

Cabinet Meeting	
Meeting Date	1 February 2017
Report Title	Crown Quay Lane Compulsory Purchase Order
Cabinet Member	ClIr Gerry Lewin, Cabinet Member for Planning
SMT Lead	Emma Wiggins, Interim Director of Regeneration
Head of Service	James Freeman
Lead Officer	James Freeman
Key Decision	No
Classification	Open
Forward Plan	Reference number:
Recommendations	<ol style="list-style-type: none"> 1. That Members grant delegated authority to the Head of Planning, in consultation with the Head of Mid Kent Legal Services, to progress a suitable indemnity agreement(s) with the owners of land outlined in red on the attached plan, in order that the Council can ultimately progress to compulsorily acquire the land pursuant to section 226(1)(b) of the Town and Country Planning Act 1990; and 2. The confirmation of the CPO, including the associated back-to-back indemnity agreement with prospective developer(s), be reported back to the Cabinet for decision.

1 Purpose of Report and Executive Summary

- 1.1 This report seeks Members' 'minded to' decision to compulsorily acquire land at Crown Quay Lane, Sittingbourne, subject to suitable back-to-back indemnity agreements being entered into, to enable it to be comprehensively developed in accordance with Policy A9 of the emerging Swale Local Plan. Any final decision to serve a Compulsory Purchase Order (CPO) would come back to the Cabinet for agreement.
- 1.2 The land is in multiple ownership, and without intervention by the Council it is considered unlikely that a comprehensive development will come forward in the foreseeable future.

2. Background

- 2.1 This report is concerned with Land at Crown Quay Lane, Sittingbourne, which is allocated for residential development – Policy A9 of the emerging Local Plan currently subject to a Local Plan Examination. The site Allocation is 18.2 ha, and provides for a minimum of 650 dwellings, open space and habitat creation.
- 2.2 A major component of the allocation is to create public access to the Creekside and to enhance connectivity between the site and the northern bank of the Creek by providing a footbridge link to the Saxon Shore Way footpath. The development would also be required to contribute financially to education, library, social services and health facilities.
- 2.3 The allocated site is integral to meeting the housing needs of the Borough, and for contributing towards the five-year housing land supply. The principle of the development of the site was agreed by the Local Plan inspector in her Interim Report to the emerging Local Plan. Whilst the Plan is subject to further main modifications, the Inspector does not expect to discuss the principle of the sites allocation within the Plan.
- 2.4 In order to achieve all the planning components for the site, it was anticipated that a planning application covering the whole site would be submitted to ensure, either through direct works related to the site or through planning obligations, a comprehensive approach to infrastructure provision. The planning application would be expected to accord with an agreed development brief for the site, as required by the Policy.

The site

- 2.5 Appendix I attached sets out the emerging Local Plan allocation site and associated development concepts, and Appendix II sets out the various land owners within the allocation.
- 2.6 The allocation site as a whole extends to roughly 18.4ha (measuring a maximum of approximately 510m wide W-E by 530m N-S) and sits to the north of Eurolink Way, west of the Eurolink industrial estate, east of the existing Sittingbourne retail park, and south of Milton Creek. Land levels change dramatically from Eurolink Way down to the site, with a step of roughly 10m at the western end, gradually reducing to the east as Eurolink Way slopes down eastwards towards the roundabout. From this point onwards the allocation site is generally flat.
- 2.7 The majority of the allocation is owned by Redrow Homes, who took ownership of the former Tesco land, which itself previously comprised an industrial estate of single-storey buildings that was cleared several years ago. Redrow have also recently cleared the land of all structures and internal roadways. Tesco retain ownership of the former A2 Tyres unit, which is currently vacant.
- 2.8 The south-eastern corner of the allocation is owned and currently operated by APM Metals, and comprises a working scrap yard. Other operational sites within the

allocation include Jewsons (roughly central on the site); Odds timber yard (on the eastern side of Crown Quay Lane); and British Chestnut Fencing (north-western corner of the site, at the termination of Crown Quay Lane).

- 2.9 Members may also be aware of an unauthorised gypsy and traveller camp on the eastern side of Crown Quay Lane (on land owned by Persimmon Homes), and an HGV park and associated amenities block and food trailer at the northern end, adjacent to the Creek, which is currently the subject of an Enforcement Notice against these uses. The final parcel, at the north-eastern end of the site, is owned by Bellway Homes, and is currently being cleared of stockpiled aggregates.
- 2.10 At this juncture, it is considered appropriate to consider the whole allocation site for the purposes of progressing the compulsory acquisition in order to bring about comprehensive development. As far as the Council is aware, there are currently fifteen separate land ownerships covering the site. However, it may transpire through discussions with developers and landowners that either existing uses or sites need not be included or necessary in the compulsory acquisition to bring about a comprehensive development of the site. Where existing commercial uses are operating and would need to be compulsory purchased, the Council will work closely with these parties with a view to relocating them to an alternative site.
- 2.11 The piecemeal development of the site would undermine the proper planning of the site allocation, including its overall design layout, the provision of adequate and appropriate infrastructure to support the development, and to ensure a comprehensive approach is established between all the various landowners where appropriate and possible.
- 2.12 A planning application for part of the site (10.7 ha) owned by Redrow Homes has been submitted to the Council (ref. 16/507877/FULL, Erection of a residential development comprising 405 dwellings including associated access, parking, public open spaces and landscaping. New vehicular/pedestrian access from Eurolink Way and further secondary vehicular/pedestrian access off Crown Quay Lane. Associated drainage and earthworks).
- 2.13 Whilst Redrow Homes have submitted a Development Brief for the whole allocation site to support their planning application, it is clear that the applicant does not accept that they would be responsible for delivering the wider components of the planning application, particularly in relation to the habitat and landscape provision and the pedestrian footbridge link. Discussions are taking place with the applicant with a view to them accepting their wider role, and to engage with the Council as a partner in progressing a Compulsory Purchase Order (CPO) for the remainder of the site. However, to date there is no such commitment.

Back-to-back/indemnity agreement

- 2.14 The preferred approach for moving forward with the CPO would be for the main landowner(s) to enter into agreement with the Council as the Local Planning Authority to coordinate the progression of the CPO of the allocated site as a whole and to also enter into a back-to-back / indemnity agreement to indemnify the Council from any costs incurred as a result of the CPO.
- 2.15 Where such agreement is reached, the threat of a CPO can often bring other landowners on board to enter into the negotiation with a realistic expectation of the value their sites.
- 2.16 Equally important to the CPO process would be to extinguish any restrictive covenants and easements by virtue of section 203 of the Housing and Planning Act 2016. Any person who formerly had the benefit of these covenants or easements would be entitled to compensation if the CPO process results in the diminution of the value of the land.
- 2.17 All the costs involved in the compulsory purchase of the land within the allocated site, including legal and support costs, would be expected to be borne by the landowners.

The compulsory purchase power

- 2.18 Section 226(1)(b) of the Town and Country Planning Act 1990 allows a Local Planning Authority to compulsorily acquire land required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. This power is the appropriate one to use in this instance as it will secure the comprehensive development of an important housing allocation.
- 2.19 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 to make a CPO. The test is considered to be met in this case because without intervention by the Council the potential for a comprehensive development of the site may well be lost. The consequences of this are that the proposals for habitat creation, recreation opportunities within the Creek shore line, and providing adequate pedestrian connections north and south of the Creek, including a new pedestrian footbridge, would be lost.
- 2.20 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 compulsory purchase process

- 2.21 There are legal and administrative costs associated with making a CPO, which would be likely to amount to approximately £15,000. These might include the cost of statutory notices in the local paper, and Land Registry fees. These costs can escalate depending on whether objections to the CPO are received, and the number of objections received.
- 2.22 If a person with an interest in the land objects to the CPO, the objection will either be dealt with at a Public Inquiry, or by written representations. In this scenario, the Council has to pay the Planning Inspectorate's costs for dealing with the Inquiry or written representations. Typically, these would amount to approximately £6,000. If the case was heard at a Public Inquiry, there would be further additional legal fees for representation at the Inquiry, at a cost of approximately £15,000. Most CPOs do not result in maintained objections. However, if an objector was successful the Council would have to pay the objector's costs of opposing the CPO.
- 2.23 Subsequent to the execution of the CPO, when the land is vested in the Council, Stamp Duty Land Tax (SDLT) will be payable on the market value of the land, but this can be avoided if the land is to be disposed of to a third party for development. It is anticipated that this option will be available for this case.
- 2.24 Once the land has been compulsory acquired and vested in the Council, the Council comes under a duty to pay compensation to those who previously held an interest in the land. The amount of compensation payable is usually agreed between the parties following a period of negotiation. For this reason compensation is usually settled some time after the CPO is confirmed. If the parties cannot agree on the amount of compensation, either party can refer the matter to the Upper Tribunal (Lands Chambers) for determination.
- 2.25 The main component of compensation is for former owners to receive the open market value of their interest in the land. The open market value is the value that could be reasonably achieved if the land was not subject to a CPO. The assumption in this case, given the proposed allocation as set out in the emerging Local Plan, is that it has the benefit of 'in principle' planning permission for at least 650 dwellings over the whole 18.5 ha site.
- 2.26 Importantly, however, the physical condition of the land including constraints and restrictions which have a bearing on the development of the land must also be taken into account in the market value such as contamination issues etc.
- 2.27 The market value is assessed at the date the Council acquired ownership following confirmation of the CPO. A specialist valuation of the market value of the site will need to be commissioned at an appropriate time in advance of any formal decision to proceed with a CPO.

- 2.28 It is also possible for someone to claim 'disturbance' compensation. This often applies when someone has to physically move to new premises, in which case they are able to obtain the costs of moving.
- 2.29 It is important to note that all costs relating to the CPO would be expected to be met by the developer partner involved in the back-to-back indemnity agreement, preferably the main existing landowner(s). As mentioned previously, discussions are taking place with the main landowner / developer to establish an agreed approach to using CPO.
- 2.30 Should they not be willing to enter into a partnership agreement on using CPO then there is a likelihood that the current planning application could be refused on the grounds of lack of comprehensivity. The applicant would then need to consider whether they were to test this decision at a planning appeal. If they were to do so and should the Council be successful at appeal, it is expected that the major landowners would move to engage with the Council to proceed on the basis of a CPO.
- 2.31 However, if agreement then cannot be reached, the Council does have the option of entering into agreement with another housing developer with a view to compulsory purchase the land, including the land currently owned by the current applicant, as well as the other landowners.
- 2.32 It should be noted that the Council would not wish to see any significant delay in bringing forward the Crown Quay Lane site to meet housing needs and contribute to the Council's five-year supply. To this end, some development could come forward in advance of a confirmed CPO on the proviso that the applicant(s) have signed up to a partnership agreement to progress a CPO.

3. Proposal

- 3.1 The Council has set out within Policy A9 of the emerging Local Plan the need for a comprehensive approach to developing this important brownfield development allocation. An intrinsic element for the allocation is the need to bring forward critical open space and habitat, and strong pedestrian linkages with neighbouring sites, making best use of the Creek area.
- 3.2 In these circumstances, it is proposed that the Council agrees to the principle of moving forward with a Compulsory Purchase Order under section 226(1) (b) of the Town and Country Planning Act 1990, covering the whole site allocation.
- 3.3 Any decision to formally progress a CPO would be brought back to the Cabinet at an appropriate time.

4. Alternative Options

- 4.1 Should the Council not be willing to progress the acquisition of the site using CPO powers, the Council's position as a Local Planning Authority in determining any planning applications for the site allocation would need to reflect on the practical willingness of landowners to co-operate to bring forward co-ordinated development and associated infrastructure.
- 4.2 This dependency would likely give rise to some landowners and/or occupiers not being willing to engage, and therefore undermining a co-ordinated approach to the comprehensive development of the whole site as each site would likely come forward without the necessary landscaping and habitat infrastructure and the important pedestrian connections to neighbouring sites.
- 4.3 Such a decision could also undermine the Council's approach to other sites within the emerging Local Plan, with the consequences of delivering reduced quality of development and not securing the necessary infrastructure required.
- 4.4 In these circumstances this option is not recommended.

5. Consultation Undertaken or Proposed

- 5.1 Significant consultation has been undertaken in developing Policy A9 of the emerging Local Plan, including the need for the site's comprehensive and co-ordinated development.

6. Implications

Issue	Implications
Corporate Plan	<p>The proposal would contribute to the regeneration and improvement of Sittingbourne Town Centre and the Borough as a whole as a Borough to be Proud of.</p> <p>Similarly, it will help Swale BC fulfil its community leadership role in securing and sustaining effective development partnerships, in accordance with the theme of being a Council to be Proud of.</p>
Financial, Resource and Property	<p>It is anticipated that all costs related to the confirmation and implementation of the CPO, including those costs set out in Section 2 of the report, would be anticipated to be covered by a back-to-back agreement with a developer.</p> <p>At this stage there has not been a valuation of the costs of compulsory purchasing the land, or any related 'disturbance costs'. These costs would be assessed and reported if and when the CPO progresses to formal submission to the Secretary of State.</p> <p>Any initial costs, including on-going legal advice, would be met from existing budgets at this stage.</p>

Legal and Statutory	CPO powers are afforded to a Local Planning Authority under section 226 of the Town and Country Planning Act 1990 (as amended) Circular 6/2004 – ‘Compulsory Purchase and the Criche Down Rules’ sets out the guidance to acquiring authorities in England making CPOs to which the Acquisition of Land Act 1981 (as amended) applies.
Crime and Disorder	None identified at this stage
Sustainability	The intent of Local Plan Policy A9 is to provide for a quality and sustainable development of the Crown Quay Site. Not progressing a CPO would undermine that objective.
Health and Wellbeing	None identified at this stage.
Risk Management and Health and Safety	The need to consider the compulsory purchase of land should be considered as a last resort where alternatives have failed to secure the intended outcome. The compulsory purchase of land has a number of attendant risks. These are principally financial – as set out in more detail in the report; and procedural – if there are errors in the undertaking of the CPIO or the case is not upheld at Inquiry, then the CPO could fail. It is considered that these risks are all capable of being mitigated, and this is set out in the body of the report.
Equality and Diversity	None identified at this stage.

7 Appendices

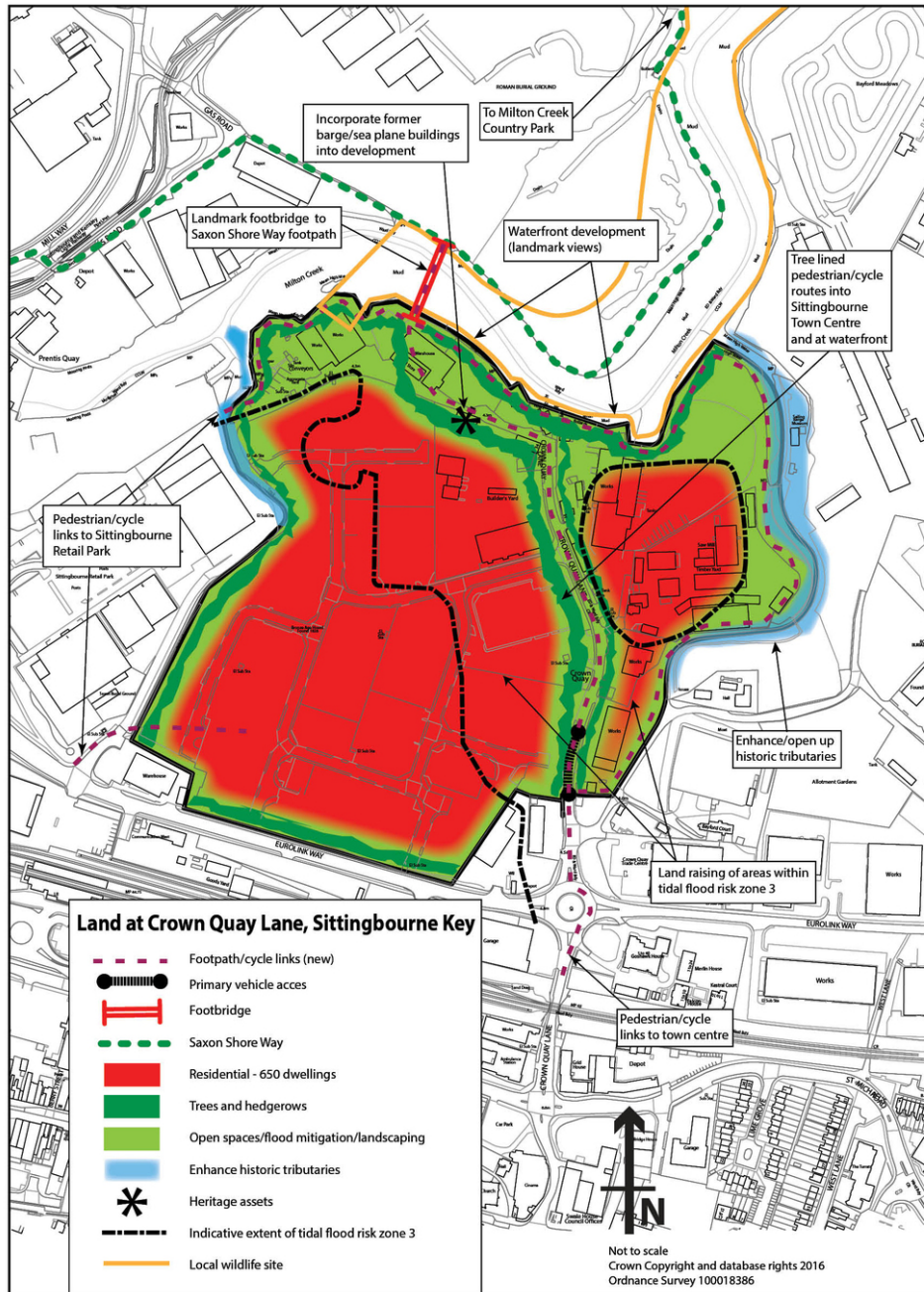
7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Development concepts at Crown Quay Lane, Sittingbourne (modification showing changes to site area and increased development area)
- Appendix II: Crown Quay Lane Allocation – Land Ownership Plan

8 Background Papers

8.1 None.

Development concepts at Crown Quay Lane, Sittingbourne (modification showing changes to site area and increased development area)



Crown Quay Lane Allocation – Land Ownership Plan

3. LANDOWNERSHIP PLAN

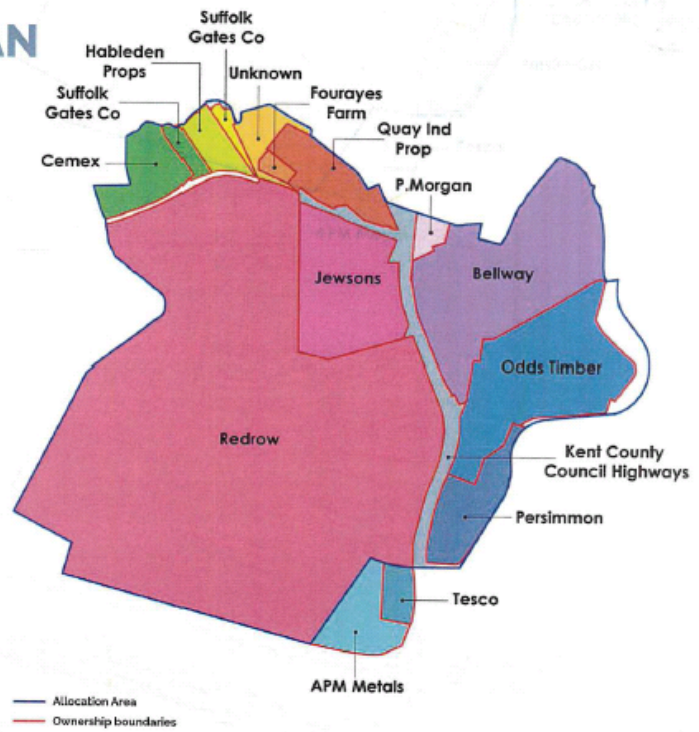


Figure 3.3