

## BASILDON BOROUGH COUNCIL

**Report to:** Policy and Resources Committee 15 March 2018

### **THE BASILDON BOROUGH COUNCIL (FRYERNS AND CRAYLANDS BASILDON) (PHASE NORTH) COMPULSORY PURCHASE ORDER 2018**

**Report by:** Corporate Director,

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**Enclosures:** Enclosure No. 1 - Risk Management Implications  
Enclosure No. 2 - Plan of affected areas (North Phase)  
Enclosure No. 3 - Indices of Multiple Deprivation  
Enclosure No. 4 – Revised offer to homeowners

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#### **EXECUTIVE SUMMARY:**

The purpose of this report is to seek Committee approval to:

(i) Make a Compulsory Purchase Order (CPO) pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 with respect to land and property shown hatched on the plan attached (**Enclosure No. 2**) so as to enable the north phase of the Fryerns & Craylands Regeneration scheme to proceed; and

(ii) Give the Corporate Director delegated authority to make any necessary minor modifications to the CPO land to be acquired to finalise the development site for the north phase of the project and progress the CPO.

Compulsory purchase action is required to ensure the successful progression of the redevelopment of the Fryerns & Craylands area as previously approved by the Council.

#### **CORPORATE PLAN PROMISES AND CORE PRINCIPLES:**

##### Corporate Plan Promises

- Strong, safe and healthy communities with access to quality homes.

##### Core Principles

- Working with partners, communities and residents by joining up our work.

#### **WARD(S):**

Fryerns

#### **RECOMMENDATIONS:**

- 1. That subject to a suitable indemnity agreement being entered into between the parties, a Compulsory Purchase Order (CPO) is made in respect of the land and property shown hatched on the plan attached to this report (Enclosure No 2) pursuant to section 226(1)(a) of the Town and Country Planning Act 1990.**
  - 2. That the Corporate Director is given delegated authority to make any necessary minor modifications to the CPO land to be acquired.**
  - 3. That the Corporate Director is given delegated authority to settle the statement of reasons and take all other action necessary to secure confirmed Orders.**
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## **BACKGROUND**

Cabinet on 9 February 2017 (min 76/2017) resolved to make a CPO pursuant to ensuring the successful regeneration of the Craylands Estate. However due to a number of factors including the Council's reorganised decision making process, changes to the CPO boundary requirements and new legal advice with regard to recent CPO enquiry decisions, the Committee is asked to consider this revised report.

### **The original regeneration proposals**

The original Fryerns and Craylands regeneration scheme, which is a partnership between the Council, the (former) Homes and Community Agency (HCA), (now Homes England), and Swan Housing Association, was approved by Cabinet in June 2007 (min 405/2007).

The previous report to cabinet outlined the reasons for the need to regenerate the Craylands estate by highlighting the poor condition of the housing stock and the high levels of social deprivation prevailing there. In particular, the estate has many maisonette blocks, which are very unpopular and difficult to manage and, because the estate was built using the Radburn principle of estate design, the parking areas are separate and remote from the residential properties which causes safety and security problems for residents. The maisonettes in particular are of poor quality and would require high levels of investment if retained.

In order to put together a viable regeneration scheme, the adjoining redundant Fryerns School site was purchased from Essex County Council (ECC) by the HCA and included in the area of development. A comprehensive regeneration scheme was then put together following extensive resident consultation and engagement, approved by all the partners in 2006 and development works commenced in 2008,

During the first phase of the regeneration scheme, 161 properties were demolished and 404 new properties were built. This phase completed during 2017. Consultation with residents resulted in a decision to name the regenerated estate Beechwood Village.

### **The revised regeneration proposals**

The original masterplan granted planning permission under reference 06/00873/OUT. The 'Original Permission' for the scheme proposed the demolition of up to 700 properties and their replacement with up to 1400 new homes.

At that time, the application was considered in accordance with the adopted Basildon Local Plan 1998 (and Alterations of 1999), in addition to Regional Planning Guidance for the South East 2001 (RPG9) and the Essex and Southend-on-Sea Replacement Structure Plan 2001. Also of some weight as a material consideration was the Draft East of England Plan, intended to replace RPG9 in due course that had gone through the process of Examination in Public and was subject to a published report setting out its findings. Planning Policy Guidance Notes were also applicable at that time with PPG3, (Housing) of particular relevance.

Much of the site was identified as being of 'no notation' on the Proposals Map accompanying the Basildon District Local Plan, presuming the predominantly residential use to remain, although there were some small parcels of land around the estate identified as 'Existing Open Space (of less than 0.4 ha)', and the open space that formed part of the Fryerns School was identified as 'School Playing Fields and Other Open Space'.

The outline proposals were compliant with the policies of the day, with the issue in respect of the loss of open space mitigated by a contributions towards enhancement of alternative open space in the locality. Contributions were also to be made towards education, health services and highways/transportation. In conclusion the development was considered to contribute to a number of Strategic Plan objectives including the delivery of major social, physical and economic regeneration projects, improving the use and provision of homes and making communities safer.

However, the project experienced difficulties during the worldwide recession from 2008 onwards and paused for some time because of poor market conditions. As a result of the changed market conditions both nationally and locally, it was considered that the scheme proposals needed to be fundamentally changed. What was planned to be a mostly flatted scheme has been changed to one that is predominantly low level family houses. The proposals to change the scheme were received favourably by residents during consultation that took place during 2015/16 and, in 2016, Cabinet approved the necessary changes to the Fryerns and Craylands Comprehensive Development Agreement to enable the scheme to be revised (min 279/2016).

The new plans were given planning consent recently under reference 16/00898/OUT. The overall scheme will see 521 properties demolished (including the unpopular maisonette blocks) and up to 994 new homes will be built. This reduction in both demolitions and new-build resulted from the need to ensure the project was financially viable and reconsideration of the type of dwellings required in the area. The original plans required many flatted buildings and the revised plans consist mostly of family type houses with gardens. The project still requires all the Council-owned maisonette blocks to be demolished but retains more of the family houses on the estate than first envisaged. The number of social rented homes is protected by the Comprehensive Development Agreement (CDA) that governs the project as 30% of the new-build or the number of social rented homes demolished whichever is the greatest.

The policy context has been subject to some change since the consideration of the earlier, 2006 application. The statutory plan now comprises the Basildon District Local Plan Saved Policies of 2007. An examination of the saved policies shows that only a limited number as having a direct relevance to the application.

Policy BAS S5 (Affordable Housing), states that for developments of 25 dwellings or more, or residential sites above 1 hectare, the Council will expect an appropriate provision of affordable housing where suitable. The Council will seek both low-cost market and

subsidised housing dependent on local housing needs and suitability of the site. The scale form and provision is identified as negotiable and may consist of between 15-30% of the total number of units.

Policy BAS R1 (Open Space) states that within urban areas, planning permission will not be granted for development on open space which would cause significant harm to the recreational or amenity value of the open space, or to the contribution which the open space makes to the character of the area within which it is located.

Policy BAS BE12 (Development Control), states that planning permission will be refused for new residential development if it causes harm in any of the following ways:

- Harm to the character of the surrounding area, including street scene
- Overlooking
- Noise or disturbance to the occupiers of neighbouring dwellings
- Overshadowing or over-dominance and
- Traffic danger or congestion.

Policy Bas BE24 (Crime Prevention), states that the Council will expect the design and layout of new development to include considerations of crime prevention.

The Proposals Map that accompanies the adopted Basildon District Local Plan does not designate the Craylands Estate for any specific land use except for some small parcels of land around the estate that are identified as Existing Open Space (of less than 0.4 ha). However, the now unused open space that formed part of the Fryerns School site is identified as School Playing Fields and Other Open Space and Existing Open Space (less than 0.4 ha).

Of particular importance and weight in considering the planning merits is the National Planning Policy Framework of 2012. The Framework sets out the Government's planning policies for England and how these are expected to be applied in the determination of planning applications. It re-affirms that applications must be determined in accordance with the development plan unless material considerations indicate otherwise (Section 38 (6) of the Planning and Compulsory Act). This is confirmed by paragraphs 11, 12 and 196 of the Framework, which continue to place importance on the plan-led approach. The Framework is a material consideration in planning decisions and is a material consideration of very significant weight in circumstances where the extant development is out-of-date.

The Government has made clear its expectation, through the Framework, that the planning system should positively embrace well-conceived development to deliver the economic growth necessary and the housing needed to create inclusive and mixed communities. The presumption in favour of sustainable development is a key thread running through national policy for both plan-making and decision taking. Paragraph 14 sets this out as follows:

*“At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision taking.....*

*.....For decision taking this means;*

*approving development proposals that accord with the development plan without delay; and*

*where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless:*

*Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*

*Specific policies in this Framework indicate development should be restricted”.*

The Framework also makes clear that for development plans to be afforded full weight, they should be up to date, be prepared in accordance with the Planning and Compulsory Act 2004; and have no more than limited conflict with the Framework. Where the development plan policies are likely to be regarded as out of date, or have more than “limited conflict”, with the Framework, this will inform the weight that a decision-taker may apply (paragraphs 214 and 215). Emerging development plans may also be afforded weight in the decision-making process according to their stage of preparation, and the extent of unresolved objections to them (paragraph 216).

Paragraph 6 of the Framework explains that the purpose of the planning system is to contribute to achievement of sustainable development. Paragraph 7 of the Framework states that there are three dimensions to sustainable development: economic, social and environmental and paragraph 8 confirms that these roles should not be taken in isolation as they are mutually dependent.

Paragraph 17 sets out a series of underpinning core principles which, inter alia, seek to proactively drive and support sustainable economic development to deliver the homes, business, infrastructure and thriving local places that the country needs; secure high quality design, take account of the different roles and character of different areas; recognise the intrinsic character and beauty of the countryside; contribute to the conservation and enhancement of the natural environment; promote mixed use development and sustainable, accessible development.

The Framework makes clear how it expects local planning authorities to approach decision taking at paragraphs 186-187:

*“Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.*

*Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area”*

Fewer houses will be demolished in the revised scheme but all the Council owned maisonette blocks will still be demolished. The retained Council homes are benefitting from substantial investment through the Council’s Housing Revenue Account capital programme. The whole estate is benefitting from investment in the infrastructure of the estate through the provision of re-surfaced pavements, roads, green areas and new street furniture.

In comparing the development now approved with that submitted in 2006, it is important to appreciate the figure of 1400 dwelling previously stated was a ceiling, not a target. The new development proposed contains elements that sought outline permission in additions to those that sought full permission. The consideration of the more detailed design standards

have given rise to a more realistic development number being proposed. This is further reinforced by the need to address the failings of the original estate, in particular the limited and poor relationship of parking provision and amenity areas, (echoed in the responses to the public consultation exercises).

The original layout, based on the Radburn principles of design is typified by the separation of pedestrian and vehicle movement and characterised by cul-de-sacs, parking courts and alleyways between houses. The estate had little in the way of meaningful green areas, being largely urban with the exception of small private gardens and some communal spaces. It's layout and form lent itself to opportunistic crime and anti-social behaviour due to unsecured rear gardens that are evident in more traditional layouts of housing estates along with poor natural surveillance of the public realm. It gives rise to a confusion of backs and fronts to houses and there is poor legibility and way finding around the estate.

The estate has a poor reputation within Basildon due to the high incidence of crime and anti-social behaviour on the estate, and is ranked within the top 10% most deprived wards in England and third worst for education.

As such the solution requires a more drastic approach than simple refurbishment if the problems that are highlighted are to be overcome in the regeneration of the area.

The final phases of the scheme started in 2017 and are due to complete in 2024. The proposed development is fully in accordance with both local and national planning policies in that it is proposing housing within an existing urban area and seeking to regenerate and improve an area that has become very dilapidated over the years. National planning policy, as expressed through the National Planning Policy Framework, encourages local authorities to significantly boost the supply of housing and to provide a mix of housing to meet the needs of different groups within the community. The regeneration of the former Craylands estate has already commenced and to date 404 dwellings have been built under the Original and the Full Permission.

The CPO is required to enable the re-development of the north phase of the development.

The financial viability of the entire project has been scrutinised by an external organisation and has been assessed as viable. The Comprehensive Development Agreement (CDA) between the partners requires this viability test to be passed as a prerequisite for embarking on the next phase of development.

### **Why CPO action is considered necessary to deliver the original and revised proposals**

It is accepted practice to ensure CPOs are in place when radical changes are being made to the layout of existing estates, especially when the demolition of homes is required. Failure to secure the land required for the development in time can stop developments from progressing and developers normally require assurances regarding this prior to entering into contracts. A CPO ensures that timing can be controlled and that risks in relation to land assembly are managed. Swan will not be able to secure funding for the development without such control and assurances being available.

It was originally planned that the HCA would make the CPO on behalf of the partnership, but, in response to the introduction of the Localism Act 2011, the HCA decided to withdraw

from CPO activity in these matters nationally and pass them to the Local Authority. As a result of this, Cabinet agreed, in principle, to make a CPO, should one be required (Cabinet 7 February 2013 – min 84/2013).

The north and south phases of the redevelopment will each require their own CPO due to the lengthy nature of the regeneration scheme. Approval for the CPO for the south phase will be sought at a later date.

### **The land to be included in the CPO for the north phase**

It is intended that the north phase CPO will cover all the land and properties within the hatched areas as shown in **Enclosure No. 2** and these consist of 33 properties that are privately owned or are owned by Housing Associations and 74 properties owned and let by the Council on secure or short term arrangements. Once these are demolished the sites will be developed for new housing.

### **Voluntary negotiations, rehousing and compensation**

As is the Council's usual practice, all attempts will be made to reach negotiated purchases with all third parties and work commenced on these negotiations in March 2017. Past experience is that these properties can be bought by agreement if a fair offer is made. The Council has back-up policies to help people should they find it difficult to find alternative homes. Shared equity properties from the developer can be provided for owner-occupiers by Swan and re-housing for private tenants is available if required. Council tenants are fully provided for through the Council's "decant" policy. In practice, this means that secure tenants are offered properties suitable for their needs, where possible, in areas of their choice, within the borough. Statutory Home-loss and Disturbance payments are made to these tenants. Monetary compensation is also available to freeholders and long leaseholders as per statutory requirements. The CPO process ensures all eligible claimants receive commensurate compensation for their loss enhanced by shared equity offers within the Borough where required due to individual circumstances of freeholders and long leaseholders. The newly revised offer to owner occupiers is attached as **Enclosure No 4**. It is recognised that the offers may not meet everyone's need and some may require a more tailored approach. An example of this could be where a household has little or no equity and public housing is the best option.

Each resident will have the opportunity to discuss their particular circumstances and these will be taken into consideration whilst rehousing options are being considered. In the case of private owners and non-resident private owners and their tenants, an Independent Resident Advisor has been appointed by the developer to ensure they are aware of their legal entitlements.

Under the terms of the Development Agreement, the developer Swan, is responsible for funding the CPO and will fully indemnify the Council's costs.

### **OPTIONS**

Failure to put a CPO in place could substantially damage the progress of the redevelopment, conceivably allowing individuals to block the development which would prevent the completion of the much-needed regeneration of the estate. The required assurances that the Council's developer partner requires in order to proceed with the re-development scheme would not be in place so the scheme would not proceed.

## LEGISLATION/POLICY

Section 226(1)(a) of the Town and Country Planning Act 1990 allows a local planning authority to compulsorily acquire land assembling it to enable it to be improved, developed or redeveloped, provided that this will bring about social, economic or environmental benefits. These are as follows:

### Economic Benefits

The Development will enhance and contribute to the local economy by the creation of jobs and training opportunities associated with the construction stages. New residents are also likely to support existing local services and businesses, with a possible increase in local jobs as a result. In addition the new dwellings would offer homes to local residents who would contribute to the labour supply, some of whom would be likely to be local.

Beechwood Village Community Trust has been formed to enhance the life chances of the residents through initiatives providing economic, educational and health interventions on the estate. It is funded in perpetuity through income from the community assets, the shops and an annual charge to the new homes built on the estate.

### Social Benefits

The proposed housing will provide social benefits and will contribute to the health and vibrancy of the local community by providing towards a supply of good quality homes and open spaces to meet the needs of present and future generations. This will include much needed affordable housing totaling 30% of the new homes.

The Development will provide a mix of housing, particularly with the inclusion of custom build type housing in the West Phase which will allow residents the opportunity to design a house that matches their particular needs and preferences through a wide choice of options regarding the layout of the external and internal houses and the desired finishes to these.

The new residents will have the potential to add to the vibrancy of the area with their new energy and enthusiasm creating and sustaining an invigorated community. They could expand participation in local events and have the potential to introduce new skills and interests. The approved plans provide more community facilities, improve the pedestrian links within the estate and also improve the links to the surrounding areas.

The Development will create a safer more hospitable environment for local residents by opening up parts of the estate and removing some of the inhospitable un-overlooked areas which will improve the perceptions of safety and well-being of local residents.

When the regeneration of Craylands began the Indices of Multiple Deprivation (IMD) ranking for the estate was 3<sup>rd</sup> most deprived in Basildon. Whilst this position has slightly improved to 4<sup>th</sup>, the figures still show a pressing need for intervention. A full list of most recent IMD Analysis (2015) is attached to this report (**Enclosure no. 3**)

### Environmental Benefits

The proposals for the interventions in the north and south phases to remove the existing alleyways and create traditional street patterns to ease safe movement through the estates.



The introduction of a landscaped park area to the centre of the estate and the other areas of landscaping in the west and north phases will make a positive contribution to the environment.

Work is already underway to ensure areas of the Estate not improved directly by the demolition and rebuild will benefit from the project through investment in the environment through provision of newly surfaced pavements, roads and parking areas as well as replacement street furniture and planting.

The new homes will be built to high standards of sustainability providing affordable warmth for the residents through efficient heating and excellent levels of insulation.

### **Justification for the CPOs**

The test the Secretary of State applies in deciding if a CPO should be confirmed is that of a compelling case in the public interest. This is the test that the Council should similarly apply in considering whether or not to make a CPO. The test is considered to be met in this case because the benefits set out above substantially overcome the deficiencies in the estate and the effect on the people living in it, summarised in the background section and earlier reports.

Any CPO interferes with the human rights of those with an interest in the land. However whenever the compelling case test is met such interference is considered to be proportionate and lawful. The rights potentially affected are Article 1, peaceful enjoyment of possessions and Article 8 respect for private and life and home. Both are qualified rights subject to the public interest and economic benefits. The Council judges the social, economic and environmental benefits of the Development to outweigh the harm to private interests, taking into account the compensation rights available to the private interests. The UK's CPO procedures have been held compliant with the convention.

### **GENERAL INFORMATION**

#### Corporate Plan Promises and Core Principles

Due to the scale and effect of the regeneration scheme, the proposals meet all the Corporate Plan Promises and Core Principles. The best example is the Promise to enable regeneration and provide secure homes. The existing housing is very unpopular and the nature of the build renders it unsustainable in the longer term. The new housing will be of a high standard and the modern methods of construction used will be more energy efficient and will be sustainable in nature.

#### Financial Implications

As has already been stated, all costs the Council incurs in exercising its' powers under the CPOs proposed in the report will be met by the developer, Swan. It is not possible to identify the actual sums involved since it is not yet known the extent (if at all) to which the exercise of these powers will be used. The indemnity agreement will provide for the Council to be reimbursed the costs it incurs without any undue delay between the outflow of funds from the Council and reimbursement by the developer and provide for a compensation amount to be paid if such a delay does occur. It is imperative that the Council keeps detailed records of expenditure incurred in respect of any CPO and this should include the cost of officer time spent on the matter.

It is important to determine whether or not the option to tax has been exercised on any of the non-residential land that may be subject to a CPO as this may affect the costs incurred and further advice may be necessary. Where the Council is meeting third party costs, e.g. solicitor's fees, it will not be possible to recover the VAT from HMRC so the costs to be met by the developer is the gross (i.e. including VAT) sum.

The Section 151 Officer is authorised to make any amendments necessary to capital and revenue Budgets to accommodate the financial implications of a CPO under Financial Regulations 7 (5) (iii).

### Risk Management Implications

The risk management implications are set out at **Enclosure No. 1**.

### Inclusion, Diversity and Community Cohesion Implications

A Service Impact Assessment (SIA) has been conducted and this shows that any equalities implications on grounds of ethnicity, gender, disability, age, sexual orientation, religion and any relating to community cohesion based on its' findings can be avoided if Council policies and the compensation and rehousing proposals in the report are followed.

In exercising its compulsory purchase and related powers (e.g. powers of entry) the Council as an acquiring authority will have regard to the effect of any differential impacts on groups with protected characteristics.

Particular care must be taken to ensure anyone who currently has or needs home adaptations to allow them to properly access and enjoy their home is provided with the necessary adaptations and the location of their new home is suitable taking their needs into account.

### Other Relevant Considerations

The regeneration scheme has benefitted from much public consultation and the design and scope of the development is a product of that.

A Statement of Reasons will be produced to support the CPO.

Compliance with the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010.

In exercising their compulsory purchase and related powers (e.g. powers of entry) the Council as acquiring authority has had and will have regard to the effect of any differential impacts on groups with protected characteristics. In particular the Council has ensured that consultation on the Development has been available to all protected groups through frequent on-going public events. The Council has carried out Equalities Act assessments on those likely to be affected by the Order to date and will assess all others who may be identified as occupants change. The results of the assessments are being monitored on an individual household basis and their individual needs are being considered in all cases. The benefits of the development and the compensation and rehousing proposals in the report will apply to all protected groups and the Council's housing allocation policies are Equality Act compliant.

### Background Papers

None