

Report to Cabinet
11 November 2020
Report of Director of Place
Subject Compulsory purchase of the Ailwyn Hall site, Lower
Clarence Road

Item

9

KEY DECISION

Purpose

To consider the compulsory purchase of the Ailwyn Hall site on Lower Clarence Road.

Recommendation

To:

- 1) approve the making of a compulsory purchase order under section 17 of the Housing Act 1985 for the land edged red on Plan 1 to enable the delivery of social housing; and
- 2) delegate authority to the Director of Place in consultation with the deputy leader and portfolio holder for social housing to take all steps necessary to secure a confirmed compulsory purchase order including but not limited to:
 - the carrying out of land referencing including without limitation the service of notices under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and/or section 5A of the Acquisition of Land Act 1981.
 - the entry onto the Land and other land for the purpose of carrying out surveys
 - the completion of the statement of reasons
 - preparation of a draft Order, Order Map and Order Schedule (including any minor amendments to ensure that all interests required are included) the preparation of notices to owners, lessees and occupiers, site notices and any other notices required to be served or advertised in accordance with the Acquisition of Land Act 1981
- 3) delegate authority to the Director of Place in consultation with the deputy leader and portfolio holder for social housing to:
 - a. make General Vesting Declarations (GVDs) under the Compulsory Purchase (Vesting Declarations) Act 1981 or to serve notices to treat and notices of entry following confirmation of the order;
 - b. issue and serve any warrants to obtain possession of property acquired by the Council following the execution of a GVD or

service of a notice of entry relating to the order if it is considered appropriate to do so;

- c. to acquire third party interests in the land within the CPO either by agreement or compulsorily; and
- d. to develop the scheme design further based on the enhanced environmental specifications proposed and to submit a planning application for the proposals

Corporate and service priorities

The report helps to meet the corporate priority Great neighbourhoods, Housing and Environment

Financial implications

The site acquisition and CPO costs would be covered within the affordable housing opportunity budget which is included within the existing budget and hence the base HRA business plan. Construction can be funded from existing HRA reserves and borrowing, with 30% of the build costs covered by retained one for one RTB receipts. The scheme has been included within the modelling of the proposed HRA capital ambition plan which remains sustainable over the 60 year planning period. The financial implications are covered in more detail in the exempt appendix.

Ward/s: Thorpe Hamlet

Cabinet member: Councillor Harris - Deputy leader and social housing

Councillor Stonard - Sustainable and inclusive growth

Contact officers

Tony Jones – City Growth and Development Coordinator 01603 989443

Gwyn Jones- City Growth and Development Manager 01603 989440

Background documents- None

Report

1. Following reports to Cabinet in October 2018 and September 2019, work has progressed on an initiative to expedite delivery of a number of stalled privately owned development sites in the City. The initiative aimed to bring forward development on the sites which had become eyesores and attracted anti-social behaviour. It sought to achieve regeneration and deliver much needed new housing.
2. As part of this initiative, in September 2019, Cabinet agreed to seek to acquire the site of the former Railway Social Club at Ailwyn Hall, Lower Clarence Road for development for social housing via the council's Housing Revenue Account (HRA). Specifically, Cabinet authorised the steps below :
 - To continue the dialogue with the landowner to seek to acquire the freehold interest by way of open market negotiation (acquisition in 2019/20 was to be funded from the affordable/social housing opportunities fund budget)
 - To bring back a further report to Cabinet with recommendations to use the Council's compulsory purchase powers in the event that open market acquisition could not be agreed within a reasonable period of time.
 - To agree to commission initial design work for the site so that a scheme could be agreed prior to serving any Compulsory Purchase Order (CPO). (This was to be funded through the 2019/20 site formation budget).
 - That budgetary provision for detailed design, acquisition and development as required would need to be approved for future years as part of the 2020/21 capital programme, in the context of work on other priorities. Costs were to be kept to the minimum necessary to progress the project to the next stage.
Note- provision in budgets has subsequently been made for 2020/21.
3. The site which would form the order land in the CPO is shown on plan 1. The site is owned by Lower Clarence Road Investments Ltd, domiciled in Dubai and incorporated in the Bahamas. The owners are represented by Urban Spectrum, based in London.

Progress update on the negotiations to acquire the site by agreement.

4. Following identification of the Ailwyn Hall site as a priority, the Council made contact with the owner's representatives (via Essentia consultants) in order to open negotiations to acquire the site in early 2019. Avison Young were subsequently appointed as the council's professional advisors to provide commercial surveyors' advice on CPO and to negotiate with the landowner to seek to acquire the site by agreement. Avison Young carried out negotiations during 2019 and 2020 including meeting with the owner and with Urban Spectrum in early 2020 in order to further negotiations. A financial offer to purchase in line with the Compensation Code has been made, but has not been accepted by the

owner. Avison Young is continuing to seek to negotiate with the owner and his agents and these negotiations will continue alongside the formal compulsory purchase process.

5. Urban Spectrum submitted a pre-application proposal in August 2019 for student accommodation including 111 bed spaces. Planning services responded that the scale of the proposal was likely to have an unacceptable impact upon neighbouring residents and ran counter to policy on purpose-built student accommodation.
6. Nplaw continues to provide the legal advice required for CPO.
7. Due to the current Covid-19 pandemic, the Council is ensuring that it is fully considering the implications of making this CPO during this time of uncertainty and is following Government Guidance on Covid-19 in relation to compulsory purchase. Negotiations are on-going with the site's landowner and the Council's advisors are continuing to seek to acquire it by agreement. There is a risk of some delay to the process due to timing of inquiries but this will be kept under review and members will be updated, as appropriate.

Planning

8. The site is not covered by any specific site allocation, but lies adjacent to CC15 (Norwich Mail centre). The proposal to redevelop the site for housing complies with planning policy, specifically:
 - a) The National Planning Policy Framework (NPPF) underlines the importance of creating high quality places and taking opportunities to improve the character and quality of areas and how they function (paragraphs 124 and 130). The 2018 revisions to the NPPF introduced a new section encouraging the effective use of land to provide new homes and meet other identified needs (section 11). In particular, substantial weight should be given to the use of brownfield land, opportunities to remediate degraded and derelict land and develop under-utilised land (paragraph 118 (c) and (d)). Local planning authorities are advised to take a proactive role and use their full range of powers (including CPO) to identify and bring forward land that may be suitable to meet development needs (paragraph 119).
 - b) With regard to the Council's adopted development plan policies, the principle of redeveloping the site with housing is in accordance with Policy DM12, subject to consideration of the details and impacts of the proposal in relation to:

Joint Core Strategy for Broadland, Norwich and South Norfolk, 2011 amended 2014 (JCS):

- Policy 1 - Addressing climate change and protecting environmental assets
- Policy 2 - Promoting good design
- Policy 3 - Energy and water

- Policy 4 - Housing delivery
- Policy 5 - The economy
- Policy 8 - Culture, leisure and entertainment
- Policy 11- Norwich City Centre

Norwich Development Management Policies Local Plan 2014 (DMPLP):

- Policy DM1 Sustainable development principles for Norwich
- Policy DM2 Ensuring satisfactory living and working conditions
- Policy DM3 Delivering high quality design
- Policy DM5 Planning effectively for flood resilience
- Policy DM6 Protecting and enhancing the natural environment
- Policy DM8 Planning effectively for open space and recreation
- Policy DM9 Safeguarding Norwich's heritage
- Policy DM11 Protecting against environmental hazards
- Policy DM12 Ensuring well-planned housing development
- Policy DM22 Planning for and safeguarding community facilities
- Policy DM28 Encouraging sustainable travel
- Policy DM31 Car parking and servicing
- Policy DM32 Encouraging Car Free and Low Car Housing

9. The site has previously held planning consents for residential development which have not been implemented The planning history is as follows:
 - 06/00963/F Redevelopment of site with 2/5 storey building comprising 21 flats with associated parking and bicycle storage. Approved 21/04/08
 - 10/01560/ET Extension of time period for commencement of development for previous planning permission (App. No. 06/00963/F) 'Redevelopment of site with 2/5 storey building comprising 21 flats with associated parking and bicycle storage. Approved 15/03/11
 - 13/02029/D Details of Condition 2, 3, 4, 6, 7 and 8 of permission 10/01560/ET. Approved 17/02/14
 - 13/01941/F Demolition of Ailwyn Hall (Railway Social Club). Approved 17/01/14 – expired 17/01/17 (previously approved in 2007 and 2010 - 06/00962/C and 10/01556/C)
10. All pre-commencement conditions were discharged prior to expiry of the 2010 permission and a build contract was submitted alongside the 2013 demolition application. However, the building is largely still standing so it appears the demolition consent has not been implemented and it does not appear that any work has taken place on site to constitute implementation of the planning permission.
11. Following the September 2019 cabinet decision to proceed to acquire the site, Chaplin Farrant architects were appointed to produce an initial design for a new social housing scheme for the site. Three design options were presented, including versions with 3, 4 and 5 storeys and varying numbers of one-bedroom flats. The preferred option is an amended option 3 (three storeys) constructed to an enhanced fabric specification. The proposed layout is shown on plan 2.

12. The proposed scheme was submitted to the council's planners for an initial review to provide some assurance that the scheme, when designed in more detail, is likely to secure planning permission. Clearly the comments provided are made without prejudice to the formal planning process. Planning comments indicate:

- a) The layout responds well to the identified constraints and opportunities on the site and has raised no highways objection.
- b) Analysis has been undertaken to investigate how much of the amenity area to the rear will be in the shade, with the impact deemed acceptable for the preferred option of a 3 storey building.
- c) Surveys and assessments in relation to surface water flooding, trees / ecology and contamination will need to be prepared in due course for detailed consideration to be given to these impacts.
- d) Subject to consideration of these matters, the scheme prepared to date would, in principle, be considered favourably by officers.

Design and quality standards

13. The housing design includes a "fabric first" approach to reducing energy use, and to ensure properties will be compliant with emerging standards for low-carbon heating and hot water.

14. The enhanced specification (aimed at achieving an 'A' rated Energy Performance Certificate or as close as is practicable) includes the following upgrades beyond current Building Regulations

- Increased insulation in the fabric throughout,
- Reduced thermal bridging throughout,
- Improved air tightness,
- Mechanical ventilation / heat recovery
- Additional Photovoltaics

15. Chaplin Farrant have worked with Clear Consulting to establish the preferred approach to providing heating and hot water in order to develop confidence in build costs at this feasibility stage. An enhanced fabric specification including the upgrades listed above can be delivered with a build cost uplift of 13% above Building Regulation standards. For comparison, achieving a Passivhaus standard would represent a 25% increase in build costs.

16. Further details of the financial appraisals are set out in the exempt Appendix

The CPO process

17. A CPO allows a public authority to acquire third party interests in land compulsorily. It must be progressed concurrently with a strategy to acquire the land voluntarily. A CPO is viewed as a serious interference with private property rights, is a complex process and should only be used following careful consideration of other options. Preparation of a CPO requires attention to detail and strict adherence to statutory

requirements. Making the Order does not give the Council the power to acquire the land – this power arises only when the Order is exercised after it is confirmed either by the Council, the Planning Inspectorate or by the Secretary of State.

18. Following making of the CPO, the Council must notify the affected persons that the CPO has been made and is to be submitted to the Secretary of State for confirmation and then submit the CPO for consideration. The council needs to prepare a Statement of Reasons to be submitted to the Secretary of State when the CPO is served.
19. There may also be other land interests and rights which need to be extinguished or overridden which will be included in the CPO if required. Affected persons have the opportunity to object to the Secretary of State. If no one objects, the Secretary of State is likely to invite the Council to confirm the CPO itself, following which, the Council has the power to exercise the CPO and acquire third party interests in land.
20. Where there are objections, the Secretary of State will appoint an inspector to examine the CPO, via written representations, a public hearing or a public inquiry into the CPO. The inspector's report will summarise the evidence and come to a view as to whether there is a compelling case in the public interest for the confirmation of the CPO. Considering the nature of the case, the inspector is likely to constitute the decision maker, however in some cases the Secretary of State makes the decision in light of an inspector's recommendations.
21. If the CPO is not confirmed, the Council may have the option of bringing a judicial review to challenge the legality of the decision-making process. If and when the CPO is confirmed there is a 6-week window during which affected parties may bring a High Court challenge to the legality of the decision-making.
22. As per Government Guidance on the use of CPO, the Council has been and will continue to seek to reach a negotiated settlement. Implementation of a confirmed CPO will only arise where agreement cannot be reached on reasonable terms and in a reasonable timeframe. The authority given in this report assists the Council by making it clear to the land interests that the Council intends to deliver the scheme and is willing to secure and exercise a confirmed CPO, if required.
23. As part of the CPO process the Council needs to demonstrate that funding is in the place to acquire the land and property interests, as well as to complete the development of the site

Funding for the proposal

24. Funding for site acquisition is available through the council's Opportunities Fund. This fund was established in 2019 to allow the council to acquire land and property for social housing through the Housing Revenue Account (HRA).

The fund currently has £5.68m uncommitted for 2020/21, so more than sufficient to cover this.

25. Design and other fees will be funded through the council's Site Formation Budget (in the HRA). £50k is available in 2020/21. The development of the site is included in the council's Capital Ambition programme, which sets out the council's priorities for capital funding in advance of inclusion in the capital programme for future years, where specific budgetary provision can be made, as required.

Delivery of the scheme

26. Subject to Cabinet resolution, the architects will be commissioned to continue to progress the design in further detail and it is envisaged that a planning application will be submitted in December 2020 with determination likely in March 2021. Once the council has acquired the site there will be a period of further design development (post planning) prior to commencing work on site, in order to secure building regulations approval and to provide design details for construction purposes.
27. The council will shortly commence a process to determine the route to procurement of a contractor to develop the site. Procurement of a contractor will commence as soon as reasonably possible after the council takes possession of the site and design development is complete.
28. Assuming a public inquiry is held as set out in the timetable below, it is envisaged that work could commence on site in January 2022 with completion by summer 2023.
29. Set out below is an indicative project programme- the precise timings will depend on whether there is a public inquiry or if agreement can be reached to acquire the site through a negotiated route. Date of inquiry/ decision are approximate as this will be determined by the Inspectorate/ Secretary of State, and may be subject to delay as a result of Covid-19.

Milestone	Estimated Date
Make and notify CPO	Dec 2020
Period of objections	Dec 2020-Jan 2021
Public inquiry (if required)	May 2021
Sec. of State or	Aug 2021
Inspector's decision	September 2021
Take possession	September 2021

The legal case for CPO

30. By virtue of section of s.17 of the Housing Act 1985 the Council has the power to acquire compulsorily, subject to confirmation by the Secretary of State, land for the erection of houses. Compulsory purchase powers should only be used where there is a compelling case in the public interest and where the Council has been unable to acquire the site through

negotiations within a reasonable timeframe or budget. The Council has already taken various steps to seek to see development undertaken or acquire the relevant land by private treaty and at this stage there is no certainty over whether the land can be acquired within a reasonable timeframe or budget, resulting in the Council choosing to exercise its compulsory purchase powers

31. The proposal for the council to acquire and develop the site will achieve the following key benefits:

Regeneration

- The site has been unused since around 2005. The scheme will bring the site into use and send a message to other owners in control of inactive sites that the council wishes to see these developed and is willing to use its CPO powers if necessary.

Delivering new social housing

- The Strategic Housing Market Assessment (SHMA) 2017 identified an annual need for 240 new affordable homes for rent. It should be noted that this does not generally cover the numbers lost annually through right to buy. The Ailwyn Hall site delivers a car-free development of one bedroom flats, (the category of highest need) in a sustainable location close to the city centre, bus, rail and cycle routes.

Options Appraisal

32. Other options were considered (as set out in September 2019 Cabinet report):

- a) The council had previously considered the option of acquiring this and another site and selling them on to a registered provider who would develop the sites and cover the council's acquisition costs in full. No willing party could be identified who would enter into such an arrangement with the council.
- b) The council could acquire the site, obtain planning consent and sell it on to a local developer or as serviced plots. Although this would be less costly for the council, there would be less control over the timeframe for delivery and the scheme would not deliver affordable housing.
- c) The only realistic option for the council to achieve the development of the site for affordable housing within a reasonable timeframe is for the council to intervene and develop the site itself. The scheme proposed will provide new housing to higher environmental standards than required by current building regulations and therefore higher standards than are likely to be achieved by any developer delivering a market housing scheme.

Without the council's intervention it is probable that the site will remain derelict for years to come. A more detailed options appraisal of the 2

remaining options - do nothing and develop the site for social housing - is provided as part of the exempt appendix.

Equality Duties

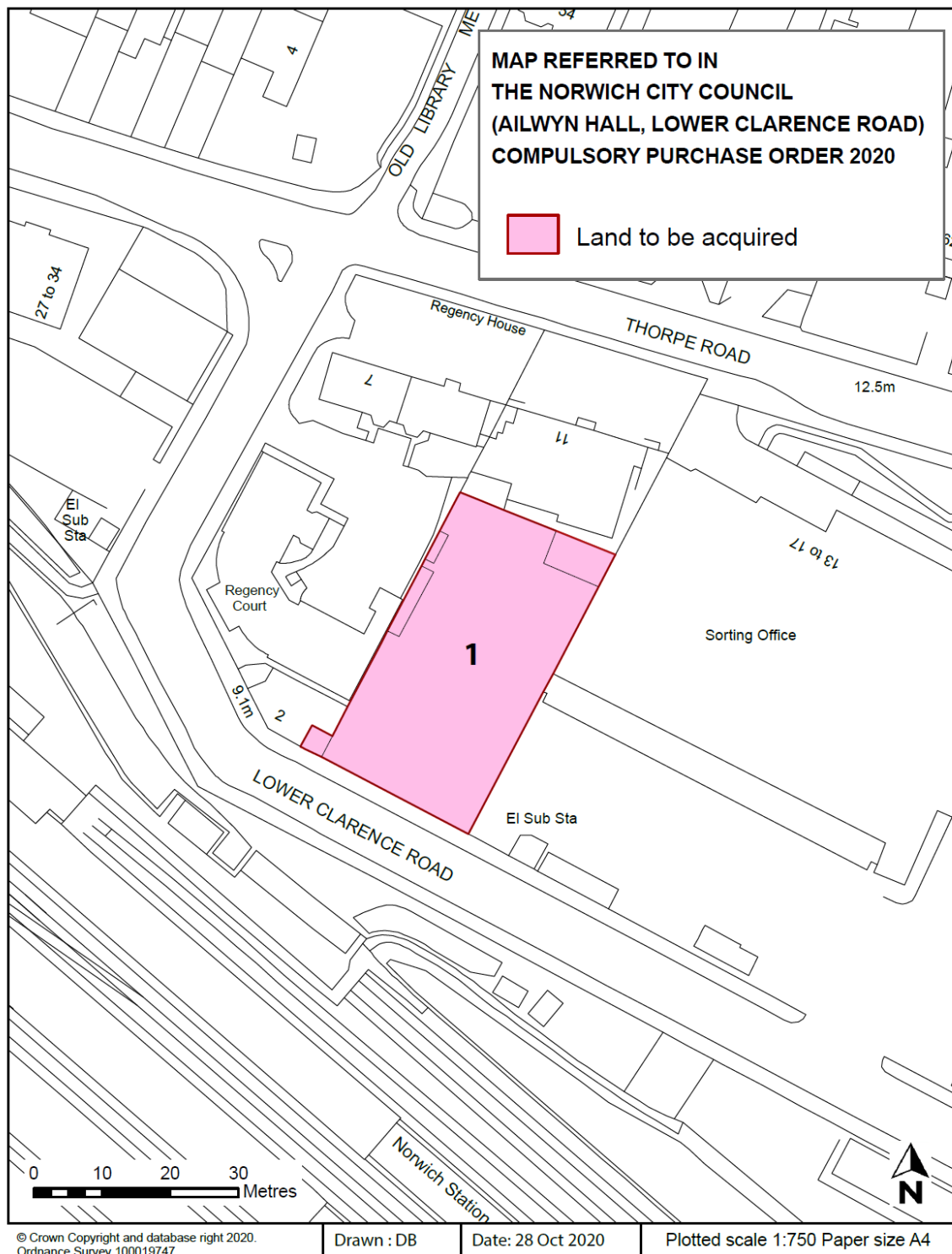
33. No equalities assessment has been undertaken on the owner because it is a company.
34. The site is currently unoccupied and does not provide its owner with an income, and does not constitute a home. The Council considers that the owner and their agent have the capacity to understand and deal with the Council over a voluntary purchase and the CPO process and is not therefore disadvantaged by that process. Furthermore the council has offered to acquire the site on a basis which reflects the Statutory Compensation Code. The Code requires landowners to be put back in the position they were prior to the acquisition so far as money can. The Council will keep its duty under the Equality Act under review and report further as required.

Human Rights

35. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. The Convention rights likely to be relevant to the CPO are:
- First Protocol Article 1: Peaceful enjoyment of possessions.
This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.
 - Article 6: Entitlement to a fair and public hearing in the determination of a person's civil and political rights. This includes property rights and can include opportunities to be heard in the consultation process.
 - Article 8: protects the right of the individual to respect for private and family life
36. The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties. Any interference with a Convention right must be necessary and proportionate.
37. The Council must consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. So, it must carefully consider the balance to be struck between individual rights and the wider public interest.
38. In this case it is considered that there is little interference with article 8, the order land being a vacant commercial site. With respect to article 1

the public interest is served by removing the amenity and environmental harm arising from the site and by its regeneration and development of the site with social housing to meet housing need. It is considered that these public benefits outweigh the necessary interference with the private rights and interests and in the absence of a voluntary acquisition creates a compelling case in the public interest for a CPO.

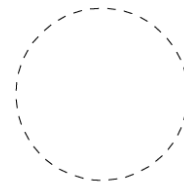
39. In addition, the individuals affected by the order have the right to object and have their objection heard at a public inquiry and, additionally, appropriate compensation will be available to those entitled to claim it under the relevant provisions of the CPO Statutory Compensation Code. These rights have been held by the courts as compliant with article 6.
40. Therefore, it is considered that in making the CPO the Council has struck a fair and proportionate balance between the interests of those whose Convention rights will be affected and the wider public interest

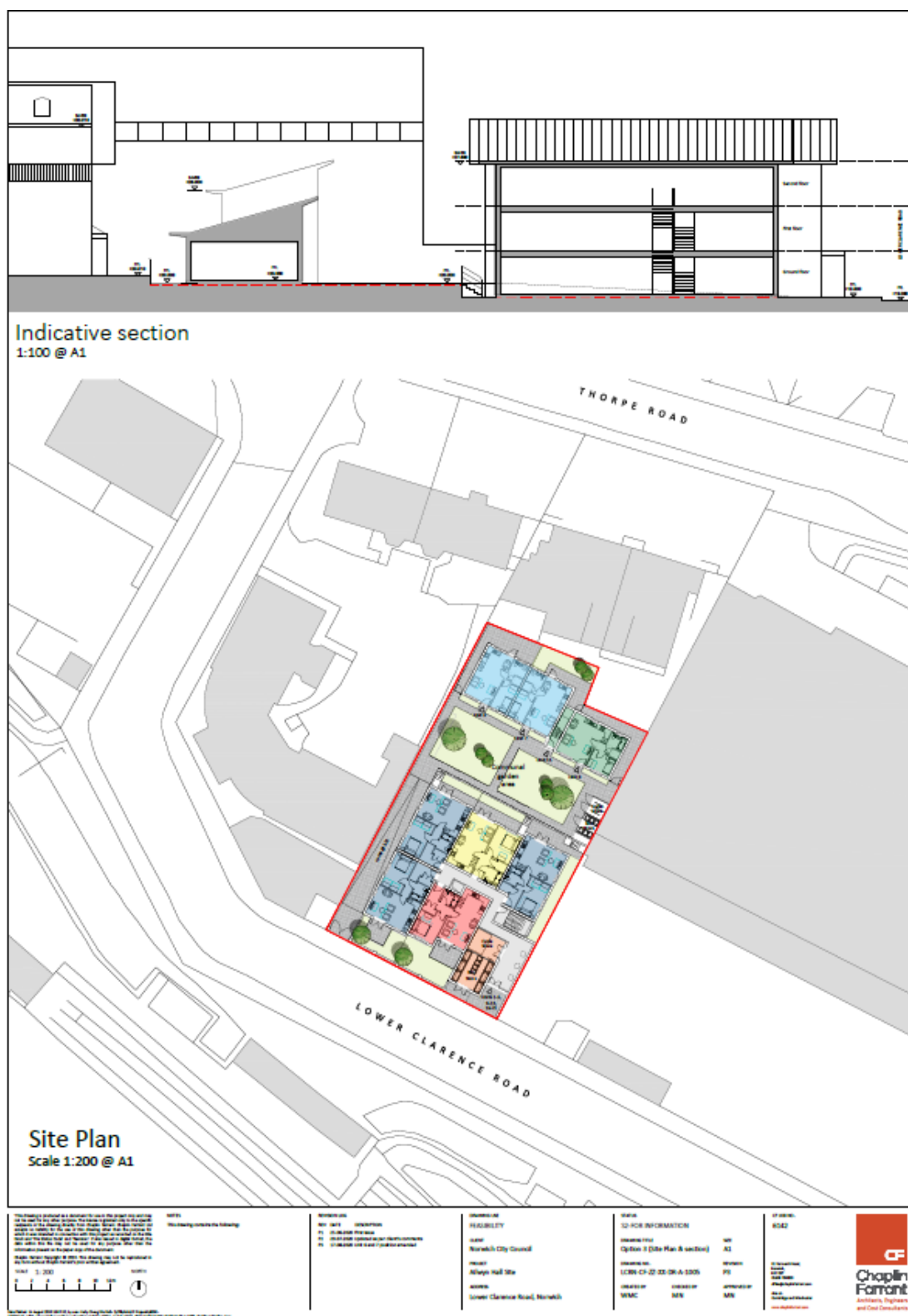


THE COMMON SEAL OF NORWICH CITY COUNCIL
WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

Authorised Signatory:

DATED THISDAY OF2020







Perspective View Looking North West from Lower Clarence Road

Integrated impact assessment



NORWICH
City Council

Report author to complete

Committee:	Cabinet
Committee date:	11/11/2020
Director / Head of service	Andy Watt
Report subject:	Compulsory purchase of the Ailwyn Hall site, Lower Clarence Road
Date assessed:	27/10/2020

	Impact			
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is a cost to the council's capital budgets in acquiring/developing site, however this will assist with spending RRTB receipts.
Other departments and services e.g. office facilities, customer contact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
ICT services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Economic development	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Regeneration of currently undeveloped site
Financial inclusion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Provision of affordable housing
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>S17 crime and disorder act 1998</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Human Rights Act 1998	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Health and well being	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Development of derelict site will have a beneficial effect on local peoples' health and well being

	Impact			
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Advancing equality of opportunity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Provision of affordable housing on site
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Redevelopment will have minimal impact on transportation
Natural and built environment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Regeneration of eyesore site
Waste minimisation & resource use	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Redevelopment will involve use of resources
Pollution	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Redevelopment could have an impact on pollution although this will be minimised through the development process
Sustainable procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Energy and climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Redevelopment will have an impact on energy and climate change although this will be minimised through the development process. The proposed housing will be delivered to “fabric first” standards to minimise energy use.

	Impact			
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Risk management	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There are risks associated with the CPO process and the development process including the unknown of any site contamination

Recommendations from impact assessment

Positive

The report aims to achieve regeneration of a vacant stalled site in the City which will bring new affordable housing and improve the site which is currently unused.

Negative

There will be some negative impact as a consequence of development e.g. resource use although this will be minimised through the approach to development and through the planning process

Neutral

Issues

