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Castleward Urban Village: Acquisitions and Funding arrangements update

Purpose

- 1.1 To outline changes to the funding arrangements for acquiring land and property interests required for the next phase of housing development at Castleward Urban Village (CUV) and to seek approval to increase the Council's financial contribution to the scheme and the associated changes to the Capital Programme.
- 1.2 To approve the serving of notice under a General Vesting Declaration (GVD); being the compulsory purchase notices, to remaining property interests that need to be acquired for the next phase of housing development at Castleward (Phase 4).
- 1.3 To approve changes to the Compulsory Purchase Order Indemnity Agreement (CPOIA) and the Development Agreement (DA) between the Council and Compendium Living (CL) and delegate authority for the signing of this agreement.

Recommendation(s)

- 2.1 To delegate authority to the Strategic Director of Communities and Place, following consultation with the Strategic Director of Corporate Resources and Cabinet Member for Regeneration, Decarbonisation and Strategic Planning & Transport to negotiate and enter into a Deed of Variation (DoV) to the existing CPOIA with developer partner CL and a DoV to the overarching DA, in advance of giving notice of compulsory purchase. The headline terms of these changes are outlined in paragraphs 4.9 – 4.13.
- 2.2 Subject to completion of the necessary Deeds of Variation and CL Board approval; to approve the acquisition by compulsory purchase of remaining property interests required for the next development Phase 4 of the CUV regeneration programme.
- 2.3 To approve an increase to the Castleward Compulsory Purchase Order (CPO) capital budget by £0.330m (funded from capital reserves in the first instance) and update the capital programme accordingly.
- 2.4 To delegate authority to the Strategic Director of Corporate Resources to approve the capital budget transfers and replenish the temporary funding from capital reserves to the value of £0.330m and also action any associated funding switches required, at 2022/23 capital outturn.

Reason(s)

- 3.1 To implement use of CPO powers that were obtained in April 2021 and ensure continued delivery of the CUV regeneration programme. Compulsory acquisition will be served through the formal procedure known as General Vesting Declaration (GVD) with sufficient notice to achieve vacant possession of the site as required by the developer partner for Phase 4. This phase creates a further 112 homes including 34 affordable homes.
- 3.2 The forecast costs for the acquisition of land and interests required for the next phase of housing development have increased, as explained in paragraph 4.7. In order to proceed with the GVD, the Council and CL have agreed in principle to revised cost underwriting arrangements by the developer, and an increased contribution from the Council's existing budgets to address this forecast cost increase, subject to necessary approvals as required by Financial Procedure Rules.
- 3.3 A key component to the recovery and regeneration of the city centre is the creation of further residential space and an increase in city living. Continuing delivery of the CUV regeneration programme will contribute towards this objective.
- 3.4 The changes to the budget and funding on the Council's Capital Programme require approval by Council Cabinet to comply with the Council's Contract and Financial Procedure Rules.

Supporting information

Background

- 4.1 The development of a new residential community at Castleward has been a long-term ambition within Derby City Centre regeneration strategies and the Local Plan. Increasing city living is a vital component part of bringing greater vibrancy and growth to the city centre and supporting the reversal of city centre decline that has impacted heavily in recent years.
- 4.2 Early phases of development at Castleward have delivered award-winning housing and community infrastructure to the city, with more than 200 new homes, a new primary school and high-quality public realm. The connection between the city centre and the rail station has been vastly improved by a new boulevard including space for businesses to serve the local community. The partnership behind the CUV programme, comprising Derby City Council, Homes England and Compendium Living, have invested significantly in bringing development forward and building a case for compulsory purchase powers to ensure further phases can happen and the community at Castleward can continue to grow.

- 4.3 Following a Public Inquiry, the Government-appointed Inspector confirmed the Castleward (2020) Compulsory Purchase Order (CPO) in April 2021, which will be in place for 3 years until May 2024. The implementation of the CPO Scheme will deliver at least 512 homes in a desirable and highly sustainable location, close to the City Centre, Pride Park, the bus station, the railway station, Bass' Recreation Ground and the banks of the River Derwent. It will deliver a coherent residential development and provide a high level of amenity for occupiers without having to rely on the development of any future phases. The mix of tenures and range of property types will encourage a diverse and inclusive community to further develop, in a neighbourhood well-placed to reduce dependence on the private car, and to promote walking and the informal interactions between neighbours that result.
- 4.4 In the interest of retaining services and employment in Derby, as well as achieving vacant possession of land for re-development, the Council and partners have provided relocation support for businesses and occupiers affected by the CPO. For Phase 4 (as outlined in Appendix 1), the planned relocation of two existing occupiers, Tarmac and the Derbyshire County Council Transport Depot to the former Rolls Royce Light Alloy Foundry site on Osmaston Road is progressing. Construction of a serviced site for Tarmac and new premises for the Depot is planned to start in Autumn 2022 ahead of relocation scheduled for Summer 2023.
- 4.5 In line with the development programme anticipated by CL (post Covid-19), the execution of the CPO to assemble land Phase 4 of development had been planned for July 2022. This was to enable a seamless transition from the current development of 82 new homes on John Street to the next phase of development. The DA that governs the contractual relationship between the Council and CL enshrines the principle that CL's development programme will, alongside funding arrangements, dictate when the Council implements its CPO powers.
- 4.6 Before executing its CPO powers, the Council's commercial property advisors, Avison Young (AY), updated the relevant compensation cost estimates, which were last reviewed in June 2021. AY's cost estimates for the Phase 4 property interests are significantly above the 2021 figures. As such, estimated costs for future phases have also increased and are set out in the confidential report.

Costs and Funding

- 4.7 The increase in estimated costs of acquiring property interests for Phase 4 onwards are due to the following factors:
- (i) Investor and occupier demand for secondary industrial properties has increased significantly since the Covid-19 pandemic in 2020. This has led to an increase in property values and hence compensation payable for the following reasons:
- Valuation yields for secondary industrial premises changing
 - Industrial rental values increasing
 - CPO compensation valuation headings / incidentals such as occupier's loss and basic loss payments have also increased as they are based on

a percentage of the underlying property compensation amounts (approximately 10% in total).

- (ii) Under CPO rules, an acquiring authority must meet the occupiers' cost of relocating their business to alternative premises, and all associated costs. This element of compensation is called 'Disturbance'. Original disturbance cost estimates could only be best assessments based upon limited access to premises and disclosure of information by owners/occupiers at the time of valuation. With more specific engagement with potential claimants and increased information about the nature of the businesses, the Council's knowledge has increased. This additional information has led the Council to increase its estimates of the cost of disturbance payable to claimants. This is an inherent risk of CPO and compensation estimates and has been on the project risk register, which was reported to Cabinet in November 2019 when the Council first took the decision to pursue a CPO.
- (iii) Three claims for the cost of the extinguishment of businesses (rather than their relocation) are now expected to be made from a number of businesses.
- (iv) The Council could be compelled to acquire a property interests outside Phase 4, notably Plot 16 due to compensation requirements.

4.8 The Council and CL have agreed in principle how the increase in forecast cost might be managed for the next Phase 4. The underlying principle is that CL will guarantee a capital contribution for the Phase 4 land (including Plot 16), to cover the majority of this cost increase, leaving a balance. This report seeks approval to fund this balance from Council resources as outlined in the confidential report. This proposal is subject to formal approval by both partners (Council Cabinet and CL Board approval respectively) and changes to the existing CPOIA through a DoV (which would make the change in funding legally binding on both parties). The implications of this arrangement are further detailed in paragraphs 4.9 to 4.13 and Section 7 of this report.

CPO Indemnity Agreement (CPOIA)

- 4.9 The delivery of the CUV regeneration programme is governed by a DA between the three partners: the Council, Homes England and CL. It was always anticipated that a CPO would be required to assemble the land needed to deliver the entire Castleward programme, and the DA includes the principle of CL underwriting any acquisition costs associated with implementing a CPO. Given that the Existing Use Value of commercial property in Castleward is, however, greater than residential redevelopment values, undertaking CPO to enable redevelopment has been unviable without public subsidy. The Council and CL therefore jointly fund CPO costs. These funding principles were translated into a CPOIA between the Council and CL, that was entered into prior to the making of the CPO in March 2020.
- 4.10 The CPOIA includes a maximum CL liability comprising a total compensation estimate plus a contingency. The total compensation estimate funds the non-HiF land. The contingency covers the entire CPO Scheme area. The Council draws upon HiF and Council funding to finance what is referred to as HiF land in this report.

- 4.11 In line with the funding proposal as set out in the confidential report, a DoV to the CPOIA is required. This variation will specify that CL's maximum liability will be translated into a guaranteed capital contribution for land acquired by CPO. The implications of this are that less funding will be available for further phases of CPO acquisitions.
- 4.12 Whilst not a requirement of the CPOIA, the DA provides for CL to establish a date when land required is to be transferred from the Council to the developer partner.
- 4.13 In changing the CPOIA, a DoV may also be required for the overarching DA. This would need to be completed simultaneously and before any vesting declaration for Phase 4 is served.

Future phases of CPO implementation

- 4.14 The focus of this Cabinet report is to approve the proposed funding arrangements to enable the next phase of development – Phase 4 – to proceed. It is recognised that bringing forward a large proportion of CL's underwriting liability will create a potential 'gap' in funding for future phases of CPO acquisitions. There is also a risk that the forecast cost increases seen on Phase 4 may also transpire on further phases of acquisitions.

Project benefits

- 4.15 Bringing forward Phase 4 will deliver 112 new homes including 34 affordable homes. This will add to the 218 homes already delivered in Castleward and contribute towards the 512 new homes required under the HIF funding agreement within the whole CPO area.

Programme Milestones

- 4.16 The confidential version of this report provides a high-level programme of key milestones.

Project Risks

- 4.17 The confidential version of this report provides a summary of the key risks taken from the project risk register:

Public/stakeholder engagement

- 5.1 The Council has written to affected parties within the proposed CPO phase advising a delay pending resolution of funding issues, with a further update to be communicated in October 2022.

Other options

- 6.1 The confidential version of this report explains the other options explored.

Financial and value for money issues

- 7.1 The financial implications in respect of this proposal are set out in the confidential report, detailing:
- The proposed revised budget required to accommodate the increase in cost estimates for phase 4 acquisition costs and associated professional and internal fees
 - The resultant capital budget increase of £0.330m and proposed revised budget spend profile
 - Budget provision remaining for future phases
 - Development partner CL's underwriting commitment and proposed variations required to the DA and CPOIA agreements
- 7.2 The balance of £0.330m that will be required, if in 2023/24 the cost estimates materialise, will be funded by a transfer of capital budgets from savings on other schemes on the Regeneration capital programme. Such budget transfers may also require associated funding switches as the cost of the back-to-back land transfer to CL would not be eligible for funding from borrowing. Approval is sought to delegate authority to the Strategic Director of Corporate Resources to approve the capital budgets transfers to secure the additional £0.330m funding, and any associated funding switches required, at 2022/23 capital outturn. £0.330m of capital reserves has been allocated to the project in the first instance.

Legal implications

- 8.1 A variation to the existing CPOIA and DA will be required and agreed prior to the Council issuing a GVD to acquire the remaining Phase 4 interests. The Council's legal advisors, Freeths, have been instructed to support the completion of both DoVs. Freeths are also ensuring that there are no subsidy control issues arising from the Council's actions.
- 8.2 A minimum of three months' notice is required to landowners and occupiers served with a Notice of GVD. Notice will need to be served in time to firstly achieve vacant possession in line with CL's programme, the Council's associated legal obligations and also terms of the Homes England (HiF) grant funding agreement regarding spend, milestone and output achievement.

Other significant implications

Equalities Impact

- 9.1 An Equalities Impact Assessment (EqIA) was first prepared to accompany the November 2019 Cabinet report, which subsequently approved the Castleward CPO proposal. As part of the next annual EqIA review in November 2022, the assessment will continue to identify controls to minimise the impacts of the CPO upon the affected occupiers/businesses, updated as appropriate.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Stephen Teasdale	23-September-22
Finance	Amanda Fletcher	22-September-22
Service Director(s)	David Fletcher	22-September-22
Report sponsor	Rachel North	23-September-22
Other(s)	Jayne Sowerby-Warrington	23-September-22

Background papers:	Cabinet November 2018 – Castleward Urban Village – Future Phases Cabinet September 2019 – Castleward – Next Steps Cabinet November 2019 – Compulsory Purchase Scheme – Compulsory purchase properties in Castleward
List of appendices:	
Appendix 1	Plan showing CPO area, Phase 4 development and Plot 16
Appendix 2	Plan showing future phases and land ownerships following the acquisition of Phase 4 and plot 16