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Cabinet

20 June 2023

Use of Compulsory Purchase Powers for land adjacent to Blandford Heights Industrial Estate

For Decision

Portfolio Holder: Cllr L Beddow, Culture, Communities and Customer Services

Local Councillor(s): All

Executive Director: J Sellgren, Executive Director of Place

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Report Status: Fully Exempt

Brief Summary:

The business case for a strategic Waste Management Centre (WMC) for central Dorset was approved by the former Dorset Waste Partnership Joint Committee in June 2016. Subsequently this project was approved and included within the Council's capital programme.

While planning permission has been granted to construct this facility adjacent to the Sunrise Business Centre, Blandford Forum, the negotiations with the landowner for the purchase of this site has not reached a conclusion despite best efforts of officers since 2015.

Officers will continue to seek to acquire the land by agreement but authority to progress with a compulsory purchase order is now needed because agreement has not been reached with landowners within a reasonable timescale for this critical infrastructure.

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Recommendation:

It is recommended that Cabinet:

Authorises

- (i) the use of the Council's powers of compulsory acquisition under section 121 of the Local Government Act 1972 (and the enabling purpose set out in section 51 of the Environmental Protection Act 1990), the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 and such other powers as may be appropriate to secure a compulsory purchase order (the 'CPO') to acquire land and rights over in or under land adjacent to Sunrise Business Park as indicatively shown edged red on the plan at Appendix 1 to enable the construction of the Blandford waste management centre provided that the acquisition costs are within the budget approved by Cabinet from time to time.

And that the following actions are delegated to the Executive Director of Place Service in consultation with the Portfolio Holder:

- (ii) To take all necessary steps to secure the preparation, making, and submission to the Secretary of State for confirmation and implementation of the CPO including (but not limited to) drafting and publishing the Statement of Reasons; the publication, advertisement, notification and service of all necessary notices; the investigation of and response to objections; and the presentation of the Council's case at any public inquiry or other examination procedure.
- (iii) To continue to negotiate to acquire the necessary land and new rights by agreement and to acquire the same by private treaty if agreement can be reached, but if this is not possible to acquire the necessary land and new rights as set out in the CPO; and
- (iv) If relevant, to appropriate any third-party interests in the land required to override third party interests where not dealt with by the CPO.
- (v) To make minor amendments, modifications and deletions to the CPO including to the land or new rights required should this be considered appropriate.
- (vi) If the CPO is confirmed, to take all necessary steps and serve all necessary notices so that the land subject to the CPO vests in the Council.

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- (vii) to make an order to stop up the private means of access shown on the plan at Appendix 2

Reason for Recommendation:

To deliver works approved by Cabinet to secure critical infrastructure in Blandford for the development of a strategic waste transfer facility in central Dorset which will provide the capacity to maximise the benefits of operational efficiency and resilience to provide business continuity.

Negotiations have taken place over a considerable time period and it has not so far been possible to reach a formal agreement. Compulsory purchase powers are therefore sought to enable the project to progress in the event that the land and necessary rights cannot be acquired by agreement.

The resolution for a CPO will also support the negotiation process. The delegation would not be progressed until such time as an up to date valuation and any increase in capital costs are approved and provided. Once this is in place, the portfolio holder and Section 151 Officer will be consulted on exercising the delegation and this would be recorded.

1. Current Position

- 1.1 Planning permission for a new waste management centre on land adjacent to the Sunrise Business Centre, Blandford Forum, was granted April 2022. The facility will provide a waste transfer station and a modern Household Recycling Centre (HRC) replace the existing inadequate facility in Blandford. This development remains crucial for the continued waste services provided to residents and businesses in Dorset.
- 1.2 The land required for the proposed waste management centre indicated edged red on the plan in Appendix 1 is the minimum necessary to accommodate the new facility. Also indicated on the plan is land that is required to maintain the tree belt surrounding the site which will either need to be purchased or access and maintenance rights secured.
- 1.3 Discussions have taken place with landowners and their representatives since 2015, with agreed 'Heads of Terms' and a provisional agreed purchase price of [land negotiation and valuation amounts redacted for commercial confidentiality] reached. An independent valuation commissioned by the Council (December 2022) has indicated a market value of [land negotiation and valuation amounts redacted for commercial confidentiality]. The owner's land agent also commissioned a valuation which indicated a sum of [land negotiation and valuation amounts

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redacted for commercial confidentiality] (March 2023). From a recent meeting with the landowner and their agent it was suggested that they anticipate reaching a settlement between these two valuations. Cabinet's approval will be required separately for the increase in project costs over that approved in the Capital Programme.

- 1.4 All planning documents were sent to landowners for consideration in advance of submission and supported. Whilst Heads of Terms were agreed, negotiations have stalled despite best efforts by officers of the Council for the last 18 months. The reasons for this previously willing landowner to stall negotiations may be due to proposed developments of other land in their ownership. While officers have proceeded to discuss options with the site owner and continue to seek completion of the sale there is an unacceptable delay to the construction of the new facility.

2. Justification for Land Take

- 2.1. The existing Blandford WMC is an adapted grain store located on the Blandford Heights Industrial Estate. The site is owned by the waste management company SUEZ and is on a short-term lease arrangement with the Council.
- 2.2. The site is the waste service's busiest site in Dorset, in terms of the volume of material passing through the transfer buildings, yet the least efficient and most at risk of service failure / enforcement action by the regulators. Poor access, enforced tipping windows (time slots), a lack of drainage, no fire suppression, disruption to neighbouring businesses, impacts on waste collection operations, all results in an inefficient service. At present the collection service has to divert some waste to Sherborne due to the limited availability at Blandford.
- 2.3. The site is restricted in what it can accommodate in terms of materials delivered to the transfer barn by our roadside collection vehicles and the waste streams delivered to the household recycling centre by residents of Blandford and surrounding area. The access to the transfer barn is narrow with single vehicle access so vehicles delivering waste and bulkers taking the waste away cannot use the site at the same time. Tipping windows in terms of time have been introduced to avoid conflicts between tipping and loading. This can cause queuing of waiting vehicles on the access road causing a hazard to users of the HRC.

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- 2.4. Long queues form on the access road due to restricted access to the transfer barn and limited space at the household recycling centre which closes for container changes. This has an adverse impact on neighbouring businesses with queueing traffic obstructing access to their premises. At times queue length extends back to Shaftesbury Lane with delays from 5 to 20 minutes and are a daily occurrence.
- 2.5. The Council did explore purchasing the existing site from landowners SUEZ and land from neighbouring businesses to increase the footprint of the site. In 2012 a feasibility study was carried out to establish the land that would be required to construct a replacement facility on the existing site. Purchase of land from neighbouring businesses was essential to meet legislation at that time in terms of fire regulations with waste separation, drainage, and the need to install a fire suppression system. The additional requirement for improved access also necessitated the negotiation of a section of land owned by a third-party adjoining Shaftesbury Lane. Land purchase would have been required from 3 landowners with access rights negotiated with a further 3 landowners because a new access would be required onto Shaftesbury Road. Landowners declined to enter into negotiations with the Council and the site was not considered for compulsory purchase at that time due to the early stages of consideration and discussions.
- 2.6. In 2015, the land adjacent to Sunrise Business Park was put forward by Planning Officers at North Dorset District Council and subsequent discussions with the landowners and planning officers were positive leading to the current proposals being brought forward. Discussions over purchase on the existing site ceased at that time.
- 2.7. In reviewing the feasibility study for the current leased site, it is considered that with the requirement to separate more waste streams combined with current and future predicted property growth, the existing site, even if expanded would not be suitable for the size of development required. The development would raise significant issues with traffic movements resulting from increased visitor numbers, household collection vehicles and bulkers. The impact on traffic on Shaftesbury Lane and residential development would also be a significant issue. Drainage would be particularly difficult to design in such a restricted area, especially retention of contaminated water in the event of a fire. There would be a significant adverse impact on neighbouring businesses from increased activity at the existing site.

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- 2.8. On discussing our aspirations to build a strategic facility with the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty (AONB) and the Council's planning/landscaping teams, the size and impact of the proposed development within the AONB was deemed a concern. The case for the facility is based on exceptional need and this is clearly demonstrated for the waste transfer and HRC due to unavailability of suitable sites within the area and outside of the AONB, that can accommodate this level and type of development. This has also been demonstrated through the Waste Plan process which has allocated the site for the development of local waste management facilities for the transfer and recycling of waste. The Waste Plan process considered alternative sites and determined the site adjacent to the Sunrise Business Park as the most suitable and subject to scrutiny at the Waste Plan Inquiry. Planning permission was granted on 5 April 2022.
- 2.9. The design for the new WMC retains many of the features of the Bridport WMC, with changes to the waste delivery operation which is more suitable for the higher waste capacity required. The design keeps the public and operations separate, and there is a segregation of the refuse collection vehicles delivering waste and the plant bulking the waste for onward transportation. The household recycling centre has sufficient parking spaces for predicted visitor numbers and suitable access roads to accommodate vehicles waiting for spaces. In respect of the transfer building sufficient capacity is available for collection vehicles to wait on the approach lanes. Traffic volumes including predicted future growth has been modelled to ensure the facility is in a position to cater for future increases in trips to the site.
- 2.10. The improved design of the transfer barn can accommodate increased quantities of material and additional bays for alternative materials. This provides contingency in the event of temporary closure of other sites and third-party delivery points. Provision has been made to accept waste from small traders, an increased re-use area and an improved customer experience across the HRC area.
- 2.11 Planning permission for the scheme was granted on 5 April 2022. The reasons for granting the permission included that it was on an allocated site in the Waste Local Plan and that '... it would provide a fit for purpose, safe and accessible facility to serve the growing population. The benefits the facility would provide, the identified need for the public facility and the lack of suitable alternative sites in this location are considered to represent exceptional circumstances that would be in the public interest.' Therefore, the all that remains outstanding is acquiring the land and a stopping up order.

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3. History of Committee Decisions

- Dorset Waste Partnership Joint Committee 13 June 2016 – approval of proposal for a new waste management centre for central Dorset
- Dorset Waste Partnership Joint Committee, 20 March 2018 – reaffirmed approval of a new strategic Waste Management Centre in central Dorset
- Dorset Waste Partnership Joint Committee, 11 June 2018 - approved the increase in the application for prudential borrowing for the new strategic Waste Management Centre in central Dorset
- Cabinet, 6 April 2021, Capital programme 2021/22 - inclusion of the Blandford waste Management Centre
- Strategic and Technical Planning Committee, 4 April 2022 – planning permission granted

4. Negotiations with Landowners

- 4.1. Constructive discussions have taken place with landowners and their representatives since 2015, with agreed 'Heads of Terms' and an agreed purchase price. All planning documents were sent to landowners for consideration in advance of submission and supported. The landowners state that they remain supportive of the project and continue to confirm their intention to sell the land to Dorset Council.
- 4.2. Whilst Heads of Terms were agreed, over the last 18 months completion has stalled.
- 4.3. The landowner is proposing development of land adjacent to the proposed site and further round the bypass, comprising of residential, commercial, light industrial and a new school. To achieve the aspirations of the landowner's developers a relocation of allotments is necessary and is currently at the negotiations stage and has been for some time. These proposals are completely independent of Dorset Councils proposals for the waste management centre.
- 4.4. The landowner concern is that should an agreement not be reached over relocating the allotments then an alteration of the junction layout to the proposed waste management centre would be required to access part of their development land. The Council has, on numerous occasions, confirmed that an alternative access arrangement could be accommodated, subject to the owners' consultants agreeing an acceptable design with Dorset Highways and approved by Planning.

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- 4.5. In further negotiations on 22 March 2023, the Landowner reconfirmed the intention to sell the land to the Council but at the “right price”. Until this is agreed they will not allow access to continue ground investigations that would help conclude value engineering amendments to the design.

5. **Financial Implications**

5.1 Funding of £12.9 million for the project has been allocated in the Council's Capital Programme

5.2 Due to possible cost of CPO, additional land costs and general construction inflation it is likely that additional funding will need to be sought. A report for additional funding, including estimated CPO costs, will be forthcoming in due course.

6. **Legal Implications**

6.1 The Council has a duty under section 51 of the Environmental Protection Act 1990 (the ‘**EPA 1990**’) both to arrange for the disposal of waste collected in its area and to provide places at which residents can deposit household waste. The new facility the subject of this report is required for that function.

6.2 The Environmental Protection Act 1990 (the EPA 1990’) does not include a specific power of compulsory purchase to further these purposes. Rather, section 121 of the Local Government Act 1972 (the ‘**LGA 1972**’) sets out what is termed in the Guidance on compulsory purchase process and the Criche Down Rules’ (2019) – ‘**the Guidance**’ - ‘*the general compulsory purchase power*’ for local authorities. This is used alongside other enabling powers to acquire land compulsorily for the stated purpose (which must be authorised by other legislation. In this case the stated purpose is as described above, and the section 51 EPA 1990 duty is included in the Guidance at paragraph 107 among examples of enabling powers that the s121 power may be used in conjunction with.

6.3 Being a general power, s121 LGA 1972 does not of itself have specific requirements per se. However, the usual considerations that apply to the use of CPO powers (as set out in section 13 of the Guidance) are relevant.

6.4 The LGA 1972 also includes:

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- a) at section 120 a power for the Council to acquire land by agreement for the purposes of its functions (again, as set out in the EPA 1990 in this case); and
- b) at section 122 of general power of appropriation for any of the Council's purposes. Appropriation may be used to override any third party rights relating to the land either alongside or instead of compulsory acquisition. It can be a useful power when land is acquired by agreement rather than under a CPO, to 'cleanse' the title.

6.5 For completeness, the Council also has available to it the 'well being' power in section 226 of the Town and Country Planning Act 1990 ('the TCPA 1990'), which the Council may use as a local planning authority. Section 226 allows compulsory acquisition where: (a) the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or (b) it is 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. Section 226 goes on to provide that a local authority should not use the power set out at (a) above unless it thinks that the project is likely to contribute to the achievement of the economic, social or environmental well being of its area.

6.6 When considering the use of compulsory purchase powers generally, the Guidance makes clear that a compulsory purchase order should only be made where there is a compelling case in the public interest, and these powers are intended to be used as last resort. However, the Guidance also acknowledges that:

"If an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to ...plan a compulsory purchase timetable as a contingency measure; and initial formal procedures.

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations" (see paragraph 2 of the Guidance).

6.7 The Guidance, and the legislation cited, sets out a series of matters that need to be taken into account when making the CPO, which in turn the Strategic Director will need to be satisfied on before authorising the making of the CPO. They include:

- a) What is the appropriate power to use

The Guidance recommends that the most relevant power is used by acquiring authorities. In this case and as identified above, the use of the general power is s121 LGA allied with the enabling power in s51 EPA 1990 is considered the most

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relevant as the purpose of the new facility is to enable the Council to meet its statutory duty under the EPA.

In due course the statement of reasons in support of the CPO will set out the justification for the use of compulsory acquisition powers, and demonstrate the requirement for a compelling case in the public interest is met.

b) Is the scheme deliverable/viable

If the CPO is before the Secretary of State for confirmation, they will wish to be reassured as to the 'funding intentions' of the acquiring authority, and that there is a 'reasonable prospect that the scheme will proceed'. The timing of funding will be relevant to this. Funding will include acquisition costs, including the CPO process, as well as the development costs.

c) What impediments (other than land acquisition) are there to the scheme proceeding.

It is important to show that, should the CPO be confirmed, that there are no other reasons why the scheme would not proceed, for example the need for planning permission. In this case, planning permission has been granted.

A requirement of the planning permission is to stop up a small section of highway/ a private field access which may require an order to be made by the Council and confirmed by the Secretary of State. Any such process will run alongside the CPO so as not to cause any delay or impediment.

d) Whether the purposes can be achieved by other means (for example, alternative proposals)

As part of the CPO process, the Council will show that there are no better alternatives to the proposals that may avoid the need for compulsory acquisition.

e) The Public Sector Equalities Duty and Human Rights

These matters are addressed at sections 11 and 12 of this report, and will feature in the Council's statement of reasons

7. Environmental Implications

7.1 Dorset Council declared a climate and ecological emergency in May 2019, and has subsequently refreshed its strategy to reflect the synergies

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between climate, environment and adaptation. In the waste sector, the only way to make carbon (and financial) savings is to push waste further up the waste hierarchy and reduce, reuse and recycle waste ahead of any treatment options. The new waste management centre incorporates a much-improved Household Recycling Centre which would allow more materials to be separated for recycling compared with the current site serving the Blandford area. The new site will also allow for more diversion of waste for reuse.

- 7.2 Having more facilities contained in the same site for reuse and recycling will reduce the mileage residents have to travel to effectively dispose of their different waste streams. For example, the only other two sites in Dorset that have capacity on site to segregate and therefore recycle rigid plastics in Dorset is at Bridport or Portland.
- 7.3 As part of the council's commitment to decarbonise energy use wherever possible, the new waste management centre will incorporate solar panels to ensure that renewable energy is an integral part of the site's electrical needs.

8. **Well-being and Health Implications**

none

9. **Error! Bookmark not defined. Implications**

none

Other

10. **Risk Assessment**

- 10.1 **HAVING CONSIDERED:** the risks associated with this decision; the level of risk has been identified as:

Current Risk: High

Residual Risk: Medium

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11. Human rights implications

11.1 The Human Rights Act 1998 incorporated the European Convention on Human Rights (Convention) into UK Law. The Convention includes provisions which aim to protect the rights of the individual (including companies and similar bodies). In resolving to make the CPO the Council must consider the rights of the property owners affected by the CPO, should it be confirmed and in particular, under Article 1 and Article 8 of the Convention.

11.2 As the land to be acquired does not include or affect a residential property it is considered that Article 8 of the Convention is not directly applicable. However, it is acknowledged that the compulsory acquisition of land required to deliver the Scheme could amount to an interference with the human rights of those with an interest in the land and new rights to be acquired. In this instance, the Council considers that there is a compelling case in the public interest for the compulsory acquisition of the land required for the Scheme that outweighs any interference with such rights and therefore the use of compulsory purchase powers in this matter is proportionate.

11.3 Without the use of these powers, it is possible that all of the land necessary to deliver the Scheme may not be made available within a reasonable timescale, which would compromise the ability of the Council to dispose of waste in the Blandford area.

11.4 Furthermore, the compulsory purchase process clearly provides for those affected to have a right to object prior to it being confirmed and any objection will be considered by an independent inspector appointed by the Secretary of State for Transport. Any objection may also be considered at a public inquiry held to consider the confirmation of the CPO. Notwithstanding this, any person affected by the proposed CPO will be entitled to compensation pursuant to and subject to the Compensation Code.

12. Equalities Impact Assessment

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An EQIA for the service was reported to the Dorset Waste Partnership Joint Committee of 25 September 2014 - Review of Household Recycling Centres. The new site includes the provision of a split level HRC to replace a site where steps are required to access waste containers. This complies with the action plan of this EQIA.

13. **Appendices**

Appendix 1: Indicative plan of proposed land and new rights required under Compulsory Purchase Powers – Land and Tree Management Area

Appendix 2: Indicative plan of proposed land and new rights required under Compulsory Purchase Powers – Highway Access Stopping Up Area

14. **Background Papers**

Dorset Waste Partnership Joint Committee, 25 September 2014, Review of Household Recycling Centres

Dorset Waste Partnership Joint Committee 13 June 2016, Strategic Waste Transfer Facility for Central Dorset

Dorset Waste Partnership Joint Committee, 20 March 2018, Strategic Waste Transfer Facility for Central Dorset.

Dorset Waste Partnership Joint Committee, 11 June 2018, Strategic Waste Transfer Facility for Central Dorset

Cabinet, 6 April 2021, Capital programme 2021/22 [Capital Programme 202122 report including Appendix 1-3.pdf \(dorsetcouncil.gov.uk\)](#)

Strategic and Technical Planning Committee, 4 April 2022 - Land south-east of Sunrise Business Park and north of the A350 Blandford Bypass, Blandford Forum.

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Appendix 2 Plan of proposed land and new rights required under Compulsory Purchase Powers – Highway Access Stopping Up Area

