

**THE COUNTY COUNCIL OF DURHAM (WITTON GILBERT) COMPULSORY  
PURCHASE ORDER 2020**

**STATEMENT OF REASONS**

## **STATEMENT OF REASONS FOR MAKING THE COMPULSORY PURCHASE ORDER**

### **1. INTRODUCTION**

1.1 This is the Statement of Reasons of the County Council of Durham (the "Acquiring Authority") for making the County Council of Durham (Witton Gilbert) Compulsory Purchase Order 2020 (the "Order").

1.2 In preparing this statement, the Acquiring Authority has endeavoured to provide sufficient information so that its reasons for making the Order can be properly understood. The Acquiring Authority has prepared this statement pursuant to and in accordance with the "Guidance on Compulsory purchase process and The Crichel Down Rules" issued by The Ministry of Housing, Communities & Local Government in July 2019.

1.3 This Statement of Reasons:

1. Identifies the powers under which the Order is made (Section 2);
2. Sets out the background to the Order (Section 3);
3. Provides a general description of the "Scheme" (Section 4)
4. Sets out the Acquiring Authority's reasons and justification for making the Order (Section 5);
5. describes current negotiations with landowners (Section 6);
- 6 describes the current planning position (Section 7);
- 7 sets out how the Scheme is to be financed (Section 8);
- 8 deals with Human Rights and Equalities issues (Section 9);
- 9 sets out the arrangements for the inspection of documents (Section 10); and
- 10 sets out contact details for further information (Section 11).

### **2. POWERS UNDER WHICH THE ORDER IS MADE**

2.1 The Order is made under section 25 and section 39 of the Smallholdings and Allotments Act 1908 (the "1908 Act"). The powers in the 1908 Act enable the Acquiring Authority to acquire land compulsorily and acquire rights compulsorily by creating new rights for the purposes of providing allotments.

### **3. BACKGROUND TO THE ORDER**

3.1 The Acquiring Authority is proposing to acquire 8498 sq m of land at Witton Gilbert ("the Land") which is currently used as allotments.

3.2 The Land is currently leased by Witton Gilbert Parish Council (“the Parish Council”) on a rolling one year lease. The Parish Council sublet the land in 42 parcels to allotment holders. The Parish Council took over the running of the allotments in 1910 and the Land has been in almost continuous use as allotments since.

3.3 In 2018 the freehold owner of the Land put the Land up for sale with the Land being sold in by informal tender. The Parish Council’s bid to purchase the Land was unsuccessful. The successful bidder Mr and Mrs Hodgson (“the Freehold Owners”) purchased the Land for £16,000 on 7 May 2019.

3.4 On 29 July 2019 the Freehold Owners served a notice to quit the Land upon the Parish Council (“the Notice to Quit”). The Notice to Quit required the Parish Council and allotment holders to give vacant possession of the Land on 12 November 2020.

3.5 The Parish Council has always been keen to purchase the Land in order to secure it as an important community resource for the local community. Following the Parish Council’s unsuccessful bid to purchase the Land and the service of the Notice to Quit by the Freehold Owners, the Parish Council attempted to engage with the Freehold Owners to come to an agreement in terms of purchasing the Land.

3.6 In December 2019 the Witton Gilbert Neighbourhood Plan was adopted (“the Neighbourhood Plan”). Policy 9 of the Neighbourhood Plan designates the Land as a Local Green Space.

3.7 Section 25 of the 1908 Act empowers the Acquiring Authority to compulsorily purchase land for the purposes of providing allotments. Section 39 of the 1908 Act provides that where the authority proposing to acquire land compulsorily is a parish council, the parish council shall approach the district council to request that the district council exercise its powers to compulsorily acquire land on behalf of the parish council. Section 39 of the 1908 Act provides that if the district council does exercise its powers on behalf of the parish council then the land must be demised to the parish council and that all expenses incurred by the district council must be paid by the parish council.

3.8 In 2019 representatives from the Parish Council approached the Acquiring Authority with a request pursuant to s39 of the 1908 Act for the Acquiring Authority to safeguard the future of the allotments by exercising its powers of compulsory purchase in order to provide allotments on the Land. On 27 May 2020 the Acquiring Authority resolved by way of a delegated decision by the Interim Corporate Director of Regeneration and Economic Growth uses delegated powers to formally corporately acknowledge support for the Parish Council’s request for the Acquiring Authority to exercise its CPO powers on behalf of the Parish Council. The delegated decision was subject to detailed legal and other procedural matters being satisfactorily determined, and a formal resolution to make a CPO being made appropriately.

3.9 Since then the Acquiring Authority and the Parish Council have attempted to engage with the Freehold Owners in an attempt to voluntarily acquire the Land. Agents acting on behalf of the Parish Council on 8 July 2020 made a formal offer to the Freehold Owners to purchase the Land for £17,200 plus reasonable legal fees which amounted to full market value plus the compensation the Freehold Owners would be entitled to in a CPO process. To date all attempts to acquire the Land by negotiation have been unsuccessful. Full details of the Acquiring Authority’s and Parish Council’s attempts to negotiate with the Freehold Owner are set out in section 7 of this statement.

#### **4. GENERAL DESCRIPTION OF THE SCHEME**

4.1 The Land is located within the village of Witton Gilbert in County Durham, approximately 3.6 miles North West from Durham City.

4.2 The Land is a relatively flat, long rectangular parcel of land measuring 8498 square metres located towards the southern edge of the village. The Land is bounded by the B6312 to the south, Witton Gilbert Primary School and playing fields to the west, school playing fields/open space to the north and the existing residential development of Acorn Croft to the east.

4.3 The Land is currently divided into 42 plots all of which are occupied and for which rents are charged between £8 and £16 per year depending on plot size.

4.4 The Land is not located within any Conservation Area nor does it contain any listed buildings. The Land is allocated in the Neighbourhood Plan as Local Green Space. The Neighbourhood Plan was only very recently adopted and provides that inappropriate development which is harmful to the Local Green Space will not be supported except in very special circumstances.

#### **5. REASONS FOR MAKING THE ORDER**

5.1 The Acquiring Authority considers that there is an overriding public interest in making a compulsory purchase order to provide allotments on the Land. The Acquiring Authority has carefully considered whether all of the Land is required for the provision of allotments and is satisfied that this is the case, as the land sought to be compulsorily acquired is limited to the existing footprint of the allotments.

5.2 The land is an important community resource and is used by the 42 tenants plus their friends and family. The Land has also been used as an educational resource for pupils of the adjacent Witton Gilbert Primary School. The tenants of the allotments have submitted compelling evidence to the Acquiring Authority as to the importance of the Land to the local community.

5.3 The allotments provide tenants with a place to socialise, exercise, produce healthy and nutritious food with almost zero food miles and at a low cost. The allotments have also been used in the past as an important educational resource with students from the nearby primary school renting a plot.

5.4 The acquiring authority is satisfied that there are no suitable alternatives to the scheme and that there are no impediments from a financial, planning or other perspective.

5.4 The Acquiring Authority has written to the Freehold Owners' solicitor who has confirmed that the Freehold Owners do not have any firm plans for the Land at the moment. Having balanced the impacts of the loss of the allotments in terms of the

benefits to the wider community against the deprivation of the Freehold Owner of their interest in the Land, it is considered that there is a compelling case in the public interest in favour of making the Order.

## **6. Alternatives to the Scheme**

6.1 In order to justify the making of a compulsory purchase order, the Acquiring Authority must be satisfied that there are no alternatives available to the scheme.

6.2 The Parish Council has commissioned an independent expert assessment of suitable alternative sites. The report concludes that there are no suitable and alternative sites available which could accommodate the allotments. The report concludes that the Land is the only suitable site for the scheme.

6.3 The Acquiring Authority has carefully considered the findings of the independent report and agrees with its scope, assessment and findings. As a result of this, the Acquiring Authority is satisfied that there are no suitable alternative sites available within Witton Gilbert

6.4 The Acquiring Authority is satisfied that there is a significant demand for allotments within Witton Gilbert. The allotment plots on the Land are fully occupied and despite the Parish Council subdividing the plots, there remains a waiting list for plots to become available. The Parish Council has advised that the average time on the waiting list until a plot becomes available is 14 months. The Acquiring Authority is satisfied that if the Land was lost as allotments this would be a significant detriment to the area and would lead to a significantly increased demand for allotment plots within Witton Gilbert. In reaching this conclusion, the Acquiring Authority has had regard to the Open Space Needs Assessment ("OSNA") prepared as part of the preparation of the County Durham Plan adoption process. The OSNA 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 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, a shortfall which would be exacerbated by failure to secure the Land for the scheme.

## **7. NEGOTIATIONS WITH LANDOWNERS**

7.1 Both the Acquiring Authority and Parish Council have attempted to engage with the Freehold Owner in order to attempt to voluntarily acquire the Land.

7.2 The Acquiring Authority wrote to the Freehold Owner's solicitors on 29<sup>th</sup> May 2020 informing them of the Acquiring Authority's decision to offer in-principle support to the Parish Council's application. The Acquiring Authority emphasised that it wished to avoid the need to exercise its powers of compulsory purchase and asked whether the Freehold Owner's would be willing to discuss the voluntary sale of the Land with either the Acquiring Authority or the Parish Council. The Acquiring Authority sent further emails on 18<sup>th</sup> June 2020, 25<sup>th</sup> June 2020 and 26<sup>th</sup> June 2020. On 6<sup>th</sup> August 2020, the Freehold Owners' solicitor wrote to the Acquiring Authority advising that they had instructions from the Freehold Owners and expected to be in a position to respond

further within the next week. On 12<sup>th</sup> August 2020, the Freehold Owner's solicitor wrote to the Acquiring Authority asking for further information as to the Acquiring Authority's position but providing no answer to the question as to whether the Freehold Owners would be willing to discuss the voluntary sale of the Land to either the Acquiring Authority or the Parish Council. The information requested by the Freehold Owner's solicitor was provided by the Acquiring Authority on 23 August 2020 together with a further request for the Freehold Owners to confirm whether they would be willing to discuss the voluntary sale of the Land with either the Acquiring Authority or the Parish Council. To date, no substantive response has been received.

7.3 Agents acting on behalf of the Parish Council on 8 July 2020 made a formal offer to the Freehold Owners to purchase the Land for £17,200 plus reasonable legal fees which amounted to full market value plus the compensation the Freehold Owners would be entitled to in a CPO process. This was followed up by a letter dated 3 August 2020 and a letter dated 26 August 2020 in which the Parish Council's agent asked the Freehold Owners whether there was a price at which the Freehold Owners would be willing to voluntarily sell the Land. To date no response has been received.

7.3 The Acquiring Authority will continue to attempt to voluntarily acquire the Land from the Freehold Owners.

## **8. THE PLANNING POSITION**

8.1 The land has been used as allotments since 1910. It is a generally accepted principle that the use of land as allotments does not require planning permission, as it amounts to an agricultural use of land. To the extent that any use is taking place on the Land which does not fall within the definition of agricultural land, it is clear that the Land holds a lawful use having been used almost continuously in this way for over a century. There is therefore no impediment to the scheme from a planning perspective.

## **9. FINANCE OF THE SCHEME**

9.1 Section 39 of the 1908 Act provides that the Parish Council must meet the Acquiring Authority's expenses incurred in making and confirming the CPO. The Acquiring Authority has investigated whether the Parish Council has sufficient resources available to it in order to meet the costs of the scheme. The Acquiring Authority is satisfied that appropriate funding is available to meet the administrative costs of the CPO process and the compensation requirements. In terms of the future financing of the Land, the allotments give an income through rental receipts. By the nature of the activities undertaken on the Land, there is little to no maintenance or other expenses. The Acquiring Authority is satisfied that there are no financial impediments to implement the scheme.

## **10. HUMAN RIGHTS AND EQUALITIES**

10.1 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ('the Convention'). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.

10.2 The following articles of the Convention are relevant to the determination as to whether the Order should be confirmed:

10.3 Article 6 entitles those affected by the powers sought in the Order to a fair and public hearing by an independent and impartial tribunal.

10.4 Article 8 protects the right of the individual to respect for his private and family life, his home and his correspondence. A public authority cannot interfere with these interests unless such interference is in accordance with the law and is necessary in the interests of, inter alia, national security, public safety or the economic wellbeing of the country;

10.5 Article 1 of the First Protocol protects the right of everyone to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws. As with Article 8, any interference with possessions must be proportionate and in determining whether a particular measure is proportionate a fair balance must be struck between the public benefit sought and the interference with the rights in question.

10.6 The Order has the potential to infringe the human rights of persons who own property in the Order Land, Such infringement is authorised by law provided:- the statutory procedures for obtaining the Order are followed and there is a compelling case in the public interest for the Order; and any intervention with the Convention right is proportionate to the legitimate aim served.

10.7 The Scheme has been designed to minimise interference with the peaceful enjoyment of a person's possessions under article 1 of the First Protocol of the Human Rights Act under which no one is to be deprived of their possessions except in the public interest. Any interference with the right has to be provided for by law and strike a fair balance between the public interest and the protection of the rights of the individual. The Acquiring Authority believes that the provision of allotments on the Land is in the public interest and that this outweighs the harm caused by the use of compulsory purchase powers to acquire the Land for the Scheme.

10.8 In processing the Order the Acquiring Authority has complied with all relevant legislation and regulations which provide an opportunity for those affected to object to the Orders and have their representations considered at a public inquiry. The land to be acquired for the Scheme which is the subject of the Order has been kept to the minimum necessary to provide the allotments.

10.9 In exercising its functions, the Acquiring Authority has a duty under Section 149 of the Equality Act 2010 to have regard to the need to (a) eliminate discrimination, harassment, victimization and any other conduct that is prohibited under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Having carefully considered such matters, no issues have been identified in terms of the Acquiring Authority's public sector equality duty.

## **11. INSPECTION OF DOCUMENTS**

11.1 The following documents are available for public inspection during normal office hours at:

11.1.1 Reception, County Hall, Durham, DH1 5UL:

11.2 The documents are:

11.2.1 the Order and accompanying plan;

11.2.2 this Statement of Reasons;

11.3 The documents can also be viewed on the County Council's website

[www.durham.gov.uk](http://www.durham.gov.uk).

## **12. CONTACT DETAILS FOR FURTHER INFORMATION**

12.1 Interested parties affected by the Order who wish to discuss matters with the Council should contact Clare Cuskin by one of the following means:

12.1.1 by telephone on 03000 269723

12.1.2 by e-mail to [clare.cuskin@durham.gov.uk](mailto:clare.cuskin@durham.gov.uk);

12.1.3 by post to Durham County Council, Legal and Democratic Services, County Hall, Durham, DH1 5UL marked for the attention of Clare Cuskin.