
Report to: Planning Committee

Date of Meeting: 28 September 2023

Subject: Update - 10 Gannel Hill View, Devon Village

**Report by: Lee Robertson, Senior Manager of Legal &
Governance**

1.0 Purpose

- 1.1. The purpose of this report is to provide Planning Committee with an update on the option of using the Council's compulsory purchase order (CPO) powers for a property at 10 Gannel Hill View, Devonside as provided for in the Report presented to the Planning Committee on 3 November 2022.

2.0 Recommendations

Committee is asked:

- 2.1. To note that the option to use the Council's CPO powers is unlikely to be successful and accepted by the Scottish Ministers as detailed in the considerations in paragraph 3.0

3.0 Considerations

- 3.1. All CPO's require to be approved by the Scottish Ministers before they can be enforced.
- 3.2. Acquiring authorities should aim to develop the strongest possible case drawn from evidence when demonstrating the public interest associated with the CPO proposal. This is to ensure that any objections or legal challenge by land owners or those impacted by the development can be addressed and if necessary defended.
- 3.3. There are a number of factors that must be considered and the acquiring Authority must be able to clearly set out why an order is in the public interest and that there is clear justification for interfering with the legal rights of those affected by such an order (Planning Circular CPOGNAA/003).
- 3.4. Acquiring authorities should be able to explain why they consider that:
- 3.4.1. The purpose for which land is to be acquired are sufficiently important to justify the deprivation of property or interference with possession which the compulsory purchase entails;

- 3.4.2. All of land in question is directly needed for the proper delivery of those purposes;
 - 3.4.3. A less intrusive measure could not have been used for those purposes; and
 - 3.4.4. A fair balance has been struck between the rights of the individuals affected and the interests of the community.
- 3.5. Acquiring Authorities should be able to clearly evidence and justify the following when setting out the reasons for a CPO:
 - 3.5.1. Powers it intends to use and why it is considered that those powers are the most appropriate in the circumstances.
 - 3.5.2. Public Benefit for the proposal versus what would happen if the project did not go ahead:-
 - 3.5.2.1. Any direct and immediate benefits to the population such as flood prevention, public health facilities, new sewer systems etc;
 - 3.5.2.2. Wider public benefits such as an increase in road capacity, alleviation of congestion, reduction in air pollution;
 - 3.5.2.3. Economic benefits such as job creation;
 - 3.5.2.4. New housing and the provision of any new infrastructure to support this, education or healthcare
 - 3.5.2.5. Infrastructure to support area regeneration
 - 3.5.2.6. Social benefits such as providing public service or addressing social problems ie crime reduction, skills development and employment opportunities.
- 3.6. In addition to the factors detailed in paragraph 3.2 there is also a legal requirement to evidence that the Council has attempted to negotiate the sale of the property. Any purchase price would need to be at market value and the Council would need to obtain a valuation to confirm the market value of the property. Costs would also need to include additional compensation and covering of all legal costs. As there is currently no budget available for the purchase of properties under CPO powers the Planning Authority would also require to confirm budget to allow the Council to make an offer to purchase from the owner.
- 3.7. Acquiring Authorities should not use their CPO powers speculatively as there is a need to demonstrate there is a reasonable prospect of being able to meet any potential shortfalls in funding. At this time the Council has no available budget for the completion of such a project.
- 3.8. One of the owners of the property has recently passed away. The estate of the late owner will take a number of months before it is finalised. As such it would not be appropriate nor would the owner have the ability to sell the property until the estate of the deceased has been discharged.

- 3.9. It is unlikely as a result of the requirements detailed in paragraphs 3.2, 3.3, 3.4, 3.5 and 3.6 the Council would be successful in obtaining the approval of the Scottish Ministers to CPO the property.
- 3.10. Acquiring Authorities can, in some circumstances, undertake the compulsory purchase of the land needed for the project but then rely on a third party (including the private sector) to undertake the development of the land and/or deliver the underlying project. Where this is the case the responsibility for obtaining confirmation of and implementing the CPO and then ensuring the project is delivered appropriately, remains with the Acquiring Authority. When considering the disposal of land to a third party an Acquiring Authority should at a minimum satisfy itself that:
- 3.10.1. No better solution exists;
 - 3.10.2. The developer has been unable to acquire the land through any other means;
 - 3.10.3. The developer can demonstrate it has actively engaged with the affected community. This should include land owners and all those directly or indirectly likely to be impacted by any proposed development;
 - 3.10.4. The developer can demonstrate a clear link to and/or compliance with a relevant plan or strategy;
 - 3.10.5. The developer can demonstrate the clear public interest in the development proceeding; and
 - 3.10.6. No procurement or State Aid issues arise, and if they do, that these can be complied with.
- 3.11. On the basis of the minimum requirements detailed in paragraph 3.10 it is unlikely that the Council would obtain Scottish Government consent for the relevant CPO and back to back agreement.

4.0 Sustainability Implications

- 4.1. None.

5.0 Resource Implications

5.1. Financial Details

- 5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

- 5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

5.4. Staffing

6.0 Exempt Reports

6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all

Our families; children and young people will have the best possible start in life

Women and girls will be confident and aspirational, and achieve their full potential

Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes No

9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

11.0 Background Papers

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes (please list the documents below) No

Reports

to

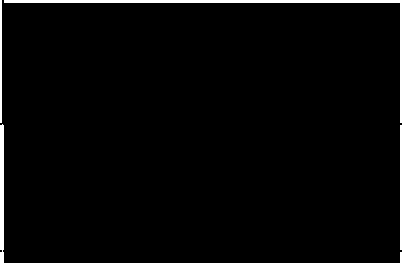
Clackmannanshire

Council:

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Approved by

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