



Purpose: For Decision

# Committee report

## **CABINET**

Date **14 JANUARY 2021**

Title **ACQUISITION OF PROPERTY AT FITZROY STREET AND STATION AVENUE, SANDOWN.**

Report of **CABINET MEMBER FOR PLANNING AND HOUSING**

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### EXECUTIVE SUMMARY

1. Fitzroy Street, Sandown, PO36 8HW and Station Avenue, Sandown PO36 8HB (the Properties) are empty properties consisting of 4 commercial units on the ground floor and 5 residential flats on the first floor and second floors. The majority of units have been empty since December 2004, but they have all been empty since December 2008. The Properties are in the same ownership and are connected to another neighbouring property in Fitzroy Street, Sandown.
2. The Council has been engaging with the owner of these Properties since July 2004 to bring all the Properties back into use and up to an acceptable standard. The Properties as one whole building have fallen into serious disrepair both externally and internally, which significantly deteriorated following a fire due to an arson attack in 2008. The condition is such that the Properties have been taken out of valuation for rates purposes.
3. The Council, acting as Local Planning Authority (LPA), has also had to intervene recently with the poor conditions at this property. A planning notice has been served in relation to this land under section 215 of the Town and Country Planning Act 1990. This notice requires works to the land which the LPA consider to be necessary to improve the amenity of the area which is currently affected by the condition of the land. The notice has 22 requirements including requiring works to: improve condition to the moulded and rendered panels, improve doorframes, repaint parts of the building, cut back overgrown vegetation, and remove vegetation growing on parts of the building such as guttering.
4. It is proposed that the authority seeks to acquire the properties by way of negotiation or by the making of a Compulsory Purchase Order (CPO).

5. If a CPO is necessary then the authority will adopt a 2 stage process. The first stage is that this paper seeks an in-principle decision that the use of the Council's CPO powers under Section 17 of the Housing Act 1985 be made, and instructs officers to prepare the necessary documentation for final approval by the cabinet. A further, more detailed report will be submitted assessing the acquisition by way of CPO and, if appropriate, will seek a formal resolution to prepare the CPO for submission to the Secretary of State.

## BACKGROUND

6. The Isle of Wight Council has attempted to engage with the owner of the Properties to bring them back into use since July 2004. The owner has been written to and contacted on many occasions in relation to bringing the Properties back into use – see appendix 1 attached for a chronology of correspondence and events.
7. The Council renewed its Empty Property Strategy in 2019 with the overarching aims of bringing long term empty properties back into use, to increase the supply of homes for Island residents and in turn reduce the impact of empty properties on local communities.
8. The objectives of the strategy were clear that the Council will encourage owners to bring empty properties back into use; to prioritise premises which have been empty for over two years and consider all options available for tackling the problem and, make use of informal intervention as well as formal enforcement where needed. The objectives also stated that informal actions will make use of all available partner agencies, departments and community schemes, and to remove the negative impact empty properties in poor condition have on their neighbourhood.
9. The Properties are recorded to have been empty since 2008. Following the engagement of Hyde Martlett Housing Association in 2010, it was established that the best course of action would be to demolish the property and replace it with a new build due to the unviable refurbishment costs.
10. There are not any current estimates for refurbishment costs, the Housing Renewal team are seeking voluntary access in early 2021 to inspect the property and undertake an assessment on works required.
11. The empty property officer has engaged with the following people and teams throughout the case; Property Services to inform that department of the potential CPO, a local estate agent to obtain a market value appraisal, Police following the arson attack, Financial Services, Council Tax department involved all the way through, Planning and Building Control, the Local Ward Member and Cabinet Member and local residents.
12. Whilst the Properties remain empty they are having a detrimental effect on the surrounding area due to the poor visual condition, especially the adjoining properties. As noted above, the condition of the building, and its impact upon the amenity of the area has resulted in the service of a s215 notice by the local planning authority.

13. A requisition for information has been served on the owner of the Properties requiring them to provide information on the ownership of the Properties. This information will assist the Council in preparing for next stage of the CPO process.

## STRATEGIC CONTEXT

14. The Council has set out in its Empty Property Strategy the intention to reduce the number of long-term empty properties on the Isle of Wight and made this one of its strategic housing aims.

15. These Properties are considered a priority for intervention due to the length of time being left empty, 12 years at least. The Strategy prioritises premises that have been empty for over 2 years and to prevent serious issues arising. Including continued detriment or blight, or anti-social behaviour to neighbours and the local community.

16. There has also been a significant amount of officer resources to encourage the owner to bring them back into use over that 12-year period.

17. In summary officers have sent the owner twenty-eight letters, carried out twenty-three telephone conversations, nine emails and undertaken five meetings. They have worked in partnership with him by introducing three Housing Associations and four developer groups to enable him to bring the properties back into use, but he failed to engage with each except one who pulled out due to ceasing their activities on the Isle of Wight. Officers have also engaged with other Council departments over these properties with a view to re-occupation and assisting the Council to receive income.

18. A CPO supports the following Council strategies;

- The Island Plan by assisting in providing housing to meet the needs of Island residents.
- By taking this action it supports the Housing Strategy by signalling to owners of long term empty properties that the Council will continue to use its powers and interventions to maintain the high standards already achieved, as well as bringing long term empty properties back into use for housing purposes.
- The Housing Strategy also indicates that action will be taken against landlords if properties are mis-managed or left empty in accordance with the Neighbourhood Directorate Enforcement policy 2019.
- The Housing Strategy also states that the Council will target empty properties that have been empty for two years or more and fully utilise the Councils' powers to bring those homes back into use.

19. A CPO would assist in meeting the following corporate objectives:

- Support economic development and regeneration by bringing these long term empty properties back into use;
- Community needs are met by the best public services possible, in that considerable informal intervention and assistance has been tried and

formal action is now required to improve the community visually and financially.

- By bringing the Properties back into use it can help support vulnerable people by increasing the available housing stock.
- The aim of facilitating reoccupation of the properties as residential dwelling supports the corporate objective of people having a place to call home where they can live with independence.
- By removing these Properties from their long term empty status it will also reduce the temptation of crime against the property which will make the local community feel safer, as well as removing an eyesore property in one of the Islands leading holiday towns.

## FINANCIAL / BUDGET IMPLICATIONS

20. By progressing the CPO the Council has three options for acquiring and dealing with the Properties.

- Back to Back sale by implementing a CPO
- By implementing a CPO and then holding the Properties for future sale
- By purchasing the Properties from the owner by negotiation without using CPO powers

21. One possible process in financing this CPO by utilising the time periods allowed for the general vesting declaration process which may enable a back to back sale to be agreed. This requires the Council to advertise the Properties requesting interested parties to bid for purchasing prior to finally implementing the CPO under a general vesting.

22. The bidding process allows the Council to decide whether the CPO, particularly in terms of financial implications, is viable prior to competing the CPO because it will have sight of the bids. If the bids are favourable compared to the compensation and costs that would be advantageous, however if the bids are equal to or lower than the total costs the Council has time to further consider the situation before finally implementing the CPO.

23. This option would seek to satisfy the capital expenditure and costs through the proceeds of the sale. Any shortfall would be required to be found internally, and any ongoing costs such as external legal fees will likely need to be paid throughout the CPO process which would need to be found from within the existing Housing Renewal budget.

24. Should the Council wish to implement the CPO and hold the Properties for a period of time before disposal for best consideration, the whole of the compensation and costs would need to be in place beforehand. The Properties would become the responsibility of the Property Services section, including all of the risks, management and day to day costs which come with that.

25. In addition to the compensation and CPO costs, there will be additional costs of staff management of the Properties, handling enquiries in regard to them, preparing the marketing and sale of the Properties for best consideration. Insurance costs will also be required.

26. The final acquisition option is by purchasing the Properties from the owner prior to the CPO. Differing from the second option the whole of the agreed cost of the Properties, as well as any legal costs involved in the purchase would have to be in place beforehand, and a plan of how the relevant Council department will deal with the properties. This option would avoid the need to consider any CPO compensation costs, and any additional CPO legal costs such as through appeals and judicial review.
27. Depending on the planned outcome with the properties additional costs applicable to this option could include surveying fees, planning and architectural fees, further legal costs, refurbishment or conversion costs, property management, insurance and rates costs. This option would definitely need further research and analysis by the relevant department should this course of action be considered desirable for the Council, and could be undertaken following the stage 1 CPO approach.
28. By completing the CPO the Council will be liable to pay the owner compensation of the market value of the property at the time of general vesting which we will ascertain from an independent RICS valuation surveyor on the date. The current value is considered to be in the region of £405,000, which has been ascertained from a local estate agent and using average house price increase for the area. A capital bid (2021/22) has been submitted and seeks to cover £450,000 which includes a 10 per cent allowance pending a final open market valuation. Funding will be available subject to budget provision in the capital programme which will be subject to agreement by Full Council.
29. The costs of implementing the CPO will also include a payment by way of compensation to the owner of the Properties and any other parties with rights over the Properties. This will be paid from the processes as described in the options above. If the amount of compensation cannot be agreed it will be determined by the Upper Tribunal (Lands Chamber).
30. The compensation is likely to include the value of the land but can also include compensation for disturbance.
31. Should the capital bid be successful the Capital Programme will be updated to include both the acquisition of the properties and the associated funding from the proceeds of sale under the delegated authority of the Section 151 Officer.
32. The Section 151 officer also stated that the Council will seek to dispose of the properties for best consideration, to achieve this there may be some delay between acquisition and subsequent sale and the Council will manage any negative cash flow through its normal treasury management activities
33. The full CPO procedure is likely to be resource intensive and it may require specialist advice which needs to be found from within the existing Housing Renewal budget.
34. Additional legal costs and internal resources may be required if the CPO is appealed or if there is a Judicial Review.

35. It is anticipated that legal fees would be £5,000 to £7,000 per property/Order if uncontested, and £7,000 to £10,000 if there are objections to the CPO.
36. It is proposed that the future cabinet report on this CPO scheme will identify the preferred process for acquisition of this property that seeks to mitigate potential financial costs to the authority. On this basis, concurrent to the other actions agreed by this report, investigations will be made to identify if any development or housing association partner would wish to enter into an indemnity agreement to underwrite the costs of the CPO process.

## LEGAL IMPLICATIONS

37. The Council can use its powers under Section 17(1)(b) and Section 17(3) of the Housing Act 1985 to acquire the Properties. This power enables local housing authorities to compulsorily acquire land, houses or buildings for the provision of housing accommodation by way of CPO or by negotiation. The Council will need to justify the use of its CPO powers to the Secretary of State.
38. The Council will need to demonstrate that it has the power to purchase the Properties, that there is a compelling case in the public interest that justifies interfering with the rights of those with an interest in the Properties, that there are adequate resources to implement any CPO within a reasonable time frame, that there is a reasonable prospect of the CPO scheme going ahead and there is no reasonable alternative site or alternative means of bringing about the objective of the CPO.
39. The Council has decided to adopt a two stage resolution approach to the possible CPO. The first stage being considered in this report is the decision to agree in principle to the use of the CPO powers. Once further information has been obtained, as outlined in this report, the Council can consider whether or not to proceed to the second resolution stage.
40. The title of the Properties will need to be investigated and enquiries made with the owner and any occupiers as to existing rights. The Council must demonstrate that all the land included within the CPO is necessary for the implementation and operation of the CPO scheme.
41. The full CPO process will include the preparation of the relevant CPO documents including the CPO Schedule, CPO map and statement of reasons to be submitted to the Secretary of State to justify the use of the power. The Council will need to demonstrate there is a compelling case in the public interest for the CPO and a need for the provision of further housing accommodation. Further work will also need to be undertaken in relation to notices and publishing.
42. Specialist legal advice may be required and consideration will need to be given to Article 1 and Article 8 of the Human Rights Act if the authority proceeds with making a CPO.
43. Article 1 of the First Protocol to the European Convention on Human Rights: An acquiring authority should be sure that the purposes for which it is making

a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. The rights of those with an interest in the Order Land will be taken into account by the Council when considering whether to finally make the Order.

44. Any future Order made will affect the Article 1 rights of the present owners if confirmed by the Secretary of State. However, at this stage it is considered that there will be no violation of those rights where the steps taken are in the public interest and are lawful (as the provisions of Article 1 of the First Protocol require). Those directly affected by any future Order will also be entitled to compensation proportionate to any losses that they may incur as a result of the acquisition.
45. Article 8 is a qualified right and interference can be justified in appropriate cases. At present there appears a compelling case in the public interest to acquire the Order land and the public benefit will outweigh the private loss. If these circumstances remain then the compulsory acquisition of the Order land will not conflict with Article 8 of the Convention.
46. In making any order the Council will carefully consider the balance to be struck between individual rights and the wider public interest. To the extent that the Order would affect those individual rights, the proposed interference with them would be in accordance with the law, proportionate and necessary in the public interest in order to secure the improvements in housing accommodation that the Scheme will bring.
47. All of those Article 1, and Article 8 rights would be affected by the Order will have an opportunity to object to it and to have their objection considered at an independent and public hearing. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the national Compensation Code.

#### EQUALITY AND DIVERSITY

48. An EIA has been completed. It concludes that there are no matters which affect protected characteristics of equality and diversity in this case. A further assessment may be necessary if any further parties hold an interest in the land.

#### PROPERTY IMPLICATIONS

49. Further investigations will need to be made as to ownership, occupiers, specific boundaries of the Properties and value of the Properties and rights of third parties. Plans should be generated to show the precise extent of the Properties.
50. The Council's Property Services department would normally be the service acquiring the Properties and then having responsibility of managing and selling them. This may occur if a sale for the best consideration is desired and not immediately resolved, which will then incur owner responsibilities and costs such as insurance and essential maintenance.

51. No renovation works are planned to be undertaken as this will be the responsibility of any future owner. The Council may need to undertake minimal health and safety works, if necessary, before the Properties are sold. The likely cost for these works is under £1,000 and would include changing of the locks for example.
52. Should the Properties be purchased with a view that the Council will convert and / or refurbish them considerable further financial resources will be necessary, the Council will need to further consider the capital funding available for this option following Stage 1 of the CPO process.

### SECTION 17 CRIME AND DISORDER ACT 1998

53. Crime and disorder issues have been considered. There has been a serious incident (arson) in 2008 which required police and fire service intervention in relation to these Properties, which put the neighbouring properties and the occupiers at risk. There are no other known crime or disorder matters related with the Properties, however it is considered that the recommended option will reduce the potential for crime and disorder where the Properties would likely be left empty for a longer period otherwise.

### OPTIONS

54. Option 1 - To agree in principle to the use of Section 17 of the Housing Act 1985 to acquire the CPO land by way of CPO and that a final report, having completed all necessary legal enquiries and with all necessary documentation be presented to cabinet for formal approval for submission to the Secretary of State; and to identify if any development or housing association partner would wish to enter into an indemnity agreement to underwrite the costs of the CPO process; and that the Director of Neighbourhoods be granted delegated authority to negotiate, agree and complete the purchase of the CPO land up to the current open market valuation at the point of purchase if concluded prior to the final report being prepared.
55. Option 2- Undertake further negotiations with the owner to bring these Properties back into active residential use.

### RISK MANAGEMENT

56. The following risks have been identified in the evaluation of this report.
57. Insufficient resources in house to deliver all elements of the project. To mitigate this it is expected that the legal service would be contracted out to an appropriate service provider. The Housing Renewal team has a dedicated empty property officer able to provide time to the project, although this may have an impact on dealing with other empty properties whilst the CPO process takes place.
58. Project costs exceed funding. This is mitigated by the coordinated general vesting and marketing process, allowing the ability to consider interested parties bids prior to final implementation. That gives the ability to decline to proceed but the authority would still have legal fees as well as risk of compensation costs by not proceeding. This is also mitigated by the cash

receipt upon sale that the Council will seek best consideration. This could be greater or less than the amount indicated as income in the capital bid.

59. Failings in legal process, leading to loss of appeals or objections, or decline of the CPO application by the Secretary of State. This will be mitigated by operation of a two-stage cabinet decision process, and scrutiny of the processes and application throughout. The process will also have regular legal reviews and challenge which will also consider whether a different CPO legal route, such as Planning, is more appropriate. There will also be an independent RICS valuation of properties.
60. Project fails to deliver the benefits. To mitigate this risk the Council would ascertain as far as reasonably practicable what the potential purchaser proposes for the properties and that he/she has suitable funding in place. Checks will be made with the Planning and Building Control departments to cover any issues with planning or building regulation matters.
61. The risk that the Council cannot sell the Properties or achieve a value to cover compensation paid and costs. This can be mitigated by attempting to secure a purchaser prior to making the CPO. The Council will also investigate title to check if there are any issues which might be an issue for a buyer. Also, one of the benefits of following a two stage CPO process as suggested here is that allows for potential purchasers to come forward with details of their plans for bringing the Properties back into use and ideally enter in to an indemnity agreement that covers the Councils costs in undertaking the CPO process.

## EVALUATION

62. It is proposed that the Council proceed preparing the full documentation for making the CPO in a future report. The full documentation will set out further details of the acquisition by way of CPO, costs involved and risks identified and to seek the formal resolution and delegation required to make the CPO for submission to the Secretary of State.
63. Concurrent to this work the Council will still continue with negotiations with the owner of properties to encourage the owner to return the properties back into use, and introduce further external developers and interested groups.

## RECOMMENDATION

### **64. Option 1.**

To agree in principle to the use of Section 17 of the Housing Act 1985 to acquire the CPO land by way of CPO and that a final report, having completed all necessary legal enquiries and with all necessary documentation be presented to cabinet for formal approval for submission to the Secretary of State; and to identify if any development or housing association partner would wish to enter into an indemnity agreement to underwrite the costs of the CPO process; and that the Director of Neighbourhoods be granted delegated authority to negotiate, agree and complete the purchase of the CPO land up to the current open market valuation at the point of purchase if concluded prior to the final report being prepared.

## APPENDICES ATTACHED

1. Chronology summary
2. Location Plan
3. CPO Process

## BACKGROUND PAPERS

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684529/Compulsory\\_purchase\\_process\\_and\\_the\\_Crichel\\_Down\\_Rules\\_-\\_guidance\\_updated\\_180228.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684529/Compulsory_purchase_process_and_the_Crichel_Down_Rules_-_guidance_updated_180228.pdf)

The Crichel Down rules.

<http://wightnet.iow.gov.uk/documentlibrary/view/corporate-plan-2017-2020> The Corporate Plan.

<http://wightnet.iow.gov.uk/documentlibrary/view/empty-property-strategy-residential-2019-2022>

The Empty Property Strategy

<http://wightnet.iow.gov.uk/documentlibrary/view/neighbourhoods-enforcement-policy-2019-2022>

Neighbourhoods Directorate Enforcement Policy

<https://www.iow.gov.uk/azservices/documents/2776-Core-Strategy-Adopted-March-2012-updated-web-links-May-2013-with-cover.pdf>

The Island Plan.

Equalities Impact Assessment

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