



# EXECUTIVE BOARD DECISION

<b>REPORT OF:</b>	Executive Member for Regeneration Executive Member for Resources
<b>LEAD OFFICERS:</b>	Deputy Chief Executive
<b>DATE:</b>	13 April 2017

<b>PORTFOLIO/S AFFECTED:</b>	Regeneration	Resources
<b>WARD/S AFFECTED:</b>	Shear Brow	
<b>KEY DECISION:</b>	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

**SUBJECT:** 11 – 17 Blakey Moor, Blackburn (“the property”): Promotion of a Compulsory Purchase Order for planning purposes.

## 1. EXECUTIVE SUMMARY

1.1 The Executive Board is requested to give approval for the Council to make a Compulsory Purchase Order (CPO) (referred to as the “Order”) to deliver the Heritage Lottery Fund (HLF) Blakey Moor Townscape Heritage Project. The Council has powers to compulsorily acquire land under the provisions of sections 226(1)(a) of the Town and Country Planning Act 1990, and section 121 of the Local Government Act 1972.

1.2 The Council needs to acquire 11 -17 Blakey Moor Terrace, Blackburn in order to deliver the Townscape Heritage Project and the regeneration of the Blakey Moor/Northgate area of the town centre. The Council has attempted to acquire the property over an extended period of time with agreement still to be reached. Negotiations are currently ongoing. Other than this land and property, the CPO will include any other interests, any third party and reversionary interests to be acquired (that may be revealed after carrying out full land registry checks). A plan is attached at Appendix 1 showing the property.

1.3 Whilst all attempts will be made to acquire the land and property by agreement, the Council considers that if agreement cannot be reached, it will be necessary to make a CPO as a last resort.

## 2. RECOMMENDATIONS

That the Executive Board upon being satisfied that:

- 1) It would contribute to the economic, social and environmental well-being of the Borough
- 2) there is a compelling case in the public interest as the interference with Human Rights involved is both necessary and proportionate in the interests of bringing about the improvements that would follow from the carrying out of the works
- 3) sufficient funds exist for carrying the resolution into effect
- 4) the legal estate in the land and property required could not be acquired by agreement
- 5) that no impediments exist to the implementation of the project (subject to the making of the order) and there is a reasonable prospect of its implementation should the order be made
- 6) the land and property sought to be acquired is reasonably required for the purposes of the scheme underpinning the order and to carry out the works

7) full planning permission is obtained if required for the refurbishment works

It is recommended that

1) The support of the Council for the refurbishment/improvement of the Blakey Moor terrace as indicated in the HLF approval of the Townscape Heritage project for the area is reaffirmed as set out in the Executive Board report of February 2016.

2) The Director of HR, Legal and Corporate Services be authorised to prepare a Compulsory Purchase Order for the area of land indicated on the plan for the purposes of refurbishing/improving the Blakey Moor terrace as a key project in the Blakey Moor Townscape Heritage Project;

and to take all steps necessary for its confirmation, including the publication and service of all statutory notices and the presentation of the Council's case at any public inquiry or other hearing, and any other means to the resolution of any disputes arising; and

3) Authorise the Director of HR, Legal & Corporate Services (in the event that the Secretary of State notifies the Council that it has been given the power to confirm the Order) to confirm the Order, if he is satisfied that it is appropriate to do so.

4) Authorise the Deputy Chief Executive in consultation with the Executive Member Resources, to negotiate terms for the acquisition by agreement of any outstanding interests in the land within the CPO prior to its confirmation.

5) Authorise the Deputy Chief Executive to approve agreements with landowners setting out the terms of withdrawals of objections to the Order including where appropriate the exclusion of land from the CPO.

6) Authorise the Director of HR, Legal & Corporate Services in consultation with the Deputy Chief Executive to make deletions from, and/or minor amendments, and modifications to the proposed Order and the Order Plan, and accordingly to make applications to amend any planning applications/permissions.

7) Authorise the Director of HR, Legal & Corporate Services in consultation with the Deputy Chief Executive to make and seal a General Vesting Declaration in the event that the CPO is confirmed and to serve the relevant notices.

### **3. BACKGROUND**

3.1 The Council received Full Approval in June 2016 from the Heritage Lottery Fund (HLF) for the £3 million Blakey Moor Townscape Heritage Project. £1.5 million funding will come from HLF and £1.5 million match funding will come from Blackburn with Darwen Borough Council's Capital Programme (approved February 2016).

3.2 The project proposals were developed by the Council's Economic Regeneration and Business Team, guided by the recommendation of the Heritage Lottery Fund and a team of consultant's including Buttress Conservation Architects, Planit-IE landscape Architects and Colliers International commercial property and development specialists.

3.3 Over the next 4-5 years, the project will offer property owners grants of up to 80% to repair or reinstate architectural details and to bring vacant floor space back into commercial use.

The project will deliver:

- refurbishment of up to 25 historic buildings including King Georges Hall front elevation, former Baroque public house, Blakey Moor terrace and properties on Northgate and Lord Street West
- a public realm improvement scheme to Blakey Moor that will see the area better defined with quality paving, improved lighting and soft planting (see attached Townscape Heritage project

plan at Appendix 2)

- a heritage skills training programme developed with Blackburn College supporting
- activity including marketing and an events and activity programme to celebrate the town's rich culture and heritage

3.4 The project is an important part of the on-going regeneration and development of the town centre, creating improved links between Blackburn College and the towns retail core. The enhancement works will support commercial viability of existing businesses, create opportunities for new businesses, help to reinvigorate the towns evening and leisure economy and further establish this part of the town as a cultural hub.

3.5 The refurbishment of the Blakey Moor terrace was identified as a priority project in the delivery of the wider Townscape Heritage Project. An options appraisal was carried out by Colliers International to establish the most commercially viable option for the terrace within the context of supporting the wider regeneration of the area and town centre.

As reported in the Executive Board Decision February 2016, the viability of 6 options for the Blakey Moor Terrace were assessed, including the option to demolish. Soft market testing, taking in the views of licensed restaurant agents and commercial developers, was undertaken by Colliers to establish likely demand from commercial users/operators. This concluded that:-

- The site is potentially attractive to restaurants and also cafes and coffee houses with the historic nature of the area attractive as a destination.
- There are many examples of reconfigured historic buildings being attractive to such operators. The town centre location, very busy footfall, opposite a major leisure attraction and near to car parking make it attractive to operators.
- The minimum floor area that operators look for would be 200sq.m – up to about 500sq.m. The proposed layouts would give unit sizes of 250sq.m, with about 100sq.m outside, and 570sq.m;
- Local authority ownership can be used to positively influence the offer.

All 6 options that were considered require the acquisition and/or improvement of 11-13 Blakey Moor.

The final report from Colliers and insights from the Retail Group research both concluded that Blackburn could sustain a substantial modern restaurant offer and Blakey Moor has the potential to provide a suitable environment for this. Colliers therefore suggested it would be the optimal option for the Council to use the Townscape Heritage Project to nurture a restaurant quarter, using Blakey Moor and the former Baroque building as a focal point. The indicative development appraisals attached show the 2 large restaurants to be optimal.

Blakey Moor terrace specifically presents an opportunity for an independent/premium restaurant offer. The majority of works to deliver a suitable unit/s for this use would be eligible for Townscape Heritage grant funding.

#### **4. KEY ISSUES & RISKS**

4.1 The key issues regarding the Townscape Heritage project are as follows:

- Blakey Moor terrace is identified within the Townscape Heritage Project as the 'Priority Project' and delivery of this is as essential, as defined by the Heritage Lottery Fund.
- The Council has held ownership of part of the terrace, 19-27 Blakey Moor since 1998 and the remaining properties 11-17 and land are within private ownership.
- In January 2016, the owner of 11-17 Blakey Moor indicated to the Council that they did not wish to receive a grant to develop the property and their preference would be to sell the properties to facilitate delivery of the project by the Council. Independent property consultants

were appointed at the property owners request and negotiations began to acquire the properties by agreement.

- Should an agreement not be reached, the project could be substantially delayed and at worst put at risk.
- The Council therefore wishes to reserve the right, should negotiations not conclude, to purchase the required land and property by CPO.
- The Council will be seeking to use powers available within the Town and Country Planning Act 1990 (section 226 (1)(a) for the CPO and/or section 121 of the Local Government Act 1972
- The Council is progressing with the property owner in relation to the land and property acquisition and the Council is hopeful that an agreement can be reached.
- The justification for the CPO is that the Council has been in discussions with the property owner since February 2015 as part of the consultation on the deliverability of the TH project and specifically to acquire the property since February 2016. The owner of the properties indicated at that time that obtaining a grant from the Council to carry out the refurbishments was not an option but that sale of the properties to the Council was preferable. However, agreement with property owners and agents has not, so far, been reached. Negotiations are ongoing. Consequently, there is a very real possibility that the property acquisition could be concluded by mutual agreement with the property owner. If this is the case then a CPO will not be required by the Council and will only be made as a last resort.

## 5. POLICY IMPLICATIONS

The development of the Northgate area meets the 'Culture and Life' objective of the Blackburn Town Centre Strategy and the development of the Town centre in the Local Plan. Specifically, Policy 26 of the Local plan, part 2 applies and supports the delivery of the Blakey Moor Townscape heritage Project. The project also helps to deliver the improvements set out in the Northgate Conservation Area Appraisal and Management Plans. The project also delivers the Heritage priority and ambitions within the Council's 12 point Plan.

### **Department for Communities and Local Government (DCLG) Guidance on compulsory purchase process and The Crichel Down Rules for disposal of surplus land acquired by, or under the threat of, compulsion ("the Guidance")**

5.1 Government policy on the making of CPOs is set out in the above mentioned Guidance whereby the Government encourages the use of CPO powers as set out in Para 1:

*"Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life."*

5.2 Paras 2,12 and 13 of the Guidance set out when a compulsory purchase power should be exercised:

*"Para 2. Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest."*

*Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost."*

*...When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues."*

*Para 12. A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.*

*Para 13. The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.*

*However, the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.*

*If an acquiring authority does not:*

- have a clear idea of how it intends to use the land which it is proposing to acquire; and*
- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale*

*it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making."*

5.3 The Guidance at para 14 refers to other matters of which the Council must be satisfied in making a CPO which it is considered are met in the present case:

*"a) **sources of funding** - the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:*

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and*
- the basis on which the contributions or underwriting is to be made*

*b) **timing of that funding** - funding should generally be available now or early in the process."*

5.4 The financial implications for this scheme are set out later in the report.

### **Impediments to implementation**

5.5 *The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation including any need for planning permission or other consent or licence. Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious*

reasons why it might be withheld. (para 15)

5.6 The Council will be making an application for planning permission if this is required for the scheme. It is the Council's view that there are no obvious reasons for the permission to be withheld.

5.7 Officers are seeking authorisation to the making of any minor amendments, and modifications that maybe necessary to the proposed CPO, Order Plans, and accordingly to make applications to amend the planning applications or permissions (if required).

### **Preparatory work and making the CPO**

5.8 Before embarking on a CPO the acquiring authorities should seek to acquire land by negotiation wherever practicable. At para 16 the Guidance sets out that *“Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.”*

5.9 The Guidance states that the Secretary of State requires to be satisfied that the land included in an order can be reasonably regarded as required for the purposes of the acquisition as stated in the order. For the reasons set out in this report, it is considered that the land is reasonably required for the purposes of the acquisition.

### **HUMAN RIGHTS**

5.10 There are no residential properties within the CPO area, so Article 8 of the European Convention on Human Rights (which provides that every person is entitled to respect for his home and private life) does not apply to this Order.

5.11 However, it is acknowledged that the compulsory acquisition of the necessary lands will amount to an interference with Article 1 of the First Protocol (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions). However that interference will be justified if it is in accordance with the law.

5.12 All property and land owners will receive compensation for their loss of property, and all necessary action will be taken to ensure that the impact on adjoining owners and occupiers is kept to a minimum.

5.13 As already noted, the Council should only make a CPO if it is satisfied that there is a compelling case in the public interest. Notwithstanding the acknowledged impact that the CPO will have with regard to some aspects of Human Rights Act 1998, the benefits identified in this report present a compelling case in the public interest for making the proposed CPO and compensation will be payable under the statutory compensation code. The making of the proposed CPO is in the public interest because the proposed scheme will deliver:

- refurbishment of up to 25 historic buildings
- vacant properties brought back into commercial use
- a public realm improvement scheme
- a heritage skills training programme
- an events and activity programme to engage the public in the project
- new opportunities for businesses and job creation
- economic regeneration of the area and wider town centre

- supports the Council's Town Centre Strategy and the Local Plan

## **PUBLIC SECTOR EQUALITY DUTY**

5.14 The Guidance states at para. 6 that “*all public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. In exercising their compulsory purchase and related powers (e.g. powers of entry) these acquiring authorities must have regard to the effect of any differential impacts on groups with protected characteristics. As part of the Public Sector Equality Duty, acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.*”

5.15 The scheme will promote the social, environmental and economic well-being of the area.

5.16 The land proposed to be included in the CPO is reasonably required for the purposes set out in this report.

## **6. FINANCIAL IMPLICATIONS**

6.1 **Construction costs** (including professional fees) of Blakey Moor terrace (11-29) are estimated at £1,455,151. 80% of this will be funded by the Townscape Heritage Project Common Grant Fund (made up of 50% Heritage Lottery and 50% Blackburn with Darwen Borough Council Capital Programme) and 20% will be funded by the property owner which will be the Council and be funded by the Council's Capital programme.

<b>80% Townscape Heritage Grant:</b>	£1,164,121	<b>Total BwD contribution</b>
Heritage Lottery Fund	£582,060.50	
BwD BC	£582,060.50	£582,060.50
<b>20% Property owners contribution</b>		
BwDBC:	£291,030	£291,030
<b>Total</b>	<b>£1,455,151</b>	<b>£873,090.50</b>

Acquisition costs are still to be determined as negotiations continue and a further report will come to Board once progress has been made either by agreement or using CPO powers.

6.2 There is a possibility that a public inquiry may be held if there are statutory objections to this CPO. The additional costs of an inquiry will be reviewed at the appropriate stage, and will be met by the Council's capital programme.

## **7. LEGAL IMPLICATIONS**

7.1 In order to ensure that the scheme is completed within the timeframe allocated, it is essential that a Compulsory Purchase Order (CPO) be made under section 226(1) (a) of the Town and Country Planning Act 1980 Under Section 226(1)(a) a local authority may acquire land to facilitate the carrying out of development, re-development or improvement on or in relation to the land. The Council can also compulsorily acquire land under the provisions of section 121 of the Local Government Act 1972.

7.2 The CPO has to be confirmed by the Secretary of State. If there are objections then a public inquiry may be held.

7.3 The making of the CPO does not prevent negotiations with any person holding an interest in land affected by the CPO, as these negotiations can proceed in parallel with the statutory process. Indeed, this is advised by the Guidance at para 16.

7.4 Additional external legal support may be required if a public inquiry or proceedings takes place as a result of the Order.

7.5 The Council's legal section will be involved in progressing and finalising the statutory elements of this scheme. Powers of compulsion are needed as a last resort to ensure that land is available and in the ownership of the Council before refurbishment/improvement can commence.

If no objections are received, the CPO may be confirmed by the Council. If objections are received and not withdrawn, the order will be subject to confirmation by the Secretary of State who may wish to hold a public inquiry.

## 8. RESOURCE IMPLICATIONS

Resource demands of this project in terms of officer time will be met by existing Council Growth and Development, Legal and Property officers. The project will be coordinated by a Townscape Heritage manager, now appointed into post and funded by the project. Some external support may be required should the matter proceed to public inquiry or any specific further legal advice required

## 9. EQUALITY AND HEALTH IMPLICATIONS

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. (*insert EIA link here*)

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. (*insert EIA attachment*)

## 10. CONSULTATIONS

10.1 The Blakey Moor Townscape Heritage Project is a key part of the Council's ongoing Economic Regeneration of Blackburn town centre and the wider borough and the redevelopment of Blakey Moor including 11-17 (currently privately owned) and 19-29 (Council owned) is an essential part of the successful delivery of the Townscape Heritage Project.



10.2 The Townscape Heritage Project has been consulted upon with members of the public, property owners, businesses and other stakeholders and this consultation informed The Detailed Scheme Plan, Activity Statement and Detailed Plans for Public Realm that were prepared prior to submitting the funding application to the Heritage Lottery Fund.

Consultation events and activity included (dates from February 2015 to February 2016)

- public exhibition, talks and tours, arts activity, painting competition and a pop-up memory café as part of this year's Blackburn Heritage Festival
- group meetings and drop-in sessions with business and property owner
- one-to-ones with owners and businesses
- heritage careers lecture and consultation event with Blackburn College students
- consultation and workshop event with construction staff at Blackburn college
- meetings with local arts and events groups and organisations to establish links and develop wider activity
- consultation with highways and other people responsible for Town Centre Management and Maintenance
- regular consultation and progress updates for Council Members to ensure continued support of the project
- market testing with potential developers and operators to ensure proposals are economically viable and sustainable
- consultation with heritage lottery to ensure proposal can secure funding
- consultation with building surveyors, conservation architects and Council's Planning department to ensure that proposals were deliverable, sustainable and best practice in the conservation of an historic property

10.3 Alongside this, detailed and ongoing discussions with the property owner of 11-17 Blakey Moor in relation to the project and potential acquisition of property have been ongoing since October 2015. Key events include:

October 2015 – meeting with Growth Programme Director

December 2015 – Meeting with Executive Member for Regeneration

January 2016 – meeting with Economic Regeneration and Business Manager

January 2016 – property owner confirmed that they did not wish to be part of the project and wished to sell to the Council

February 2016 - The Council appointed a surveyor to negotiate sale

April 2016 – Financial advisor appointment to act for property owner

October 2016 – Offer made to property owner

October 2015 – March 2016 – chasing up response to offer and responding questions

10.4 Consultation has demonstrated a high level of support for the Townscape Heritage Project, including acquisition of 11-17 Blakey Moor by the Council to facilitate the development of the full terrace, 11-29 Blakey Moor. Consultation with the property owner has identified that they did not wish to receive a grant to develop the property and their preference would be to sell the properties to facilitate delivery of the project by the Council.

Feedback from consultation with the Heritage Lottery has been that Blakey Moor terrace is a 'Priority Project' and delivery of this is as essential to the wider scheme and funding. Without firm plans to deliver the development of the full terrace, the whole Townscape Heritage Project would be at risk. Colliers International options appraisal and feedback from market testing concludes that the development of the terrace could deliver wider regeneration benefits, but this would need to include the whole terrace to provide viable floor space and ideally the block should be redeveloped at one time.

Consultation with members of the public and other stakeholders has demonstrated support for the

proposed redevelopment and reuse of the building and agreement that this would impact positively on the town's economic and cultural prosperity.

10.5 Following the publishing of the Order, the CPO, associated plans and the statement of reasons can be viewed at any time in the Town Hall as part of the statutory process.

10.6 The Order will be advertised by the Council and formal objections can be made to the Secretary of State. In relation to the CPO, all relevant notices will be served on all parties within the statutory timeframes.

#### **11. STATEMENT OF COMPLIANCE**

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

#### **12. DECLARATION OF INTEREST**

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

<b>VERSION:</b>	<b>1</b>
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<b>CONTACT OFFICER:</b>	<b>Clare Turner</b>
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<b>DATE:</b>	16 <sup>th</sup> March 2017
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<b>BACKGROUND PAPER:</b>	
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