

## COMPULSORY PURCHASE AND OVERRIDING EASEMENTS POLICY

### 1. RECOMMENDATIONS

- 1.1 That a 4 week consultation is undertaken on the draft Compulsory Purchase and Overriding Easements Policy and the outcome reported to Cabinet to decide on the adoption of the policy.

### 2. THE PURPOSE OF THE REPORT

- 2.1 The purpose of this report is to seek authority to consult on a proposed Policy relating to the use of Compulsory Purchase Powers and the use of powers to override easements and other rights (under Section 203 of the Housing and Planning Act 2016). The Council has powers to acquire land compulsorily, subject to confirmation by the Secretary of State, and may also override third party rights over land such as easements or rights to light. A copy of the draft Policy document is attached at **Appendix A**. The use of Compulsory Purchase Powers, together with a range of other powers is being encouraged by government to assist local planning authorities to speed up housing delivery.

### 3. BACKGROUND

- 3.1 In February 2019 the long anticipated Housing Delivery Test was published alongside the updated National Planning Policy Framework (NPPF). The publishing of these changes reflects the push from central government to increase housing delivery across the country and introduces new mechanisms in an attempt to enforce this.
- 3.2 As set out in the NPPF local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against the requirement set out in adopted strategic policies, or against the local housing need where strategic policies are more than five years old (unless those policies do not need updating). The Council's Monitoring Report amongst other things sets out delivery of housing, performance against housing target, housing trajectory and five year supply of deliverable sites.
- 3.3 The Local Plan 2016-2036 Part One: Planning Strategy is currently the subject of Public Examination by the Planning Inspectorate and promotes housing delivery of 10,500 homes over the period 2016-2036. A stepped target is being promoted due to the time for new site allocations to secure planning permission and to mobilise. The combined target for the first 10 years represents a 42% increase on the average rate of completions in the Plan Area in the last decade. It therefore represents a step change for the local planning authority and a range of initiatives and changes will need to occur to ensure that the delivery targets are met.

3.4 The National Planning Policy Framework para 119 says:

*“Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.”*

3.5 The DCLG Compulsory Purchase Order Guidance provides as follows:

*“The planning power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justification for the use of the power exists.”*

3.6 It is recognised that the use of Compulsory Purchase powers should only be used where there is a compelling case in the public interest to do so. Compulsory purchase is intended to be used where land is required and there is uncertainty whether it can be acquired by agreement. It may be progressed to secure the assembly of land, deliver stalled sites or sites that are not being delivered in line with Local Plan trajectory and thus impacting on 5 year Housing Land supply.

3.7 Section 203 of the Housing and Planning Act 2016 allows easements or other rights (usually rights to light) over land which is or has been owned by local planning authorities to be overridden. Where land is acquired or appropriated by the planning authority for particular purposes third parties would not be possible to enforce their rights against development related to those purposes. They would then just have a right to compensation. The power can only be used where the land could have been acquired compulsorily for those purposes (assuming that the Council did not already own it). A local planning authority may acquire land from a developer or a third party and then transfer it back so that the developer can proceed without the risk of being stopped by adjoining landowners. In such a case the developer will pay all of the Council's costs, including any compensation due.

3.8 The statutory objective that underlies Section 203 is that provided that work is done for purposes for which the land could have been compulsorily acquired and is in accordance with planning permission, the local planning authority should be able to allow the land to be developed in a manner which best serves the public interest. The person who loses their rights will receive compensation,

3.9 A balance has to be struck between giving authority to develop land held for planning purposes and the need to protect the interests of third party whose right are interfered with.

3.10 Housing delivery will be a major challenge for the local planning authority going forward, there is a need to demonstrate and implement an proactive programme focused on delivering the housing numbers promoted in the Local Plan, failure to do so will result in further housing pressure being placed on the authority.

3.11 Any decision to start a Compulsory Purchase Order would require a Cabinet decision with the rationale, resources and cost of such an action being detailed in a full report. The adoption of a Compulsory Purchase and Overriding Easements Policy puts in place a framework for these decisions. It also demonstrates that this Council is taking its responsibility around housing delivery seriously and as required by the NPPF is taking a proactive role in helping to bring forward land for housing development in its administrative area.

#### **4. FINANCIAL IMPLICATIONS**

4.1 There are no financial implications from consulting on the adoption of this Policy.

#### **5. CRIME & DISORDER, ENVIRONMENTAL, DATA PROTECTION IMPLICATIONS**

5.1 There are none.

#### **6. EQUALITY & DIVERSITY IMPLICATIONS**

6.1 A full assessment of equality and diversity implications would need to be carried out on a case by case basis.

#### **7. PORTFOLIO HOLDER COMMENTS**

7.1 The Portfolio Holder supports the recommendation that the draft policy is published for a 4 week consultation.

#### **For further information contact:**

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#### **Background Papers:**

Published documents

APPENDIX A

**DRAFT**

**NEW FOREST DISTRICT COUNCIL**

**COMPULSORY PURCHASE AND  
OVERRIDING EASEMENTS POLICY**

# **NEW FOREST DISTRICT COUNCIL**

## **COMPULSORY PURCHASE AND Section 203 POLICY**

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## **1. PURPOSE**

- 1.1 This Policy sets out the approach that New Forest District Council will take when it considers that land within its area should be acquired for facilitating development, re-development or improvement on or in relation to land, for the proper planning of its area.
- 1.2 New Forest District Council will only seek to acquire land compulsorily, in accordance with legislation and guidance set out in the Ministry of Housing Communities & Local Government Guidance on Compulsory Purchase Process and the Crichel Down Rule 2018. This will include the development, re-development or improvement of the area promotes the economic, social or environmental well-being of its area or is in the interests of the proper planning of the area. The Council will also consider this policy when using other specific compulsory purchase powers. The local planning authority will first pursue an Acquisition Strategy however if progress is not being made the authority will not wait for negotiations to break down before starting the compulsory purchase process. In such cases a compulsory purchase timetable will be agreed and authority will be sought from Cabinet for a Compulsory Purchase Order.
- 1.3 This policy aims to provide information on the Council's approach to compulsory purchase and the practical guidance that the Council can provide to those affected.

## **2. SCOPE**

- 2.1 The Policy applies to all freeholders, leaseholders and any tenants of the freeholder or leaseholder whose land the Council requires to purchase to facilitate development, for the proper planning of its area or other statutory purposes.

## **3. LEGISLATIVE CONTENT AND OTHER RELEVANT DOCUMENTS**

The following legislation and policy documents will be relevant when considering whether to exercise compulsory purchase powers.

- 3.1
  - Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004)
  - Planning and Compulsory Purchase Act 2004
  - Housing Act 1985
  - Housing and Planning Act 2016
  - Compulsory Purchase Act 1965
  - Land Compensation Act 1973
  - Acquisition of Land Act 1981
  - Local Government Act 1972
  - DCLG Guidance on compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion. [Government Guidance on the Compulsory Purchase Process and Crichel Down Rules](#)

- New Forest District Council – Local Plan Policies
- National Planning Policy Framework 2019

3.2 The following provisions of the Town and Country Planning Act 1990 will be of particular reference:-

S. 226 of the TCPA 1990 provides:

- (1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area –
- (a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or
  - (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- (1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects –
- (a) the promotion or improvement of the economic well-being of their area;
  - (b) the promotion or improvement of the social well-being of their area;
  - (c) the promotion or improvement of the environmental well-being of their area.

#### **4. INTRODUCTION**

4.1 It has been long recognised that 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, compulsory purchase powers can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, and the revitalisation of communities, much needed housing and the promotion of business, leading to improvements in quality of life.

4.2 More recently, the Government has expressly advocated the use of compulsory purchase powers for meeting development needs or to secure development outcomes which may not otherwise be achievable.

The National Planning Policy Framework para 119 says:

*“Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.”*

4.3 Opportunities for sustainable development within New Forest District are severely restricted by environmental constraints. It is therefore very important that when land has been allocated for development in the Local Plan, the site is delivered in a timely

manner to ensure a 5 year Housing Land Supply is maintained and the housing needs of local people are met. Where sites are stalled and so not coming forward (for example, where land needs acquiring from a third party to implement a scheme) or inactive for a period of time that is considered unreasonable by the Council, the Council will consider using its powers to compulsory purchase the land and bring it forward for development.

## 5. THE COUNCIL'S POLICY STATEMENT

5.1 The Council will consider the use of compulsory purchase powers in appropriate cases, in particular, to enable development or re-development to take place.

It will, in particular, consider whether it is necessary to compulsorily acquire land to deliver the Local Plan on sites which are either not proceeding or which is being unreasonably delayed. Those cases will include:

- Allocations which are not being brought forward by landowners within the timeframe agreed through the Local Plan;
- Where ownership or rights issues exist, such as access problems or covenants, which inhibit the development of sites in these cases the Council will look to use Section 203 powers;
- Sites where there are more than one land owner and land assembly is needed to achieve proper planning.
- Sites with inactive land owners

5.2 In exercising any compulsory purchase powers, the Council will only do so when there is a compelling case in the public interest.

5.3 **The Local Plan Review 2016-2036** includes the following policy relating to the implementation of the strategic objectives of the plan, including the timely delivery of planned development.

*Policy 36: Monitoring - The Council will monitor the implementation of the Local Plan 2016-2036 Part One using the Strategic Objective monitoring framework set out in Figure 9.1. If the strategic objectives of the Local Plan are not being achieved, including where planned development is not being delivered in a timely manner, the Council will investigate the reasons why and take appropriate action.*

*Depending on the scale and nature of the objective or delivery target not being met, actions may include:*

*Engagement with the relevant parties including developers, landowners, service and infrastructure providers and other relevant parties to identify barriers or obstacles to the achievement of a Local Plan objective, or to the timely delivery of a planned development, and how they can be resolved.*

5.4 The local planning authority will work co-operatively with landowners, investors and developers to ensure that sites are made available for development within an acceptable timescale. However, if it becomes clear to the Council that land is unlikely to come forward within an acceptable timeframe, the Council will commence the process of acquiring the land if this does not process within delivery timescales the Council will seek to acquire by compulsory purchase.



- 5.5 Prior to the formal exercise of compulsory purchase powers, the Council will enter into discussions with any affected landowner with a view to acquiring the land by agreement.
- 5.6 The Council will at all time follow the Ministry of Housing Communities & Local Government Guidance on Compulsory Purchase Process and The Crichel Down Rules.
- 5.7 The Council will consider the use of Section 203 powers where there is an overriding easement or other right that may prevent desirable development. The Council will discuss the use of these powers with land owners, investors or developers prior to the submission of a planning application. Given the impact of these powers on third party rights these powers will only be used where there is a compelling planning justification to do so.

**6. WHAT THE COUNCIL WILL DO FOLLOWING COMPULSORY PURCHASE OF THE LAND OR SECTION 203**

- 6.1 Where the Council has acquired land for development by a third party, it will:
- Sell the land for market value;
  - Recover the full costs of the compulsory purchase process or overriding easements process, including the payment of compensation, from the purchaser;
  - Require the prompt carrying out of the development.