

## Notice of Part-Exempt KEY Executive Decision (Special Urgency)

This Executive Decision Report is part exempt. The Exempt Appendix A is not available for public inspection as it contains exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it *refers* to information relating to the financial or business affairs of any particular person (including the authority holding that information), and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

<b>Subject Heading:</b>	The London Borough of Havering (Rainham and Beam Park Housing Zone Regeneration Area) Compulsory Purchase Order 2019 No. 1 - Withdrawal
<b>Cabinet Member:</b>	Councillor Damian White <b>Leader of the Council and Cabinet Member for Regeneration</b>
<b>SLT Lead:</b>	Neil Stubbings <b>Director of Regeneration Programme Delivery</b>
<b>Report Author and contact details:</b>	Harry Scarff Commercial Manager <b><a href="mailto:harry.scarff@havering.gov.uk">harry.scarff@havering.gov.uk</a></b>
<b>Policy context:</b>	This decision is made in the context of the current policy to comprehensively regenerate the area defined by the Rainham and Beam Park Housing Zone.
<b>Financial summary:</b>	There are no immediate financial implications arising for this decision but there is the possibility of blight and other costs which are covered in the main body of this report.

**Key Executive Decision**

<p><b>Reason decision is Key</b></p>	<p>Grounds for decision being Key: (a) Expenditure or saving (including anticipated income) of £500,000 or more</p>
<p><b>Date notice given of intended decision:</b></p>	<p><b>This is a decision pursuant to para 11 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, made under “special urgency” with the consent of the Chair of the Overview and Scrutiny Board.</b></p> <p>Why special urgency applies.</p> <p>There is an urgent need to formally withdraw the London Borough of Havering Rainham and Beam Park (Housing Zone Regeneration Area) Compulsory Purchase Order 2019 No. 1 in order to give sufficient time for a notice of cancellation of the inquiry to be published.</p> <p>Paragraph 39 of the Department of Levelling Up Housing and Communities Guidance on Compulsory Purchase Process and the Critehel Down Rules (“the CPO Guidance”) provides that;</p> <p>“Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published.”</p> <p>The Planning Inspectorate will set the date for the Public Inquiry to commence on 25 January 2022 if the Council has not responded by December 5<sup>th</sup> 2021.</p>

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<b>Relevant OSC:</b>	<b>Towns and Communities OSC</b>
<b>Is it an urgent decision?</b>	<b>Yes</b>
<b>Is this decision exempt from being called-in?</b>	<b>Yes, due to Special Urgency</b>

**The subject matter of this report deals with the following Council Objectives**

Communities making Havering	[X]
Places making Havering	[X]
Opportunities making Havering	[X]
Connections making Havering	[X]

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**Part A – Report seeking decision**

**DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

**This decision requests the Leader of the Council to:**

1. Authorise the withdrawal of the CPO
2. Authorise the Director of Regeneration, in consultation with the Leader of the Council and Deputy Director of Legal and Governance to;
  - a. notify the Secretary of State that the Council has agreed to withdraw the CPO under the provisions of Paragraph 39 of the CPO Guidance.
  - b. make financial provision for the settlement of any Blight Notices and other claims arising and served by Qualifying Landowners as set out in the Financial Implications section below.
  - c. take any steps necessary to deal with any incidental issues arising from the withdrawal of the CPO

**AUTHORITY UNDER WHICH DECISION IS MADE**

According to Part 2 of the Council's constitution "Powers of the Executive" – the Leader of the Council may choose to execute functions personally where the function is usually delegated to:

1. Cabinet
2. A committee of the Cabinet
3. Individual Cabinet Members
4. Staff
5. Joint Committees

In this instance, a matter of this nature is usually delegated to Cabinet, as per "2.1 General functions of Cabinet".

(c) To determine all substantial policy matters and strategic decisions and those minor matters which are referred by the Leader at the request of an individual Cabinet Member as being particularly contentious.

**STATEMENT OF THE REASONS FOR THE DECISION**

This decision is required under "Special Urgency" to allow the Council to formally withdraw the CPO in line with the provisions of Paragraph 39 of the CPO

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Guidance which provides that the Authorising Authority will not normally agree to cancel an inquiry unless all statutory objections are withdrawn or;

“ the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published.”

The Planning Inspectorate has provisionally set the date for the Public Inquiry to commence on 25 January 2022 and this date will be confirmed week commencing December 6<sup>th</sup> 2021 unless the council withdraws the CPO beforehand.

### **Background**

In February 2016 Cabinet approved the implementation of the Rainham and Beam Park Housing Zone Land Acquisition Strategy. A further resolution on the same date delegated to the Leader of the Council, Cabinet Member for Housing Company Development & One Source Management and the Group Director Community and Resources the authority to approve the making of a Compulsory Purchase Order and for confirmation (if subject to objections) by the Secretary of State.

On 21<sup>st</sup> February 2018 Cabinet agreed to use the Council's Medium Term Financial Strategy and in particular the capital programme to fund land acquisitions and CPO costs.

At the Cabinet meeting of the 10<sup>th</sup> October 2018, having received a report setting out further details consequent to the original decision, Cabinet resolved that the Council makes Compulsory Purchase Order(s) pursuant to the statutory powers contained in section 226(1)(a) of the Town and Country Planning Act 1990 (as amended), and section 13 of the Local Government (Misc. Provisions) Act 1976 and all other necessary action to acquire all property and other proprietary interests on the land, including where appropriate new rights, located within the outline on the CPO Red Line Plan, for the purpose of securing the regeneration of the Rainham and Beam Park Housing Zone.

On 24<sup>th</sup> September, 2019 the Council made The London Borough of Havering (Rainham and Beam Park Housing Zone Regeneration Area) Compulsory Purchase Order 2019 No. 1 pursuant to the statutory powers contained in s226 (1)(a) of the Town and Country Planning Act 1990 as amended (“the 1990 Act”) and associated provisions within section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”).

The Order was published and submitted to the Secretary of State for Communities and Local Government (“the Secretary of State”) for confirmation on 4<sup>th</sup> October 2019. The Secretary of State's confirmation of the relevant date was delayed and not received by the Council until 28<sup>th</sup> January 2020.

The unforeseen Covid-19 pandemic and lockdown on 23<sup>rd</sup> March 2020 resulted in the Council's Strategic Planning Committee being suspended and planning decisions relating to core planning applications forming the Council's case for justifying the CPO were delayed. Lockdown also resulted in the Council being unable to progress the land acquisition programme which is a pre requisite for the successful confirmation of the CPO and the Planning Inspectorate (PINS) further informed the Council that it was unable to set Public Inquiry dates for the foreseeable future.

These cumulative delays led PINS to extend the date for the Council's submission of its Statement of Case to 31<sup>st</sup> July 2020 and propose the 13<sup>th</sup> April 2021 for the

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commencement of a virtual CPO inquiry. This date was subsequently withdrawn pending the resolution of a Holding Direction on a key planning decision imposed by the Department of Levelling Up Housing and Communities (DLHC). The Holding Direction was lifted by the DLHC on the 7<sup>th</sup> April 2021. Following further challenging development and economic uncertainties arising from the Covid-19 restrictions PINS and the Council agreed a Public Inquiry commencement date of the 7<sup>th</sup> December 2021.

On the 12<sup>th</sup> August 2021 the Department for Transport, without any forewarning, indicated that it did not support the opening of a new railway station at Beam Park.

The Beam Park Station has been identified as a key strategic infrastructure component and development catalyst and is currently critical to unlocking the development of strategic sites in the Rainham and Beam Park area to deliver over 4,000 much needed new homes. The new station has been embedded in regional and local planning and regeneration policy documents for over two decades, including the GLA London Plan 2021, the London Riverside Opportunity Area Planning Framework and the L.B Havering Local Plan. Furthermore the costs of development and construction of the proposed station are fully funded by the GLA and the development process is well advanced and construction poised to commence.

The new station is considered relevant and vital to the Council's Statement of Case and the justification of that case as presently advanced in support of the confirmation of the CPO.

The impact on the council's case that arises from the DfT's unexpected position is severe. A request was made to the Planning Inspectorate, ("PINS"), on the 2<sup>nd</sup> September 2021, in response to these exceptional circumstances, to postpone any public inquiry until March 2021 in order for the Council and GLA to attempt to resolve issues surrounding the DfT's position.

On the 5<sup>th</sup> October 2021 PINS rejected the requested postponement of the Public Inquiry requesting that the Council confirm whether it intended to withdraw the CPO or to continue with the Public Inquiry. PINS advised that inquiry dates would otherwise be fixed for no later than the end of January 2022 by the 31<sup>st</sup> October 2021, and that they would be writing to all remaining objectors to the CPO in that respect.

The Council responded to PINS by letter on the 29<sup>th</sup> October after obtaining legal advice from Counsel again setting out the wholly exceptional and unforeseeable circumstances, and requesting that before an inquiry date is set, the discussions presently underway with respect to the Beam Park Station be given a reasonable chance to continue to resolution or, if that is not achieved, that the Council is given an opportunity to amend its statement of case and other relevant evidence to reflect the new circumstances and that no inquiry date be fixed until after the beginning of April 2022.

PINS responded on the 8<sup>th</sup> November 2021 acknowledging that the Council finds itself in a difficult position but, that given the length of time elapsed, the Inspectors preference was for the Council to withdraw the CPO with a view to remaking it when the Beam Park Station issue has been resolved in order to reduce the uncertainty experienced by land owners. A deadline of the 23<sup>rd</sup> November 2021 was given for the Council to either

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withdraw the CPO or continue when they again would write out to all parties confirming an inquiry date (inquiry opening during the latter part of January 2022).

Following further dialogue with PINS a further deadline of December 5<sup>th</sup> has been set to accommodate the council's necessary governance procedures prior to making any decision.

Following consultation with Leading Counsel, and their unequivocal opinion that the Council's case for the CPO is so fundamentally undermined by the DfT's stance on the new station and that pursuing the CPO to Public Inquiry in January 2022 would have a high risk of the CPO not being confirmed, it has been determined that the CPO should be withdrawn.

## **Implications**

### Costs

An award of costs may be made in the claimants' favour if an inquiry is cancelled because the acquiring authority have decided not to proceed with the CPO (Section 5 Acquisition of Land Act 1981 & section 250(5) Local Government Act 1972). The statutory objectors to the CPO will be entitled to claim the costs of their legal representatives and surveyors.

### Blight Notices

Schedule 13 of the Town and Country Planning Act 1990 confirms that blight notices can be served where land is identified for compulsory acquisition in a compulsory purchase order. In this case, a CPO has been submitted for confirmation to a Minister to facilitate construction of a development scheme. The New Road CPO was submitted to the Secretary of State for Communities and Local Government for confirmation on 4 October 2019 and so qualifying landowners within the new Road CPO red line boundary are now able to serve blight notices. It is important to note that not all land owners would be able to sustain a claim for blight. This is considered further in Part B of this paper.

In normal circumstances, when a CPO proceeds, service of a blight notice will not increase the overall liability to pay compensation, it brings the timing of a purchase and compensation settlement forward.

If the CPO were not to proceed the service of blight notices by qualifying resident land owners may compel the Council to acquire properties that it might otherwise prefer not to purchase immediately. Although those properties could be sold on at a later date as assets or retained as rental investments pending development, there is a risk that this would only be achievable at a lower price than that paid by the Council and any compensation paid for disturbance, professional fees and loss payments would not be recoverable.

These potential costs are set out in the Financial Implications section below.

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**OTHER OPTIONS CONSIDERED AND REJECTED**

To request a postponement of the public inquiry – This option has been rejected by PINS

To proceed with the CPO and go to Public Inquiry in January 2022 – **Rejected**  
The inquiry start date now imposed by PINS is imminent and leaves the Council with insufficient time to amend its evidence to reflect the current developments re Beam Park Station.

Leading Counsel has advised that the ability of the Council to justify the CPO is undermined in view of the position taken by the Department of Transport with respect to the Beam Park Station given that this currently underpins the Council's case.

The implications for the Council and the prospects for its regeneration objectives in the Rainham and Beam Park area of failing to secure the confirmation of the CPO are deemed unacceptable and would lead to severe reputational damage. The credibility of the Council's position as an acquiring authority and the perception of its ability to successfully undertake any future CPOs would be compromised if the CPO is rejected.

The failure of the CPO at Public Inquiry would be likely to jeopardise the prospects of future development in the area as a whole and would stifle further regeneration. The parcels of land already acquired are insufficient to carry out comprehensive and holistic development at a later date that will meet the regeneration and policy aspirations for the area.

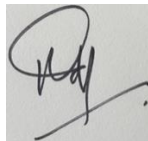
**PRE-DECISION CONSULTATION**

**N/A**

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Harry Scarff

Designation: Commercial Manager



Signature:

Date: 30/11/2021



## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

As set out above the Council is entitled to discontinue the CPO pursuant to Paragraph 39 of the CPO guidance.

Counsel has given advice against proceeding with a January 2022 inquiry date with delivery of Beam Park Station cancelled.

Paragraph 19 of the CPO Guidance sets out that Compulsory purchase proposal will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land so Acquiring Authorities should therefore consider keeping any delay to a minimum by completing the statutory process as quickly as possible. The CPO has been beset by a range of unprecedented challenges that has precipitated delays including the onset of COVID 19, holding direction in relation to plot RW04b and more recently, the cancellation of the Beam Park Station. Pursuant to the provision of paragraph 19 set out above, it is now impossible to keep delays to a minimum as the solution to the outstanding issue is outside the Council's control hence the need to discontinue the CPO.

#### **Cost Implication**

An award of costs may be made in the claimants' favour if an inquiry is cancelled because the acquiring authority have decided not to proceed with the order (Section 5 Acquisition of Land Act 1981 & section 250(5) Local Government Act 1972). The statutory objectors to the CPO will be entitled to claim the costs of their legal representatives.

Whilst land already acquired through private treaty negotiations can be sold, It is not certain that the full value of the land will be recouped. Also, there are several irrecoverable incidental costs e.g. surveyor/legal representative fees. Furthermore, the disturbance and basic loss payments already made to those with qualifying interests cannot be recouped neither can Counsel's fees be recovered.

#### **Reputational Damage**

Whilst the credibility of the Council's position as acquiring authority and perception of its ability to see future CPOs through might be impacted if the CPO is discontinued, the circumstances precipitating the CPO withdrawal are wholly outside the Council's control

#### **Regeneration Stifled**

Withdrawal of the CPO may jeopardise the prospects of future development in the area as a whole. The parcels of land already acquired through private treaty negotiations are insufficient to carry out comprehensive and holistic development in line with the regeneration and policy aspirations for the area.

#### **Blight**

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Discontinuance of the CPO could further give rise to the Council being served with multiple blight notices. There is a real risk of statutory blight as the properties within the Rainham and Beam Park regeneration scheme may be unsaleable on the open market given that they are affected by the scheme. Discontinuance of the CPO gives no assurances that the Scheme will not proceed at a later date.

Blight procedures enables a qualifying owner to serve a blight notice on the acquirer (the Council in this case) which operates as a form of reverse compulsory purchase. The qualifying owner can require the Council to purchase their property at a market price which disregards the effects of its scheme.

### **FINANCIAL IMPLICATIONS AND RISKS**

The Exempt Appendix A – “Financial Implications” is not available for public inspection as it contains exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972.

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### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

The Rainham regeneration project will require continued involvement of officers from the Regeneration Directorate, other Council services and external resources. The Rainham and Beam Park Housing Zone forms part of the Council’s overall regeneration programme and is a key area for housing growth identified in the Local Plan.

The withdrawal of the Rainham and Beam Park CPO will not result in any impact on those arrangements.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- i. the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

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- ii. the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- iii. foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economic and health determinants.

In respect of the proposed decision to withdraw the Rainham and Beam Park CPO there are no implications or risks associated with the Council's statutory duty.

### **HEALTH AND WELLBEING IMPLICATIONS AND RISKS**

This proposed decision to withdraw the Rainham and Beam Park CPO has no health and well-being implications to individuals or groups in the short term.

However, it will contribute uncertainty to the timing of the on-going realisation of the Council's regeneration vision for the Rainham and Beam Park Housing Zone including risks of delays to the unlocking of significant investment for housing – both market and affordable – and the realisation of key social infrastructure provision in South Hornchurch and Rainham and Wennington Wards which are among the most deprived in the Borough and in London.

The regeneration of the Beam Parkway neighbourhood with provision of housing, transformation of divisive nature of the A1306 carriageway, increased access to public transport, employment and leisure opportunities is expected to have a largely positive impact on residents. However, a health impact assessment, HIA will be required in accordance with the Local plan to further enhance the positive impact of the project and ensure that any negative impacts are mitigated.

No 'protected' group will be disadvantaged by the decision, however, where there is the possibility of a negative impact, a full Equality Impact Assessment will be carried out.

### **BACKGROUND PAPERS**

None

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**Part C – Record of decision**

I have made this executive decision in accordance with my authority as the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed 

Name: Councillor Damian White

Cabinet Portfolio held: Leader of the Council

Date: 02/12/2021

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Committee Officer in Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_