

# Cabinet



Date of meeting: 08 February 2022

Title of Report: **Compulsory Purchase Order Resolution at Bath Street West**

Lead Member: Councillor Patrick Nicholson

Lead Strategic Director: Anthony Payne (Strategic Director for Place)

Author: David Parkes

Contact Email: david.parkes@plymouth.gov.uk

Your Reference: Bath Street

Key Decision: No

**Confidentiality: Part I - Official**

## 1. Purpose of Report

This report seeks approval to make a Compulsory Purchase Order (CPO) to complete the land assembly at Bath Street which will enable the development of the site to progress

## 2. Recommendations

It is recommended that Cabinet agrees to:

1. implement a Compulsory Purchase Order, if required, pursuant to Section 226(1)(a) of the Town and Country Planning Act 1990 in respect of the Land to the West of Bath Street identified as PL30 in the Joint Local Plan (JLP) and shaded on Figure 1 below (“the Order Land”)
2. delegate to the Service Director for Economic Development and Head of Legal Services the power to effect the making, confirmation and implementation of such a CPO and to take all necessary steps to give effect to the CPO in respect of the Order Land including, but not limited to, the following:
  - a) finalise a Statement of Reasons to properly reflect the Council's position regarding the proposed CPO so as to properly present the Council's case;
  - b) In making the CPO, the publication and service of any press, site and individual notices and other correspondence for such making;
  - c) acquire for planning purposes all interests in land and new rights within the Order Land as may be necessary to facilitate the Scheme, either by agreement or compulsorily, including entering into negotiations with any third parties for the acquisition of their land interests and/or for new rights over their land (as appropriate), the payment of compensation and dealing with any blight notices served in connection with the CPO;
  - d) approve agreements with land owners or statutory undertakers as applicable
  - e) make any additions, deletions or amendments to the plan at Appendix 1 and to seek any requisite modifications to the CPO and maps;
  - f) seek confirmation of the CPO by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act 1981) (the 1981

- Act), including the preparation and presentation of the Council's case at any public inquiry which may be necessary;
- g) publication and service of notices of confirmation of the CPO and thereafter to execute and serve any general vesting declarations and/or notices to treat and notices of entry, and any other notices or correspondence to acquire those interests within the area;
  - h) referral and conduct of disputes, relating to compulsory purchase compensation, at the Upper Tribunal (Lands Chamber).
3. Delegates authority to the Service Director for Economic Development and the Service Director for Finance to approve the financial terms of the compensation arising.
  4. Authorises in accordance with section 122 of the Local Government Act 1972, the appropriation of land owned by the Council within the Order Land, to planning purposes pursuant to section 203 of the Housing and Planning Act 2016, so development may proceed without obstruction in respect of any claimed third-party rights.

**Reasons :** The purpose of the CPO is to secure the acquisition of all relevant interests in the Order Land.

### **Alternative options considered and rejected**

A comprehensive development of this site as envisaged under policy PL30 of the Joint Local Plan could not proceed without securing the subject sites. Although every effort will be made to achieve a negotiated outcome it is appropriate that CPO action is considered at this stage as a fallback to such negotiations.

### **Relevance to the Corporate Plan and/or the Plymouth Plan**

The scheme contributes to the Council's corporate policies of creating a vibrant economy, delivering jobs and will provide new homes in a sustainable setting with easy access to the City Centre and transport links.

#### **HEA8 Meeting Local Housing Needs**

The area between Bath Street and Martin Street is identified as an area suitable for comprehensive mixed use redevelopment encompassing residential, offices, small scale retail and cultural and community uses. Whilst the delivery of up to 300 new homes is envisaged under JLP policy PLY30 the more likely scale of development would be 100-150 affordable homes

#### **INT3: Positioning Plymouth as a Major UK Destination**

Bath Street provides an attractive pedestrian link from the waterfront and deep water docks at Millbay to the West End of the City Centre and provides the main access for visitors from cruise liners to the City. The development will establish a new street vernacular and, along with the new Moxy Marriot hotel, currently under construction, create a new identity for this area of the City Centre.

#### **PLY6: Improving Plymouth's City Centre**

*Plymouth City Centre will be renewed and enhanced through a combination of major new developments, proactive management of change and support for community and trader led initiatives. This will deliver a modern, high quality, vibrant, accessible and adaptable centre that reflects its status alongside the waterfront as the showcase of Plymouth.*

The West End of the City Centre is itself a key regeneration area that will be supported by development plans for a new combined health hub of 65,000 sq ft at Colin Campbell Court bringing 200 new jobs and over 2,500 visitors a day to the City. This is part of wider plans to significantly improve and regenerate the City Centre.

**PLY30: Bath Street West**

*Land at Bath Street West is allocated for a comprehensive residential led mixed-use redevelopment. Uses which will be supported include residential, offices, small scale retail, cultural and community uses.*

**Implications for the Medium Term Financial Plan and Resource Implications:**

Resources are already identified, allocated and in place and set out in Part II of this report.

**Carbon Footprint (Environmental) Implications:**

This is a highly sustainable location with access to alternative transport options, services and facilities within the City Centre. The developer will be encouraged to follow a sustainable development strategy subject to viability.

**Other Implications: e.g. Health and Safety, Risk Management, Child Poverty:**

Seeking CPO action at this point is part of the project’s risk mitigation strategy.

**3. Appendices**

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>											
		1	2	3	4	5	6	7	8	9	10	11	
1	Part II (Exempt-Commercially sensitive)												
2	Equalities Impact Assessment												

**Background papers:**

Title of any background paper(s)	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
	1	2	3	4	5	6	7

**Sign off:**

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Originating Senior Leadership Team member: Anthony Payne

Please confirm the Strategic Director(s) has agreed the report? Yes

Date agreed: 25/01/2022

Cabinet Member approval: Approved verbally by Cllr Patrick Nicholson

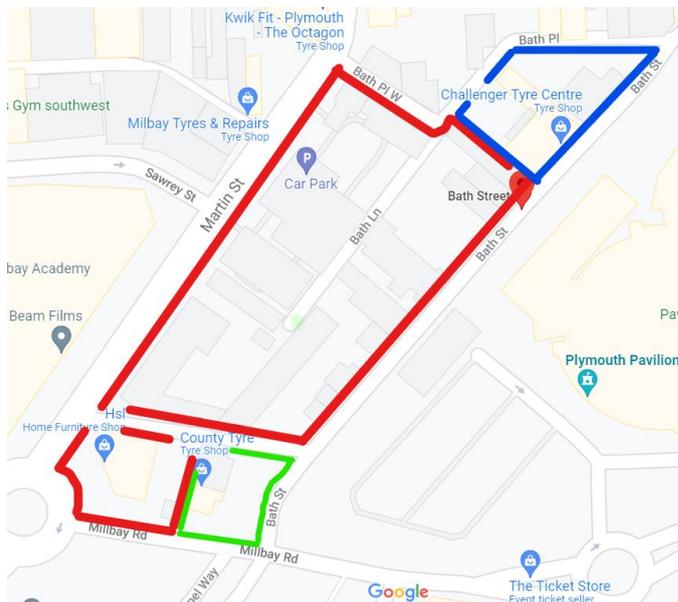
Date approved: 25/01/2022

## 1. Purpose of Report

1.1. This report seeks approval to make a Compulsory Purchase Order (CPO) to complete the land assembly at Bath Street which will enable the development of the site to progress

## 2. Background

- 2.1. The Council recently invested £6m in public realm improvement works to transform Bath Street (Millbay Boulevard) in support of the regeneration of this area and improve links between Millbay and the City Centre. The Council's ambitions for regeneration of the area around Bath Street are captured in policies PLY30 (comprising the subject sites) and PLY31 (Plymouth Pavilions) of the Joint Local Plan (JLP)
- 2.2. Supporting this regeneration plan, the Council has already acquired the land to the north west of Bath Street outlined in red on Figure 1 comprising around 2 acres and is now seeking to complete the site assembly by acquiring the green and blue parcels.
- 2.3. The aspiration is to deliver between 100 to 150 new affordable homes along with associated infrastructure ("the Scheme"). The Council have selected their preferred development partner (PCH) who are now ready to move forward to deliver this.



**Figure 2**

2.4. Site acquisitions have been supported by a loan from Homes England (previously Homes and Communities Agency) and some of this loan remains available to complete the site assembly. This will include:-

- the County Tyres depot, outlined in green on Fig 2,
- the area outlined in blue that includes the Challenger Tyres depot along with Shekinah and other minor interests,
- highways such as Martin Lane and Bath Lane along with any other residual interests.

2.5. Whilst negotiations continue and it is hoped that agreement can be reached directly with the respective parties, the Council needs to have confidence in being able to deliver vacant possession at the appropriate time to deliver the Scheme.

### 3. Reasons for this decision

3.1. The purpose of the CPO is to secure the acquisition of all relevant interests in the Order Land.

### 4. Statutory requirements

#### Practical negotiation

4.1. The Government's "Guidance on Compulsory purchase process and The Crichel Down Rules" (Ministry for Housing Communities and Local Government CPO Guidance July 2019) (the "CPO Guidance") at paragraph 17 states that acquiring authorities should provide evidence that meaningful attempts at negotiation have been pursued.

4.2. Compulsory purchase is a last resort and may not be necessary in this case if a settlement can be reached by negotiation. It is commonly acknowledged that a negotiated settlement usually produces the best results for both parties.

4.3. In this case the Council has made significant efforts to acquire all interests by voluntary agreement. The Guidance expects that the Council will be required to continue those efforts and detailed evidence of those further efforts should be available during the making of a CPO.

#### Funding

4.4. Funding for the scheme would need to be identified to demonstrate capacity to progress the scheme. In this case the funding for the initial feasibility and planning application phases of the project will be provided jointly by the Council and developer and this was sanctioned by the PCH board in November 2021. The developer will hold responsibility for the capital funding of the Scheme and will be applying for Affordable Housing Grant through Homes England.

4.5. It is anticipated that the cost of the land acquisitions would be funded through the residue of the Homes England loan that was provided for that purpose.

#### Legal

4.6. The compulsory purchase process is governed by law, principally the Acquisition of Land Act 1981. There is a public and lawful process which must be followed by the Council to secure the Secretary of State's confirmation of the CPO.

4.7. Under section 226(1)(a) of the Town and Country Planning Act 1990 the Council has the power, on being authorised to do so by the Secretary of State, to acquire compulsorily any land in their area if it thinks the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. The Council must not exercise the power under section 226(1)(a) unless it thinks the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the

promotion or improvement of the social well-being of their area; (c) the promotion or improvement of the environmental well-being of their area.

- 4.8. The Guidance states that the Council must demonstrate a compelling case in the public interest and that the public benefits that will arise from the purpose for which the land is to be acquired i.e the Scheme outweighs the impact on those affected. On the basis of legal advice and the Guidance officers are of the view that such a compelling case can be demonstrated from the desirability of implementing the Scheme.
- 4.9. As outlined in this report The Scheme forms part of the wider regeneration plan for this area as outlined in policies PLY 30 and 31 of the adopted Joint Local Plan to provide a new gateway into the City Centre from Millbay Docks. Without the acquisition of the subject sites these regeneration plans would be significantly compromised and the adopted policy objectives would not be fulfilled.
- 4.10. The Council has been in contact and initiated discussions with those whose land and interests are required for the Scheme, and the preference remains to acquire the land and interests by agreement. However, without the use of compulsory purchase powers it may not be possible to acquire all of the required land and interests within a reasonable timeframe.
- 4.11. Those who wish to object to a CPO may do so and are entitled to request a public inquiry be held to consider the case for, and the objections to, the Order. Those whose land and interests are acquired will be entitled to compensation calculated on the basis of legislation and related case law.
- 4.12. The preparation of a CPO and related documents is a technical and complex area carrying a risk of challenge. The Council would retain experienced legal advice throughout the process.

### **Human Rights**

- 4.13. Consideration must also be given to the interference of rights protected by the Human Rights Act 1998, including Article 8 (respect for private and family life and home) and Article 1 (the right to peaceful enjoyment of property) of the European Convention on Human Rights. A decision to make a CPO must strike a fair balance between the public interest associated with the regeneration of the land and interference with private rights.
- 4.14. Officers consider that there is a compelling case in the public interest for the exercise of the Council's CPO powers and that, as a result, any interference with the private rights of those affected as a result of the CPO is lawful, justified and proportionate.

### **5. Equalities and Diversity**

- 5.1. The public sector equality duty under section 149 of the Equality Act 2010 requires the Council to have due regard to: (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; and (ii) the need to advance equality of opportunity between persons who share a protected characteristic and persons who do not share it.
- 5.2. Officers have taken this into account in the assessment of the CPO and Cabinet must be mindful of this duty when considering the recommendations in this Report.
- 5.3. The CPO by assisting with implementation of the Scheme will have a positive impact on equalities in general. To ensure that this is the case an Equalities Impact Assessment has been

prepared specifically with regards to making the CPO. The assessment has been appended to this report at Appendix 5. No potential equalities impacts have been identified at this stage, but monitoring will be required.

## 6. Alternative options considered and rejected

- 6.1. A comprehensive development of this site as envisaged under policy PL30 of the Joint Local Plan could not proceed without securing the subject sites. Although every effort will be made to achieve a negotiated outcome it is appropriate that CPO action is considered at this stage as a fallback to such negotiations.

## 7. Relevance to the Corporate Plan and/or the Plymouth Plan

- 7.1. The scheme contributes to the Council's corporate policies of creating a vibrant economy, delivering jobs and will provide new homes in a sustainable setting with easy access to the City Centre and transport links.

### HEA8 Meeting Local Housing Needs

- 7.2. The area between Bath Street and Martin Street is identified as an area suitable for comprehensive mixed use redevelopment encompassing residential, offices, small scale retail and cultural and community uses. Whilst the delivery of up to 300 new homes is envisaged under JLP policy PLY30 the more likely scale of development would be 100-150 affordable homes

### INT3: Positioning Plymouth as a Major UK Destination

- 7.3. Bath Street provides an attractive pedestrian link from the waterfront and deep water docks at Millbay to the West End of the City Centre and provides the main access for visitors from cruise liners to the City. The development will establish a new street vernacular and, along with the new Moxy Marriot hotel, currently under construction, create a new identity for this area of the City Centre.

### PLY6: Improving Plymouth's City Centre

- 7.4. *Plymouth City Centre will be renewed and enhanced through a combination of major new developments, proactive management of change and support for community and trader led initiatives. This will deliver a modern, high quality, vibrant, accessible and adaptable centre that reflects its status alongside the waterfront as the showcase of Plymouth.*

- 7.5. The West End of the City Centre is itself a key regeneration area that will be supported by development plans for a new combined health hub of 65,000 sq ft at Colin Campbell Court bringing 200 new jobs and over 2,500 visitors a day to the City. This is part of wider plans to significantly improve and regenerate the City Centre.

### PLY30: Bath Street West

- 7.6. *Land at Bath Street West is allocated for a comprehensive residential led mixed-use redevelopment. Uses which will be supported include residential, offices, small scale retail, cultural and community uses.*

## 8. Recommendations

It is recommended that Cabinet agrees to:

- 1. implement a Compulsory Purchase Order, if required, pursuant to Section 226(1)(a) of the Town and Country Planning Act 1990 in respect of the Land to the West of Bath Street identified as PL30 in the Joint Local Plan (JLP) and shaded on Figure 1 below (“the Order Land”)

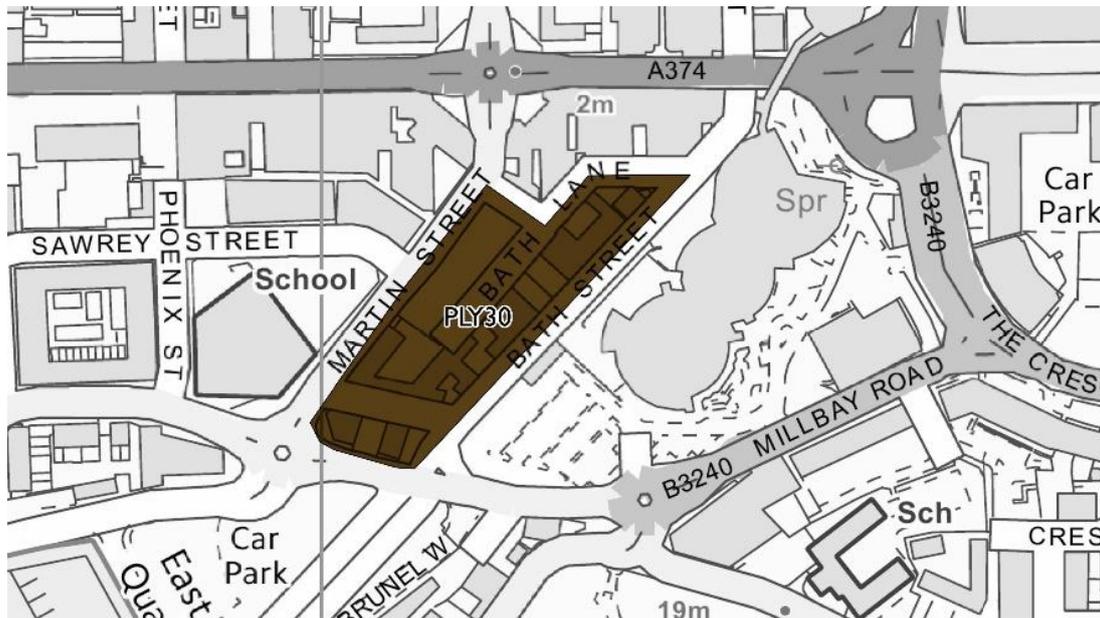
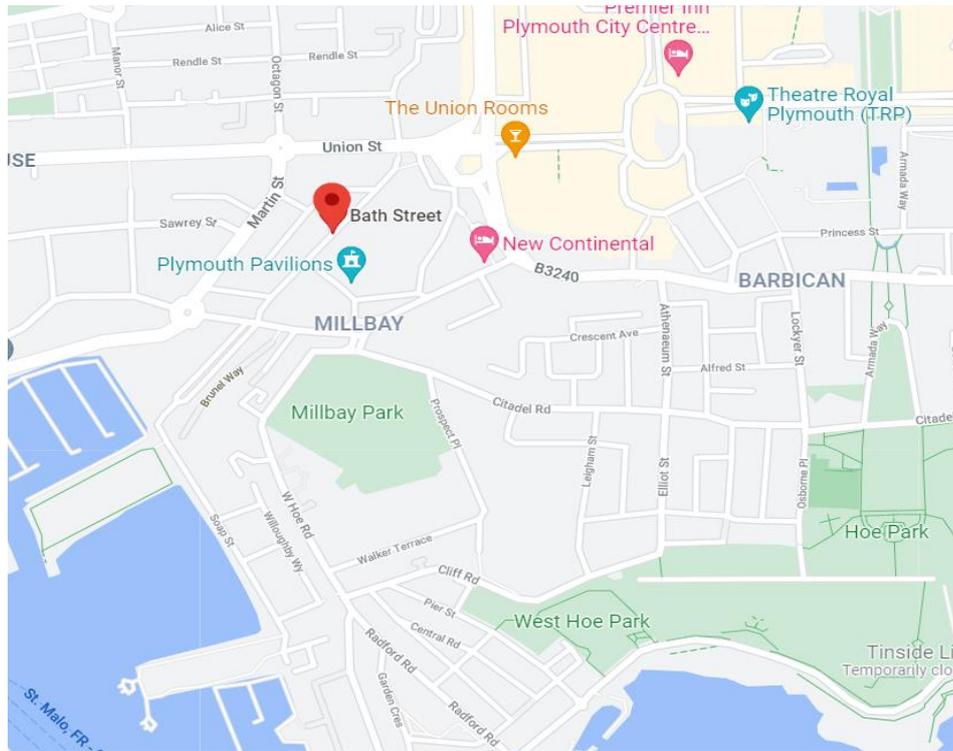


Figure 1

- 2. Delegate to the Service Director for Economic Development and Head of Legal Services the power to effect the making, confirmation and implementation of such a CPO and to take all necessary steps to give effect to the CPO in respect of the Order Land including, but not limited to, the following:
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