estate will meet the Council's City for All objectives. A City that Celebrates its Communities and includes a transparent engagement process with residents at its centre. Renewal will promote A City of Opportunity by providing more homes of all types and tenures to create a vibrant community which is full of opportunity. Renewal of the Ebury Bridge estate is a significant chance to strengthen a Healthier and Greener City through creating high quality homes and a healthier, greener environment that connects better to surrounding communities and the wider area.</p>
Key Decision:	<p>This report identifies the progress made towards the renewal of the Ebury Bridge Estate and seeks Cabinet approval to progress all work necessary to establish a case for compulsory purchase of land and property required for the redevelopment of Pimlico House, Bridge House, Westbourne House, Rye House, Bucknill House, Victoria House, and Doneraile House (the Order Land) as part of the Ebury Bridge Estate Renewal, whilst continuing to negotiate and complete acquisitions of legal interests, on the basis of the statutory Compulsory Purchase Compensation Code.</p>
Financial Summary:	<p>The Ebury Bridge Estate Renewal proposals result in additional expenditure and income within the HRA. This is in line with the net budget approved in the 2019/20 Housing Revenue Account (HRA) Business Plan however the profiling of expenditure and receipts does impact on HRA resources by the end of the 30 year Business Plan period. The expenditure by Westminster Housing Investments Limited (WHIL) can be accommodated within the current WHIL Business Plan and associated funding allocation within the General Fund. A further report is proposed in respect of the funding of development of the Order Land but, at this stage, the work undertaken demonstrates that the overall Business Case for the scheme as a whole remains sound.</p>
Report of:	Barbara Brownlee, Executive Director, Growth Planning and Housing

1. Executive Summary

- 1.1. The vision for Ebury Bridge estate is to provide an increased range of affordable and market housing and bring about long-term physical, economic and social sustainability of the neighbourhood. The Council have been working with Ebury Bridge residents to create a new high quality neighbourhood that offers an attractive mix of homes (including affordable homes meeting a range of housing needs) shops, public realm and community facilities. The comprehensive renewal proposals for Ebury Bridge secured a test of opinion approval of residents and following that the approval by Cabinet of a preferred scenario (Scenario 7) in July 2018.
- 1.3. The approval of Scenario 7 allowed for the creation of a potential 750 residential units. Within this, it re-provides the existing 198 social rented homes on-site with modern, high quality replacement homes. It further delivers at least 144 affordable homes, 35% of the additional housing the scenario envisages, comprising 87 social rent and 57 intermediate homes. The proposals also envisage improvements to the public realm, ensuring the estate is better connected to the local area, creation of community facilities and a contemporary mix of shops that cater both for the residents and wider community. The Council will retain ownership of all social and intermediate units within the development, either directly or through its wholly owned housing company, Westminster Housing Investments Limited.
- 1.4. A planning application is to be submitted in July 2020 for the Ebury Bridge estate renewal project which consists of two parts, part detailed and part outline to provide a residential-led mixed use development comprising the erection of new buildings to provide residential units and ancillary residential facilities (Class C3) and retail (Class A1 – A4), community floorspace (Class D1/D2) and workspace (Class B1), the provision of new publicly accessible open space, new pedestrian and vehicle routes, accesses and amenity areas, and other associated works.
- 1.5. The detailed part of the planning application provides homes for existing residents in two new buildings, enabling existing residents to move into the first phase comprising approximately 226 residential units and ancillary residential facilities as well as community and estate management floorspace and associated amenity space servicing access and disabled and cycle parking. This first phase has been designed to set the quality for the future phases for which outline planning permission is sought and will be self-delivered by the Council. The subsequent phases which cover the redevelopment of the land shown indicatively in hatched blue and orange on the attached plan at Appendix 1 (**the Order Land**) will provide the remaining homes (approximately 532 units) and will bring forward retail and further community facilities.
- 1.6. The Council now has control of all the existing properties for which the detailed part of the planning permission is sought and the intention would be to proceed with the redevelopment of the area covered by the detailed planning application as soon as planning permission has been secured. The Council would wish to commence the development of the area subject to the outline planning application within the later stages of the construction programme for the area covered by the detailed planning application.
- 1.7. The Council already owns significant freehold interests within the Order Land. There are, however, long leasehold interests that remain to be acquired by the Council with no certainty that these can be acquired by private treaty. The CPO Guidance requires acquiring authorities to attempt to acquire land by agreement before embarking on the CPO process, although it is recognised that for schemes involving the acquisition of the number of interests, it is sensible to run the CPO process in parallel with ongoing negotiations. Given the time required to complete the compulsory purchase process it would be sensible to commence work on a compulsory purchase order (**CPO**) as a

contingency measure. It is however important to mention that the successful re-housing of 102 households, impacted by phase 1 of the scheme, was delivered without the requirement of Compulsory Purchase Powers. This report seeks Members support for a resolution 'in principle' for the use of compulsory purchase powers to assemble the Ebury Bridge Estate Renewal scheme site for phases beyond the first phase, should all reasonable attempts to acquire the necessary land and interests fail.

2. Recommendations

Cabinet is invited to:

- 2.1 Approve the progress of all work necessary to establish a case for compulsory purchase of the Order Land.
- 2.2 Approve, in principle, the use of compulsory purchase powers for the acquisition of the land required for development phases of the Ebury Bridge Estate Renewal redevelopment beyond the first phase. The extent of the land required is shown indicatively in hatched blue and orange on the attached plan at Appendix 1 (referred to as **the Order Land**) and note that the making of any CPO will be subject to Cabinet being satisfied in all respects that the criteria in paragraph 3.7 have been met.
- 2.4 Note that Officers will need to seek a future resolution to grant authority, in accordance with section 122 of the Local Government Act 1972, to declare that any land acquired or held by the Council and required for the delivery of the Ebury Bridge Estate Renewal redevelopment may, where they conclude that it is no longer needed for its present purpose, appropriate the land for such statutory purpose as necessary to deliver the Ebury Bridge Estate Renewal redevelopment, and to authorise the overriding of such easements, rights, or other adverse matters burdening the land, where that is needed to deliver the scheme, in reliance on section 203 of the Housing and Planning Act 2016. Such appropriation may take place as a whole or in phases.

3 Reasons for Decision

- 3.1 The Ebury Bridge Estate is one of the five priority estates identified in the Council's Housing Renewal Strategy (2010) as needing significant improvement and investment. In line with the Council's City for All objectives, the overarching objective of regenerating Ebury Bridge Estate is to create a comprehensive renewal that brings about physical, economic and sustainable change that creates additional homes and improves the lives of residents, businesses and visitors alike.
- 3.2 Whilst progress with property owners has been made in discussing acquisitions that will be necessary to deliver the proposals beyond the first phase of the Ebury Bridge Estate redevelopment, land assembly remains a critical issue for the delivery of this part of the scheme. Clearly the estate renewal cannot be delivered across properties that are not wholly in the ownership or under the control of the Council and without this, certainty cannot be gained to the likely programme for delivery of the complete estate renewal.
- 3.3 To enable the comprehensive redevelopment of the Ebury Bridge estate renewal all relevant land interests will need to be brought in, in a timely way. Whilst it is anticipated that further progress can be made on the negotiated approach for some property interests it is good practice and appropriate to consider the use of compulsory purchase powers.

- 3.4 The government recognises in its "Guidance on Compulsory Purchase Process and The Criche Down Rules" dated July 2019, (the **CPO Guidance**), that if acquiring authorities wait for negotiations to break down, this can have detrimental impacts on the timing of delivery of projects. Therefore, depending on when the land is required, the guidance considers it sensible for an acquiring authority to:
- plan a compulsory purchase as a contingency measure; and
 - initiate formal procedures.
- 3.5 Importantly, the CPO Guidance expressly recognises that such steps "*...help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations*".
- 3.6 The CPO Guidance requires acquiring authorities to attempt to acquire land by agreement before embarking on the CPO process, although it is recognised that for schemes involving the acquisition of the number of interests, it is sensible to run the CPO process in parallel with ongoing negotiations.
- 3.7 This report seeks Members support for a resolution 'in principle' for the use of compulsory purchase powers to assemble the Ebury Bridge Estate Renewal scheme site for phases beyond the first phase, should all reasonable attempts to acquire the necessary land and interests fail. As the CPO Guidance makes clear, use of compulsory purchase powers is intended as a 'last resort'. Officers acknowledge that if any CPO was to be made the Cabinet would require further updating and justification:
- that there was a compelling case in the public interest;
 - that there were no planning, funding or other legal impediments to the Ebury Bridge estate renewal being delivered,
 - that all reasonable attempts to acquire all interests by agreement have not been successful;
 - for any interference with the human rights of those with an interest in the land affected; and
 - that any assessment of the impacts on residents, visitors and employees be measured and evaluated, with special focus on the likely effect of the proposals on those sharing protected characteristics (race, pregnancy, age, disability, gender reassignment, marriage/civil partnerships, religion/belief, sex, sexual orientation (as defined by the Equality Act 2010)) be made, in order for the Council to fully understand those impacts, and to consider measures to mitigate impact, make reasonable adjustment, and foster good relations between those sharing protected characteristics, and those who do not.
- 3.8 A further detailed report and the proposed Statement of Reasons would come forward to Members in due course setting out the justification for the making of a CPO.
- 3.9 The main benefit of the use of compulsory purchase is the certainty of being able to obtain vacant possession to a planned programme. This is vital in order give the Council confidence that the whole Ebury Bridge estate renewal will be delivered. The use of compulsory purchase also provides a level of certainty on project programming which in turn would allow the Council to enter into commercially sound construction contracts. This is because, once the CPO is confirmed and the legal challenge period has passed, the CPO can be implemented and a date for vacant possession fixed in accordance

with the project programme which can immediately follow or coincide with the programme for the first phase of redevelopment.

Use of CPO Powers

- 3.10 In order to compulsorily acquire land the Council must have a relevant statutory power that authorises such acquisition. In addition the Council must use the most specific and appropriate power available to it. In the case of a CPO in connection with the Ebury Bridge estate renewal it has been decided that the Council's planning powers under section 226 of the Town and Country Planning Act 1990 (the Act) are the most appropriate, as the proposals would make a major positive contribution to the economic, social and environmental well-being of the area. At the time of making the CPO it would need to be ensured that the proposal meets with the requirements of this statutory power.
- 3.12 Detailed advice to acquiring authorities on the use of compulsory purchase powers is set out in the CPO Guidance. The CPO Guidance provides helpful information on the matters which the Secretary of State will take into account when considering whether or not to confirm a CPO, so should be fully considered by Members now in relation to the 'in principle' use of its compulsory purchase powers and later with reference to the making and implementing of the CPO that may be considered in future. These matters as they relate to the Scheme are considered below.
- 3.13 The Guidance states that in considering whether or not to confirm a CPO, the Secretary of State will have regard to the extent to which the purpose for which the land is being acquired fits with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and National Planning Policy Framework.
- 3.14 Westminster Council adopted its local plan, the Westminster City Plan in November 2016. It sets out the vision for the City of Westminster up to and beyond 2036/37, putting in place a policy framework that would deliver this vision. Many of its policies are therefore of high relevance to the Ebury Bridge Estate scheme.
- 3.15 The City Plan recognises that the Council must actively pursue housing development if it is to meet its housing target, and that the city's density and accessibility provide significant opportunities for sustainable redevelopment and growth.
- 3.16 The City Plan sets out seven strategic objectives for Westminster including to: sensitively upgrade Westminster's building stock; increase the supply of good quality housing to meet needs; maintain and enhance the quality of life, health and well-being of Westminster's residential communities ensuring that they can benefit from growth and change, by providing more employment and housing opportunities, safety and security; accommodate the safe and efficient movement of growing numbers of people; and to protect and enhance open spaces, civic spaces and biodiversity.
- 3.17 In all cases, Westminster intends to 'raise the bar' in terms of urban design and architectural quality, to support communities and foster civic pride in all parts of the city.
- 3.18 The Site is designated as Proposal Site F2 (Ebury Bridge) in the Council's City Plan, for the opportunity it provides to deliver residential, social/community floor space, refurbished retail and improved public realm, recognising its potential for large-scale redevelopment.
- 3.19 In the context of the above, the Council is satisfied that use of the Council's powers of compulsory purchase for site assembly is justified and that the purpose for which the land is being acquired fits in with the adopted planning framework for the area. The

proposals also fit in with the Council's emerging local plan, "City Plan 2019-2040" where the Site is designated as a spatial development priority.

3.20 The CPO Guidance states that the Council must demonstrate a 'compelling case in the public interest', and that the public benefits that will arise from the purpose for which the land is to be acquired (i.e. the scheme) outweigh the impact on those affected. The Council must demonstrate both the need for the scheme in principle and in general and the need to acquire each and every parcel of land included in the CPO. On the basis of the legal advice and the Guidance, officers are of the view that such a compelling case can be demonstrated from the desirability of implementing the scheme – in particular from the following substantial wider benefits resulting from it:

- **New and improved homes**

Westminster has an acute need for additional homes covering a range of tenures, especially affordable housing, which the Ebury Bridge Estate regeneration will help to deliver. The scheme will provide a mixture of market, intermediate and social housing. The proposals will significantly increase the amount of affordable housing floor space in line with the Council's adopted policies. This will be achieved by the uplift in the density of development on the site.

- **Outdoor Space**

Additional amenity space will be provided for residents in the form of roof terraces, balconies and residential gardens. At present, none of the homes on the Estate have private amenity space, so this will represent significant qualitative and quantitative improvement to residents' quality of life. Most of the proposed flats are dual aspect and all have private balconies or winter gardens. There are also communal gardens, courtyards and roof terraces.

- **Communal Uses**

The scheme also provides for replacement landscaping, children's play space and improved and larger community facilities as well as new Class A1/A2/A3/A4/B1/D1/D2 space.

The Scheme will improve the overall safety of the Estate by removing a number of loiter spaces within the housing block entrances.

3.21 Implementation of the Scheme will ensure that the 5 key objectives of the Council's 2010 Housing Renewal Strategy as set out below will be fulfilled:

- to increase the supply and quality of affordable housing to meet a variety of local needs including for families;
- to improve the quality of the local environment with outstanding green and open spaces that promotes low energy consumption and environmental sustainability;
- to promote a high quality of life for people of all ages and backgrounds in safe cohesive and healthy neighbourhoods, supported by a range of high quality housing and excellent community facilities;

- to enable people to maximise economic opportunity with housing tenure with support for training, employment and enterprise, and housing tenures which help those in work to remain in the City;
 - to create a more distinct sense of neighbourhood ending the physical divide between Westminster's estates and surrounding streets.
- 3.22 Part of the justification for obtaining confirmation of a CPO would involve demonstrating that compulsory powers are necessary because the land required cannot be acquired by agreement. Compulsory purchase is seen as a last resort and the acquiring authority must be able to show that it has made genuine attempts to acquire the land by negotiation. The Council has made significant efforts to acquire all interest by voluntary agreement and this can be thoroughly evidenced. The Guidance expects that the Council will be required to continue those efforts and detailed evidence of those further efforts should be available prior to the making of a CPO.
- 3.23 The Council must also demonstrate that there are no other impediments to proceeding with the Scheme, for example the need for planning permission, other consents or physical constraints. The planning application in relation to the Ebury Bridge Estate Renewal will be submitted in July 2020 and is expected to be determined during the Autumn. The Ebury Bridge Estate Renewal is the subject of allocations in the City Plan and emerging Local Plan policies and accordingly it benefits from policy support. The expectation is that if a CPO is required that it would be made after the grant of the planning permission.
- 3.24 The Council would have to demonstrate that it has, or at least will obtain, the resources necessary not only to pay compensation for the land but also to implement the Scheme. The reason for this requirement is to avoid a situation in which private land has been acquired compulsorily for a purpose which, in the event, cannot be achieved for lack of funds.

CPO Land Referencing

- 3.25 The CPO will include all occupiers and all interests that are included within the blue and orange hatched areas (identified on the map at Appendix 1 (to the extent that these have not been acquired by the Council) as well as those that have any interest over that land including adjoining owners. All owners and occupiers will be written to as part of the land referencing process that precedes the making of the CPO, and all relevant names and addresses will be included in the final CPO. In order to collate this information, it is intended that, subject to the recommendations being agreed, that land referencing commences at the earliest possible date. This land referencing will be undertaken by an external agent who specialises in land referencing exercises.

Human Rights and the Case for Compulsory Acquisition

- 3.26 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 that the use of such powers is proportionate to the ends being pursued.
- 3.27 When the Council decides to make a CPO, the Council will need to be sure that the purpose for which the land is required sufficiently justifies (or can be sufficiently justified in due course) interfering with the human rights of those with an interest in the land affected. It is acknowledged that the compulsory acquisition of the Order Land may amount to an interference with the human rights of those with an interest in the land. These include rights under Article 1 of the First Protocol of the European Convention on Human Rights (ECHR) (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides

that everyone has the right to respect for his private and family life, his home and his correspondence).

- 3.28 When preparing the case for making a CPO, officers will keep in mind and in due course advise Members about the need to balance the public interest and the individual's rights and that any interference with these rights will be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim. As part of the investigations that will be undertaken ahead of making any CPO, there will be an investigation into the effect on owners and occupiers to be included in the CPO, and this will be fully taken into account before a final decision is made as to whether or not to put forward a resolution for the making of a CPO.
- 3.29 Members are advised that on the basis of the information that is available to officers at present, that officers are of the view that there is likely to be a compelling case in the public interest for compulsory acquisition of the various interests within the Order Land if they cannot be acquired by agreement. Therefore, the use of compulsory purchase powers in this case is likely to be proportionate. Without the use of these powers, the much-needed redevelopment of the land may not be achievable. Appropriate compensation will be available to those entitled to claim it under the relevant statutory provisions. Members are advised that the land is both suitable for and will facilitate the carrying out of development, redevelopment or improvement and will make a positive contribution to the promotion of the economic, social and environmental well-being of the area.

4 Financial Implications

- 4.1 The Ebury Bridge Estate Renewal proposals result in additional expenditure and income within the HRA. This is in line with the net budget approved in the 2019/20 Housing Revenue Account (HRA) Business Plan however the profiling of expenditure and receipts does impact on HRA resources by the end of the 30 year Business Plan period. The expenditure by Westminster Housing Investments Limited (WHIL) can be accommodated within the current WHIL Business Plan and associated funding allocation within the General Fund. A further report is proposed in respect of the funding of development of the Order Land but, at this stage, the work undertaken demonstrates that the overall Business Case for the scheme as a whole remains sound.
- 4.2 At this stage, the Council is being asked to only make an "in principle" decision to use its powers. A full detailed assessment of the financial implications and costs of making and implementing a CPO will be prepared and presented to Cabinet in a further report should a CPO actually be required.
- 4.3 The work required to prepare for the use of CPO powers, including all work needed to support the making of such a CPO will be managed and coordinated by Council officers working with the appointed legal advisors. Work that is required before making a CPO includes serving the 'requisition' notices on land owners to gather information about their land interests on the Council's behalf, working on the case for CPO and preparing the Statement of Reasons to support the making of the CPO and drafting the CPO itself.
- 4.4 Under a CPO, property or rights are acquired at open market value but disregarding any increase (or decrease) in value attributable to the Scheme for which the land is acquired. Affected parties may also be entitled to other compensation for loss payments and disturbance depending on circumstances. The Council will be responsible for paying all compensation to landowners, whether payable by purchases through voluntary negotiation or through the CPO process.

5. Equality Implications

5.1 Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it

5.2 In deciding whether to resolve to make a CPO, the Council must pay due regard to its Public Sector Equality Duty (PSED), as set out in section 149 of the Equalities Act 2010. Consideration must also be given to whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on a protected group or to take steps to promote equality of opportunity by, for example, treating an affected group more favourably.

5.3 Officers have had regard to the Council's PSED in the assessment of the case for making a CPO and Members must be mindful of this duty when considering the recommendations in this report. Those with an interest in the Order Land and which are included in the CPO will be affected by the implementation of any CPO, once made. An Equalities Impact Assessment has been undertaken on the potential impact of the proposal and any necessary mitigation strategy, to ensure that due regard has been taken of the Council's PSED. The Equalities Impact Assessment will be kept under review and the result of any update will be presented to the Cabinet when seeking authorisation to make a CPO. The Equalities Impact Assessment will inform any ongoing design, resident-led decisions in respect of the scheme, in addition to any negotiations with those with an interest in the Order Land.

5.4 Full regard will be paid to the Equalities Impact Assessment in the development of any proposals and in negotiations with those with an interest in the Order Land.

6. Legal Implications

6.1 The Council is empowered under section 226(1)(a) of the Town and Country Planning Act 1990 as amended, to acquire any land in its area if it is satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council may utilise its compulsory purchase powers under section 226 of the TCPA:

- (a) if it thinks the acquisition will facilitate the carrying out of development, or redevelopment or improvement on, or in relation to the land or
- (b) which is required for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated

6.2 In order to make an acquisition under (a), the Council must also consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of its area.

- 6.3 In this case the proposal is to seek in-principle approval to make a CPO for the purpose of facilitating the comprehensive redevelopment of the Order Land to enable the delivery of the redevelopment beyond the first phase. The redevelopment is overall considered to make a major positive contribution to the economic, social and environmental well-being of the area.
- 6.4 Section 226(3) of the Act confirms that the Council's CPO powers extend to any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land. This is relevant to interests required to undertake the scheme (such as crane over-sailing rights) which fall outside of the planning application boundary.
- 6.5 The Acquisition of Land Act 1981 governs the procedures which apply to compulsory acquisition. The Compulsory Purchase Act 1965 governs post-confirmation procedures and the Land Compensation Act 1961 governs the amount and assessment of compensation. The Local Government (Miscellaneous Provisions) Act 1976 governs the granting of new rights. Further implications relating to requirements of the CPO Guidance are as set out above and would need to be considered by Cabinet in detail at the time of making a CPO. The Human Rights and equalities aspects of a CPO are also reviewed above at paragraphs 3.26 to 3.29 and paragraph 5.
- 6.6 Detailed legal implications would need to be assessed when consideration is given to making a CPO.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

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Appendices

Appendix 1: plan showing the extent of the Order Land

Background Papers

None

