

CABINET

14 DECEMBER 2021

ACTION TO RETURN A LONG-TERM DERELICT PROPERTY INTO USE AT 364 HIGH STREET, ROCHESTER ME1 1DJ

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Arron Nicholls, Derelict and Empty Homes Officer

Summary

This report seeks approval from Cabinet for the acquisition of the former Mak's Curry Nest at 364 High Street Rochester ME1 1DJ, through a Compulsory Purchase Order (CPO).

1. Budget and policy framework

- 1.1. The responsibility for the decision on acquiring property and making of a Compulsory Purchase Order is a matter for Cabinet.

2. Background

- 2.1. 364 High Street is a three-storey end of terrace building built in the early 20th century located in the Star Hill to Sun Pier Conservation Area ("the property"). The property comprises a former restaurant/hot food take away at ground floor level and a flat at first and second floor level.
- 2.2. The property has been vacant since 2012 and has fallen into significant disrepair.
- 2.3. According to Land Registry records, The current owner has owned the property since 16 January 1995. Council Tax and business rates records suggest the flats and ground floor shop have been empty for more than 9 years. Since 2012, the Council has received a number of complaints relating to the external condition of the property.

3. Options

The Councils options are as follows:

- 3.1. To continue to try to locate and engage with the owner of the property - This is not considered likely to bring the property back into use. Internal and external agencies have all failed to locate the owner.
- 3.2. To do nothing - This is not acceptable, due to the property's continuing deteriorating condition and the negative impact it has on the Conservation Area and the neighbourhood. It will also negatively impact on the Council's progression of improvements through the Heritage Action Zone. Further issues are likely to arise as the property deteriorates further and the Council may well receive further complaints from neighbours.
- 3.3. To pursue a Compulsory Purchase Order – In order to put the Council in the best possible position, officers advise that compulsory purchase proceedings allowing the Council to purchase the property should be started. An external specialist Legal firm will be appointed to undertake the legal works subject to Member approval. Subject to the CPO being agreed, and the property being acquired, below are options for the building's future.
 - 3.3.1. The Council could sell the building in its current condition on the open market with a requirement to bring the property back into use, preferably at auction, as this will demonstrate that the Council has obtained best consideration for the property, which will also inform the amount of compensation, likely to be payable for the property.
 - 3.3.2. The Council could itself carry out the works necessary in order to bring the property back into use and then sell it on the open market. The cost of this would need to be agreed and met by the Council. The risk in this option is that the Council will need to fund the works and might not get the cost of these back. There will also be more of a delay between the Council acquiring the property and selling it, which will impact on cashflow. However, the benefit will be in getting the property upgraded to an appropriate condition, which will make it more attractive to a potential purchaser and will also then link to work being done in relation to the Heritage Action Zone.

4. Advice and analysis

- 4.1. The proposal is for agreement to pursue a CPO on 364 High Street Rochester ME1 1DJ. Medway Council's legal section has advised that the CPO would need to undertaken by an external legal company.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
CPO proceedings are opposed	There is a risk the CPO will not be granted	Seek appropriate specialist support to put the Council's case for a CPO in the strongest possible terms	D2
Compensation payable for the property exceeds how much it is sold for	Including the cost of obtaining the CPO, the council may have to pay more for the property than it can sell it for	Sell the property by auction with a requirement to bring it back into use and to carry out the necessary repair and upgrade works, as soon as possible after acquisition.	D2

6. Climate change implications

6.1. Empty and derelict buildings such as this represent a wasted resource. There are over 1573 long term empty properties in Medway. If all of these buildings were brought back into use this would reduce the need for the as many new properties to be built and have a positive impact on the environment.

7. Financial implications

7.1. The Council will need to bear the costs of instructing external legal services. As an example, one such firms' fees (NP law) for undertaking the CPO process are £3200 + Vat and disbursements, this may increase should there be a relevant objection to the CPO process. In addition, the Council will also need to cover the costs for acquiring the property, changing the locks on acquisition, insuring the property, any costs involved in selling the property on e.g., conveyancing fees, auction fees and estate agent fees. These fee's will be re-covered as soon as the building is brought back into use through the sale proceeds and Council Tax and Business Rates payments.

7.2. A valuation of the property has been carried out by one the Council's Valuation Surveyors. It should be noted that the actual valuation for compensation will be set on the vesting day and this may have changed by completion of the CPO as it is subject to market fluctuations.

7.3. In addition to the property value, the owner may also be entitled to claim additional heads of compensation as well as market value including but not

limited to: basic loss payment disturbance, legal fees and surveyor fees. Further details are set out in the exempt appendix.

- 7.4. The proceeds from the sale of the property would be used to cover the cost of the compensation. Owners do not always claim these sums, but the Council must make provision for these sums to be claimed for a 6 year period after the property has vested in the council. The compensation would need to be ring-fenced and kept in an interest accruing account for six years.
- 7.5. The Council will also need to consider the risk that the CPO may fail and the costs associated with this process will have to be absorbed by the Council.
- 7.6. The total assumed claim for purchase of the property, as set out in the exempt appendix, will be funded from the Regeneration Investment Fund Scheme (9C702, total scheme budget of £13.177million) in the Council's current Capital Programme, subject to Cabinet agreement.

8. Legal implications

- 8.1. The Council has powers under s226(a) of the Town and Country Planning Act 1990 to make a CPO, on the basis that the acquisition of the property and its subsequent development, re-development or improvement, would promote the economic, social, or environmental wellbeing of the area.
- 8.2. Compulsory purchase of empty buildings may be justified as a last resort in situations where there appears to be no other prospect of the building being renovated and brought back into use.
- 8.3. **Further Guidance on Compulsory Purchase Orders**

In promoting a CPO, the Council must use the most recent Government guidance which is Compulsory Purchase Process and The Crichel Down Rules July 2019.

Matters which must be addressed within the CPO are:

- 8.3.1. There must be a compelling case in the public interest – The Property is a waste of a potentially good commercial space and housing accommodation in an area with a high housing demand. The property also has a significant impact on the conservation area and neighbourhood due to being long term empty with the external appearance continuing to deteriorate. The property is within the Heritage Action Zone and its further deterioration will impact on the improvements to that area to be secured through HAZ funding. Further reasons for the compelling case can be found in section 10.
- 8.3.2. Authorities should have taken reasonable steps to acquire the interests by negotiation, where practicable. A compulsory purchase order is intended as a last resort in the event that attempts to acquire by agreement fail. Multiple attempts have been made to try to locate the

owner in order to bring the property back into use but all attempts have failed as the owner is an absent landlord. Officers are satisfied that they have carried out sufficient steps to meet this criterion.

- 8.3.3. There must be a clear idea of how the Council intends to use the building and that the necessary resources are likely to be available to achieve that end within a reasonable timescale. The Council intends on bringing the property back into use and has two options to do so as set out in paragraph 3.3.
- 8.3.4. Full details for the source of, and timing for, the funding of the scheme are required – the Council already has funding to cover the compensation to acquire the building and undertake works if necessary, subject to approval by Cabinet.
- 8.3.5. The scheme must be unlikely to be blocked by impediments to implementation. The property will be returned to use to reflect others in its proximity.
- 8.4. On the basis of the assessment carried out by the Council, it must consider that a compelling case exists before a decision is made. Officers have carried out this assessment and returning a disused building back into use will bring employment opportunities and housing. This will also link to other improvements works being undertaken in the area linked to HAZ funding. Officers are of the view that there is a compelling case in the public interest for making a compulsory purchase order.
- 8.5. The Council considers that there is no alternative other than to use its CPO powers to return the property to beneficial use.
- 8.6. The Council must consider the provisions of the European Convention on Human Rights. The Convention Rights relevant to compulsory acquisition are as follows:
- 8.7. The Council considers that the CPO will result in the property being brought back into use. The CPO is necessary and justified as last resort as this benefit could not be achieved by agreement.
- 8.8. Article 1 (of the First Protocol) - This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.
- 8.9. Article 8 (of the Convention) - This protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.
- 8.10. Article 14 (of the Convention) - This protects the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as

sex, race, colour, language, religion, political or other opinion, or national or social origin.

- 8.11. In the officers' view there are sufficient grounds, as detailed in the preceding paragraphs, on which to conclude that the proposed CPO is in the public interest and to justify interfering with the human rights of any person with an interest in the Property. As there is no evidence that the renovation of the property will be completed within a reasonable timeframe and these benefits could not be achieved by agreement, they outweigh the loss that will be suffered by the current landowner. The compulsory purchase order is therefore considered to be compatible with the Convention.
- 8.12. The Council also considers the proposed CPO to be compatible with the Public Sector Equality Duty and that it will not have a significant impact on protected groups. However, this will continue to be considered throughout the process.

9. Recommendations

- 9.1. It is recommended that the Cabinet agrees that the Council makes a Compulsory Purchase Order (CPO) under the Acquisition of Land Act 1981 and s226(a) of the Town and Country Planning Act 1990, for the acquisition of the 354 High St Chatham for the purposes of the provision of housing accommodation with a potential commercial use on the ground floor.
- 9.2. It is recommended that Cabinet delegates authority to the Director of Place and Deputy Chief Executive in consultation the Portfolio Holder for Resources to:
 - 9.2.1. Delegate securing of funding for the CPO to officers.
 - 9.2.2. Take all necessary steps to secure the making, confirmation and implementation of the CPO, including the publication and service of notices and all other associated procedural steps.
 - 9.2.3. Acquire the Property whether by voluntary agreement or compulsorily using the statutory powers set out in paragraph 9.1.
 - 9.2.4. Once acquired, dispose of the Property by one of the two options set out in paragraph 3.3 with appropriate conditions to secure its repair.
 - 9.2.5. Suspend or abandon the CPO proceedings or withdraw an order on being satisfied that the Property will be satisfactorily renovated and re-occupied.
 - 9.2.6. Take necessary action to deal with all matters relating to the payment of statutory compensation including, where required, instituting or defending proceedings.

9.2.7. Take all other necessary action to give effect to these recommendations.

9.3 It is recommended that the Cabinets agrees to fund the CPO and related costs from the Regeneration Investment Fund Scheme in the current Capital Programme.

10. Suggested reasons for decisions

10.1. The property is one of a number of similar abandoned and derelict buildings across Medway, including properties such as 6 High Street Gillingham which are being assessed and considered by officers in consultation with the Portfolio Holder.

10.2. The property has been derelict and empty for over 10 years, its condition has steadily deteriorated and is now proving to be detrimental to the character of the conservation area and neighbourhood as well as being a waste of employment space and residential accommodation in an area with high housing demand.

10.3. Officers and external agencies have also been unable to locate the owner.

10.4. The property has attracted a number of complaints from local residents and therefore is having a detrimental effect on them, as it is affecting enjoyment of their properties. CPO action will allow the physical appearance of the property to be brought in line with neighbouring properties, thereby increasing the economic and social wellbeing of the area.

10.5. Works to enhance the appearance of the property will remove its current blighting effect and improve the local environment for neighbouring properties. This will also link to further improvements in the area facilitated by HAZ funding.

10.6. Re-occupation/ re-use would also reduce the likelihood of the property attracting anti-social behaviour, crime and vandalism. It has already attracted squatters.

10.7. The Council considers that the CPO will result in the property being brought back into use. The CPO is necessary and justified as last resort as this benefit could not be achieved by agreement.

Lead officer contact

Arron Nicholls
Derelict and Empty Homes Officer
Telephone : 01634 333184
Email: Arron.nicholls@medway.gov.uk

Appendices

Exempt Appendix 1

Background Papers

None