



Report of: Executive Member for Housing and Development

<b>Meeting of:</b>	<b>Date:</b>	<b>Ward:</b>
Executive	21 April 2022	Barnsbury

<b>Delete as appropriate</b>	<del>Exempt</del>	Non-exempt
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## APPENDICES 2 AND 3 TO THIS REPORT ARE EXEMPT FROM PUBLICATION

### **SUBJECT: Support for Newlon Housing Trust in respect of the redevelopment of New Barnsbury Estate; Compulsory Purchase Order (CPO) in respect of commercial and residential premises on The New Barnsbury Estate**

#### **1. Synopsis**

- 1.1 The council is committed to the delivery of more new, good quality affordable homes, to help Islington families tackle their housing needs and help with their cost of living. As part of delivering more homes, we will also create more jobs and training opportunities and make the borough a fairer place to live and work.
- 1.2 Newlon Housing Trust and its Joint Venture Partner, Mount Anvil, propose to redevelop the New Barnsbury Estate. This initiative was supported by a positive residents’ ballot in March 2021. Subject to planning permission, the applicants are proposing to submit a scheme would involve the phased demolition of all buildings and phased construction of approximately 950 new homes including the reprovision of all the existing homes to meet housing needs, and a significant uplift in affordable homes and market homes including family sized homes. It will also provide a new community centre and nursery facilities, replacement of the ground floor commercial floor space along Caledonian Road and substantial improvements to the public realm and green open spaces. The scheme also proposes substantial improvements to the Old Barnsbury Estate.
- 1.3 The scheme may require the compulsory purchase of residential and/or commercial properties, and this report seeks the approvals required to make a Compulsory Purchase Order (CPO) for the acquisition of specified leasehold interests in both residential and commercial property (“the Land”) and associated third party rights to the Land, which may be affected, by the new build proposals. The CPO is required as a backstop, a final contingency measure to ensure the development can proceed should Newlon Housing Trust fail to reach a negotiated settlement with the relevant affected parties.
- 1.4 The Council has powers under the Town and Country Planning Act 1990 (as amended) and ancillary legislation to undertake land assembly. The opportunity and potential benefits offered by

this proposed scheme would be at risk without the ability to use CPO powers, as vacant possession of the development site is required to enable demolition and redevelopment in relation to this project.

- 1.5 The potential exercise of CPO powers is a significant decision, and it is good practice to secure authority in advance of the submission of an associated planning application. This ensures adequate time for meaningful engagement with leaseholders, initially with the intention of reaching negotiated settlements, and where this is not possible, providing a clearly evidenced case for the exercise of CPO powers.

## 2. Recommendations

- 2.1 To authorise the Corporate Director for Community Wealth Building, in consultation with the Executive member for Housing and Development, and subject to the prior completion of a compulsory purchase indemnity agreement with Newlon Housing Trust, to take all necessary steps, including the making of a Compulsory Purchase Order (CPO) under section 226(1)(a) of the Town and Country Planning Act 1990 to ensure that the leasehold interests in the Land, (as described in the table below as well as any third party rights over the Land where attempts to negotiate a voluntary acquisition of the leasehold interest or third party rights in accordance with the development timetable have failed), can be acquired.

Table 2.1

Address of premises			Interest to be acquired
Number	Estate / Commercial	Street	
23	Commercial Units (see Exempt Appendix 2)	Caledonian Road	a. Commercial Head lease b. Commercial Sub-Leases c. Third party rights
78	Residential Units (see Exempt Appendix 3)	New Barnsbury Estate	a. Long leaseholds b. Third Party Rights

- 2.2 That where the Corporate Director of Community Wealth Building approves the making of a CPO, to authorise the Director of Law and Governance to take all necessary steps to secure the making, confirmation and implementation of the CPO. This includes the approval of agreements with the owners and any objectors for the withdrawal of objections to the CPO, the acquisition of interests by use of General Vesting Declarations or notices to treat the settling of compensation and the acquisition of all interests in the properties on terms recommended by the Corporate Director of Community Wealth Building. The costs of all such actions, following agreement and confirmation, to be met in full by Newlon Housing Trust.
- 2.3 To authorise the Corporate Director of Community Wealth Building, to acquire any interests in land within the area of the Land by agreement and the making of payments equivalent to statutory compensation (or payments as are deemed reasonable in the circumstances) and the provision of property or services in lieu of compensation, in contemplation of the Order being made. The costs

of all such actions, following agreement and confirmation, to be met in full by Newlon Housing Trust.

- 2.4 That, if the CPO is confirmed, to authorise the Corporate Director of Community Wealth Building to negotiate and agree the compensation amounts payable in compulsorily acquiring the interests. The costs of all such actions to be met, following agreement and confirmation, in full by Newlon Housing Trust. Additionally to authorise the Director of Law and Governance to transfer any interests in the Land acquired by the council pursuant to the Compulsory Purchase Order or by agreement to Newlon Housing Trust

### **3. Background**

- 3.1 Following extensive consultation with residents and other key stakeholders (which has included an independently run residents' ballot where residents voted for the transformation of their estate), Newlon Housing Trust and Mount Anvil have prepared a proposal and are in the process of submitting a planning application for the development on the New Barnsbury Estate.
- 3.2 The applicant is proposing to submit a scheme that, subject to planning permission, would involve demolishing the existing 23 commercial units and 371 residential properties in a phased redevelopment creating some 950 new homes. Existing social rented and market homes will be replaced alongside a significant uplift in affordable and market housing. The proposals include new commercial spaces along Caledonian Road and wider improvements to amenity and security for the benefit of all residents on the new Barnsbury Estate. The proposals also include a replacement community centre and nursery and substantial improvements to the public realm and green open spaces. The proposals also provide substantial improvements to the homes and open spaces of Old Barnsbury, which will be refurbished and improved.
- 3.3 Newlon Housing Trust may require the support of the Council to acquire ex-Right to Buy (RTB) homes from the current leaseholders and additionally business premises from commercial property investors and tenants on terms acceptable to all parties. This represents one of the key delivery risks for the redevelopment scheme, and it is unlikely to proceed without vacant possession of these properties.
- 3.4 Voluntary acquisition of the leasehold properties is the preferred option and Newlon will pursue this option as far as possible, but where all reasonable efforts to reach a satisfactory outcome in the available timescale through negotiation with individual leaseholders have been exhausted, and by way of last resort, the council may make a Compulsory Purchase Order (CPO).
- 3.5 In February 2021, Newlon published its Landlord's Offer which set out the key terms of the proposal for resident and non-resident leaseholders and formed the basis of its commitments to them pre-ballot. Since the positive ballot vote in March 2021, high level discussions have continued with residential leaseholders, focusing on those leaseholders who own 8 properties in Phase 1a which is due to be redeveloped in March 2023. The land upon which the commercial properties exist is not due to be redeveloped until late 2027/2028 so discussions with this group are only just beginning.
- 3.6 To date out of 80 leaseholds, 2 have been acquired by negotiations. Discussions have started with some of remaining 78 residential leaseholders. Discussions will shortly commence with all parties which own an interest or rights in the 22 commercial units along Caledonian Road. The remaining commercial unit is occupied by the LB Islington. The existing commercial units have long leases of 999 years and a variety of sub lease arrangements. The ownership is split almost equally between an investment company and owner-occupiers. The intention is to purchase, by negotiation, the long leases and subsidiary interests and surrender those interests to the freeholder Newlon Housing Trust. However, if agreement cannot be reached, we would need the necessary approvals in place to make an application for a CPO.

- 3.7 Ongoing consultation and negotiations by Newlon will continue to have full regard to the legal rights of leaseholders and commercial tenants as set out in the Compulsory Purchase and Compensation Booklets: Business Owners and Occupiers (No 2) published by the Department and Communities and Local Government on their website. Resident leaseholders are being offered the opportunity to remain on the estate through a shared equity arrangement. This arrangement enables them to effectively trade their existing home for a share in one of the new market homes. The value of their share in the new home would be equivalent to the market value of their existing home plus the 10% home loss payment. Newlon would retain the remaining share of equity, but no rent is payable on this. Non-resident leaseholders are being offered the market value of their home plus 7.5%. The intention is to purchase the residential and commercial head-leases and sub leases and if the parties can reach agreement, to either re-locate the sub-leaseholder to alternative premises in the area or agree compensation for extinguishment.
- 3.8 Once homes or properties are acquired on a voluntary or compulsory basis, they may be used to provide temporary homes for residents living on the estate being decanted to enable the development or much needed temporary accommodation to ensure that they would not remain empty pending the commencement of the development.
- 3.9 Another implication of the redevelopment of the housing blocks on the Land is a potential reduction in the level of light reaching the windows of surrounding properties. The planning application will include a report which describes any such impacts in quantitative terms and the Council's Development Management Team will determine whether the impacts are acceptable. However, there are instances where, even when the grant of planning permission does not extinguish a neighbour's 'right to light' and reductions in light that would be/are caused by the development may need to be dealt with by Newlon separately and outside of the planning process.
- 3.10 Where there is significant impact upon right to light there may, in certain circumstances, be an entitlement to injunction against the proposed development. Any properties affected in this way would be outside the CPO red line area. However, one of the effects of enabling regeneration by compulsory purchase of land using planning powers (s226 of the Town and Country Planning Act 1990) is to override third party rights including interference with any rights to light. The effect of a CPO on such owners, where such rights exist, would not be to compulsorily purchase their property but rather to override any entitlement to injunction against the approved scheme and to automatically convert any such entitlement into a claim for compensation, rights to full statutory compensation, where they exist, would not be affected by a CPO. This will ensure there will be no impediment to the development, which would result in risk of substantial delays to the scheme moving forward and additional costs. Appropriate compensation would be payable to those impacted.
- 3.11 Newlon Housing Trust and Mount Anvil will be commissioning a rights of light report to assess if any surrounding properties will have their light affected by the proposed development with some of the properties having a right to injunction. Further investigation is being made into the extent of those rights. The daylight/sunlight assessment (in accordance with the BRE) is being carried out by Point 2.
- 3.12 The Executive is therefore asked to agree the use of the Council's powers of compulsory purchase to acquire the required leasehold interests, who are still in occupation at the date of this report as well as any other third-party interests that exist. As well as to potentially manage right to light issues.

## 4. Implications

### 4.1 Financial implications

Costs covering the acquisition of the residential and commercial leasehold interests, other 3<sup>rd</sup> party rights plus associated CPO costs are to be met in full by Newlon Housing Trust.

### 4.2 Legal Implications

#### 4.2.1 Compulsory Purchase Order (CPO)

This report proposes the making of a CPO for the acquisition of the residential and commercial leases as described in the table to Recommendation 2.1 and shown for illustrative purposes only on the plan(s) at **Appendix 1**.

4.2.2 The council has the power under section 226(1)(a) of the Town and Country Planning Act 1990 to acquire compulsorily any land in its area if it thinks 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 if the council thinks that the development, re-development or improvement is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of its area.

4.2.3 The acquisition of the properties in the table together with Third Party Rights is reasonably required to enable the proposed re-development scheme to proceed. Further, the redevelopment will contribute to the promotion and improvement of the economic, social and environmental well-being of the area and local residents by providing better quality and additional social housing and other benefits for local residents and the wider community, for example environmental improvements and/or new or improved community facilities.

4.2.4 A CPO should only be employed as an option of last resort, and only when all other opportunities to secure the redevelopment of the site have been fully explored and exhausted. However, the Secretary of State has recognised that it is appropriate in some situations to make a CPO at the same time as seeking to purchase by agreement given the amount of time needed to complete a compulsory purchase.

### 4.3 Human Rights

4.3.1 A CPO should only be made where there is a compelling case in the public interest, which justifies the overriding of private rights in the land sought to be acquired.

4.3.2 In respect of human rights, regard should be had in each case, in particular to the provisions of Article 1, the right to peaceful enjoyment of your possessions, Article 6, the right to a fair and public hearing and Article 8, the right to respect for private and family life, of the First Protocol to the European Convention on Human Rights ("ECHR").

4.3.4 In relation to Article 1 whilst owners will be deprived of their property or those with third party rights will have, their rights extinguished, if the CPO is confirmed and implemented, this will be done in accordance with the law and they will receive appropriate compensation for their interests. Further, the right under Article 1 is qualified rather than absolute as it permits the deprivation of an individual's possessions or rights where it is in the public interest.

4.3.5 Interference with the right to respect for private and family life under Article 8 is justified under the Protocol if this is in accordance with the law and "necessary in a democratic society" for, amongst other things, economic wellbeing. The interference here will be in accordance with UK law (the Town and Country Planning Act 1990). In considering whether the interference with the right is "necessary in a democratic society", it is necessary to consider whether the interference is proportionate. In this context, proportionate means that the interference must be no more than necessary to achieve the identified legitimate aim. Here the legitimate aim is the redevelopment of the New Barnsbury Estate and the requirements of s226 of the TCPA 1990 have been fulfilled,

that is, the development, redevelopment or improvement will contribute to promotion or improvement of the economic social or environmental wellbeing of its area.

- 4.3.6 In relation to Article 6 those affected by the CPO will have the right to make representations to the Secretary of State and to be heard at any public inquiry.
- 4.3.7 Therefore, there must be a balancing exercise between the public interest and the individual's rights whereby the Council must be able to show that the interference with an individual's rights by the making of a CPO must be necessary and proportionate. The availability of compensation to those deprived of their property and rights is of relevance to the issue of proportionality.
- 4.3.8 The CPO should therefore only be made where there is a compelling case in the public interest, which justifies the overriding of private rights in the land sought to be acquired and a method of last resort. While each case will need to be considered on its merits it is likely that redevelopment to provide better quality and additional social housing and other benefits for local residents and the wider community, for example environmental improvements and/or new or improved community facilities would demonstrate sufficient public interest to justify interfering with the private rights of those with an interest in the leasehold land.

#### 4.3.9 Funding the Acquisition of the Land

If the Compulsory Purchase Order is confirmed and implemented, the council will be liable to compensate the owners for the compulsory acquisition of their land interests. To ensure there is no financial cost to the council the making of the Compulsory Purchase Order should be conditional upon Newlon Housing Trust entering into an indemnity agreement with the council. The indemnity agreement will provide for Newlon Housing to indemnify the council for all CPO and related costs including the costs of making the order and the compensation paid to owners for their interests acquired by the council.

#### 4.4 **Environmental Implications**

- 4.4.1 There are no specific environmental implications associated with the Compulsory Purchase Order process beyond those associated with the office-based work being carried out. The significant implications associated with this project will occur at the time of the demolition/construction and beyond, and will be assessed and form part of the conditions of the grant of planning consent.

#### 4.5 **Equalities Impact Assessment**

- 4.5.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.
- 4.5.2 A potential negative impact on individual residential or commercial leaseholders has been identified but this is mitigated through the CPO process that ensures that the rights of affected owners and occupiers are protected and that they receive compensation in line with the relevant legislation and statutory guidance. The key principle is that owners/occupiers should not be any better or worse off as a result of a CPO.
- 4.5.3 All other impacts identified from current new build redevelopment proposals are positive as they are aimed at improving the lives and opportunities afforded to residents to access decent and genuinely affordable homes and increase jobs and training opportunities, helping make Islington a fairer place to live and work.

4.5.4 An Equalities Impact Assessment in relation to the delegation of CPO powers is set out at **Appendix 4**. In addition, Newlon Housing Trust and Mount Anvil will be submitting an Equalities Impact Statement relating to the proposed development as part of the planning application process.

## 5. Reason for recommendations

5.1 The ability to acquire the leasehold interests in the residential and commercial premises located on the estate where proposals to build more high quality homes for local people, supported by local residents, have been proposed, is critical to their successful delivery. Given the significant project delivery risks it is preferable to satisfactorily conclude negotiations with leaseholders as early as possible in the development process and voluntary acquisition is the preferred option in all cases.

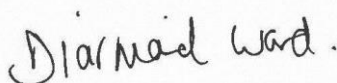
5.2 Where it is not possible to voluntarily purchase leasehold interests in the residential and commercial premises and, subject to the relevant grounds being established, the option to apply for a CPO should be authorised, subject to the necessary delegated internal approvals. The potential delays and costs associated with the CPO process are outweighed by the benefits to the wider community to be derived from the scheme and the significant investment already committed to bringing forward the proposals. It is therefore considered to be in the public interest for the Council to make a CPO to secure the redevelopment to provide better and more homes and to promote economic, social and environmental wellbeing and to contribute to sustainable development in Islington.

### Appendices

- Appendix 1: Site location plan
- Appendix 2 : Commercial leaseholder Interests (Exempt)
- Appendix 3 : Residential Leaseholder Interests (Exempt)
- Appendix 4: Equalities Impact Assessment

### Final report clearance:

Signed by:



8 April 2022

Executive Member for Housing and Development

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