COUNCIL CABINET
21 November 2023

Report sponsors:

Cllr Nadine Peatfield, Cabinet Member for Regeneration, Decarbonisation and Strategic Planning and Transport

Rachel North, Deputy Chief Executive (Place)

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Derby City Council

ITEM 8

Castleward Urban Village: Acquisitions and Budget update

Purpose

1.1 To update Cabinet on progress with delivering the Castleward Urban Village regeneration programme.

1.2 To advise Cabinet of proposed changes to the cost and funding arrangements in respect of the compulsory purchase programme at Castleward, and to seek approval for the associated changes to the capital programme.

1.3 To note the recommendations will conclude the current CPO activity, excepting for the ongoing negotiation and making of compensation payments.

Recommendations

2.1 To approve an addition of £2.082m to the Castleward CPO capital budget funded by developer contributions, and to update the Capital Programme and profiling as set out in paragraphs 7.7 and 7.8.

2.2 To delegate authority to the Deputy Chief Executive (Place), following consultation with the Director of Financial Services (S151 Officer) and the Cabinet Member for City Centre, Regeneration, Culture and Tourism, to enter into a Deed of Variation to the existing CPO Indemnity Agreement with Compendium Living, and a Deed of Variation to the overarching Development Agreement.

2.3 Subject to completion of the necessary Deeds of Variation, to approve the acquisition of all the remaining property interests for Phase 5 of the Castleward development by way of compulsory purchase, payment of compensation claims, and the subsequent transfer of all relevant land interests to Compendium Living, in accordance with the amended Development Agreement.

Reasons

3.1 The regeneration of Castleward is a key component of the City's ambition for Derby to be a vibrant and thriving city, and a key housing priority within the Local Plan.

3.2 To continue the use of statutory powers to assemble land within the CPO area before compulsory purchase powers lapse in May 2024, without which further delivery is likely to stall.

3.3 Increases in forecast CPO compensation costs require additional funding. Agreement with Compendium Living is necessary for an increase in the amount they are prepared to contribute, in exchange for removing development phases 3 to 5 from further financial requirements of the DA. In line with Financial Procedure Rules, Cabinet approval is required to amend the capital programme to reflect the increased cost and funding package.

Supporting information

4.1 The Castleward Urban Village is priority regeneration area in Derby and has already brought major change to this part of the city. Derby's Local Plan Part 1 envisages that Castleward, along with the neighbouring site of the former Derbyshire Royal Infirmary (DRI), "will be transformed into a vibrant residential and commercial neighbourhood where people will enjoy a high quality of life within a distinctive, accessible and sustainable urban environment". This transformation is well under way but is not yet complete.

4.2 The benefits that new housing at Castleward brings to the city are huge, and Derby's City Centre Masterplan 2030 and Housing Strategy 2020 – 2029 recognise these, which include:

- Investment in housing as a key driver for economic growth and regeneration. House building investment creates capacity in the construction sector and its supply chain, with 'knock-on' effects on demand in the broader Derby economy.
- Good quality, reasonably priced housing complements Derby's vison as the UK Capital of Innovation, creating, attracting and retaining 'urban entrepreneurs' as part of an innovative economy, providing homes for the highly skilled workers and entrepreneurial talent that Derby businesses require.
- A vibrant city centre requires people to live closer to the centre, with their spending power supporting the city's retail, leisure and cultural offer. It also reduces pressure on transport infrastructure, the environment and release of greenfield land.
- Enabling people to access key services and maintain independence, contributes to stability and a sense of identity that supports secure, thriving communities.

4.3 Through the creation of a new community, Castleward has been a catalyst for the redevelopment of the former DRI site and the resultant Nightingale Quarter, bringing significant private investment with over 900 new homes and community facilities under construction. In addition, demand from some of the relocated businesses in Castleward has accelerated the development of the long-vacant Rolls Royce Light Alloy Foundry site off Osmaston Road, providing further economic benefits to the city.

In addition, Castleward has been supplying a level of affordable housing that is in line with our targets and policies and is an exemplar scheme in this regard.

4.4 The Council's development partnership with Compendium and Homes England has been delivering regeneration outcomes since 2013. In this time the partnership has achieved:

- 219 new homes completed and occupied in Phases 1 and 2
- 82 homes approaching completion on Phase 3
- 112 homes with planning permission, with construction due to begin next year (Phase 4)
- A pipeline of 153 homes planned in Phase 5, subject to planning and to approval of the funding arrangements set out in this report.
- 258 homes under construction at Elevate Development's Silk Yard scheme – development commenced due to the Council having the benefit of CPO powers, but also because the adjacent Tarmac batching plant has been relocated.
- This will total 824 homes, exceeding the 800 allocated in the Local Plan Part 1. A sizable proportion of these new homes are affordable housing.
- The Castleward Spencer Academy Primary School & Nursery
- Public realm improvements at Castleward Boulevard and Liversage Square
- 12 commercial units providing local shopping and business space

4.5 Cabinet has received several prior reports on the Castleward Urban Village, most recently in October 2022, which set out the funding and delivery arrangements for previous phases up to Phase 4.

4.6 The CPO costs to date have been funded partly by Housing Infrastructure Fund (HIF) grant, which has now been used up, and partly by developer contributions under the CPO Indemnity Agreement (CPOIA). The level of developer contributions needs to increase to meet the increased cost of acquiring the remaining commercial property.

4.7 The final development phase within the CPO area is Phase 5. The Council has operated a rigorous approach to risk and cost management throughout the CPO phases. The Council's property advisors, Avison Young, have prepared updated estimates of the total compensation due to landowners and occupiers, regarding the latest market information. Despite the benefit of the current underwriting of acquisition costs by CL under the existing CPOIA, based on these latest cost estimates, the current approved capital budget will not be sufficient to complete all the Phase 5 acquisitions. This risk was specifically noted in the October 2022 report.

4.8 The confidential version of this report sets out the current estimated cost of completing the acquisitions required for Phase 5.

4.9 Compared to October 2022, the higher costs forecast can be explained by:

i. Sustained demand for industrial property with higher valuation yields and rental values.
ii. Increases to costs of disturbance as actual costs are being realised and estimates are revised.
iii. Business extinguishment costs have been realised
iv. Homes England assets are paid for at Book Value. The Council is advised by Homes England these values cannot be written off or funded by way of additional HIF funding.

4.10 The Council has considered options to bridge the funding gap, including discussions with Homes England and with CL. CL is prepared to increase its financial contributions and a revised funding proposal has been received. In summary, the arrangement will supersede the existing CPOIA. CL's currently committed cost underwriting will be replaced with a series of fixed capital receipts. Payments will be made as land is transferred to them. These payments include for the transfer of the Council's existing small parcel of land fronting Traffic Street, for which a separate capital receipt had been anticipated. CL have also agreed to make further contributions to associated non-acquisition costs. The confidential version of this report summarises the values mentioned in this paragraph.

4.11 In accordance with the Development Agreement and HIF Funding Agreement with Homes England, the Council will retain responsibility to execute the CPO. Once notices are served under a GVD, the freeholds will vest in the Council on the specified date and then simultaneously transfer to CL. CPO powers will lapse in May 2024, although the GVDs can be dated to allow the land to vest in the Council after this date. It is currently proposed that the Council will take possession of the land around November 2024, to align with CL's development programme.

4.12 The following legal agreements, which are detailed in the Legal Implications at Section 8, will need to be entered into in the following sequence:

- A Deed of Variation (DoV) to vary the existing CPOIA provisions and implement the revised proposal from CL.
- A Deed of Variation to the existing Development Agreement between the Council, CL and Homes England
- General Vesting Declaration(s) to execute the CPO.

The Council's legal advisors, Freeths LLP, have prepared the necessary draft agreements.

4.13 To assist Cabinet in understanding how development is progressing, the revised development phasing plan for the CPO area is shown at Appendix 1.

4.14 **Future Programme milestones**

Castleward Urban Village delivery milestones	**Target date**
CL Board approval of funding arrangements for Phase 5	Nov 2023
Cabinet approval of funding arrangements for Phase 5	Nov 2023
Commence demolition and pre-construction work on Phase 4	Nov 2023
Legal completion of deeds of variation to the CPOIA and DA (draft agreements are prepared)	Dec 2023
Service of General Vesting Declarations for Phase 5 interests	Feb 2024
Payment of interim claims received for advanced completion	Apr-Oct 2024
Achieve vacant possession of all Phase 5 property interests	Nov 2024
Transfer of Phase 5 properties to Compendium	Nov 2024
Settlement of outstanding compensation claims	Ongoing
Commence demolition and pre-construction work on Phase 5	Spring 2025
Completion of Phase 4 – 112 new homes	Winter 2026
Completion of Phase 5 – 153 new homes	Autumn 2029

4.15 **Project risks**

The highest rated risks are summarised from the project risk register:

Table 1 – Key Risks

Risk	**Overview of mitigation**
Costs of proceeding with acquisitions and settling outstanding claims – property compensation values and claimants' fees – exceed the approved budget and result in an additional cost to the Council	Regular review of acquisitions by agreement prior to service of the GVD notices, where these may reduce longer term costs. Professional support from Avison Young and Estates on valuation and negotiation This report proposes a revised funding arrangement for the final phase of compulsory purchase acquisitions, which includes a contingency.
Costs of proceeding with acquisitions – occupiers disturbance (relocation & business disruption costs) – exceed the approved budget and result in an additional cost to the Council	Regular review of valuation assumptions and cost forecasts compared to claims received. Claimants' legal duty is to mitigate loss – claim headings and their respective costs scrutinised for legitimacy (e.g. three quotes provided). The Council is providing sufficient time from GVD notice to date of possession to enable occupiers to relocate efficiently.
Cost of proceeding with acquisitions – business extinguishment – exceed the approved budget and result in an additional cost to the Council	Refresh previous land referencing exercise to identify any further businesses than those already known that may be eligible for extinguishment. Scrutiny of extinguishment claims by specialist forensic accountant.
Clawback of HIF by Homes England should housing targets not be achieved. (Although CUV altogether is on course to deliver 824 homes, there is under delivery against 512 homes contracted under HIF)	HE are active partners in the project and fully informed of the situation – no prospect of clawback has been raised. The Council can demonstrate it has used best endeavours to deliver the

	housing, in accordance with the HIF funding agreement.

Public/stakeholder engagement

5.1 Extensive public engagement around the principles of the Castleward Urban Village took place at the time the outline planning application was determined, and again during examination of the Local Plan Part 1. The CPO was also subject to rigorous scrutiny at a public inquiry.

5.2 The key stakeholders to be engaged are the parties whose interests are to be purchased, and particularly the businesses affected that need to relocate. The project team has written to all affected parties since the CPO was confirmed to update them on timescales and will write again to those affected by Phase 5 once the necessary approvals are given and the timetable for acquisition is known.

5.3 Although the Council, as Acquiring Authority, has no legal duty to relocate the affected businesses, support is being provided by colleagues within the Council and Marketing Derby to look at options for relocation, with the aim of keeping business and jobs within the city.

Other options

6.1 **Proceed with Phase 5 acquisitions under the current contractual arrangements**

This is the status quo option. The Council would acquire the land and CL would guarantee to pay the Council's costs up to the limit set in the CPOIA. Land transferred to CL would be at a price reflecting a valuation at the time. The overage provisions of the DA would remain in operation, meaning that over-achievement of sales forecasts would be shared between CL and the Council.

Under this option, the Council would have to fund all costs above the current limit of underwriting in the CPOIA. Given the total project costs require funding from the developer that is significantly higher than this, the Council would need to be confident that the capital receipts from the sale of land to CL in Phases 4 and 5 would cover this. Overage arising from future development could contribute, and so reduce the Council's risk, but this cannot be guaranteed.

In a rising market, the Council could decide to take this higher risk option, in order to maintain future potential benefit from overage provisions and future capital receipts. However, in current market conditions it is recommended that the risks of this option are too high. It is preferable to allow CL to assume a much greater share of the development risk in return for a series of fixed capital receipts.

6.2 **Defer making a decision**

The Council could defer making this decision and see how market conditions evolve. March 2024 is realistically the latest that Cabinet could decide to accept the recommendations in this report, for the necessary agreements to be signed, as any GVDs must be executed and served by May 2024.

This option is not recommended, as the costs and benefits of para 6.1 are not likely to have become significantly clearer by that time. This option would cause further delay in giving clarity to the affected businesses, who would be left unsure whether they need to relocate or not.

In addition, should the housing market not strengthen in that time, it is more than possible that CL may withdraw the current offer to extend their underwriting, which would leave paragraphs 6.1 and 6.3 as the only possible options.

6.3 **Do not implement the CPO for all of Phase 5**

It is possible that CL, or indeed another developer, might be able to assemble the land by agreement, but this is unlikely in the short term, as ownership is highly fragmented. This would mean CL's development proposals would have to be revised and industrial units would remain, compromising the salability of nearby homes. A number of homes, including affordable homes, would not be delivered, with implications for regeneration and housing priorities. The risk of clawback of the HIF grant may be increased because fewer homes would be delivered against the HIF Funding Agreement.

Financial and value for money issues

7.1 The confidential version of this report sets out both the currently budgeted and revised cost estimates for acquiring the remaining land for Phase 5, as well as the current and proposed contributions to be guaranteed by Compendium Living.

7.2 The actual amount that Compendium Living have agreed to pay towards acquisition of the remaining land is commercially confidential, and disclosure could prejudice both their commercial position in delivering the remaining phases of Castleward, and the Council's position in negotiating compensation claims with displaced occupiers.

7.3 In addition, the revised agreement includes a further contribution of £0.694m from CL towards associated non-acquisition costs. Of the £0.694m, £0.396m has been committed towards funding the new school at Castleward and forms part of the approved capital budget on the Schools capital programme. The balance of £0.298m will contribute towards the Council's associated CPO fees and is included in the revised budget.

7.4 It will be the Council's responsibility to pay all CPO compensation costs and to cover all professional and internal fees. The confidential version of this report sets out the profile of payments to be received from Compendium Living.

7.5 To help evaluate the offer from CL, the Council's commercial property advisors Avison Young have carried out a RICS Red Book Valuation of Phase 4 and 5 land. They have advised that if the Council were to market the land for sale, it would achieve a price lower than the revised offer from CL; and supports the recommendations in this report to accept CL's offer and proceed with the CPO of Phase 5. Without the revised CL contribution proposed and included in the revised budget recommended for approval, the project would have a funding gap which would need to be addressed if the final phase of the project is to continue.

7.6 The variations to the existing CPOIA and DA proposed at paragraphs 4.8 – 4.10 above, will result in Development Phases 3, 4 and 5 being released from the Development Agreement provisions. This means that CL will make no further land payments or CPO underwriting payments. CL will also be entitled to keep 100% of future reward rather than sharing 50:50 with the Council. Known as overage, this can arise from any future sales revenue increases and any cost savings they may make during redevelopment of these phases, compared to the current values in their development appraisal.

7.7 The confidential version of this report sets out a balanced budget, demonstrating that the latest forecast costs of completing the CPO are in balance with the available funding. As well as historic capital receipts from Compendium Living, and the proposed increased level of contributions that will replace the current arrangements in the CPOIA, a large portion of the balance of funding has come from Housing Infrastructure Fund grant.

7.8 The total revised budget for the Castleward programme will be £11.451m. The actual budget for 2023/24 in the current approved capital programme is £0.051m but should have been the £0.510m as approved October 2023, the difference being the result of an incorrect figure included in the February 2023 MTFP.

7.9 The revised budget of £11.451m is to be profiled as follows:

Financial Year	£m
To 2022/23	3.914
2023/24	2.557
2024/25	4.080
2025/26	0.900

The actual spend profile will depend on the timing of CPO acquisitions and receipt and settling of future claims. This will be monitored as the CPO process progresses and any profile change will be reported through the quarterly monitoring cycle.

7.10 A contingency has been retained, in relation to the unconfirmed claims in both Phase 4 and Phase 5. Based on latest cost estimates from Avison Young and considering past claims outcomes this should be sufficient. However, the cost risks which under this proposal would fall to the Council as detailed in paragraph 4.13 should be noted.

7.11 It should be noted that the Council has already acquired one long leasehold owned by HE in Phase 3. Two further HE long leaseholds within Phase 5 will be compensated and are included in the above costs. These costs were not anticipated in the original CPO budget approved 2019 and have had to be addressed in subsequent budget increases as no additional Homes England funding was forthcoming.

7.12 Cabinet is recommended to approve the addition to the Castleward CPO capital budget, funded by additional developer contributions from Compendium Living, and to update the Capital Programme and profiling as set out in paragraphs 7.8 and 7.9.

Legal implications

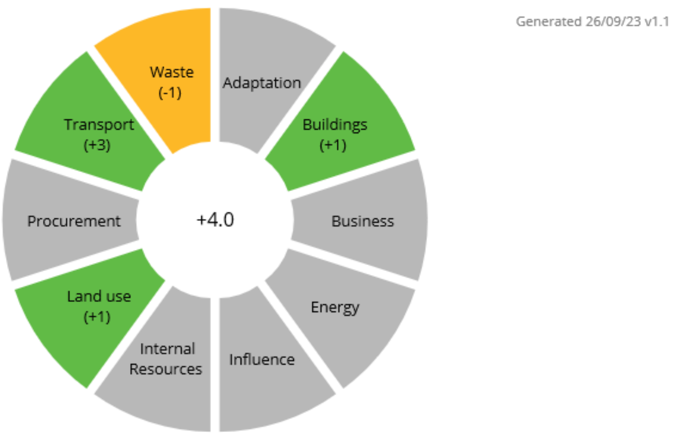
8.1 As mentioned in paragraphs 4.8 – 4.10 above, variations to the existing CPOIA and DA will be required. Freeths have been instructed and a draft Deed of Variation has been circulated to CL for approval. There are no further contractual implications between the Council, CL, and HE arising from the DoV.

8.2 Freeths have also been instructed to advise whether Subsidy Control issues arise from the Council's actions. A RICS Red Book Valuation of all of the land to be transferred to CL supports Freeth's advice and has been prepared by Avison Young. The Subsidy Control opinion concludes that there are no subsidy control issues.

8.3 Subject to Cabinet approval, the GVD notice(s) for Phase 5 will be served in or around February 2024. The GVDs will specify that the land will vest in the Council's ownership in or around November 2024 (exact date to be confirmed). This date is required to meet the Council's obligations under the revised DA and CPOIA and Homes England HIF grant funding agreement, and to give affected businesses a reasonable time to relocate their operations.

Climate implications

9.1 A Climate Change Impact Assessment has been carried out, focussing only the delivery of Phase 5 of the Castleward Urban Village, and not the entire CUV regeneration programme itself.



9.2 The impact assessment shows small positive scores for Transport, due to the central location of the new homes, and because the redevelopment will create a safer and more amenable environment for walking and cycling; for Buildings, due to new tree planting; and for Land Use, due to the presumed planning requirement to achieve a minimum 10% biodiversity net gain as part of the development.

9.3 The impact assessment has a minor negative score for Waste, due to the unavoidable creation of construction waste. It should be noted that this will be the case for almost any construction project, and that the construction industry achieves very high rates of reusing or recycling waste arising from demolition of existing buildings.

9.4 Neutral scores have been assigned for building construction and building use, reflecting that if the new homes planned for Phase 5 were not built here, they would need to be built elsewhere in Derby, potentially in less sustainable locations, to meet the targets within the adopted Local Plan Part 1.

Socio-Economic implications

10.1 Much of the rationale for regeneration interventions is to deliver projects with socio-economic benefits that the market alone will not deliver (as set out at 6.3). In this case, the benefits are the delivery of new housing in a sustainable location, providing opportunities for both first time buyers and people in need of affordable housing for affordable rent. The levels of on-site affordable housing provided in previous phases are policy compliant, 20% in Phases 1 and 2; 30% in Phase 3. This provision is exemplary and compares very favourably with most brownfield development in the City. There is strong commitment from all partners to continue this, and to develop a mixed and sustainable community that meets the needs of local people.

10.2 The intervention will also increase the resident population in and around the city centre, in accordance with Policy AC1 of the Local Plan Part 1, which in turn will support Derby's retail, cultural and leisure offer.

Other significant implications

11.1 **Equalities**

The project Equalities Impact Assessment was reviewed in November 2022. The assessment confirmed that the controls to minimise the impacts of the CPO on the affected occupiers and businesses remain in place and are reviewed regularly.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Stephen Teasdale	25 October 2023
Finance	Amanda Fletcher	25 October 2023
Service Director(s)	Catherine Williams	25 October 2023
Report sponsor		
Other(s)		

Background papers	Cabinet November 2018 Castleward: Future Phases Cabinet November 2019 Compulsory Purchase Scheme – compulsory purchases of properties in Castleward Cabinet October 2022 Castleward Urban Village: Acquisitions and Funding arrangements update
List of appendices	Appendix 1 Plan showing CPO area including Phases 4 and 5

Appendix 1: Plan showing CPO area