

North Tyneside Council

Report to Cabinet

Date: 24 January 2022

Title: Compulsory Purchase Order in Respect of Land at former Tyne Brand Factory, North Shields

Portfolio(s): The Deputy Mayor
Finance & Resources

Cabinet Member(s): Councillor Carl Johnson
Councillor Martin Rankin

Report from Service

Area: Regeneration and Economic Development

Responsible Officer: John Sparkes, Director of Regeneration and Economic Development (Tel: (0191) 643 6091)

Wards affected: Tynemouth

PART 1

1.1 Executive Summary:

North Shields Masterplan was approved by Cabinet on 25th January 2021. The plan identified several housing sites including the redevelopment of the former Tyne Brand factory site as key to the regeneration ambitions for North Shields.

The site is currently in multiple ownership (including Authority owned land) which can be seen on the plan included at Appendix 1. The former industrial site enjoys a prime location at the gateway to the Fish Quay, an area which has undergone considerable regeneration in recent years. The site is therefore well placed to bring forward new homes to the town.

The site has remained undeveloped since the closure of a food canning factory on the site in the late 1970s. Despite several attempts by private developers to assemble the land necessary, the market has failed to bring forward a viable development for the site. It is therefore considered appropriate for the Authority to take steps to acquire the site to bring it into public ownership and secure its onward development.

The Authority will seek to purchase the interests in private ownership by agreement however should this not be possible, it may be necessary to use Compulsory Purchase Powers (CPO).

This report outlines the CPO proposal in respect of the various land interests at Tyne Brand, North Shields. Those interests are within the area shown by the dark outline plan attached as Appendix 1 (the "Order Land").

1.2 Recommendation(s):

It is recommended that Cabinet:-

- i. Authorises the Chief Executive in consultation with the Director of Commissioning and Investment, the Mayor, the Deputy Mayor, the Director of Resources, the Director of Law and Governance and the Director of Regeneration and Economic Development to:-
 - a. Invoke Compulsory Purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990 for the acquisition of the former Tyne Brand site, North Shields, within the area in dark outline on the plan attached at Appendix 1 should the site not be acquired by negotiation.
 - b. agree a final “Statement of Reasons” that will be submitted with the Order to the Secretary of State for Levelling Up, Housing and Communities providing the justification for pursuing a Compulsory Purchase Order based on the information given in Section 1.5 of this report;
 - c. agree a “Scheme” for the onward development of the site; and
 - d. take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order, including the conduct of a Public Inquiry (if appropriate) to obtain confirmation of the Order by the Secretary of State.
- ii. agrees that the Order be named “Former Tyne Brand site, North Shields Compulsory Purchase Order 2022”.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 28th October 2021.

1.4 Council Plan and Policy Framework

This report relates to the following priorities in the 2021-2025 Our North Tyneside Plan:

A thriving North Tyneside:

- We will regenerate the high streets of North Shields and Wallsend and in addition to the Masterplan for North Shields, we will bring forward Masterplans’ for Wallsend and Whitley Bay town centre areas.
- We will reduce the number of derelict properties across the borough.

A secure North Tyneside:

- We will provide 5000 affordable homes.

1.5 Information:

1.5.1 Background

The former **Tyne Brand** factory site is a complex development site in multiple ownership.

Over the years there have been a number of reported efforts by private developers to purchase those land interests with a view to bringing forward housing development on

the site. However, these have been unsuccessful and the site has remained an eyesore and undeveloped for in excess of 40 years.

Following the approval of the North Shields Master Plan in January 2021 and with no realistic prospect of the site being brought forward for development without public sector intervention an application was made to the North of Tyne Brownfield Housing Fund.

Grant funding has been secured to assemble and remediate the site on the basis of adopting a staged approach to achieving its onward redevelopment. The first stage of this approach includes two key deliverable outcomes; these are to develop an Acquisition Strategy and a Demolition/Site Clearance Strategy by December 2021.

An Acquisition Strategy – will set out how the Authority can acquire the remaining interests on the site. In the first instance this will be via negotiation with those landowners willing to engage. However, in order that the land interests can be acquired in a timely manner the potential use of CPO powers must be a consideration.

A Demolition/Site Clearance Strategy – will set out how the demolition and site clearance of as much of the site as feasible to facilitate safe access for more detailed Stage 2 site investigations can be achieved.

Use of Compulsory Purchase Powers (CPO)

Under section 226(1)(a) of the Town and Country Planning Act 1990 a local authority has a power to acquire compulsorily any land in their area in order to facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.

In order to exercise such powers the Authority must be satisfied that the proposed development, redevelopment or improvement is likely to contribute towards any of the following objectives:

- the promotion or improvement of the economic well-being of their area;
- the promotion or improvement of the social well-being of their area; or
- the promotion or improvement of the environmental well-being of their area.

The site is part of a wider regeneration plan which is a valid reason to use CPO powers.

To use its CPO powers the Authority must also demonstrate a number of further requirements:

A scheme for the site – the site has been problematic for several years and is an ideally placed gateway housing site for delivery of the Authority's Masterplan ambitions. As such, it is anticipated that once the site is assembled and remediated, suitable development options, including an appropriate planning application, will be brought forward. Housing concepts were shared during the initial Masterplan engagement exercise and which we have discussed with some of the landowners. It is proposed that wider Statement of Reasons will confirm the work required to halt the further decline of the site, its impact on the immediate locality and an agreed housing development scheme.

A budget available to execute it –initial investment from the North of Tyne Combined Authority of £4.3m is being secured from the Department for Levelling Up, Housing and Communities (DLUHC) Brownfield Housing Fund to bring this site forward for

development. As noted above, the availability of a fully assembled and remediated site in this desirable location is likely to lead to significant developer interest in due course. The wider “Statement of Reasons” will confirm the funding model most appropriate for the onward redevelopment of the site before making a CPO.

Tried all other ways to secure the site by agreement - the proposed approach to reach negotiation first is set out above in line with the Acquisition Strategy.

The “Statement of Reasons” will be submitted for formal approval in accordance with Recommendation iii (a) of this report.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

To agree the recommendations at paragraph 1.2 of this report.

Option 2

Not to agree the recommendations at paragraph 1.2 of this report. Cabinet may decide not to approve the recommendation to make the CPO and request that officers to look at other options available to the Authority.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is the recommended option as this will provide a clear legislative process for the Authority to secure ownership of the site, stop its further decline and negative impact on that locality and prepare the land for onward development.

1.8 Appendices:

Appendix 1: Dark outline plan of Tyne Brand Site, North Shields “The Order Land”.

1.9 Contact officers:

Niall Cathie, Strategic Property Manager, Tel: 643 6517.

Paul Dowling, Regeneration & Transport Service Manager, Tel: 643 6428.

Rob Peach, Project Co-ordinator, Housing Strategy, Tel: 07974 576848

Steve Jackson, Senior Estates Surveyor, Tel: 07840 647641.

Cathy Davison, Principal Accountant, Tel: 643 7038.

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) North Shields Town Centre and Fish Quay Masterplan; Cabinet, 25th January 2021.

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

As stated in section 1.5.1 above, £4.3m of funding has been secured from the North of Tyne Combined Authority Brownfields Housing Fund to enable the purchase of the land interests within the site, complete site investigation and demolish existing buildings. Officers consider that up to the maximum £4.3m is sufficient for these activities. Once the Grant Funding Agreement is received, a report will be taken to Investment Programme Board for approval and the budget included in the Authority's Investment Programme.

Funding to support the onward development of the site has not been confirmed, however the acquisition and remediation of the site will provide for an attractive development opportunity for the provision of new homes. The wider "Statement of Reasons" will confirm the funding model most appropriate for the onward redevelopment of the site before making a CPO. Details of the final "Scheme" and the full financial implication of it will be considered when final approval for the CPO is sought in accordance with Recommendation iii (b) of this report.

2.2 Legal

Under section 226 (1)(a) of the Town and Country Planning Act 1990, a local authority has a power to acquire compulsorily any land in their area in order to facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.

Consideration has also been given to the Acquisition of Land Act 1981 with regard to the procedures which apply to compulsory acquisition. The Compulsory Purchase Act 1965 governs post confirmation procedures and the Land Compensation Act 1961 governs the amount and assessment of compensation as well as The Local Government (Miscellaneous Provisions) Act 1976 governing the grant of new rights.

Once a CPO is made and the relevant notice has been served, a period of at least 21 days is allowed for objections. If valid objections are raised and not withdrawn, the Secretary of State must call a public inquiry. Following the inquiry, the inspector appointed will report to the Secretary of State. The Secretary of State will determine whether or not to confirm the CPO.

Market value for the land will normally be payable under the terms of any confirmed CPO.

Under the legislation, an owner of adjoining land may serve a blight notice if they consider that the CPO Scheme will have a negative impact on the sale price of adjoining land. If a notice is received, the Authority may serve a counter notice to object to the claim of blight. Where such a notice is upheld, the Authority would be required to compensate the owner of the blighted land.

The risk of a blight notice is considered to be negligible with regard the former Tyne Brand site given its current condition and that the objective of the CPO is to improve the condition of the site in preparation for onward development.

Legal representatives will be part of the Project Team to ensure the CPO process is followed and any issues dealt with effectively. Specialist external legal advice on the CPO process will also be procured. Subsidy Control advice is ongoing in relation to the Brownfield Housing Fund schemes.

CPO Guidance

The government recognises in its Guidance on Compulsory Purchase Process and The Crichton Down Rules that if acquiring authorities wait for negotiations to break down, this can have detrimental impact on the timing of delivery of projects. Therefore, depending on when the land is required the Guidance considers it sensible for an acquiring authority to plan a compulsory purchase as a contingency measure; and initiate formal procedures.

The CPO Guidance expressly recognises that such steps 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. The CPO Guidance requires acquiring authorities to attempt to acquire land by agreement before embarking on the CPO process, although it is recognised that the schemes involving the acquisition of a number of interests, it is sensible to run the CPO process in parallel with ongoing negotiations. This ensures that the CPO progresses on the basis of a compelling case in the public interest, that there are no planning, funding or other legal impediments, that all reasonable attempts to acquire all interest by agreement have not been successful and for any interference with the human rights of those with an interest in the land affected. The Guidance also states that in considering whether or not to confirm a CPO, the Secretary of State will have regard to the extent to which the purpose for which the land is being acquired fits with the adopted Local Plan for the area.

On the basis of legal advice and the Guidance, officers are of the view that such a compelling case can be demonstrated.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

In accordance with the delegation in the Cabinet Report of 25th January 2021, the following Officers and Elected Members have been consulted on the proposed CPO route for the Tyne Brand site and are supportive:-

- The Deputy Mayor in his role as Cabinet Member for Regeneration.
- The Cabinet Member for Finance & Resources in his role as a member of Investment Programme Board (IPB).
- The Director of Resources and the Director of Regeneration responsible for the oversight and direction of the programme.
- The Strategic Property Group agreed on 20th October 2021 to propose this as a recommendation to Cabinet.
- Ward Councillors will be consulted and regularly briefed regarding this matter and the intention to progress with a CPO.

2.3.2 External Consultation/Engagement

In the autumn of 2020, the Authority's draft North Shields Masterplan was subject to consultation with residents, businesses and other stakeholders in order to seek their views on the future of the Town Centre. These views were considered by Cabinet in January 2021 when it took the decision to proceed with the Masterplan, its projects and the acquisitions required. The feedback is set out in the January 2021 Cabinet report which is referenced at 1.10 above and available at the office of the author or on the Authority's website.

Further public consultation about the plans for the site will be undertaken as part of the planning approval process for the proposed scheme when it emerges.

2.4 Human rights

The Human Rights Act 1998 places direct obligations on public bodies such as the Authority to demonstrate that the use of CPO powers is in the public interest and that the use of such powers is proportionate to the ends being pursued.

There must be a balancing of the public interest and the individual's rights and any interference with these rights must be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim.

In deciding whether to proceed with the recommendations, Cabinet needs to consider the extent to which the decision may impact upon the Human Rights of the landowners and residents and to balance these against the overall benefit to the community the CPO will bring. It is considered that interference with the rights under Article 8 and Article 1 of Protocol 1 of the Human Rights Act is justified in the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.

In respect of the former Tyne Brand site, the use of CPO powers will only be required if acquisition cannot be secured by agreement. If a CPO is required, then further advice on compliance with the ECHR and Human Rights Act 1998 will be addressed in the legal advice on the CPO process.

2.5 Equalities and diversity

Section 149 Equality Act 2010 creates a public sector equality duty. A public authority must, in the exercise of its functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Officers have given consideration and paid due regard to its Public Sector Equality Duty with regard to the decision to proceed and the possibility of mitigating any adverse impact on a protected group or to take steps to promote equality of opportunity. Officers of had regard to the Public Sector Equality Duty in the assessment of the case for making a CPO and that those with an interest in the Order Land and which are included in the CPO and how they will be affected.

An Equality Impact Assessment will be undertaken as the plans for the site are developed along with consultation.

2.6 Risk management

The risks associated with the acquisition of the Tyne Brand site have been considered in consultation with the Authority's Senior Risk Adviser and a Strategic Risk Register is in place for the delivery of the Masterplan.

Should Cabinet not approve the recommendations as set out in paragraph 1.2, the Authority may be curtailed in acquiring the ownerships necessary to improve the condition of the site and leave it vulnerable to further decline with no realist prospect of improvement in the foreseeable future. There will remain the ongoing risk health and safety risks inherent in such a site.

2.7 Crime and disorder

Securing ownership of the site will significantly reduce the decline and negative impact on the local community particularly in terms of attracting anti-social behaviour. Crime and disorder implications will also be considered as part of the planning process for the subsequent redevelopment of the site.

2.8 Environment and sustainability

The current condition of the site is poor and redevelopment will result in a general improvement in the amenity of the surrounding area. Environment and sustainability implications will be considered as part of the planning process, both for the clearance of the site and its subsequent redevelopment.

PART 3 - SIGN OFF

- Chief Executive X
- Director(s) of Service X
- Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Assistant Chief Executive X