

Cabinet

15 October 2014

Compulsory Purchase at Henderson Avenue, Wheatley Hill



Key Decision R&ED/12/14

Report of Corporate Management Team

Ian Thompson, Corporate Director Regeneration and Economic Development

Councillor Neil Forster, Cabinet Portfolio Holder for Economic Regeneration

Purpose of the Report

- 1 The purpose of this report is to seek approval to make and pursue the confirmation of a Compulsory Purchase Order (CPO) in order to facilitate the acquisition of land and buildings at 3 Henderson Avenue, Wheatley Hill ("the CPO Area") shown on the attached Plan entitled "3 Henderson Avenue, Wheatley Hill, Compulsory Purchase Order" (Appendix 2) under Section 226(1)(a) of the Town and Country Planning Act 1990. Once acquired the property will be demolished to enable the regeneration of the immediate vicinity through the development of 65, 2/3 bedroomed homes.

Background

2. On 21 July 2010 Cabinet approved the Thornley and Wheatley Hill Physical Regeneration Strategy. The report detailed development appraisals to generate proposals for three specific sites (two in Wheatley Hill and one in nearby Thornley) with accompanying implementation plans to provide for the long term regeneration of the villages up to 2016. The proposals for Wheatley Hill included:

Wheatley Hill South West

- An urban design and development appraisal that would assist in the creation of a new residential area integrated into the fabric of the village;
- An estate masterplan based upon the urban design and development appraisal;
- Development briefs for the sites; and,
- An implementation and phasing plan.

Wheatley Hill Front Street

- An economic and development appraisal of the identified area determining future use options;
 - A development framework for the identified area based upon economic and development appraisal;
 - A development brief for the site; and,
 - An implementation and phasing plan.
3. In recent years, considerable efforts have been made to address the regeneration of the village. The colliery site has been reclaimed and work on a range of housing, environmental and community schemes is currently taking place.
 4. Housing stock owned by Durham County Council and managed by East Durham Homes is located on the older estates in the south of the village and a more recent development in the east. These dwellings have been subject to partial improvement programmes although more recently selective demolition has been required particularly across Ryan Terrace, Luke Terrace, Cain Terrace and Henderson Avenue.
 5. The private sector housing stock for the most part is generally in good condition and in attractive surroundings and the village has a range of local services, including the Primary School, Front Street shops and the Community Centre.
 6. One of the priority actions highlighted in the Thornley and Wheatley Hill Physical Renewal Strategy 2009 was the comprehensive re-development of Cain Terrace and Henderson Avenue in order to improve the quality of housing in a low demand area. To date 32 properties have been demolished with 8 remaining. This process has involved the sensitive relocation of tenants and a small number of owner-occupiers.
 7. The Council is committed to maintaining focus on its vision and strategic priorities for the county which were developed with specific partners. These priorities reflect the views of the public and are set out within the Sustainable Community Strategy and the Council Plan.
 8. The Housing Strategy also supports the redevelopment of Wheatley Hill and other regeneration areas in the County with the aim of improving economic viability and vitality, along with improved quality of life for local residents that the proposed and new development will bring.

Housing Development - Current Position

9. Gleeson Homes have submitted a planning application for the development of 65 units, comprising of 2 and 3 bedroomed semi and detached properties. The housing will be offered to the market as low cost housing for sale and will be built on the former Luke Terrace, Henderson Avenue, Cain Terrace site. A plan showing the area covered by this Regeneration Scheme and the indicative layout of the proposed properties

is attached as Appendix 3. The planning application for this development was approved by the Area Planning Committee (Central & East) on 22 July 2014.

10. There are a small number of properties to demolish in Cain Terrace (6 dwellings) and Henderson Avenue (2 dwellings) at the present time one tenant is to be rehoused by East Durham Homes (21, Cain Terrace) and the remaining block of empty properties (15-18 Cain Terrace) has a bat roost and therefore can only be demolished following the granting of a licence from Natural England. The licence has now been applied for following a successful planning application for the site.
11. Officers continue to seek alternative accommodation in order to relocate the tenant of 21 Cain Terrace. The Natural England Licence required for demolition of 15-18 Cain Terrace will be resolved in a timely manner and will not present an obstacle to the redevelopment of the area. However, Gleeson Homes has agreed to undertake the development, excluding 21 Cain Terrace, should the tenant not be re-housed although this will have implications for the land value and subsequent capital receipt. There remain two dwellings to demolish in Henderson Avenue, one of which, number 3 requires acquisition. Several attempts have been made to negotiate a sale with the owner but to date these have been unsuccessful.

Proposal and Efforts Undertaken to Acquire 3 Henderson Avenue by Agreement

12. It is proposed to compulsorily acquire the empty property known as 3 Henderson Avenue. The CPO Area is identified in the attached map (Appendix 2) and borders numbers 2 and 4 Henderson Avenue. There remains only one property in Henderson Avenue left to acquire as the other dwellings have been acquired by the Council through negotiation. The inclusion of 3 Henderson Avenue through a CPO will facilitate the removal of this property which is owned by an absentee landlord, visually in very poor condition and requires significant repair. Substantial efforts have been made to negotiate and acquire this property from the owners. In the last few years and in particular more recently, efforts have included: the offer to purchase the dwelling at market value; the offer of another dwelling to replace the property at 3 Henderson Avenue; attempts have been made to negotiate an agreeable sale price; and, discussions have taken place with the owners' agent in an attempt to take matters forward and acquire the property through negotiation and mutual agreement, however all offers have previously been refused or ignored. A comprehensive list of correspondence from the Housing Regeneration Team and the Assets Service to the owners of 3 Henderson Avenue is detailed at Appendix 4.
13. Further attempts to negotiate the purchase have been pursued and recently the owners' agents contacted the Councils Assets Service with a view to re-opening negotiations. However, following this attempts to contact the owner by letter have come to nothing and once again no

response has been received from the owner. Given previous efforts to acquire the property through negotiation have not been successful it is considered prudent to adopt a twin track approach and continue with the Compulsory Purchase Order at this stage until negotiations can be finalised.

14. The Council has considered whether The Order Area could be left as it is. Although Gleeson Homes have stated that they are prepared to continue with the re-development scheme even if 3 & 4 Henderson Avenue remain in situ although this would present the Council and Gleeson Homes with an unsatisfactory situation. Apart from the impact upon the reduced capital receipt to the Council for the site there is also the poor visual appearance of the property to consider and its negative impact upon the immediate area, the wider regeneration of Wheatley Hill and potential new build housing and sales. The Council would still need to find a solution for this property as leaving it in situ whilst the remainder of the area is redeveloped around it would be wholly unsatisfactory in terms of adverse visual and amenity impacts on the future residential occupiers of the new properties. Therefore to enable a successful Regeneration Scheme, resulting in new build attractive family housing, it is essential that this property is acquired and demolished.
15. The Regeneration Scheme is likely to bring about significant environmental, social and economic improvements to Wheatley Hill. In particular, it will provide a boost to the local economy and local shops, it will provide much needed new energy efficient housing for the village on an existing brownfield site and has the potential to attract new families into the area, whilst increasing the number of owner occupiers. It will also improve the immediate environment which is currently open, brownfield land.

Any impediments/obstacles to the Regeneration Scheme

16. The Regeneration Scheme is to be undertaken by Gleeson Homes who have a proven track record of delivering housing schemes and they have access to the necessary finance to do so. The acquisition of all necessary land (except the Order Area) by Gleeson Homes is currently being negotiated and this is expected to be finalised imminently. The delivery of the Regeneration Scheme will be controlled by covenants in the transfer documentation between the Council and Gleeson Homes.
17. The land is not subject to special considerations and other than the issue of a Natural England licence to demolish 15-18 Cain Terrace and the relocation of the East Durham Homes tenant, there are considered to be no other practical or legal impediments to the realisation of the Regeneration Scheme. With regard to these identified obstacles/impediments, negotiations with the representatives of the tenant are ongoing and continuing. Officers are anticipating that this can be resolved however, even if this is not the case, the Regeneration Scheme can be delivered without 21 Cain Terrace. Equally Officers are confident

that a licence is likely to be granted by Natural England in order to enable the demolition of 15-18 Cain Terrace.

Legal framework

18. It is proposed to make the compulsory purchase order pursuant to section 226(1)(a) of the Town and Country Planning Act 1990. The section enables local authorities to compulsorily acquire land in their area if they think doing so will facilitate the development, re-development or improvement on, or in relation to, that land.
19. In order to utilise section 226(1)(a) of the Town and Country Planning Act to compulsorily acquire land, the Council must be satisfied that the development, re-development or improvement of the land in question is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its area.
20. The Human Rights Act 1998 incorporates the provisions of the European Convention on Human Rights (ECHR) into UK law. Article 1 of the First Protocol sets out the following rights which are of relevance:-
 - a) Every natural or legal person is entitled to the peaceful enjoyment of his possessions except in the public interest and subject to the conditions provided for by law and by the general principle of international law.
 - b) The proceeding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

And Article 8 set out the right for the individual to:-

- a) Have the right to respect for his private and family life, his home and his correspondence.
- b) Suffer no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Human Rights

21. Article 8 (right to respect for family, private life, home & correspondence) of the ECHR along with Article 1 of the first protocol (right to peaceful enjoyment of possessions) are engaged by the proposed making of the CPO. However, these rights are qualified which means that they can be interfered with if it is necessary to do so and the interference is in accordance with the law. It is considered that any such interference would

be both in accordance with the law (the Town and Country Planning Act 1990) and necessary and proportionate in the public interest; the economic, social and environmental benefits of the Regeneration Scheme will clearly outweigh the interference with the property of those affected by the CPO. If it is not possible to acquire the properties by agreement, any owners affected by the CPO will be compensated in accordance with the statutory code.

Conclusion

22. Compulsory purchase powers should only be exercised as a last resort and where there is a compelling case in the public interest to do so. Whilst it is possible for the majority of the Regeneration Scheme to be undertaken without the inclusion of 3 & 4 Henderson Avenue this would not accord with the aims of the comprehensive Regeneration Scheme as it would result in adverse visual and amenity impacts. Such a situation would compromise the overall re-development and improvement of the area and the village as a whole. The Council is therefore satisfied that the CPO is necessary to facilitate the comprehensive development, redevelopment and improvement of the area and that the making of the CPO will be likely to contribute towards the promotion or improvement of the economic, social or environmental well-being of the area. There is clear evidence that the public benefit of the scheme outweighs the private loss. The impact upon the Human Rights of the owner has been carefully considered and any inference is considered to be lawful and proportionate. It is also considered that any other obstacles to the progression of the Regeneration Scheme can be overcome.

Recommendations

23. It is recommended that Members:
1. Agree to the use of compulsory purchase powers for the purpose of acquisition of the Order Area, under the provisions of the Town and Country Planning Act 1990, Section 226(1)(a) and other enabling powers and
 2. The Corporate Director of Regeneration and Economic Development be authorised to:
 - a. Take all necessary steps to secure the making, confirmation (where permitted) and implementation of the compulsory purchase order, including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry; and,
 - b. Approve agreements with land owners setting out the terms for the withdrawal of objections to the compulsory purchase order, including where appropriate seeking exclusion of land from the compulsory purchase order;

Background papers

The Thornley and Wheatley Hill Physical Regeneration Strategy 2009, Nathaniel Litchfield and Partners.

The Thornley and Wheatley Hill Physical Regeneration Strategy Cabinet Report, July 2010

Contact: Alan Hunter, Housing Regeneration Project Manager

Tel: 03000 262024

Appendix 1: Implications

Finance –

The Council's Medium Term Financial Plan identifies capital programme funds for the acquisition and demolition of the identified properties in Wheatley Hill.

Staffing –

None

Risk –

The key risk associated with compulsory purchase is that objections may be received making a public inquiry necessary and that ultimately, the CPO fails. This risk is mitigated to some extent by the findings of the Thornley and Wheatley Hill Physical Regeneration Strategy 2009, Nathaniel Litchfield and Partners and the approved Thornley and Wheatley Hill Physical Regeneration Strategy Cabinet Report, July 2010 identifying the basis of development for the locality.

Equality and Diversity / Public Sector Equality Duty –

An Equality Impact Assessment has been prepared.

Accommodation –

The owner of 3 Henderson Avenue does not reside in the property.

Crime and Disorder –

No direct implications, however, it is anticipated that anti-social behaviour will reduce as the re-development commences as nearby empty dwellings will be demolished and new homes with new residents will replace the existing stock.

Consultation –

Significant consultation has been undertaken since the beginning of the master planning process with Nathaniel Litchfield and Partners.

Council officers and ward members attend the bi-monthly Wheatley Hill Steering Group to provide updates to the community and ward members are appraised through regular liaison meetings.

Procurement –

The Council's Standing Orders and Contract Procedure Rules will be followed in respect of demolition.

Disability Issues –

Gleeson Homes would liaise with new home owners purchasing their property at the point of construction regarding alterations that may be required in terms of their disability.

Legal Implications & Human Rights –

Authorisation for a CPO is the first step in the process for acquiring 3 Henderson Avenue compulsorily.

The guidance outlined in circular 06/2004 Compulsory Purchase and The Crichton Down Rules have been considered in making the recommendations arising from this report as have the provisions of European Convention on Human Rights and all relevant statutory provisions. Legal advice and input has been undertaken in the production of this report.

Appendix 2:

Map number GIS1279 entitled 3 Henderson Avenue, Wheatley Hill Compulsory Purchase Order

Appendix 3:

Gleeson drawing number GH36: L:01A entitled Planning Layout.

Appendix 4:

List of correspondence: 3 Henderson Avenue, Wheatley Hill.