

REPORT TO: CABINET

DATE: 15 OCTOBER 2020

TITLE: RESOLUTION IN PRINCIPLE TO USE
COMPULSORY PURCHASE POWERS AND
HARLOW COUNCIL LAND TO ADVANCE THE
DEVELOPMENT OF THE HARLOW AND GILSTON
GARDEN TOWN

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This is a Key Decision

It is on the Forward Plan as Decision Number I011723

Call-in Procedures may apply

**This decision will affect Little Parndon & Hare Street, Netteswell and Mark Hall
Wards specifically and All Wards in principle.**

RECOMMENDED that:

- A** Cabinet recommends to Full Council that, in principle, the Council agrees to use powers available to it under section 226(1)(a) of the Town and Country Planning Act 1990 to compulsorily purchase land within the District to support development where in conformity with the Harlow Local Development Plan (subject to its adoption) in order to achieve the planning benefits set out within the Plan. Noting that this in no way predetermines or circumvents the formal planning process.
- B** Cabinet recommends to Full Council that, in principle, where Harlow District Council is landowner, or through the process of acquisition (including under CPO) would become landowner, the Council agrees to retain ownership but grant licence for infrastructure works on that land provided that:
- i) The infrastructure is intended for a public purpose, benefit or public adoption;
 - ii) there are no legal restrictions preventing this from happening;

iii) it does not materially undermine another purpose for which the Council requires the land or there are compelling reasons to dispose of a freehold interest ; and

iv) Where appropriate, the Council receives appropriate costs/compensation, indemnities and other arrangements considered necessary.

- C** Subject to East Herts District Council resolving to follow the same course of action, Cabinet recommend to Council that, in principle, it also agrees to use the powers set out in recommendation A should that be necessary to compulsorily purchase land in the Burnt Mill and River Way areas of the District, to enable the construction of transport infrastructure to support development in the Harlow and Gilston Garden Town including the delivery of The Gilston Area allocation and The River Stort Crossings in the East Herts District Plan and the achievement of the wider strategic planning benefits referred to in the report including supporting the future Harlow Local Development Plan.
- D** Cabinet and Council note that officers will prepare for any possible Compulsory Purchase Order(s) (CPO) including any associated Indemnities on behalf of the Council in accordance with the agreements under Recommendations A and C; and, where considered necessary to make a CPO, the Head of Governance, in consultation with other Heads of Service of the Council as may be necessary, will bring each matter back to Cabinet seeking authority to do so.
- E** Cabinet delegate authority to the Head of Finance and Property and Deputy to the Chief Executive, in consultation with other Heads of Service as may be necessary, to negotiate and agree and legally complete lease or licence or other arrangements for the delivery of infrastructure works on its land on a case by case basis on behalf of the Council in accordance with the agreement under Recommendation B.

REASON FOR DECISION

- A** To enable the Council to take necessary actions in respect to its land and assembly of third party land where deemed necessary and appropriate in order to implement the Harlow Local Development Plan (subject to its adoption) and support the wider Harlow and Gilston Garden Town growth, through implementation of proposals in adopted Plans of its neighbouring authorities of East Herts and Epping Forest District Councils and infrastructure works proposed to be undertaken by Essex County Council.

BACKGROUND

1. Harlow Council, working with East Herts and Epping Forest District Councils and Essex and Hertfordshire County Councils (the HGGT Authority partners) has committed to the principle of growth in and around Harlow through the Harlow and Gilston Garden Town (HGGT). This growth is set out within the

Development Plans of Harlow Council (The Harlow Local Development Plan Pre-Submission Publication (May 2018 as amended and subject to its adoption)), East Herts District Council (The East Herts District Plan (as adopted October 2018)) and Epping Forest District Council (The Epping Forest District Local Plan (Submission version 2017 as amended and subject to its adoption)). Development Plans establish the principle of development of land for a variety of purposes including that of the delivery of infrastructure.

2. The draft Harlow Local Development Plan (HLDP) establishes allocations within the Harlow District area as well as policies supporting the development and delivery of Garden Town Communities in the HGGT (policy HGT1) including: South of Harlow (Latton Priory); West of Harlow (Water Lane Area); East of Harlow; and the Gilston Area, and for the delivery of strategic infrastructure to support development in the HGGT (policy SIR1).
3. The principle of development of land to accommodate 10,000 homes in the Gilston Area has been established by the East Herts District Plan (EHDP). Development in this location will form part of the HGGT. As part of the allocation of the land, the EHDP identified the need for significant supporting infrastructure (policies GA1 and GA2).
4. One key item of infrastructure identified in the draft HLDP and the adopted EHDP is works to widen the existing Fifth Avenue River Stort and railway crossing to provide new capacity for active (walking and cycling) and sustainable (public transport). It is included in the draft HLDP under policy SIR 1, ref. SIR1-1 (under-lining for emphasis):
 - a) “North-South Sustainable Transport Corridor and River Stort Crossing to Eastwick Roundabout”. It is included in the EHDP under policy GA2: “A widening of the existing A414 crossing to enable a dualling of the northbound and southbound carriageways and provision of a new footway/cycleway, which will form part of a north-south sustainable transport corridor through Harlow”.
5. A second key item of infrastructure identified in the draft HLDP and the adopted EHDP is works to deliver a second River Stort crossing. It is included in the draft HLDP under policy SIR1, ref. SIR1-3:
 - a) “Second River Stort Crossing at River Way”. It is included in the EHDP under policy GA2: “A new vehicular, cycle and pedestrian crossing either to the east of the existing crossing (connecting the A414 to the River Way), or to the west of the existing crossing (connecting the A4141 to Elizabeth Way)”.
6. A third key item of infrastructure identified in the draft HLDP is works to deliver sustainable transport corridors (STC) across the HGGT. This is included in the HLDP under policy SIR1, ref. SIR1-1 (under-lining for emphasis):

- a) “North-South Sustainable Transport Corridor and River Stort Crossing to Eastwick Roundabout”; and ref. SIR1-2: “East West Sustainable Transport Corridor”.
7. Hertfordshire County Council (HCC) led a bid for government funding under the Housing Infrastructure Funding (HIF) programme. The bid was successful, albeit under the separate Housing Investment Grant (HIG) scheme. The successful outcome, subject to contract, will lead to the availability of funding, to a value of approximately £172 million, for the forward of transport infrastructure referred to above in this report including the Fifth Avenue River Stort and railway crossing, the second River Stort crossing and North to town centre part of the STC.
8. HCC are in negotiation with central government, through Homes England, working closely with the other HGGT Authority partners to finalise the contractual arrangements relating to the use of the HIG funding. An important element of that for all involved, is the programme of delivery. HIG funding has been awarded on the basis that it will support the delivery of housing in HGGT.
9. The owner of the majority of the land which comprises the Gilston Area Allocation, Places for People (the Applicant) has submitted three related planning applications (the Applications) to East Herts District Council for parts of the Gilston Area Allocation, as follows:
 - a) Outline planning application for a residential-led mixed use development of 8,500 homes across six distinct villages directly north of the A414 and Eastwick Road, with all matters reserved except for three ‘Strategic Accesses’ into the Gilston Park Estate (Village Development) (ref 3/19/1045/OUT);
 - b) Full planning application for enhancements and widening of the existing vehicular crossing over the River Stort (the 5th Avenue River Stort and railway crossing) (ref 3/19/1046/FUL); and
 - c) Full planning application for a new crossing over the River Stort (the second River Stort crossing) (ref 3/19/1049/FUL).
10. The two full planning applications (the River Crossings) have also been submitted to Harlow Council as the application sites straddle the boundary between East Herts and Harlow Council areas (the two Local Planning Authorities). The Harlow Council planning application references are HW/CRB/19/00220 and HW/CRB/19/00221 respectively.
11. Councillors should be aware at this stage that the determination of these planning applications (and any future planning applications for the Gilston Area Allocation) is a separate and distinct matter for the Local Planning Authorities to consider in due course. Any decision made on the use of CPO powers or the use of Council land at this stage cannot influence any decision to be made on the planning applications, which will be determined on their planning merits.

12. The Applicant controls the land required to implement the Village Development (if planning consent is granted). However, the Applicant does not have control of all of the land which is required in order to be able to deliver the River Crossings (again if planning consent is granted). The Applicant is in negotiation with the owners of the required land. In addition to land located in the East Herts District area, implementing the River Crossings also requires land in the Harlow District area.
13. Confidential Appendix B identifies the broad areas of land in the Burnt Mill and River Way areas that may be required to deliver the River Crossings, this includes land in the ownership of the Council and other parties.
14. Section 226(1)(a) of the Town and Country Planning Act 1990 enables acquiring authorities with planning powers to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. The wide power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility.
15. The Ministry of Housing, Communities & Local Government Guidance on the compulsory purchase process and the Crichel Down Rules includes the following guidance on the use of this power:
 - a) “This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate”.
16. The Guidance confirms that compulsory purchase is intended as a last resort measure to secure the assembly of all the land needed for the implementation of projects and acquiring authorities will be required to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the CPO by agreement. Whilst this is the case, it is typical for a CPO to be pursued in parallel with negotiation with landowners such that the option is progressed in case it is required.
17. The Guidance also includes key policy tests which need to be satisfied before a CPO can be confirmed. Crucially, before progressing a CPO, Councillors must be satisfied that there is a compelling case in the public interest for making and promoting a CPO, that the use of the powers is necessary and proportionate,

and that the public benefits associated with the proposals will clearly outweigh the interference with the rights of those affected.

18. Appendix A includes the 6 October 2020 East Herts Council Report to Executive for Use of Compulsory Purchase Powers (CPO) in the Gilston Area. The recommendations in the East Herts report are:
 - a) That the Executive recommend to Council that, in principle, (and subject to Harlow District Council resolving to follow the same course of action) the Council be prepared to use powers available to it under section 226(1)(a) of the Town and Country Planning Act 1990 to compulsorily purchase land in the Gilston area, as generally shown on the plans at Appendix 1, to enable the construction of transport infrastructure to support the delivery of the Gilston Area allocation in the East Herts District Plan (The Gilston Area Allocation) and the achievement of the wider strategic planning benefits referred to in the report.
 - b) That the Executive delegate authority to the Head of Legal and Democratic Services, in consultation with the Head of Planning, to enter into a Compulsory Purchase Order Indemnity Agreement (CPO IA) in relation to this matter, on behalf of the Council.
 - c) That the Executive and Council note that Officers will undertake the work needed to prepare for a possible Compulsory Purchase Order (CPO) together with the associated documentation and, if necessary, will bring a further report back to the Executive and Council seeking authority to make a CPO.
19. As indicated in paragraph 12, in order to deliver the River Crossings, land is required to be assembled in both the East Herts and Harlow District areas. In order for an authority to progress a CPO there must be an appropriate level of confidence that the project can be delivered. This being the case, it is considered necessary for both East Herts and Harlow Councils to reach the same decision when it comes to the, in principle use of CPO powers.. It is also important to establish, in principle, agreement for the use of land already controlled by Harlow Council to demonstrate that this is available otherwise this could also undermine the Council's own attempts to acquire additional land through CPO.

ISSUES/PROPOSALS

20. This report seeks authority, in principle, and where negotiation to acquire land by agreement is not successful, for the use of CPO powers and authority for an approach which involves the granting of necessary rights by the Council to another party to undertake works for the delivery of infrastructure on land in the ownership of or acquired by the Council. This report also seek delegated authority in order to allow officers of the Council to progress actions related to these matters on behalf of the Council. In the context of the background set out

above the issues and proposals of the five recommendations are set out in turn below.

Recommendation A

21. Recommendation A of this report seeks authority, in principle, for the use of CPO within the District. As set out in paragraph 15 of this report, the Council must be satisfied that the use of CPO powers will contribute to the well-being of the area.
22. In the case of this recommendation the agreement sought is limited to the possible CPO actions necessary to allow the Council to implement the Harlow Local Development Plan (subject to its adoption). The facilitation of the implementation of the Plan forms the justification for consideration of the use of the powers which is in accordance with the MHCLG Guidance set out in paragraph 16.
23. There are risks associated with undertaking CPO action, these are largely mitigated with a just cause and proper observation of process. If there are objections to the CPO these will almost inevitably give rise to a public inquiry and ultimately the Secretary of State may decide not to confirm the Order. Decisions are also subject to legal challenge. However, given the requirement to deliver the growth of the Local Development Plan and support the delivery of homes, jobs, community facilities and infrastructure such risks are considered to be outweighed by the need to ensure that growth and the public benefits associated takes place and are realised. It should be noted that it would still be necessary to satisfy the tests referenced in paragraph 17 and 18 prior to making an individual CPO therefore agreement is only sought in principle. The final decision to make a CPO would require further Member approval which is addressed under Recommendation D.

Recommendation B

24. Recommendation B of this report relates to situations where Harlow Council is a landowner or would become, through negotiation or the use of CPO, a landowner and seeks endorsement of the principle of retaining land ownership and granting necessary rights for infrastructure works on that land where the works will fulfil a public purpose, benefit or public adoption. Provided there are no legal restrictions preventing this from happening, and it will not materially undermine another purpose for which the Council requires the land or there are compelling reasons to dispose of the freehold interest.
25. In order to deliver new infrastructure necessary to support the HGGT growth, works will be required on land including that in the ownership of the Council, to ensure infrastructure is delivered in a timely fashion supporting the needs of residents, businesses and visitors. This will also need to be achieved within the timeframes stipulated in legal agreements, for example where forward funded by government grant or through Section 106 by new development. In order to do so it will be necessary to demonstrate that land is available.

26. Furthermore, where such works are to be used for the delivery of infrastructure for the public benefit it is considered preferable to retain that land thereafter in public ownership, regardless of whether it is also to be adopted as public highway. This will help the ability to adapt infrastructure in the future.
27. Councillors should note that the Council holds land across the District for different legal purposes some of which restrict the use of that land. For example, land held under the Allotment Acts. Therefore the agreement is subject to the condition that the works are not contrary to the legal purpose for which the land is held. The report also notes that where appropriate the Council may seek costs/compensation and indemnities and other arrangements considered necessary which would be negotiated on a case by case basis under delegated authority sought under Recommendation E which is covered below.

Recommendation C

28. Recommendation C of this report seeks authority, in principle, for the use of CPO specifically in relation to the Burnt Mill and River Way areas within Harlow District as necessary to deliver the River Crossings (see paragraphs 4, 5, 9 & 10 above for a description of this infrastructure) with the potential land affected identified in broad terms within confidential Appendix B.
29. For reasons of confidentiality the details of the land ownerships are not referred to in this report. However, in summary, in respect of the Fifth Avenue River Stort and railway crossing potential land identified in the Harlow area includes land within 7 titles under public ownership (including land within 5 titles held by Harlow Council) and land within 1 title held under private ownership. In respect to the second River Stort crossing potential land identified in the Harlow area includes land within 5 titles under public ownership (including land within 4 titles held by Harlow Council) and land within 8 titles under private ownership. Councillors should note from Appendix B that in the majority of cases the publicly held land already contain adopted public highway and the third party land is adjacent to that same public highway.
30. The reason for seeking this authority specifically is that it relates not just to the implementation of the Harlow Development Plan, in which this infrastructure is referenced (see paragraph 4 and 5), but also for the implementation of proposals in a neighbouring authority's Plan, the East Herts District Plan which was adopted in October 2018. The provision of the infrastructure will also give rise to wider planning benefits.
31. Furthermore, the infrastructure works are currently included in planning applications that are anticipated to be determined shortly by the councils and the works are the subject of forward funding through the HIG (as set out in paragraphs 7 and 8 above). As set out above the recommendations in this report are separate to the determination of these planning applications (set out in paragraph 11). Nevertheless, it is necessary for the councils to indicate whether it is prepared to support the delivery of the works in principle if approved including through using its powers for the assembly of land. Such actions including in relation to land assembly may precede the adoption of the HLDP

and therefore may not be covered under the agreement sought through Recommendation A. Agreement under Recommendation C would apply whether or not the HLDP is adopted.

32. The agreement to the in principle use of CPO powers is conditional on East Herts District Council resolving to agree the same. Neither Council is able to exercise the CPO powers available to it in relation to land that is located outside of its administrative area. Should either East Herts Council or Harlow Council not agree to the use of their CPO powers this may impact upon the deliverability of the named infrastructure and therefore restrict the ability of the other Council to set out a statement of case for its own CPO. As a result, if acquisition by use of compulsory powers is required in relation to land in both Council areas, then both Councils will need to exercise their CPO powers.
33. The East Herts Council report contained in Appendix A sets out the justification for the consideration of use of CPO in response to the requirements in legislation as repeated in paragraph 14 of this report, that the Council must again be satisfied that the use of CPO powers will contribute to the well-being of the area.
34. As set out, the justification must be on the basis of the area for which the acquiring authority has administrative responsibility, as such, it is necessary for Harlow Council to base its decision on its own consideration of the impact to the Harlow District.
35. Turning to the public benefits of the two projects that are likely to be achieved in respect to the promotion or improvement of the economic, social or environmental well-being of the area these are necessarily initially focussed upon the benefits of delivering growth at, and achieving an appropriate relationship with, the Gilston Area allocation in the East Herts District Plan, these can be considered through the following.
36. Firstly, Harlow Council has committed to the HGGT including approval of the HGGT Vision on 6 December 2018 and the process of working together with the other HGGT Authority partners “to ensure plans for the Garden Town support sustainable living and a healthy economy; provide a good quality of life for existing and future residents; and respond to local landscape and character”. The HGGT Vision contains reference to: “transformative investment in transport and community infrastructure”, “new villages to the north” of Harlow, identifies within the Vision diagram the New / improved River Crossings, and commits to improvements to the strategic road network including “a new road link across the River Stort” and “improvements to the Central Stort Crossing”.
37. Secondly, within the Pre-submission version of the HLDP Harlow Council has set out its Vision and Strategic Objectives for the District and key policies that support delivery of the HGGT. Whilst not yet adopted (the decision to do so awaits the final report of the inspector on the soundness of the Plan), nevertheless, the Plan considers and articulates the Council’s position towards the development of the Gilston Area and the River Crossings. As a result of urban expansion of Harlow the HLDP Vision considers that “residents will see

the benefits of growth through better infrastructure”; and that “major investment will be underway to address a number of specific transport capacity issues which are currently restricting growth and investment”.

38. The HLDP Spatial Development Strategy indicates that “to support the district’s wider growth strategy and sustain the district as a sub-regional centre for retail, employment and other wider community facilities, new Garden Communities are to be provided in the Harlow and Gilston Garden Town. The Communities are located around the periphery of Harlow, mostly outside the district boundary” including “Gilston Area, within East Hertfordshire District”. The Plan draws links between the Local Plan Strategic Objectives and the Harlow Council Corporate Priorities including to “Ensure that development is fully supported by providing the necessary infrastructure...”, to “Reduce the need to travel by vehicle by ensuring new development is sustainably located or accessible by sustainable modes of transport”, and to “Improve transport links, particularly for sustainable modes of transport...”.
39. HLDP Policy HGT1, Development and Delivery of Garden Town Communities in the Harlow and Gilston Garden Town, references the Gilston Area delivering 10,000 dwellings and supports the “timely delivery of on-site and off-site infrastructure required to address the impact of the new communities” ... “ahead of or in tandem with the proposed development to mitigate any impacts of the new Garden Town Communities, to meet the needs of existing and future residents and visitors and to establish sustainable travel patterns”. It also states support to “Create a step change in modal shift by contributing to the delivery of the Sustainable Transport Corridors and establishing an integrated, accessible and safe transport system which maximises the use of the sustainable high quality transport modes of walking, cycling and the use of public and community transport to promote healthy lifestyles and provide linkages to and from Harlow and the new Garden Town Communities”.
40. HLDP Policy SIR1, Infrastructure Requirements, states “The Council will work with infrastructure and service providers, other statutory bodies and neighbouring local authorities to deliver the timely provision of infrastructure necessary to support development in the Harlow and Gilston Garden Town.” And the Policy and HLDP Pre-Submission version Proposals Map reference the two River Crossings and STC (as stated in paragraphs 4, 5 and 6 above).
41. Thirdly, the HIG programme arrangements remain to be resolved. The broad elements of the programme see a construction timescale of not less than two years. It is not possible to commence construction until all the land required to implement it is under the control of either the Applicant or the council(s) (with a grant of licence agreed for those works). Should CPO powers be necessary, the HGGT authorities’ consultants advise that a period of not less than two years should be also be allowed for this. This gives a combined programme timescale of four years, with the requirements of the HIG funding that the funded projects be complete within less than five years. As a condition of the HIG funding the councils have committed to recover the forward-funding back from development into a ‘rolling infrastructure fund’ that in turn will be used to forward-fund other infrastructure in support of the HGGT. This fund would allow early delivery of

infrastructure to support growth and regeneration to deliver the Vision for HGGT. Being at the centre of HGGT this has a particular advantage to Harlow. Given the objectives and timescales of the HIG it is therefore appropriate to prepare for CPO action, if required, without delay.

42. Councillors should note that the information provided by the Applicant indicates that attempts to acquire the necessary land by agreement have been undertaken and are on-going. Given the timescales referred to above in relation to the HIG funding, pursuing voluntary negotiations is considered to represent a significant risk to the delivery of the infrastructure. CPO is, and would remain a position of last resort, if and where it proves unable to acquire the land through agreement.
43. If Councillors agree to the approach set out in this report, negotiation to seek to acquire by agreement will continue during the course of any CPO action. The option of ruling out the use of CPO powers at this stage is not considered realistic however.
44. As explained the recommendation is separate to the planning process for determination of the current applications. Nevertheless, in considering whether to provide support in principle for the use of CPO the Council must agree that the purpose of the land assembly to deliver these two crossings will in principle contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area.
45. As demonstrated above, the Council has publically considered and stated support in principle for the growth in the Gilston Area as positive in supporting the districts wider growth strategy and to sustain the district as a sub-regional centre, the delivery of the River Crossings directly supports delivery of the Gilston Area. Furthermore, the Council has indicated clear support for the delivery of infrastructure, in particular in respect to transport, both generally and with specific reference to the River Crossings and STC, for providing links to and from Harlow and the new Garden Communities, to mitigate the impacts of development and support sustainable travel. It is the delivery of these River Crossings for which agreement in principle for use of CPO is specifically sought. The Council has also stated clear support for the timely provision of such infrastructure, the desire to work with infrastructure providers to facilitate this and it is demonstrated that the district would benefit from the rolling infrastructure fund that would be created through HIG. The agreement in principle sought is necessary at this time to ensure actions by the Council to achieve timely delivery and agree HIG forward funding are possible.
46. Within the East Herts Report to Executive, included in Appendix A, a summary of considered benefits in respect to the HGGT Vision and the EHDP are also identified, many of which may also be considerations for Harlow Council, these are therefore recreated for Councillor's awareness below:
 - a) Supporting and accelerating the delivery of a significant quantum (10,000) of the new homes required to be delivered in the District in the period up to 2033. The new homes to be delivered will include a mix of

house sizes and types to cater for all including those most in need and the next generation of residents who want the opportunity to stay and work in the area;

- b) Significant housing and employment growth in the immediate area around Harlow and the wider UK Innovation Corridor;
- c) New transport routes that will provide genuine alternatives to car travel within the Garden Town and help to tackle congestion, air quality impacts and support healthy lifestyles for current and future residents;
- d) Enable the transport priorities and aspirations of the Garden Town partners to be achieved, prioritising healthy and active travel over other modes and seeking to achieve targets of 60 per cent of all journeys undertaken by those residing in the Gilston area development and 50 per cent of all journeys of those residing in the wider Garden Town by healthy and active modes;
- e) Provide new and improved crossings across the River Stort to link new communities to existing communities and provide better access to the Stort Valley;
- f) Enable the delivery of new homes and neighbourhoods built around self-sufficient local centres;
- g) Enable the delivery of appropriate levels of new social infrastructure and public services including schools and health services;
- h) Enable the creation of a network of green open spaces to include walking and cycling links across the Garden Town and connecting out to the wider countryside and Stort Valley;
- i) Enable the creation of new green 'wedges' between communities to help ensure individual identities for new and existing communities and villages.

47. On the basis of the above it is considered that the Council has sufficient justification to agree in principle to be prepared to use CPO to support land assembly for the delivery of the River Crossings.
48. In respect of the Gilston Area and its infrastructure requirements, the strategy of the HGGT Authority partners is, in the first instance, to allow the Gilston Area landowners/ developers to negotiate with third party landowners, as necessary, to acquire by agreement any additional land which is required in order for the Transport Infrastructure to be delivered. This role has been taken up by the Applicant as they are the majority landowner in the area and have submitted the associated planning applications.
49. If the outcome of those negotiations are unsuccessful, the strategy is then to revert to the use of powers available under the Town and Country Planning Act

1990 to compulsorily purchase the land required. The Guidance makes it clear that it is sensible to progress preparatory work on CPO action in parallel with negotiations with landowners so that valuable time is not lost.

50. There are risks associated with undertaking CPO action, these are largely mitigated through a just cause and proper observation of process. If there are objections to the CPO these will almost inevitably give rise to a public inquiry and ultimately the Secretary of State may decide not to confirm the Order. Decisions are subject to legal challenge. However, given the requirement to acquire the necessary land to deliver the River Crossings Infrastructure, such risks are considered to be outweighed by the need to support the delivery of the development in order to ensure the public benefits associated takes place and are realised. It should be noted that it would still be necessary to satisfy the tests referenced in paragraph 17 and 18 prior to making an individual CPO therefore agreement is only sought in principle. The final decision to make a CPO would require further Councillor approval which is addressed under Recommendation D.

Recommendation D

51. Recommendation D of this report asks the Cabinet and Council to note that in accordance with the agreements under recommendations A and C, Officers shall prepare any CPO including any associated indemnities on behalf of the Council.
52. Undertaking CPO action, or preparing to do so, has the potential to result in budget implications for the Council. These implications range from the modest, such as Officer time involved in preparing reports and other background work, through to the more substantial, such as if the powers are utilised successfully and compensatory payments are required to be made for land acquired. As a result, and where appropriate, the Council may seek an Indemnity Agreement (the CPO IA) with an applicant, such that it (the Applicant) will cover all costs incurred by the Council. Where a CPO IA is sought, subject to the decisions of the Head of Governance in consultation with other Heads of Service as may be necessary, Officers will typically limit the scale and nature of work until the Agreement is concluded in order to ensure the costs incurred by the Council are indemnified. The CPO IA would apply whether or not it proves necessary to ultimately use the powers.
53. In respect to Recommendation C, for the potential CPO of land at Burnt Mill and River Way, a CPO IA is currently in preparation. Subject to it being judged satisfactory the Head of Governance shall enter into this CPO IA in order to indemnify the Council from the associated costs of preparing a potential CPO.
54. Cabinet and Council are asked to note that, as Members must be satisfied that there is a compelling case in the public interest for making and promoting a CPO, the Head of Governance would bring back any specific case to Cabinet in order to seek final authority to do so.

Recommendation E

55. Recommendation E of this report seeks delegation of authority to the Head of Finance and Property and Deputy to the Chief Executive, in consultation with other Heads of Service, to negotiate and agree to grant rights for the delivery of infrastructure on Council owned land including to negotiate any premium or licence fee representing market value and appropriate costs/compensation, indemnities and other arrangements deemed appropriate in accordance with the agreement in principle under Recommendation B.
56. It is anticipated that any agreements would be negotiated on a case by case basis based upon the judgement of the Head of Finance and Deputy to the Chief Executive, in consultation with other Heads of Service. For example, such arrangements may seek to protect the Council against any dedication of infrastructure as highway prior to agreement of its formal adoption by the highway authority in order to indemnify the Council in relation to future costs of maintenance, repair or replacement. Agreements would only be brought back to the Cabinet and Council for approval where the Head of Finance and Deputy to the Chief Executive feels it necessary to do so.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

As set out in the report.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

Where it is Landowner, the Council will work with the applicant/developers to allow them to acquire by agreement (and in keeping with the requirements placed upon the Council under legislation to acquire best value in its disposal of assets) any additional land which is required in order for the Transport Infrastructure to be delivered.

The report sets out that an Indemnity Agreement (the CPO IA) is being sought with the Applicant, such that it (the Applicant) will cover all costs incurred by the Council and it is therefore anticipated that any budgetary impacts will be mitigated by the action of securing such agreement.

Author: Simon Freeman, Head of Finance and Property and Deputy to the Chief Executive

Housing

As contained in the report.

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

As set out in the report.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

The exercise of CPO powers requires strict adherence to statutory requirements.

In order for a CPO to be implemented, the Council will need to justify it to the Secretary of State in the terms set out in this Report. The use of CPO powers is a measure of last resort after all reasonable and proper attempts to acquire the land have been made during the course of negotiations and have resulted in no agreement.

Before any submission of the CPO to the Secretary of State, all relevant notice requirements required by statute must be complied with in order for the CPO to be confirmed.

All parties with an interest or rights in the land will be entitled under statute to submit to the Council a claim for adequate compensation based on the market value of the land. Other heads of compensation for loss of possession of the land may also be claimed.

To cover the compensation referred to above and associated costs, the Council should seek a sufficient financial indemnity from the developer.

If, in due course, the Council decides to exercise CPO powers, it will need to make a formal resolution to use them.

Author: Simon Hill, Head of Governance

Appendices

Appendix A – East Herts Council Report to Executive for Use of Compulsory Purchase Powers (CPO) in the Gilston Area, 6 Oct 2020

Appendix B – Plans of land ownership in respect to the Burnt Mill and River Way areas (confidential appendix. The information contained in Appendix B is exempt from publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 in that it provides details of the owners of the land to which this report relates)

Background Papers

Harlow Local Development Plan Pre-Submission Publication (May 2018) –

<https://www.harlow.gov.uk/sites/default/files/documents/Pre-Submission%20Publication%20-%20document.pdf>

Harlow Local Development Plan Pre-Submission Publication Policies Map (May 2018) – <https://www.harlow.gov.uk/sites/default/files/documents/Pre-Submission%20Publication%20-%20policies%20map.pdf>

Consultation on Modifications to the Pre-Submission version of the Harlow Local Development Plan – <https://www.harlow.gov.uk/planning-and-building-control/planning-policy/new-local-plan/local-plan-consultation/main>

East Herts District Plan (October 2018) – https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/District_Plan_Publish_web_view.pdf

Glossary of terms/abbreviations used

CPO – Compulsory Purchase Order
CPO IA – Compulsory Purchase Indemnity Agreement
EHDP – East Herts District Plan
HCC – Hertfordshire County Council
HGGT – Harlow and Gilston Garden Town
HIF – Housing Infrastructure Fund
HIG – Housing Investment Grant
HLDP – Harlow Local Development Plan