

Title of meeting:	Cabinet & Full Council
Date of meeting:	Cabinet 7 th March 2023 & Full Council 21 st March 2023
Subject:	Enabling Redevelopment of Former Debenhams Palmerston Road - CPO
Report by:	Tristan Samuels, Director of Regeneration
Report Author:	Anne Cains, Head of Acquisitions and Disposals
Wards affected:	St Judes
Key decision:	Yes
Full Council decision:	Yes

1. Purpose of report

- 1.1 This report sets out the important role that local high streets play in accommodating the economic growth and local employment in key parts of the city.
- 1.2 The Palmerston Road High Street is one of several Council priority areas, defined in both the current and emerging local plans as an area of housing and economic growth, with the areas identified for regeneration and redevelopment.
- 1.3 This paper seeks to promote a proactive and interventionist approach to delivering the Council's policy objectives and proposes that the Council considers the opportunity to bring this key site back into active use to enable and progress the regeneration of this important district hub in the City.

2. Recommendations

The Cabinet and the City Council are recommended to:

- 2.1. Approve the strategy to assemble the land required for the development of the former Debenhams Site in Palmerston Road, in line with the approved planning application for the site.
- 2.2. Delegate authority to the Director of Regeneration and S151 Officer on the advice of the City Solicitor in consultation with the Leader to: -
 - 2.2.1. Negotiate and complete acquisitions of legal interests subject to affordability, based on the statutory Compulsory Purchase Order (CPO) Compensation

Code, in land required for the delivery of the former Debenhams planning consent.

2.2.2. To procure and appoint specialist advisers as required for:

- Land referencing Agents
- Specialist compulsory purchase surveyors

2.2.3. To approve the progress of all work necessary to establish a case for compulsory purchase.

2.2.4. To approve, in principle, the use of compulsory purchase powers for the acquisition of land to deliver the former Debenhams (Palmerston Road), regeneration scheme (indicatively shown in red on the attached plan at Appendix 2) and note that the making of any compulsory purchase order will be subject to a further report to cabinet and Full Council confirming that the criteria in paragraph 3.18 have been met.

2.3. The Cabinet and the City Council are asked to note the red line area shown on the plan (Appendix 2) as currently drawn. Officers will take all reasonable measures to minimise the need to acquire third party interests in accordance with CPO Guidance and the existing design approach to the scheme.

The Cabinet are asked to note that:

2.4. Officers may need to seek a future resolution to grant the Director of Regeneration and the City Solicitor authority, in accordance with section 122 of the Local Government Act 1972, to declare that any land acquired or held and required for the delivery of the former Debenhams (Palmerston Road) Regeneration scheme, where they conclude that it is no longer needed for its present purpose, is appropriated for such statutory purpose as necessary to deliver the former Debenhams (Palmerston Road) Regeneration scheme, and to authorise the overriding of such easements, rights, or other adverse matters burdening the land, where that is needed to deliver the scheme, in reliance on section 203 of the Housing and Planning Act 2016.

3. Background

National Context

3.1. Government Policy has since 2010 been towards greater local empowerment – with the introduction of the Localism Act, Police and Crime Commissioners, City Deals and democratically elected metro mayors. But a renewed and coordinated focus is now needed to take this forward and we see this in the new Department of Levelling Up and its emerging policies and white paper.

3.2. The paper states, that learning lessons from the past, a new policy regime is needed to reverse these embedded historical trends. It is about root and branch reform of government and governance of the UK and seeks to put power in local hands, armed with the right information and embedded in strong civic institutions.

3.3. This new policy regime is based on 5 mutually reinforcing pillars.

- 3.3.1. **Pillar 1**, the UK government is setting clear and ambitious medium-term missions to provide consistency and clarity over levelling up policy objectives. These will serve as an anchor for policy across government, as well as catalysing innovation and action by the private and civil society sectors. These missions are ambitions that the UK government has for all parts of the UK. Delivering on them, while being fully respectful of the devolution settlements, will require close and collaborative work with the devolved administrations. The missions are rolling decade-long endeavours and will be reviewed periodically by the UK government
- 3.3.2. **Pillar 2**, central government decision making will be fundamentally reoriented to align policies with the levelling up agenda and hardwire spatial considerations across Whitehall. This will require greater transparency around the geographic allocation of funding and simplification of local growth funding. It will mean running levelling up through central government decision-making as a golden thread for which departments are held accountable. And it will mean extra resources being deployed to local areas, including moving 22,000 civil servants out of London by 2030.
- 3.3.3. **Pillar 3**, the UK government will empower decision makers in local areas by providing leaders and businesses with the tools they need. A new framework will extend, deepen and simplify local devolution in England. Ongoing support will be provided to existing City and Growth deal areas in Scotland, Wales and Northern Ireland, pan-regional partnerships like the Northern Powerhouse and Midlands Engine, and local private sector initiatives. The UK Government will support existing and embryonic private sector clusters of economic activity, which exist in all parts of the UK and are the wellspring of new innovation and job creation.
- 3.3.4. **Pillar 4**, the UK government will transform its approach to data and evaluation to improve local decision-making. In the past, it has been difficult to see what is being spent, where and how it is being spent, and its impact. The Office for National Statistics' Subnational Data Strategy aims to improve the UK's subnational data, mapping local economic geographies and helping improve transparency and accountability to the public. The UK government is making available interactive tools and maps to facilitate this process. It will also encourage innovative uses of real-time data at the local level, giving leaders across the UK the information they need to deliver, experiment and evaluate swiftly and effectively.
- 3.3.5. **Pillar 5**, the UK government will create a new regime to oversee its levelling up missions, establishing a statutory duty to publish an annual report analysing progress and a new external Levelling Up Advisory Council. The council will support ministers by advising on the design, delivery and impact of levelling up policy. The annual report will update the public on progress against the missions so that levelling up is subject to rigorous external scrutiny, including by Parliament.

- 3.4. Over time, these 5 pillars acting in combination will improve the information and incentives facing decision-makers locally and nationally, to strengthen the institutions driving local transformation. It is those shifts in the system of governance and government across the UK that will anchor success in meeting the medium-term levelling up missions.
- 3.5. The Levelling Up Missions are supported by the pillars above and typically seek to boost productivity, pay, jobs and living standards by growing the private sector, especially in those places where they are lagging. Some of the specific focus areas that are relevant to this district centre include Health, Housing, Crime & Pride of Place.

Local Context

- 3.6. The Portsmouth Plan was adopted in January 2012 (the Local Plan), and an Area Action Plan for Southsea Town Centre adopted in 2007 which specifically covers the key frontage site. The aim of the Local Plan is to provide a positive planning framework for the successful regeneration of the city. A main element of the development strategy of the Local Plan & AAP is to locate additional development at key development sites and support the Councils three-centre retail strategy with the aim of contributing to the vision of the City's sustainable Community strategy
- 3.7. Within the emerging 2021 local plan, most recently published under a Regulation 18 consultation, Palmerston Road High Street, as part of Southsea Town Centre is recognised as the second most significant centre of importance for new town centre development in the city. The former department stores, including the site the subject of this report are highlighted as major redevelopment opportunities to bring change into the centre. Given this recognition the Council is committed to the regeneration of the City to create a thriving, attractive, and vibrant environment for its residents, businesses and visitors.
- 3.8. The future Southsea high street will be a vibrant destination for visitors and the local community, known for its high quality environment, independent dining and retail offer.

Land Assembly

- 3.9. Negotiations commenced to secure the property interests of the major land holder within the proposed area with the Council's subsidiary development company Ravelin Housing Ltd making an expression of interest to purchase the site on 26 April 2021.
- 3.10. Ravelin Housing Ltd, made a written offer to purchase the site, subject to contract on in November 2021 and this was formally accepted by the owner in December 2021.
- 3.11. Contracts for sale were subsequently negotiated and agreed, with the final contracts being circulated for signature on 28 April 2022.
- 3.12. Ravelin Housing Limited signed the contracts for sale on 29 April 2022.

- 3.13. On the 19 May 2022, it was confirmed in writing, that the Seller could no longer proceed with the transaction and withdrew from the sale. No further explanation was received.
- 3.14. It is anticipated that no further progress can be made on the negotiated approach for the parcels of land and legal interests and therefore it is appropriate to consider the use of compulsory purchase powers.
- 3.15. The government recognises in its "*Guidance on Compulsory Purchase*" dated July 2019, ([CPO guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/81222/guidance-on-compulsory-purchase-2019.pdf)), that if acquiring authorities wait for negotiations to break down, this can have detrimental impacts on the timing of delivery of public projects. Therefore, depending on when the land is required, the guidance considers it sensible for an acquiring authority to:
- plan a compulsory purchase as a contingency measure; and
 - initiate formal procedures
- 3.16. Importantly, the CPO Guidance expressly recognises that such steps "*...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*".
- 3.17. The CPO Guidance requires acquiring authorities to attempt to acquire land by agreement before embarking on the CPO process, although it is recognised that for schemes involving the acquisition of the number of interests, it is sensible to run the CPO process in parallel with ongoing negotiations.
- 3.18. This report seeks members support for a resolution 'in principle' for the use of compulsory purchase powers to assemble the land required to deliver the former Debenhams (Palmerston Road) Regeneration scheme, should all reasonable attempts to acquire the necessary land and interests fail. As the guidance makes clear, use of compulsory purchase powers is intended as a 'last resort'. Officers acknowledge that any decision to proceed to make a CPO will be subject to a further report to Cabinet to confirm the following:
- that there was a compelling case in the public interest for the use of compulsory purchase powers;
 - that there were no planning, funding or other legal impediments to the former Debenhams (Palmerston Road) Regeneration scheme being delivered,
 - that reasonable attempts to acquire all interests by agreement have been made but not all have been successful;
 - considering any interference with the human rights of those with an interest in the land affected; and
 - reporting on the results of an assessment of the impacts on residents, visitors and employees to be measured and evaluated, with special focus on the likely effect of the proposals on those sharing protected characteristic (race, pregnancy, age, disability, gender reassignment, marriage/civil partnerships, religion/belief, sex, sexual orientation (as defined by the Equality Act 2010)), in order for the Council to fully understand those impacts, and to consider

measures to mitigate impact, make reasonable adjustment, and foster good relations between those sharing protected characteristics, and those who do not.

- 3.19. The main benefit of the use of compulsory purchase is the certainty of being able to obtain vacant possession to a planned programme. This is vital in order give the Council confidence that a scheme will be delivered. The use of compulsory purchase also provides a level of certainty on project programming which in turn would allow the Council to enter into commercially sound construction contracts. This is because, once the CPO is confirmed and the legal challenge period has passed, the Order can be implemented and a date for vacant possession fixed in accordance with the project programme.
- 3.20. A resolution approving the 'in principle' use of compulsory purchase powers at this stage in the process, will demonstrate the Council's commitment to the timely delivery of the former Debenhams (Palmerston Road) Regeneration scheme and its related benefits.
- 3.21. The Council has recently obtained specialist legal advice from a leading law firm on land assembly, use of CPO powers and the legal process for a CPO in relation to another scheme. Although it was prepared for another scheme, it contains generic advice on the CPO process. Said legally privileged and confidential advice is attached to this report at appendix 4 (this is an exempt confidential appendix). Should the Council seek to progress a CPO, it will have regard to the advice set out in the CPO Guidance and the advice of its appointed legal advisors either procured or through the existing framework.
- 3.22. The key dates for the Debenhams (*Palmerston Road) Regeneration scheme to date are:
- Planning application (20/00620/FUL) approval - 10th November 2021
 - Heads of Terms agreed 28 October 2021
 - Ravelin Funding agreed 24 April 2022
 - Contracts for sale circulated for signing 28 April 2022
 - Ravelin Housing Limited signed the contract for sale 29 April 2022

The above matters will need revising subject to the scheme and how PCC opt to deliver it.

- Letter 1 to Vendor
- Letter 2 to Vendor (MP signed)
- Visit to Portsmouth by the Vendors representative

4. Reasons for recommendations

- 4.1. Negotiations to purchase through agreement have failed to make progress. The council has reached a position of last resort.
- 4.2. In line with the policies in the emerging local plan, this site on Palmerston Road is important in creating a vibrant and viable town centre location. The ramifications of

this site being left vacant and semi derelict are serious and following the Council's failed attempt to bring the site forward for redevelopment.

- 4.3. As such consideration must now be given to the use of Compulsory Purchase Powers to unlock this important regeneration site.

5. Integrated impact assessment

- 5.1. An integrated impact assessment has been completed and is attached at appendix 3.

6. Legal comments

- 6.1. There are a number of statutory provisions permitting the compulsory acquisition of land interests and rights over (or under) land. Section 226 (1) Town and Country Planning Act 1990 provides a statutory power to make CPOs for planning purposes and is likely to be the appropriate power to be utilised in relation to the former Debenhams (Palmerston Road) site, that is the subject of this report. It states that:

- i. a local authority can exercise its compulsory purchase powers if: ‘...the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land...’
- ii. and that ‘the development, re-development or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of their area’ or
- iii. where the acquisition is ‘necessary to achieve in the interests of the proper planning of an area in which the land is situated’.

- 6.2. Moreover, the “Guidance on Compulsory purchase process and the Criche Down Rules (July 2019)” (‘CPO Guidance’) need to be taken account of as this sets out important additional requirements. Although the CPO Guidance is non-statutory guidance, it is consistently applied by the Secretary of State when considering the confirmation of a CPO. The main requirements of the CPO Guidance are referred to at paragraph 3.18 of this report.

- 6.3. The Cabinet and the City Council are asked to adopt a two-stage procedure in authorising the use of Council's CPO powers:

- (1) authority to delegate undertaking of preparatory steps in relation to the making of a CPO and authority to use the Council’s compulsory purchase powers in principle, both being sought in this report; and
- (2) a further authority from the Cabinet and the City Council, prior to submitting an application to the Secretary of State for a confirmation of the CPO. A further report to the Cabinet and the City Council will be prepared for that purpose to confirm

that the criteria set out in paragraph 3.18 of this report have been satisfied and therefore there is a robust case for the making of a CPO.

- 6.4. As set out in the CPO Guidance, Secretary of State will only confirm a CPO where there is a compelling case in the public interest - there must be a clear public interest benefit from redevelopment.
- 6.5. Compensation will be payable in accordance with the Compulsory Purchase Compensation Code.
- 6.6. External specialist legal support will be procured in order to guide the Council through the CPO process and advise on robustness of the Council's CPO case in relation to the former Debenhams site.
- 6.7. The use of CPO powers is a measure of last resort and the Council has statutory powers to acquire land for planning purposes by agreement under section 227 of the Town and Country Planning Act 1990 subject to the same proviso regarding well-being objectives as set out in section 226(1) of the Act. Further, Section 120 of the Local Government Act 1972 authorises the Council to acquire by agreement any land for the benefit, improvement, or development of the Council's area or for purposes of any of the Council's functions under any enactment, notwithstanding that the land is not immediately required for such purposes.
- 6.8. Appropriation of land for planning purposes pursuant to section 122 Local Government Act 1972 may be necessary in relation to land that the Council already holds or acquires by agreement (as opposed to through using its CPO powers). Appropriation is the internal 'transfer' of land and property between different departments or purposes. Appropriation is used as a tool to assist in achieving development where land is affected by difficult title issues, as once appropriated the Council may be able to utilise the provisions of section 203 Housing and Planning Act 2016 ('Section 203) enabling easements and other rights e.g. rights to light and restrictive covenants that may restrict the development or use of land to be overridden in specified circumstances. However, this report is not seeking member authorisation to use the above powers and a further report would be prepared for the Cabinet should the Officers consider necessary to rely on appropriation and section 203 powers.
- 6.9. It may also be necessary to utilise powers pursuant to ss 271 and 272 Town and Country Planning Act 1990 in relation to the extinguishment of rights of statutory undertakers and electronic communications code network operators.
- 6.10. The precise suite of powers required will be settled upon once land requirements and other matters relating to the development are finally determined.

7. Director of Finance's comments

- 7.1. The costs of the specialist advisers required to progress of all work necessary to establish a case for compulsory purchase are estimated to be £50,000 (tbc) can be

funded from the injection into Ravelin of £100,000 for work of this nature approved by full Council on 28 February 2023 as part of the Capital Programme for 2022/23 to 2027/28.

- 7.2. Whilst this work is being carried out the previous financial appraisal that was approved for the original purchase and redevelopment of the property will be reviewed and updated. The revised appraisal will need to include any additional costs for the CPO approach and also take into account changes in the economic climate which have been significant in terms of inflation as well as the increase in interest rates that will impact on the borrowing costs.
- 7.3. Should members ultimately agree to proceed with a CPO for the property the Director of Finance and Resources / Section 151 Officer will in the first instance need to be satisfied that there is a viable and deliverable scheme that can afford to repay the borrowing required before any further steps are undertaken, this will be contained within the future report.

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Signed by:

Appendices:

- Appendix 1 - Land Assembly Strategy
- Appendix 2 - Red line plan for CPO
- Appendix 3 - Integrated Impact Assessment
- Appendix 4 - Confidential advice note from Legal advisors (exempt for publication, s100A of the Local Government Act 1982 Schedule 12A, paragraph 3)

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: