

REPORT TO: Scrutiny and Overview Committee
Cabinet
LEAD OFFICER: Director, Health and Environmental Services

13 June 2019
1 July 2019

**Compulsory Purchase Order
The Tree, 9 Bar Lane, Stapleford, CB22 5BJ**

Purpose

1. To reconsider the decision made by Cabinet on 7 February 2018, in light of additional information obtained by the Council, in response to the request by The Tree Community Limited to use compulsory purchase powers in relation to the acquisition of The Tree, 9 Bar Lane, Stapleford, CB22 5BJ.
2. This is not a key decision because it would be for Council to decide whether to use compulsory purchase powers in the acquisition of The Tree, Stapleford.

Recommendations

3. It is recommended that Cabinet does not progress The Tree Community Limited's request for the Council to use compulsory purchase powers in relation to the acquisition of The Tree, 9 Bar Lane, Stapleford, CB22 5BJ.

Reasons for Recommendations

4. The recommendation is based on the following:
 - (a) the independent professional opinion given to the Council regarding the sustainability of the business case, as set out at paragraphs 18(b) and (c) below;

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Background

5. Section 226 (1)(a) of the Town and Country Planning Act 1990 enables councils to acquire land if they think that it will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement.
6. Councils can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are

detracting from the vitality of an area. Local authorities should consider all requests from third parties but particularly from voluntary and community organisations. They must provide a formal response.

7. Central government guidance on this matter is contained within the 'Guidance on Compulsory Purchase Process and The Crichel Down Rules (2018)', which state:
 - (a) "Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.
 - (b) "The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.
 - (c) "Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:
 - plan a compulsory purchase timetable as a contingency measure; and
 - initiate formal proceduresThis will also 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".¹
8. The Council received a request on 23 January 2017 to consider use of its Compulsory Purchase powers to bring The Tree - Public House, Stapleford, also a registered Asset of Community Value (ACV), into community ownership.
9. A report was considered by Cabinet on 7 February 2018 following research into the matter. Cabinet agreed:

"To recommend a future meeting of the Council, should it be necessary, Option 3 (a) as set out in the exempt report of the Director of Health and Environmental Services and subject to the caveats set out in that option; and

(ii) recommendation 4(a) as set out in the exempt report."

Option 3(a) stated: "recommend that Council considers agreeing to make a compulsory purchase order, should it be necessary, under section 226(1) (a) and 226(1) (b) of the Town and Country Planning Act 1990 for the acquisition of The Tree public house, 9 Bar Lane, Stapleford, CB22 5BJ shown on the plan at Appendix A to this report, subject to due diligence".

¹ Guidance on Compulsory Purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion, 2015 – Tier 1, Page 6

Recommendation 4(a) stated: "in addition to the external costs covered in Schedule 1 to the agreement: seek to re-coup the cost to the Council of officer time and of 'internal' 3C Shared Legal Service time".

Considerations

10. Since consideration of the matter at Cabinet on 7 February 2018, the officers have continued to encourage all parties involved to negotiate a voluntary sale. This included an independently facilitated meeting on 10 December 2018. [REDACTED]
[REDACTED]

(a) At the meeting on 10 December the owner informed those present of his intention to submit a new planning application for the site in question. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) The owner believes the value of the site is now higher following pre-application advice than it would be if no development were permitted. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

12. [REDACTED]
[REDACTED]

13. The property is not currently for sale on the open market. The owner's full planning application was received by the Council w/c 20/05/2019 and will be considered in accordance with usual planning regulations and timescales once registered. The application number is S/1782/19/FL and the proposal is the demolition of the existing outbuilding and construction of 3 bed detached dwelling, retention of the existing public house, and alterations to the internal layout at ground and first floor.

14. Since consideration of the matter at Cabinet on 7 February 2018 officers have sought further independent advice regarding compensation liabilities for the Council with regard to the use of CPO powers for this purpose. [REDACTED]

[REDACTED]

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (c) On the matter of the CPO is this something that, all things considered, the Council should pursue?

[REDACTED]

19. The report to Cabinet on 7 February 2018 focused on the key issues that need to be considered following a request to CPO. These have not been reproduced in full in this report and should be considered alongside the additional information provided in this report.

20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The risk log has been updated and is attached at Appendix C.

21. The property has been assessed as a 'Stream 2' investment, as defined in the Council's Investment Strategy (agreed at Council in February 2019). [REDACTED]
[REDACTED]
[REDACTED]

- (a) Assessment against investment criteria:

Score	56	4	3	2	1	0
Scoring Criteria	Weighting Factor	Excellent / very good	Good	Acceptable	Marginal	Unacceptable
[REDACTED]						
Tenure	9	Freehold	Lease 125 years plus	Lease between 50 & 125 years	Lease between 20 & 50 years	Lease less than 20 years

Building Quality / obsolescence	4	Newly Built	Recently refurbished	Average condition and likely to continue to be fit for current use for 25+ years	Aged property with redevelopment potential	Nearing end of useful life / unlikely to continue when lease expires
Repairing terms	4	Full repairing and insuring	internal repairing – 100% recoverable	Internal repairing – partially recoverable	Internal repairing – no recoverable	Landlord

- i. [REDACTED]
- ii. Tenancy strength: the property is vacant
- iii. Tenure: the proposed tenure, if the Council were considering to purchase the property, would be freehold
- iv. [REDACTED]
- v. Building quality / obsolescence: the valuation reports have identified that works would be required before the building could be put back into use, therefore the property could be considered as an aged property with redevelopment potential
- vi. Repairing obligations; if the Council were to acquire the Freehold and let to a tenant this would be on a Full Repairing and Insurance (FRI) lease
- vii. [REDACTED]

(b) Assessment against Business Plan objectives

- i. The investment scores highly on growing local businesses and economies, and partly on a modern and caring council. It does not deliver on being green to our core or on housing that is affordable for

all, however if the scheme were redeveloped there is potential for it to improve its score.

Options

22. Cabinet could:
- (a) recommend to Council to make a compulsory purchase order, under section 226(1) (b) of the Town and Country Planning Act 1990 for the acquisition of The Tree, 9 Bar Lane, Stapleford, CB22 5BJ, or
 - (b) decide not to proceed for the reasons set out in paragraph 4 of the report.

Implications

23. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered: -

Financial

24. The Council can recover its costs via an indemnity agreement, as considered by Cabinet on 7 February 2018. The enforceability of this agreement depends upon the security of the funding obtained by The Tree Community Ltd for their scheme.
25. For the purposes of calculating the compensation payable the valuation date is fixed by Section 5 of the Land Compensation Act 1961 (see in particular Rule 2, Market Value). It has been recommended that if the decision were taken to progress a CPO, the Council should obtain an updated and more detailed valuation of the market value of the property. See Appendix A, Section D.
26. Once a compulsory purchase is underway, it can be combined with other mechanisms to transfer the asset into community control (known as back-to-back transfer). The provision at Section 60 of the Finance Act 2003 gives the local authority relief from Stamp Duty Land Tax (SDLT) on the CPO, provided the conditions for relief are met. To meet the conditions, the purchase must be made to facilitate the development of the land by a third party (that is, someone other than the body making the Compulsory Purchase Order).
27. Consideration would also be given to whether any subsequent transfer of the chargeable interest to a third party is subject to SDLT in the normal way. SDLT also applies to leasehold purchase and annual rent and must be a consideration, should the Council wish to consider leasing the property rather than selling to the Community Group.
28. The cost of preparatory and due diligence work has been met from the Localism budget, prioritising this work over other work to support local communities.

29. [REDACTED]

Legal

30. The Council has power under section 226(1) (a) and 226(1) (b) of the Town and Country Planning Act 1990 to acquire land to secure the proper planning of its area provided that the Council is satisfied that the acquisition will provide economic, social and environmental benefits to its area. The acquisition of The Tree public house to

