

## Report of Corporate Management Team

**Amy Harhoff, Corporate Director of Regeneration, Economy and Growth**

**Councillor Kevin Shaw, Cabinet Portfolio Holder for Strategic Housing and Assets**

### **Electoral division(s) affected:**

Esh and Witton Gilbert.

### **Purpose of the Report**

- 1 To seek authority from Cabinet to make a Compulsory Purchase Order pursuant to section 25 and section 39 of the Small Holdings and Allotments Act 1908 in respect of the land at Witton Gilbert allotments ("the Order").
- 2 To seek authority from Cabinet to take all ancillary steps necessary in order to secure the confirmation of the Order and purchase of the Land.

### **Executive summary**

- 3 Witton Gilbert Parish Council (WGPC) currently rents the land at Witton Gilbert shown edged in red on the plan at **Appendix 2** ("the Land"). The Parish Council sub-lets the Land to local residents for use as allotments.
- 4 The freehold owner placed the Land on the market. The Parish Council made an unsuccessful bid to purchase the Land with the Land eventually being sold to Duncan and Marion Hodgson on 7 May 2019.
- 5 On 29 July 2019, solicitors acting for Mr and Ms Hodgson served a notice to quit the Land on WGPC.
- 6 Section 25 of the Small Holdings and Allotments Act 1908 empowers local councils to compulsorily acquire land for the purposes of providing allotments. CPO powers are given to both parish and county councils. However, where a parish council seeks to exercise such powers, it must do so via a request to the county council, who may exercise the CPO powers on behalf of the parish council.

- 7 If the county council is agreeable to exercising its CPO powers on behalf of the parish council, the county council shall make the CPO on the basis that the land is to be transferred to the parish council in the event the order is confirmed and the parish council must meet all of the expenses incurred by the county council in making the order.
- 8 WGPC has formally requested the County Council's' assistance in making a CPO in respect of the Land. WGPC submitted a comprehensive justification as to why the County Council should make the Order.
- 9 On 27 May 2020, the Council's Interim Corporate Director of Regeneration, Economy & Growth resolved to use delegated powers to formally corporately acknowledge support for WGPC's request for the County Council to exercise its CPO powers on behalf of WGPC subject to detailed legal and other procedural matters being satisfactorily determined including a formal resolution to make a CPO being made appropriately.
- 10 Subsequently, both the County Council and WGPC have attempted to negotiate with the Freehold Owners (as detailed within this report). All attempts at negotiation in order to voluntarily acquire the Land have been unsuccessful however, attempts to negotiate remain ongoing.
- 11 The County Council is satisfied that there is a need for allotments in the vicinity of the Land and that there are no suitable alternative sites which would be available. WGPC has also entered into a legal agreement to pay the County Council's fees.

### **Recommendation(s)**

- 12 Cabinet is recommended to:
  - (a) resolve that the use of Compulsory Purchase powers under section 25 and section 39 of the Small Holdings and Allotments Act 1908 and powers in relation to new rights under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 are justified in order to facilitate the provision of allotments on the Land outlined in the CPO Plan at **Appendix 2**;
  - (b) approve the draft County Council of Durham (Witton Gilbert) Compulsory Purchase Order 2020 as attached at **Appendix 3**, the map comprising the Land as attached at **Appendix 2** and the draft Statement of Reasons made in support of the Order and attached at **Appendix 4** (*the Statement of Reasons*);

- (c) resolve to authorise the making of the County Council of Durham (Witton Gilbert) Compulsory Purchase Order 2020 under section 25 of the Small Holdings and Allotments Act 1908;
- (d) authorise the Head of Legal and Democratic Services to make such changes to the draft Order, the Map (within the red line boundary as shown on the Map) and Statements of Reasons as considered necessary;
- (e) authorise the Head of Legal and Democratic Services to take all necessary steps to secure confirmation of the Order and the acquisition of all third party interests in the Land and any new rights and the removal of all occupants from the Land. This authorisation includes the publication and advertisement of the Order, serving appropriate notices, seeking confirmation of the Order, taking all steps to acquire relevant interests and such other steps as deemed appropriate by the Head of Legal and Democratic to facilitate the provision of allotments on the Land;
- (f) authorise the Head of Legal and Democratic Services following confirmation of the Order to publish and serve all appropriate notices of confirmation of the Order and to make one or more general vesting declarations or serve notices to treat and notices of entry (as appropriate) in respect of the Land;
- (g) authorise the Head of Legal and Democratic Services to initiate or take part in any arbitration or proceedings before the Upper Tribunal (Lands Chamber) or the Courts in order to resolve any disputes as to compensation or other payments payable for any interests in the Land or arising from the making or confirmation of the Order or securing possession of any part of the Land or title to any part of the Land or the removal of any occupants or apparatus of statutory undertakers or communication code operators.

## Background

- 13 The Land currently in use as an allotment is rented by WGPC who subsequently sub-let the Land in plots to local residents for use as allotments
- 14 The Land is bounded to the west by Witton Gilbert Primary School, to the East by the residential development of Acorn Croft, to the south by the B6312 Sacriston Lane and to the north by school playing fields.
- 15 The Land is a popular resource within the village with all 47 allotment plots being occupied and a waiting list system in place for new plots. WGPC has advised that the average waiting time for a plot to become available over the past 6 years was 14 months.
- 16 In 2018 the Land was placed on the market for sale by way of an informal tender. Having obtained independent valuation advice as to the value of the Land, WGPC made an unsuccessful bid of £10,060 to purchase the Land. The land was eventually sold to Mr and Ms Hodgson (“the Freehold Owners”) who reside in Witton Gilbert.
- 17 On 29 July 2019, solicitors acting on behalf of the Freehold Owners served a notice to quit the Land upon WGPC. The notice to quit required vacant possession of the Land by 12 November 2020.
- 18 Statutory powers exist under section 25 of the Small Holdings and Allotments Act 1908 (“the 1908 Act”) for land to be compulsorily acquired for the purposes of providing allotments. CPO powers are given to both parish and county councils. However, where a parish council seeks to exercise such powers, it must do so via a request to the county council, who may exercise the CPO powers on behalf of the parish council.
- 19 If the county council is agreeable to exercising its CPO powers on behalf of the parish council, the county council shall make the CPO on the basis that the land is to be transferred to the parish council in the event the order is confirmed and the parish council must meet all of the expenses incurred by the county council in making the order.
- 20 WGPC has formally requested that the County Council makes a CPO on its behalf.
- 21 In order to exercise its CPO powers under the 1908 Act, the Council must be satisfied that there is a compelling case in the public interest which justifies interfering with the rights of the Freehold Owners. The Council must also be satisfied that there are no impediments to the delivery of the scheme.

- 22 On 27 May 2020, the Council's Interim Corporate Director of Regeneration, Economy & Growth resolved to use delegated powers to formally corporately acknowledge support for WGPC's request for the County Council to exercise its CPO powers on behalf of WGPC subject to detailed legal and other procedural matters being satisfactorily determined including a formal resolution to make a CPO being made appropriately ("the Delegated Decision").
- 23 Since the Delegated Decision further work has been undertaken by the Council in order to progress WGPC's application. This is set out below but includes attempts to negotiate with the Freehold Owners, an assessment of need for the allotments and assessment of alternative possible sites.
- 24 This report considers WGPC's request and makes a recommendation in respect of whether the Council should exercise its CPO powers in respect of the Land.

## **Options**

- 25 The options available to the Council are either agree to make a CPO or refuse to make a CPO.
- 26 In order to make a CPO, the Council must be satisfied that there is a compelling case in the public interest in favour of compulsorily acquiring the Land which would justify the interference with the private rights of the Freehold Owners and that there are no other impediments to delivery of the scheme.

## **Main implications**

- 27 It is not a trivial matter for a council to compulsorily acquire land. CPO powers should only be exercised as a last resort and where there is a clear justification for doing so. The Council must be satisfied that there is a compelling case in the public interest which justifies depriving the Freehold Owners of their interest in the Land.
- 28 Compulsory acquisition of land also has Human Rights implications which must be carefully considered. Article 1 of the First Protocol of the European Convention on Human Rights provides the right to peaceful enjoyment and protection of property. However, the rights afforded under this Article are not absolute but qualified. Therefore, the public interest must be weighed carefully against the private interests of the landowner.
- 29 The starting point is that the Freehold Owners purchased the Land in good faith and are legally entitled to serve a notice to quit the Land upon WGPC. They are entitled to peaceful enjoyment of the Land and protection of their property.

- 30 In order to establish a compelling case in the public interest, one of the first things which needs to be established is whether there is a demand for allotments in the locality. WGPC has provided evidence that there is a significant demand for allotments within the locality. WGPC has previously taken action to meet demand by subdividing the plots in order to increase the number of available plots. However, it is clear that there is still an additional demand for allotments, with the allotments currently being fully occupied and the average waiting time for a plot to become available being 14 months. Once the Land has been vacated by WGPC and the allotment holders, this will inevitably increase the need for allotments in the area.
- 31 In addition, the Open Space Needs Assessment (“OSNA”) prepared as part of the preparation of the County Durham Plan adoption process is the most up to date assessment of need for allotments in the area. The Land is located within the Central Durham Local Plan Monitoring Area. The OSNA provides that a minimum level of 0.9 hectares of allotments per 1000 people is proposed as a minimum target provision across the county. The OSNA identifies that the existing average level of provision of allotments across the County is 0.86 ha/1000 people. The OSNA identifies that there is a fairly significant shortfall in the Central Durham area in which the Land is located with only 0.75 ha of allotment provision per 1000 people.
- 32 Having regard to the above factors, officers are satisfied that there is a demand for allotments within the area and that this demand will be exacerbated if WGPC and the allotment holders are required to vacate the Land.
- 33 Having concluded that there is an existing demand in the area which will be further exacerbated by the loss of the Land as allotments it is necessary to consider whether the allotments could be located elsewhere.
- 34 WGPC has commissioned an independent assessment by a chartered surveyor to assess alternative suitable sites. This assessment is appended to this report at **Appendix 5**. The assessment considers in detail whether there are any suitable alternative sites on which the allotments could be located. It concludes that there are no such suitable sites within the vicinity of the Land.
- 35 The report notes that the availability of alternative sites is significantly constrained by the greenbelt which is located surrounding Witton Gilbert and has specifically addressed the alternative site proposed by the Freehold Owners (namely the Clink Bank Field). The report concludes that there are no suitable sites within the village upon which the allotments could be located. Officers have reviewed the assessment of

alternative sites and agree with its conclusions that there are no suitable sites available within the vicinity to locate allotments on.

- 36 Having established that there is a demand for allotments within the locality of the Land and that there are no suitable alternative sites upon which the allotments could be located it is then necessary to consider whether there are any impediments to the delivery of the scheme.
- 37 WGPC has advised that the Land has been used as allotments since 1910. Whilst there is no express grant of planning permission for use of the Land as allotments (and one would not expect there to be one given the historic use of the Land) it is clear that the Land has an existing lawful planning use as allotments. There is therefore no impediment from a planning perspective to the continued use of the Land as allotments even if there is a short break when the allotment holders are required to vacate the Land.
- 38 WGPC has confirmed that it has sufficient funding available for it to purchase the Land and pay any compensation requirements which might arise. Evidence of this has been provided to the Council and officers are satisfied that there are no impediments from a financial perspective to the delivery of the scheme.
- 39 WGPC is legally required to meet the County Council's costs incurred in making the CPO.
- 40 As set out earlier in this report, a CPO should be a last resort when all other options have failed. In this regard, both the County Council and WGPC have attempted to negotiate with the Freehold Owners in an attempt to voluntarily acquire the Land. WGPC have made a formal offer to the Freehold Owners to buy the Land. To date all attempts have been unsuccessful but negotiations will continue.
- 41 In conclusion, having established that there is a demand for allotments within the area, that there are no suitable alternative sites within the locality upon which the allotments could be located and that there are no impediments from a financial, planning or other perspective to the delivery of the scheme it is necessary to consider whether there is a compelling case in the public interest for making the CPO.
- 42 WGPC has submitted a great deal of information in support of its application and it is clear that the allotments are a much valued and sought after community resource. Many allotment holders and users including local primary school children have written letters of support and expressing how important the allotments are to their quality of life. A copy of these representations are appended to this report at **Appendix 6.**



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## **Appendix 1: Implications**

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### **Legal Implications**

The Council must determine whether or not to exercise its powers to compulsorily purchase the land on behalf of the Parish Council. The full implications of this decision are outlined within the body of this report. The report recommends the making of a CPO and the delegation of ancillary powers to the Head of Legal and Democratic Services to take such other actions as are necessary to obtain the transfer of the Land to the Parish Council.

### **Finance**

There will be a cost to the County Council in making a CPO. Such costs are, as yet, unquantifiable but are likely to be significant. However, the Parish Council is legally required to reimburse the County Council for all of the expenses incurred by it in making any CPO. This will need to be secured through appropriate legal documentation before any CPO is made. The Parish Council will also need to indemnify the Council against any costs incurred in the eventuality that a CPO is progressed but is not successful.

### **Consultation**

Local Ward Councillors, Cllr Bev Coult and Cllr Arnie Simpson, have been involved in discussions with the Parish Council and are supportive of the proposals contained in this report.

### **Equality and Diversity / Public Sector Equality Duty**

None identified. The issues relating to Human Rights are set out within the body of the report. No issues are identified in respect of Equality and Diversity and in particular, the Council's Public Sector Equality Duty.

### **Climate Change**

Making a CPO is unlikely to have any negative impact upon climate change. If the future of the allotments is secured, this will result in food being locally sourced which could assist in reducing food miles and emissions.

### **Human Rights**

Human rights implications are set out within the report.

### **Crime and Disorder**

None identified.

## **Staffing**

There will be implications on staff capacity, as County Council officers will be required to spend a significant amount of time on this project should the Parish Council's request be accepted.

## **Accommodation**

None identified.

## **Risk**

None identified.

## **Procurement**

None identified.