Report to	Cabinet	Item
	11 March 2020	
Report of	Director of people and neighbourhoods	17
Subject	Compulsory purchase of the former King's Arms pub site, 100 Mile Cross Road	17

# **KEY DECISION**

### Purpose

To consider the compulsory purchase of the former Kings Arms pub site on 100 Mile Cross Road

#### Recommendation

To agree the next steps (as outlined in para 40 of the report) on all matters related to the compulsory purchase of the former Kings Arms site

### **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. Adding the build costs to the HRA BP does not extend the repayment of existing HRA borrowing. This has been modelled in isolation on the base plan. There are a number of potential schemes within the 2020/21 proposed HRA capital ambition plan and bringing forward a number of these schemes at the same time, would have an overall impact. 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: Mile Cross

Cabinet member: Councillor Harris - Deputy leader and social housing

Councillor Stonard - Sustainable and inclusive growth

### **Contact officers**

Gwyn Jones – City Growth and Development Manager 01603 212364

### **Background documents**

None

# Report

# **Background documents**

- 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 King's Arms public house, 100 Mile Cross 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.
- 3. The site which would form the order land in the CPO is shown on plan 3. The Kings Arms site is owned by a company. The CPO site includes the roads that would be affected or altered in route as a result of the proposals which are outside of the Kings Arms title, one is registered and one is unregistered.

# Progress update.

4. Avison Young were appointed as the council's professional advisors to provide commercial surveyors' advice on CPO and to negotiate to acquire the site. Avison Young have now managed to make contact with the sole director of the company owning the former Kings Arms site and have begun negotiations over a voluntary purchase. However at the time of writing the report there is no certainty over whether the site will be acquired voluntarily within a reasonable timeframe or at a reasonable cost.

- 5. The council has also been successful in acquiring the neighbouring property (42 Glenmore Gardens), a former council home, sold under right to buy. The incorporation of part of the garden of this property will provide for a much better access and development of the former Kings Arms pub site. The dwelling and remaining garden will be retained as part of the council's stock– as shown on Plan 1.
- 6. Nplaw is also continuing to provide the legal advice required for CPO

# Planning

- 7. Whilst the site is not covered by any specific site allocation, the proposal 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:
    - Policy JCS1 Addressing climate change and protecting environmental assets
    - Policy JCS2 Promoting good design
    - Policy JCS3 Energy and water
    - Policy JCS4 Housing delivery
    - 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 DM7 Trees and development
    - Policy DM9 Safeguarding Norwich's heritage
    - Policy DM11 Protecting against environmental hazards
    - Policy DM30 Access and highway safety
    - Policy DM31 Car parking and servicing

- 8. The site has previously held planning consent for residential development which has not been implemented .It appears that some foundations were constructed on site pursuant to the 2005 permission, but pre-commencement conditions were not discharged and correspondence in 2011 advised that the permission had lapsed. The planning history is as follows:
  - 4/2001/0679/O Redevelopment of site with four detached houses. Approved 11/02/02
  - 4/2001/0700/O Redevelopment site with three detached houses. Approved 11/02/2002
  - 4/2001/0871Redevelopment of site with five houses. Refused 11/02/02
  - 4/2002/0357/O Redevelopment of site with two semi-detached houses and four flats. Approved 05.06.02
  - 4/2002/0448 Redevelopment of site to 8 flats. Approved 07/06/2002
  - 05/00173/F Refurbishment and extension of former pub to form 6 flats and erection of 5 new flats with associated access and parking. Approved subject to S106 11/08/05
  - 15/01714/DEM Demolition of former Kings Arms public house.
    Prior approval given 10/12/15
- 9. Following the September 2019 decision, Chaplin Farrant, architects were appointed to produce an initial design for a new social housing scheme for the site. Their design includes 5 dwellings (1 x 5 bed and 3 x 4 bed houses plus a 2 bed bungalow), which is considered the most appropriate type of development in this location to meet local housing need. The proposed layout is shown on Plan 2 attached.
- 10. The proposed scheme has been 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. The planning comments indicate:
  - a) The layout responds well to the identified constraints and opportunities on the site and has raised no highways objection. A section of adopted footpath between Half Mile Road and Glenmore Gardens will need to be stopped up and re-routed and this can be dealt with through a diversion order following grant of planning, with the order sought in parallel with the CPO.
  - b) An elevation design and landscape strategy which responds to the character of the area and delivers appropriate enhancement to the site and the adjacent Conservation Area shall be necessary. Surveys and assessments in relation to daylight and sunlight, surface water flooding, trees and contamination shall need to be prepared in due course for detailed consideration to be given to these impacts.
  - c) Subject to consideration of these matters, the scheme prepared to date would, in principle, be considered favourably by officers.

### Design and quality standards

- 11. 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. Properties are also designed to exceed national space standards and to be compliant with standards such as *Building for Life* and *Secured by Design*.
- 12. The enhanced specification (aimed at achieving an 'A' rated Energy Performance Certificate).includes the following upgrades beyond current Building Regulations
  - Increased insulation in the fabric throughout,
  - Reduced thermal bridging throughout,
  - Improved air tightness,
  - Triple glazing,
  - Air Source Heat Pumps & Cylinder (for heating and hot water) compared to the standard notional building with a gas combi boiler
  - Additional Photo voltaics
  - Additional Mechanical Ventilation and Heat Recovery.
- 13. Based on a 4 bed house, the enhanced scheme provides a 60% reduction in energy demand, 20% reduction in carbon emissions and 25% reduction in energy costs compared with a property built to current Building Regulations' standards. Although energy costs are taken from 2012 SAP, they have increased by 17.2% since then (source ONS Domestic energy price indices 31 January 2020) and it is not unreasonable to assume future increases. The proposed scheme will therefore make a significant contribution towards tackling fuel poverty for tenants.
- 14. Chaplin Farrant have supplied costs, for the enhanced specification. The enhanced scheme represents a 15% increase in build costs, resulting in around 12% increase in overall development costs. This increase in costs is considered justified given the additional environmental and social benefits that can be achieved. For comparison, achieving a Passivhaus standard would represent a 25% increase in build costs (due the relatively modest scale of this scheme).
- 15. Further details of the financial appraisals are set out in the exempt Appendix

# The CPO process

16. 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.

- 17. 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.
- 18. There may also be other land interests and rights which need to be extinguished or overridden but they will not be known until the full referencing process is complete. 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, following which, the Council has the power to exercise the CPO and acquire third party interests in land.
- 19. Where there are objections, the Secretary of State will appoint an inspector to hold a public inquiry into the CPO. The inspector's report will summarise the evidence and come to a view as to whether there is 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 inspectors recommendations.
- 20. 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.
- 21. 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.
- 22. 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

23. Funding for site acquisition is available through the councils 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 has a balance of £9.6m in 2019/20 and a budget provision of £2.5m in 2020/21. Design and other fees will be funded through the council's Site Formation Budget (in the HRA). £150K was available in 2019/20 and a further £50K will be 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 of the project in the capital programme for the coming year.

### **Delivery of the scheme**

- 24. 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 April 2020 with determination likely in July 2020. 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.
- 25. The council will shortly commence a process to determine the route to procurement of a contractor to develop the site- likely to be a traditional construction contract. The procurement will commence later in 2020/21 so that a contractor is appointed to commence work on site as soon as reasonably possible after the council takes possession of the site and design development is complete. The delivery of the scheme will be overseen by the council as client and delivered by the appointed contractor.
- 26. Assuming a public inquiry is held as set out in the timetable below, it is envisaged that work could commence on site in the summer of 2021 with completion by summer 2022.
- 27. 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.

#### Milestone

CPO Resolution Make and notify CPO Period of objections to Secretary of State Pre-inquiry period Public inquiry (if required) Secretary of State decision Take possession

# Estimated Date

March 2020 April 2020 During April/ May 2020

April 2020- Autumn 2020 Autumn 2020 Winter 2020 Spring 2021

### The legal case for CPO

28.By section virtue 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 needing to exercise its compulsory purchase powers

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

### Removing derelict eyesore sites/ regeneration

- The site has been unused for some considerable time- since around • 2000- following the closure of the public house. The public house was vacant for more than 10 years until the property was demolished in 2015. Prior to the demolition of the pub the council served a section 79 Building Act notice on the owner, due to problems with pests such as rats and foxes, considerable quantities of waste tipped onto the land, including dozens of tyres, mattresses, general household waste, used pet bedding, furniture and plastics. The uneven ground was covered with mounds of brambles and weeds and trenches, hidden by the overgrowth were considered to present a risk of injury to any visitors to the site. The building was in a very poor state of repair and residents were concerned about fire risk due to people accessing the site. The owner secured prior approval consent for demolition in 2015 and arranged the demolition himself, before any further action was required.
- Although the building has been demolished, the site is still vacant, overgrown, is an eyesore and subject to antisocial behaviour and fly tipping. Over the years, the council has spent considerable officer time and money responding to complaints, checking the site, arranging notices for clearing up the site and preventing unauthorised access.
- The council has recently re-secured the site by mending the front gates (free of charge to the owner) to prevent access by large scale fly tippers.
- The council has also recently served notices under Prevention of Damage by Pests Act 1948 to ensure removal of fly-tipping/harbourage and destroy rats. This was served on 12/02/2020 with a compliance date after 21 days. Direct action may follow if no action is taken to resolve, costs for this can be recharged as a debt secured by charge on the property.
- The council has also recently commenced a Community Protection Notice Process under the Anti-Social Behaviour Crime and Policing Act 2014 to secure the site against entry by unauthorised persons for the purpose of protection of the public and reducing occurrences of fly tipping. This was also served on the 12/02/2020 with a compliance date after 42 days. Direct action may follow if no action is taken to resolve, costs for this can be recharged as a debt secured by charge on the property.

• Development of the site by the council will regenerate the eyesore site and remove the health, safety hazards associated with its current state

### Delivering new social housing

- The Strategic Housing Market Assessment (SHMA) 2017 identified an annual need for 240 affordable homes for rent. The highest need identified by the SHMA is for 1-bedroom flats however, there are a number of developments across the city with a requirement for affordable housing that are delivering flats but very few that are providing larger family accommodation. The SHMA identified an annual need for seventeen 4bedroom+ houses and therefore we look to secure opportunities to meet this need wherever possible. The SHMA is a snapshot in time so whenever considering the most appropriate mix of housing for a particular site data is also sought from the council's Home Options waiting list to consider current need and demand.
- Issues such as Right to Buy have had a significant impact on the supply of four and five bedroom houses within the council's stock. Over the past 10 years the council has sold 27 four and five bedroom properties from its housing stock. Over the same period the council has allocated an average of 9 x four bed houses and 1 x five bed house per year from its stock through the Home Options scheme. There are now 335 households on the Home Options scheme in need of such properties, many of whom have a significant or severe housing need and face little chance of being suitably rehoused. The current imbalance of supply and demand means that any addition of 4 and 5 bedroom houses to stock meets a significant need. This will also enable a through-flow of households from overcrowded 3 bed properties, particularly in the local NR3/Mile Cross area where 96 households are currently waiting for a 4 or 5 bedroom house to become available

# **Options Appraisal**

30. Other options were considered- (as set out in September 2019 Cabinet report.). The council had previously considered the option of acquiring the site and selling it on to a registered provider who would develop the site 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. 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. 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.

31. Without the council's intervention it is highly likely that the site will remain derelict for years to come and will continue to cause problems for the local community and result in ongoing complaints from residents. 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**

- 32. The Council has taken account of its duties under section 149 of the Equality Act 2010. We have not been able to carry out a public sector equalities duty assessment on the owner because the site is owned by a company and there has been limited response from the sole director.
- 33. The site is currently unoccupied and does not provide its owner with an income, and does not constitute the owners home. At the present time the Council considers that the director has the capacity to understand and deal with the Council over a voluntary purchase and the CPO process and is not therefore a person disadvantaged by that process. Furthermore the council has offered to reimburse the reasonable costs of the owner taking specialist professional advice and 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

- 34. 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
- 35. 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.

- 36. 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.
- 37. 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.
- 38. 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.
- 39. 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

#### **Next steps**

40. Cabinet is asked to agree the following next steps;

- a) To approve the making of a compulsory purchase order under section 17 of the Housing Act 1985 for the land edged red on Plan 3 to enable the delivery of social housing
- b) Delegate authority to the director of people and neighbourhoods in consultation with the 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

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

- c) Delegate authority to the director of people and neighbourhoods in consultation with the portfolio holder for social housing to 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.
- d) Delegate authority to the director of people and neighbourhoods in consultation with the portfolio holder for social housing, to 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.
- e) Delegate authority to the director of people and neighbourhoods in consultation with the portfolio holder for social housing, to acquire third party interests in the land within the CPO either by agreement or compulsorily.
- f) Delegate authority to the director of people and neighbourhoods in consultation with the portfolio holder for social housing to develop the scheme design further based on the enhanced environmental specifications proposed and to submit a planning application for the proposals

# Integrated impact assessment



# The IIA should assess **the impact of the recommendation** being made by the report Detailed guidance to help with the completion of the assessment can be found <u>here</u>. Delete this row after completion

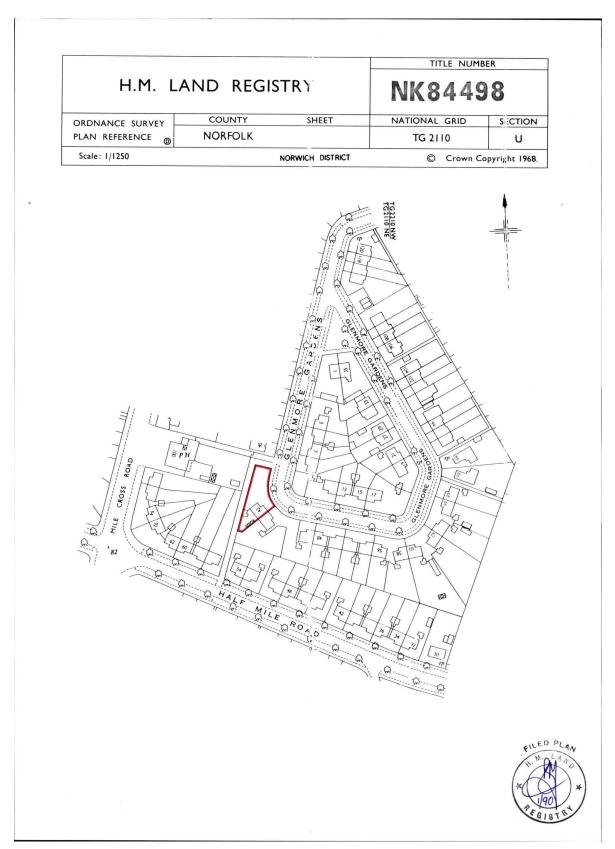
Report author to complete	
Committee:	Cabinet
Committee date:	11/03/2020
Director / Head of service	Andy Watt
Report subject:	Compulsory purchase of the former King's Arms pub site, 100 Mile Cross Road
Date assessed:	20/01/2020

		Impact		
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)			$\square$	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		$\square$		Development of the site will reduce complaints about anti-social behaviour etc.
ICT services	$\square$			
Economic development		$\square$		Regeneration of currently undeveloped site
Financial inclusion		$\square$		Provision of affordable housing
			·	
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	$\square$			
S17 crime and disorder act 1998	$\square$			
Human Rights Act 1998	$\square$			
Health and well being		$\square$		Development of derelict site will have a beneficial effect on local residents

	Impact			
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	$\square$			
Eliminating discrimination & harassment	$\square$			
Advancing equality of opportunity		$\square$		Provision of affordable housing on site
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	$\square$			Redevelopment will have minimal impact on transportation
Natural and built environment		$\square$		Regeneration of eyesore site
Waste minimisation & resource use			$\square$	Redevelopment will involve use of resources
Pollution			$\square$	Redevelopment could have an impact on pollution although this will be minimised through the development process
Sustainable procurement	$\square$			
Energy and climate change				Redevelopment could have an impact on energy and climate change although this will be minimised through the development process

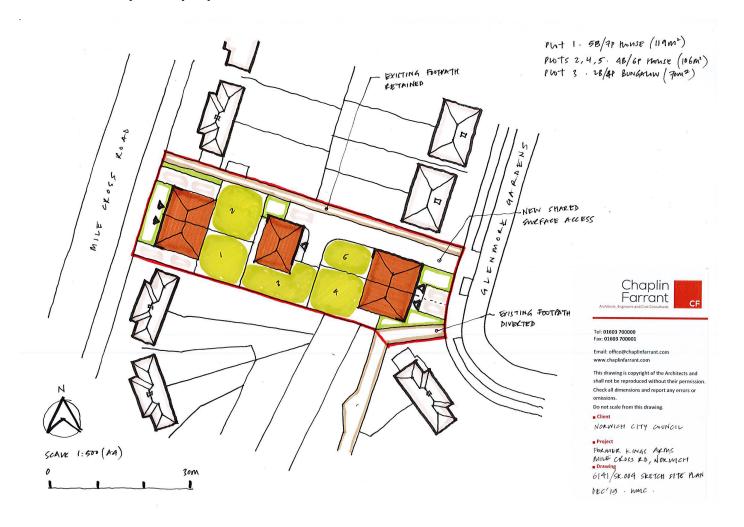
	Impact			
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Risk management			$\square$	There are risks associated with the CPO process including the unknown of any site contamination

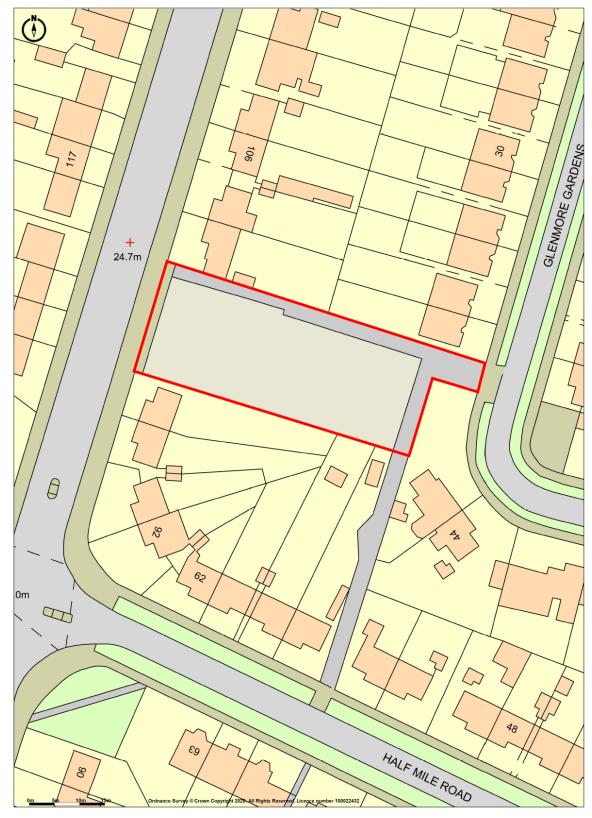
Recommendations from impact assessment
Positive
The report aims to achieve regeneration of a vacant stalled site in the City which will bring new affordable housing and improve the site which is currently an eyesore
Negative
There will be some negative impact as a consequence of development e.g. resource use although this will be minimised through the approach to development and through the planning process
Neutral
Issues



# Plan1- Land acquired at 42 Glenmore Gardens

# Plan 2- Development proposals





Plan 3- The site which will form the order land in the CPO.



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