

**REPORT TO** EXECUTIVE and COUNCIL  
**Date of Meeting:** 12<sup>th</sup> and 19<sup>th</sup> April 2016  
**Report of:** Assistant Director City Development  
**Title:** Compulsory Purchase Order

**Is this a Key Decision?**

No

**Is this an Executive or Council Function?**

Council

**1. What is the report about?**

- 1.1 This report seeks authority to make a Compulsory Purchase Order for Queen's Crescent Garden.
- 1.2 It updates an Executive Committee resolution of 20 November 2012.

**2. Recommendations:**

- 2.1 That Council approves and Executive Committee supports delegating to the Assistant Director City Development in consultation with Corporate Manager Legal authority to make a Compulsory Purchase Order in respect of land at Queen's Crescent Garden and in association with the Portfolio Holder City Development authority to take all necessary action to decide whether to proceed with compulsory purchase.

**3. Reasons for the recommendation:**

- 3.1 That a CPO is needed to acquire Queen's Crescent Garden to facilitate the regeneration proposals.

**4. What are the resource implications including non financial resources.**

- 4.1 Costs of acquisition: staff time will account for most of this since it is anticipated that the purchase price of the land will be negligible but an independent valuation has valued the land at £18,000. Costs of a public inquiry, if necessary, which may prove to be significant

**5. Section 151 Officer comments:**

- 5.1 The request for £18,000 is noted and will be added to the Council's capital programme if approved.

## **6. What are the legal aspects?**

- 6.1 Exeter City Council has powers under the Town and Country Planning Act 1990 to acquire land compulsorily if acquisition will facilitate improvement to that land and it cannot be acquired by agreement.
- 6.2 The acquisition under Town and Country Planning Act 1990 S.226 will follow a procedure for land in unknown ownership. Once the Compulsory Purchase Order has been sealed, it is advertised for 21 days during which time objectors can challenge the CPO. Any challenge can prompt a public inquiry and if so the outcome will be decided by a PINS inspector. Any such public inquiry will incur the Council in additional expense (to cover costs) and in such event the CPO will only be confirmed by the Secretary of State if the inspector's decision upholds the Council's submission.

## **7. Monitoring Officer's comments:**

- 7.1 Other than those matters already identified elsewhere in the report, this matter raises no issues of concern for the Monitoring Officer.

## **8. Report details:**

### **8.1 Background**

- 8.1.1 A report was submitted to the Executive Committee of 20 November 2012 informing members of progress on the production of a Neighbourhood Development Plan for Exeter St James. The report also sought agreement to the Council's response to the consultation process and to granting delegated powers to take the process forward.
- 8.1.2 A main priority of the Plan was to create a heart for St James centred on Queen's Crescent Garden.
- 8.1.3 Members noted that the uncertainty over the ownership of the Queen's Crescent Garden would be resolved through the Compulsory Purchase Order process and looked forward to the creation of a community green space.
- 8.1.4 Executive resolved to delegate authority to the Assistant Director City Development in consultation with the Portfolio Holder:
- (i) to continue to negotiate with the Forum (Exeter St. James Forum) on how best to address issues regarding the content of the draft plan identified in Appendix C (i.e. of the report of 20 November 2012);
  - (ii) to make any formal representations appropriate on the plan reflecting unresolved concerns;
  - (iii) to undertake the necessary procedures to enable the plan to proceed towards adoption;
  - (iv) to undertake the acquisition of the Queen's Crescent Gardens open space, by agreement with the owner if the owner is found. If the owner is not found, or terms are not agreed, that Executive authorises the acquisition of the land by making a Compulsory Purchase Order under Section 226 of the Town and Country Planning Act 1990 (as amended), on the basis that Executive thinks the acquisition will facilitate the carrying out of improvement on or in relation to that land and;

- (v) to undertake all necessary action to proceed with the Compulsory Purchase Order.
- 8.1.5 Issues regarding the Neighbourhood Development Plan (i),(ii) and (iii) were resolved and the plan was adopted on 16 July 2013.
- 8.1.6 The remaining items (iv) and (v) regarding acquisition of the Queen's Crescent Garden by agreement or by making a Compulsory Purchase Order (CPO) are the subject of this report.
- 8.1.7 Exeter St James Community Trust (EStJCT), a community registered society with stakeholder members, was set up by Exeter St James Forum specifically to take on the legal responsibility for the implementation of the regeneration proposals and subsequent management of Queen's Crescent Garden.
- 8.1.8 Pocket Park grant: following application by the Exeter St.James Community Trust (EStJCT), the Department of Communities and Local Government confirmed in January 2016 that a total grant of £13,000 had been awarded to EStJCT.
- 8.1.9 The grant is primarily intended to fund physical works to develop the site and to put it into a condition that the community can manage.
- 8.1.10 The budget for the cost of the CPO and acquisition will be set up from the Section 106 money connected to the development of the student residences at Portland House, Longbrook Street.
- 8.2 Ownership
- 8.2.1 Ownership title to Queen's Crescent Garden is not registered with the Land Registry. The Council tried to establish ownership initially by public consultation in 2013 but this did not identify a clear claim to ownership. Further investigation was undertaken in 2014 of conveyancing and probate records which indicated that a trust was created in 1900 to manage the garden for the surrounding residents. But it is now thought reasonable to assume that the trust no longer exists. The land was conveyed to one of the trustees but whilst a living relative was eventually traced no records have been found to show that this individual has acquired any interest in the Order Land. Research at the Probate Registry Office was unable to prove who owns the land leading to the conclusion that ownership of the Order Land remains unknown.
- 8.2.2 Consequently it has not been possible to acquire Queen's Crescent Garden by agreement.
- 8.2.3 Unknown ownership has meant that the land has been neglected, fallen into disrepair and attracted anti-social uses.
- 8.2.4 Certainty of ownership is required to secure funding to enable the EStJF concept design, agreed in April 2014 following public consultation, to be developed as detailed proposals and for the subsequent implementation, management and maintenance of the land for community use and in accordance with the resolution of the Council's Executive of 20 November 2012.
- 8.3 Change of Use

8.3.1 In May 2015 EStJCT applied for planning permission for a Change of Use from private open space to public open space in support of community aspirations for Queen's Crescent Gardens and as a prerequisite to the Council making a Compulsory Purchase Order for the garden with the intention of conveying the garden to the EStJCT. Permission was granted in July 2015.

#### 8.4 Compulsory Purchase Order

8.4.1 Exeter City Council has prepared a draft Compulsory Purchase Order 2016 under section 226 of the Town and Country Planning Act 1990.

8.4.2 If confirmed by the Secretary of State for Communities and Local Government the Order will enable the Council to acquire compulsorily the land and new rights included in the Order to facilitate the Queen's Crescent Garden regeneration proposals.

8.4.3 The land to be acquired is shown on the plan shown in Annex 1 which excludes the out-of-service letter collection wall box at the junction of Longbrook Street and York Road which belongs to Royal Mail.

8.4.4 The proposed CPO to acquire the freehold of the land will enable the implementation of all the works comprising the agreed scheme and will secure access to undertake maintenance of the completed scheme in perpetuity.

8.4.5 Following confirmation by the Secretary of State the Council intends to lease the land to EStJCT on terms to be agreed.

#### 8.4.6 Costs of acquisition:

- (i) Value of the land: independent valuation has been determined at £18,000.
- (ii) Staff time
- (iii) Possible costs of a public inquiry if the CPO is resisted

### 9. How does the decision contribute to the Council's Corporate Plan?

9.1 It helps to support an established neighbourhood's priorities for delivery of improvements to a community green space.

### 10. What risks are there and how can they be reduced?

- (i) Public inquiry costs, time delay, failure to secure the CPO
- (ii) Consultation with the public, time and effort spent attempting to trace owner(s)
- (iii) If a good claim to the Land is forthcoming through the CPO process then the Council would seek to negotiate by agreement and would ensure that it was clearly understood that the claimant would be expected to undertake future maintenance responsibility for the Land if the claimant retains control

**11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

11.1 Given its close proximity to important community facilities, the potential of Queens Crescent Garden as a community green space to improve wellbeing, where community events can take place is significant: it is an important part of the Neighbourhood Plan proposals for the whole area functioning as the Community Hub, forming the much-needed heart of the community that will strengthen St James' image and identity it as vibrant and diverse.

**12. Are there any other options?**

12.1 None have been identified.

**Richard Short**  
**Assistant Director City development**

**Local Government (Access to Information) Act 1972 (as amended)**

**Background papers used in compiling this report:-**

None

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