


Report Title	Resolution for authority to Make a Compulsory Purchase Order to facilitate the Regeneration of Elm Grove		
Committee	Strategy and Resources Committee		
Meeting Date	19 February 2024		
Chair	Councillor Ruth Dombey		
Report From	Spencer Palmer, Strategic Director of Environment, Housing and Neighbourhoods		
Report Author(s)	Michael Hunte, Housing Regeneration Manager 020 8770 4687		
Ward(s) Affected	Sutton Central		
Ambitious for Sutton priorities	<ul style="list-style-type: none"> • Quality and affordable housing • Action on climate change • An inclusive place for everyone • Strong and fair economic growth 		
Open/Exempt	<ul style="list-style-type: none"> • Open, with the exception of Appendix C, by virtue of paragraph 3, Schedule 12A of the Local Government Act 1972. 		
Signed		Date	8 February 2024

1 Summary

- 1.1 The Council is progressing the regeneration of Elm Grove in accordance with the Ambitious for Sutton Corporate Plan priorities for Sutton to provide Quality and Affordable Housing. The regeneration of Elm Grove will also contribute to the Council's ambitions to take action on climate change, the creation of inclusive places for everyone and to enable strong and fair economic growth in Sutton.
- 1.2 Although the Council owns the majority of the land and property interests involved with the regeneration scheme, there are a number of properties that are not owned by the Council. It is essential to acquire all of the land and properties before the works can start. Although good progress is being made to agree the purchase of these properties, there is a risk that timely acquisition agreements will not be made with all. To mitigate the risk of the entire scheme being delayed because of the failure to reach agreement with a small number of private owners, it is necessary for the Council to make a Compulsory Purchase Order (CPO or Order) to provide the compulsory purchase powers that may be used as a last resort.

- 1.3 This report therefore seeks a resolution for authority to make the Order, to appropriately manage the land assembly risk, to enable the regeneration of Elm Grove to proceed.

2 Recommendations

- 2.1 To make a Compulsory Purchase Order ("Order") pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 and section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of all land interests in the Order Land identified edged red on the Order Map, and the new rights over the land coloured blue on the Order Map and to authorise the publication and service of any press, site and individual notices relating to the making of the Order.
- 2.2 To authorise the Strategic Director of Resources to make any necessary additions, deletions or amendments to the Order and to settle the final form and content of the Order and all associated documentation including the Statement of Reasons and to take all actions necessary to pursue the Order and secure its confirmation by the Secretary of State, including the preparation and presentation of the Council's case at any public inquiry.
- 2.3 To authorise the Strategic Director of Resources to enter into any agreements with landowners or statutory undertakers as applicable, setting out the terms for withdrawal of any objections to the Order, including where appropriate seeking exclusion of land from the Order and making arrangements relating to the payment of compensation and dealing with any blight notices served in connection with the Order.
- 2.4 To authorise the Strategic Director of Resources to take all steps necessary to implement the Order including the publication and service of notices of confirmation of the Order and thereafter to execute and serve any general vesting declarations and/or notices to treat and notices of entry, including, if required, High Court Enforcement Officer notices; and all steps in any legal proceedings related to the Order including referral and conduct of disputes relating to compulsory purchase compensation to the Upper Tribunal (Lands Chamber) and/or the courts and any appeals.
- 2.5 To delegate authority to the Strategic Director of Resources to determine whether any part of the Order Land should be appropriated for planning purposes pursuant to section 122 Local Government Act 1972 and section 227 Town and Country Planning Act 1990 to facilitate the redevelopment of Elm Grove and to take all necessary steps to affect the appropriation of the relevant land for planning purposes (if required); and to delegate authority to the Strategic Director of Resources to approve the making of an application to the Secretary of State for consent to appropriate Housing Revenue Account (HRA) land within the Order Land for planning purposes pursuant to section 19 Housing Act 1985 to facilitate the redevelopment of Elm Grove (if required).

3 Background and Key Information

- 3.1 The Elm Grove Estate was built by the Council in the early 1980s and is located at the northern end of the high street (Sutton Town Centre). Covering 0.93 hectares, the estate is made up of three-storey blocks of one and two bed flats, adjacent to two-storey three bed terraced houses and bungalows. The current tenure breakdown is set out in the table below.

Tenure (as of January 2024)	Number of properties
Resident Leaseholders	8
Absentee Leaseholders (inc Private Tenants)	2
Resident Freeholders	4
Absentee Freeholders (inc Private Tenants)	1
Secure Tenants	26
Non-Secure Tenants (Temporary Accommodation)	27
Acquired Leasehold Property	1
Void Properties	4
Total	73

- 3.2 The regeneration of Elm Grove (STC45) is allocated in the Sutton Local Plan (2016-2031) and Sutton Town Centre Masterplan (2016). It is an important part of the Council's ambitions for transforming Sutton Town Centre and its redevelopment is being progressed as part of the Council's wider programme of estate and town centre regeneration. It will see delivery of up to 300 new high quality and sustainable homes, including new homes for existing residents. Up to 50% will be affordable, comprising 1, 2 and 3 bedroom flats and maisonettes. It will add new amenity space with access to communal courtyards and play space on-site, alongside public realm improvements, including a new multi-functional east-west link providing a direct connection from Throwley Way to the high street.
- 3.3 In July 2022 the Housing Economy and Business (HEB) Committee authorised the regeneration plans to be taken forward, following an extensive programme of consultation and engagement with Elm Grove residents, with 78.6% voting in favour of the proposal to redevelop the estate.
- 3.4 On 24 January 2023 HEB approved the business case and delivery strategy for Elm Grove. This included authority to progress the outline planning application, the process to select a development partner to deliver the new homes and to take forward the land assembly strategy to acquire the private land interests needed to facilitate the redevelopment.
- 3.5 The acquisition strategy has been developed in accordance with the Mayor of London's Good Practice Guide to Estate Regeneration (February 2018), and promotes negotiating with private owners to acquire their land interest by mutual agreement, with the use of compulsory purchase power as a last result. This approach is also embedded in the

Landlord Offer, which also offers a fair deal for homeowners with options to buy a new home on the estate, alongside a right to return to secure tenants.

- 3.6 The Council has endeavoured to acquire all interests by negotiation, however it has not been possible to reach agreement with all of the parties affected. Since formal negotiations commenced in Spring 2023 all 16 homeowners have been contacted to discuss the purchase of their property by agreement and to explain the home swap option (where applicable) under the Landlord Offer.
- 3.7 The Council has already completed the purchase of 1 property and agreed terms to acquire 4 properties by the end of March. A further 6 owners have agreed an option to sell their home to the Council so that they can buy a new home on the new estate, whilst the remaining 5 owners are currently considering their offer and options.
- 3.8 There are 3 commercial interests associated with Market House, 216-220 High Street. These include The Sound Lounge, Volunteer Centre Sutton and Successful Sutton - Business Improvement District. The Council has continued to work collaboratively with each group and have evolved its plans to ensure that each group can remain in the building, as part of the regeneration.
- 3.9 It is also unlikely that given the nature and number of some of these interests, that all agreements will be completed within a reasonable timescale. To mitigate these risks, the use of compulsory purchase powers is required to secure the land for redevelopment.
- 3.10 The Council will however continue to make reasonable attempts to acquire outstanding interests by negotiation, with a view to limiting the number of interests that need to be compulsorily acquired.
- 3.11 When approving the scheme, the HEB committee noted that the Strategy and Resources (S&R) Committee would be asked (at a future meeting) to approve the making of a Compulsory Purchase Order.

4 Benefits to Sutton and its Residents

- 4.1 The Council has given careful consideration to all relevant issues and is satisfied that there is a compelling case in the public interest for it to use its powers of compulsory purchase to facilitate the regeneration of Elm Grove. The proposed acquisitions will facilitate the redevelopment and improvement of the estate; and contribute to the promotion and improvement of the economic, social and environmental wellbeing of Sutton and its communities.
- 4.2 The scheme will deliver up to 300 high quality new mixed tenure homes, alongside an improved environment. Homes will be built to meet modern design, quality, energy and safety standards and will include private outdoor space for every home with new resident-only courtyard gardens with safe play areas for children.

- 4.3 It will also make a significant contribution to the social, economic and environmental well-being of the area and deliver wider community benefits through social value, skills and employment opportunities and planning gain through Community Infrastructure Levy and section 106 contributions. A detailed description of the benefits that will be derived from the redevelopment are described at section 1.6 of the draft Statement of Reasons at Appendix A.

5 Compulsory Purchase Order Details

The Order Land, Order Map and Order Schedule

- 5.1 The Council is seeking to make a Compulsory Purchase Order ("Order") under section 226(1)(a) of the Town and Country Planning Act 1990. The site that is proposed for redevelopment and subject of the Order comprises the Elm Grove Estate and the Market House building at 216 - 220 High Street ("Order Land").
- 5.2 The extent of this land is shown edged red and coloured pink in respect of land interests to be acquired, on the Order Map ("Order Map") and described fully in section 3 of the draft Statement of Reasons (Appendix A) and shown shaded [pink] and [blue] on the draft Order Map at Appendix B.
- 5.3 The majority of the land is owned by the Council, however it is also subject to a significant number of leasehold and freehold interests, tenancies and other rights that will need to be acquired. The scheme also requires the acquisition of a number of privately owned parking spaces to deliver the improvements to the rear of the high street, as well as any private expressed or implied rights that may have been granted over the land.
- 5.4 The Council also wishes to acquire new rights over the land edged blue in the Order Map, including the temporary possession of land required to carry out construction. Such rights are needed to permit site hoarding, oversailing, party wall arrangements and the erection of scaffolding to undertake the redevelopment. The list of interests affected by the proposal are contained in the draft Order Schedule at Appendix C, which is exempt from publication.

Guidance on Compulsory Purchase

- 5.5 The Guidance on Compulsory Purchase published by the Department for Levelling Up, Housing and Communities and the Crichel Down Rules (July 2019) (the Guidance) sets out the considerations to be applied when making a resolution to exercise such powers and the factors to be considered by the Secretary of State when deciding whether to confirm an Order.
- 5.6 Whilst compulsory powers should only be exercised as a last resort, the Secretary of State recognises in paragraph 2 of the Guidance, that if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Accordingly, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to plan a

compulsory purchase timetable as a contingency measure; and initiate formal procedures, at the same time as seeking to purchase land by agreement.

Statement of Reasons

- 5.7 The Statement of Reasons is a non-statutory document prepared in accordance with the Guidance and explains the reasons and justification for making the Order.
- 5.8 In the case of Elm Grove, the justification for making the Order is to address the underlying concerns about the quality and sustainability of the current homes and estate, which have been highlighted by residents. This is set out in the draft Statement of Reasons, with the Council's ambition to address these issues by improving Elm Grove and maximising the opportunities to provide new high quality housing and place-making, alongside delivering social and economic benefits.
- 5.9 The Statement of Reasons will be finalised to reflect matters as at the time the Order is made. It will be served on relevant parties with the required statutory notices and submitted to the Secretary of State. If the Secretary of State confirms the Order, this will enable the Council to compulsorily acquire the land included in the Order to facilitate the redevelopment of Elm Grove. A copy of the draft Order is included at Appendix D to this report.
- 5.10 Since the delivery strategy was approved last year there have been no material circumstances to alter the justification for using compulsory purchase powers. Instead the case has been strengthened further through the progress made to reduce the risk and impediments to delivery across the following areas:
- Design development and Planning (as set out in sections 5 and 7 of the draft Statement of Reasons),
 - Selection of a development partner,
 - Securing funding to ensure the scheme is viable and deliverable,
 - Maintaining resident support,
 - The rehousing of existing council tenants, and
 - Negotiations to acquire private land and property interests

6 Implications

- 6.1 By agreeing to these recommendations the Council is committing to using its powers to compulsorily acquire the third party land interests required to deliver the redevelopment of Elm Grove.
- 6.2 Failure to approve these recommendations would remove the Council's ability to use its compulsory purchase powers to compulsorily acquire the land interests it needs to deliver

the scheme. This would place greater risk on the Council's as a partner and party to the Development Agreement.

- 6.3 If these recommendations are not approved the Council would likely fail in its duty to deliver better quality homes and an improved environment for the residents of Elm Grove, or future generations in housing need. This would also undermine the commitments made in the Landlord Offer and the Council's ambitions to deliver quality and affordable housing.
- 6.4 This would ultimately jeopardise the delivery of a key priority regeneration scheme that is an integral part of the Sutton Town Centre Masterplan, Sutton Local Plan and Estate Regeneration Programme. This would also present a significant reputational risk to the Council and threaten the funding already secured under the GLA's affordable housing programme. Subsequently this could also result in the Council having to fund abortive costs that have already been spent on bringing forward the scheme to this stage, currently £2.5m.
- 6.5 Indicative Programme

#	Description	Date
1	Committee approval (Resolution to make a CPO)	February 2024
2	Council make the CPO	March 2024
3	CPO consideration and Public Inquiry	September 2024
4	CPO Decision	January 2025
5	Notice of intention to make General Vesting Declaration (GDV)	February 2025
6	Make GVD	April 2025
7	Take possession	June 2025

Equalities Implications

- 6.6 The Equality Impact Assessment (EQIA) for Elm Grove recognises the Council's duties under the Equality Act 2010, to give due regard to equality by supporting the most vulnerable. The Council is committed to meeting its duty and in applying an inclusive, flexible and collaborative approach to resident involvement and engagement on the proposals for Elm Grove, which ensures residents are at the heart of the process.
- 6.7 Through the commitments made in the Landlord Offer, the regeneration of Elm Grove will provide positive opportunities for current and future residents, including those with the Protected Characteristics, by making a significant contribution to the delivery of new better quality homes and places. This includes more affordable homes that are of a better standard, are safer, more energy efficient and accessible. The Council's guarantees will provide support by way of rehousing options, homelessness compensation and disturbance payments, as well as through more general forms of support and assistance with moving home, particularly for elderly and more vulnerable residents. This also includes priority

rehousing options for eligible tenants and an attractive range of home swap options to enable resident homeowners to afford to buy a new home on the estate or a replacement home elsewhere.

- 6.8 Although there are some adverse impacts associated with the regeneration process, which can disproportionately affect older and more vulnerable residents as a result of the stress and anxiety caused by the disruption of moving home, these are mainly short term impacts which can be managed sensitively through effectively supporting those affected and by maintaining good communication, consultation and engagement. The EQIA acknowledges the different needs of residents, but overall demonstrates that regeneration can provide mainly positive outcomes by improving the quality of homes and life for local people, together with delivering added social value through new jobs and training opportunities which support the social and economic wellbeing of local residents.
- 6.9 The EQIA for Elm Grove is at Appendix E to this report and the assessment of impact will continue to be monitored and developed, as the project progresses.

7 Finance and Legal Commentary

Finance Comments

- 7.1 All costs of the compulsory purchase process will be met within the existing Scheme budget (reported in the HRA Business Plan) and there is an allowance to cover any additional legal costs associated. Valuations are to be carried out to establish the appropriate value for each purchase which will then be subject to negotiations on a case by case basis.
- 7.2 Delivery of the programme within budget is a risk and will be mitigated through detailed budget and programme monitoring. This will include monitoring the costs associated with the compulsory purchase process detailed in this report.

Legal Comments

- 7.3 The Council has wide powers to acquire, sell, appropriate and develop land. Specific property related powers are very wide and include the following:
- Sections 120 to 123 of the Local Government Act 1972
 - Sections 226 to 233 of the Town and Country Planning Act 1990
 - Local Authorities (Land) Act 1963 (development) (LALA 63)
 - Housing Act 1985 and
 - Miscellaneous other powers including section 111 Local Government Act 1972 and section 1 of the Localism Act 2011 to 'top' up the above powers

Compulsory Purchase Order Statutory Powers

- 7.4 To progress the redevelopment of Elm Grove, vacant possession of the site will be required. The Council will seek to acquire all relevant interests in the site, however where negotiations fail to reach a mutual agreement within a reasonable timescale to enable the redevelopment, the Council will seek to use its compulsory purchase powers.
- 7.5 Section 226(1)(a) of the Town and Country Planning Act 1990 (the Act) enables the Council to acquire land compulsorily in order to facilitate the carrying out of development, redevelopment or improvement on or in relation to land in its area.
- 7.6 Section 226(1)(a) is subject to sub-section (1A) which provides that the Council must not exercise the power unless it thinks that the proposed development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic and/or social and/or environmental well-being of its area.
- 7.7 It should be noted that the use of compulsory purchase powers as a measure of last resort and negotiations to acquire the relevant land interests by agreement will still continue throughout the process.
- 7.8 Section 6 of the Human Rights 1998 Act prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. The main article of the Convention that is of importance in circumstances where the council is considering making a compulsory purchase order is Article 1 of the First Protocol – the protection of property which provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest.
- 7.9 The Courts have confirmed that a compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should therefore be sure that the purpose for which it is making a compulsory purchase order sufficiently justifies interfering with the human rights of those with an interest in the land affected, having regard, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and Article 8 of the Convention.
- 7.10 The Committee is directed to section 7 of the draft Statement of Reasons which sets out how the proposed compulsory acquisition of the Order Land is considered to fall within the provisions of section 226 and deliver the well-being objectives required by Section 226(1A). In summary, it is considered that transformational change from the Order Scheme, as well as the direct benefits of the redevelopment, will contribute to significantly improving the social and economic well-being of the area and its local community. With regard to the landowners, the compulsory purchase process will ensure that the landowners have an opportunity to object to the proposals and are compensated appropriately in the event that the Order is made and confirmed. It is considered that there is a compelling case in the public interest to make the Order.

Land Referencing

- 7.11 All owners and tenants have been contacted as part of the land referencing process that has been undertaken by Land Assembly Services on behalf of the Council. The land referencing exercise has identified all owners, tenants, occupiers and others with a legal interest in the land affected by the Order.

Land Appropriation.

- 7.12 The Committee is asked to delegate authority to the Strategic Director of Resources to approve the appropriation of land within the Order Land that is owned by the Council for planning purposes, to include the appropriation of any land that is held within the General Fund to the Housing Revenue Account (if required). In the case of housing land, any appropriation would be subject to the requirements of section 19(2) of the Housing Act 1985 which provides that no part of the land consisting of a house or part of a house (acquired for housing purposes) should be appropriated without consent of the Secretary of State and therefore the Strategy and Resources Committee will be asked to authorise seeking Secretary of State Consent
- 7.13 The Council intends to seek a release of any covenants which would prevent implementation of the proposed development, where the land benefitting can be identified. If a release cannot be obtained or the benefitting land cannot be identified, the Council may consider appropriating the land for planning purposes pursuant to section 122 Local Government Act 1972 and section 227 Town and Country Planning Act 1990 so that it can take the benefit of section 203 Housing and Planning Act 2016.
- 7.14 Section 203 contains powers that permit persons to override easements and other rights e.g. easements, restrictive covenants and rights to light; in relation to the development or use of land in specified circumstances. Any rights or interests that are overridden are converted into a right to claim compensation.

Legal Risks

- 7.15 Risk of objections to the making of the Order - Where a qualifying person objects to the proposed Order, and does not withdraw their objection, or their objection cannot be disregarded (e.g. because it relates solely to compensation), the objection is referred to as a 'remaining objection.' Where there are remaining objections, the confirming authority must consider the remaining objection(s) under either the written representations procedure, or by convening a Public Inquiry. The Council would then need to prepare evidence to justify the making of the Order to satisfy the confirming authority that there is a compelling case in the public interest which justifies confirmation of the Order. Objectors will also have the opportunity to put their case forward.
- 7.16 Risk the Order is not confirmed - Should the Secretary of State (or the delegated inspector) decline to confirm the Order (in part or in full), the delivery of the scheme may be jeopardised and the Council may also be liable for other parties' costs.

- 7.17 Risk the Order is challenged. - There is a risk that the confirmation of the Order could be challenged by a third party. The Council has sought external legal advice in relation to the making of the Order and will follow all due process to mitigate against such a risk.
- 7.18 In coming to its decision on the recommendations contained in this report, the Committee must ensure that the decision is one which is rational and reasonable in public law terms. This requires the Committee to consider all relevant information and disregard any information which is irrelevant. The Council must consider the usual fiduciary, best value, crime and disorder reduction, equalities, health and wellbeing and other relevant overarching duties when making decisions, as well as any explicit requirements placed on a power. This needs to be considered both generally and specifically to those who will directly gain or suffer from the proposal. This balancing exercise is for the Council to determine after having given due consideration to the appropriate weight to be afforded to the relevant factors.

8 Appendices and Background Documents

8.1 Appendices

Appendix Letter	Appendix Title
A	Draft Statement of Reasons
B	Draft Order Map
C (EXEMPT)	Draft Order Schedule
D	Draft Order
E	Equalities Impact Assessment (EQIA)

8.2 Background Documents

Date of Expiry	Background Document
N/A	N/A

9 Consultations

Consultees	Yes/No	Officer	Date of Comments
Finance	Yes	Victoria Goddard Assistant Director, Finance	01/02/2024

Legal	Yes	Rebecca Pendlebury, Partner, Bevan Brittan LLP (External Legal Adviser)	12/01/2024
		Amrita Chuhan, Assistant Head of Property and Commercial Law, South London Legal Partnership	12/01/2024
		Tim Martin Assistant Director Law and Governance (Monitoring Officer)	26/01/2024
EQIA	Yes	Simon Latham Assistant Director of Housing, Planning and Regeneration	02/02/2024
Climate Impact Assessment	Yes	Simon Latham Assistant Director of Housing, Planning and Regeneration	31/01/2024