

# Executive Decision Session Agenda

5.00 pm Tuesday, 28 April  
2020



**NOTE – This decision session is not a public meeting. The reports concerning the agenda items are published 5 days before the session and can be viewed on the website. Decision records will be published on the website after the decisions have been made.**

**Members and the general public may make representations on items on this agenda and these will be taken into account when making the decisions. Consultation will take place with the relevant Portfolio Holder(s) and Directors.**

**Representations should be submitted to Lynne Wood (Lynne.Wood@darlington.gov.uk) by 5.00 p.m. on Monday 27 April 2020**

**Decision maker : Councillor Mrs Heather Scott, OBE, Leader of the Council**

1. Declarations of Interest.
2. To consider representations received from Members and the General Public on items on this agenda. (Pages 1 - 8)
3. Neasham Road - Compulsory Purchase Order –  
Director of Economic Growth and Neighbourhood Services  
(Pages 9 - 84)
4. Central Park - Hybrid Business Innovation Centre –  
Director of Economic Growth and Neighbourhood Services  
(Pages 85 - 96)
5. Schedule of Transactions –

Director of Economic Growth and Neighbourhood Services  
(Pages 97 - 100)

## **EXECUTIVE DECISIONS**

Further information regarding Executive decision making during the Coronavirus lockdown.



**Luke Swinhoe**  
**Assistant Director Law and Governance**

**Monday, 20 April 2020**

**Town Hall**  
**Darlington.**

**Membership**  
Councillors Mrs H Scott

If you need this information in a different language or format or you have any other queries on this agenda please contact Lynne Wood. Elections Manager, Resources Group, during normal office hours 8.30 a.m. to 4.45 p.m. Mondays to Thursdays and 8.30 a.m. to 4.15 p.m. Fridays e-mail [Lynne.Wood@darlington.gov.uk](mailto:Lynne.Wood@darlington.gov.uk)

# Agenda Item 2

Representations were received from Members in respect of Item Nos. 3 and 4 on this agenda.

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### **Submission from Councillor Boddy**

It is stated at 118 (b) in the advice documentation there is no viable alternative to compulsory purchase.

(1) Is that actually correct?

(2) Why would it not be possible for the Local Authority to simply apply to the Land Registry to register possessory title to the land it is proposed should be compulsorily purchased, or all the land, in this parcel of land to which title is so far unknown and unidentified?

(3) As with all purchasers who buy only possessory title, why wouldn't the opportunity be there for any purchaser, (who subsequently purchases all or part of this land from the local authority), to acquire defect of title insurance?

(4) If the Local Authority took this alternative course of action; when the time comes to sell the land, couldn't the land be sold with a recommendation or advice that any purchaser, (who purchases all or any part of the land from the Local Authority), must acquire defect of title insurance?

(5) Could not an undertaking be required of any purchaser to buy defect of title insurance as they acquire the land or any part of it from the Local Authority, and make that a requirement for any purchasers who subsequently bought properties on the development from them?

(6) If this course of action was followed, at some future point, if an owner came forward, wouldn't the developer and their defect of title insurers (if any) and any future home owners who bought properties on the development, carry the cost of future litigation, in the usual way?

(7) If the matter is dealt with as proposed, by compulsory purchase, is there an unnecessary potential for the Local Authority to carry that cost of litigation into the future?

(8) Couldn't litigation be brought under common law or statute including under human rights legislation which may be costly to the Local Authority if compulsory purchase is used?

#### **I remind councillors of points 122 to 126 of the advice.**

(9) After the registration of possessory title, the opportunity for an owner to come forward for an adult with capacity expires after 12 years does it not?

(10) What communications (if any) have officers had with the Land Registry or any other government department?

(11) What communications (if any) have officers had with major public authorities, the Church of England, water companies and railway authorities?

(12) Has the local authority already applied to register possessory title, to prevent someone else potentially applying for possessory title earlier and creating what is known colloquially as a "ransom strip"?

(13) Why must the local authority carry the cost of improvements to the access?

(14) Wouldn't the costs of improvement to the access be better left to fall upon any developer as they purchase this land?

(15) When did it become the responsibility of the Local Authority to provide potential developers, opportunities for development entirely without normal every day insurable risk, any private

individual house purchaser might be expected to take, when purchasing a house, land, garden or garage?

(16) Is the proposed action of the council ultra vires?

(17) Why do officers regard the alternative course of action as unviable?

(18) Isn't all advice from conveyancing solicitors insured?

(19) Wouldn't the home owners who purchased any property on the development, from the developer, be able to have recourse to their own solicitors indemnity insurance, if their conveyancing solicitor failed to advise them properly, to take out defect of title insurance, when they buy any property, on this development, in all these circumstances?

(20) Don't conveyancing solicitors have the option to refuse to continue with a client's instructions, decline to act further and tell a client to go elsewhere, if a potential purchaser refuses to take out the appropriate defect of title insurance?

### **Response to Councillor Boddy**

The questions raised relate to the proposed compulsory purchase by Darlington Borough Council of land at Snipe Lane, Darlington.

This land is proposed to be compulsory purchased to facilitate the development of land owned by the Council and a private sector developer. The proposed development is mixed social and affordable housing, it will provide an income for the Council together with a substantial number of affordable dwellings for those who most need them in the town.

The land to be purchased is required for access purposes, including the dedication of new highway. No properties will be located on the land to be acquired; it is however required to provide access and to facilitate public transport routes to the development. Without this access being brought into the Council's ownership, it will not be possible to bring the proposed development forward.

At present, the land comprises a private road providing access to a number of properties and over part of which Footpaths 14 and 17 run, and there is also a small triangle of land to the north east which is currently bare land. As such, significant parts of Snipe Lane are subject to public rights of way on foot (technically rendering them 'highway') and as a matter of law possessory title cannot be acquired at any time over highway. Moreover, as no part of this land is occupied by the Council, exclusively or otherwise, no application to the Land Registry may be made under the provisions for adverse possession. Further, an application under the doctrine of *ad medium filum* (a presumption that the owner of land on both sides of a road may claim ownership of that road to the midline) cannot be used in this situation, as it is a rebuttable presumption and would not provide sufficient certainty that the road could be adopted. (Insurance is often available to guard against deficiencies in private access rights, but for a development involving many hundreds of houses accessed from an adopted highway, such insurance would not be available at reasonable (and possibly at any) cost.)

Officers have sought Counsel's advice on the various options for acquiring this land; the advice received was unequivocal, in order to acquire title to all of the land required for development, compulsory purchase is the only viable option available to the Council.

Further to the above introduction, I will now address the questions raised in turn:

1. Please see above, all other options have been explored fully by officers, the compulsory purchase procedure is the only viable option available to bring the land into the Council's ownership;
2. The Council does not occupy this land and it is in part subject to public rights on foot (i.e. it is already in part highway); therefore the Council cannot apply for possessory title;
3. Please see above and response to question 2. Further, the land is required for highway purposes, title will not pass to any later purchasers;
4. Please see above;
5. Even if this were viable, it would be an approach that would be likely to slow very greatly the sales of any properties. Please see above;
6. Please see above;
7. The compulsory purchase procedure will prevent any future litigation in respect of ownership of the land. Once confirmed, the Order will permit the acquisition of absolute title by the Council. Full compensation for loss of any relevant property or rights is an integral part of the CPO process, with a statutory code - the Compensation Code - that limits the scope and value of claims;
8. Please see above and answer to question 7;
9. If possessory title is obtained, the holder of such title may apply to the Land Registry to upgrade the title to title absolute after the expiration of 12 years. In the current scenario, for the reasons explained above and below, this is not applicable;
10. Officers have investigated title to the land in the same way as for all property transactions. A caution against first registration of the land has been registered in order to prevent such a "ransom strip" scenario arising;
11. Please see above and answer to question 10;
12. No application has been made for the reasons detailed above; another person would also be unlikely to make such a claim for the reasons detailed;
13. The costs of bringing the access up to adoptable standards will be borne by the joint venture developer. The Council is merely bringing the land into its ownership in order to bring the adjoining land forward for development;
14. Please see answer to question 13 above;
15. This is not the situation in this case;
16. No;
17. Please see responses above;
18. Yes, if the solicitors are regulated by the Solicitors Regulation Authority, rule 3.1 of the SRA Indemnity Insurance Rules requires solicitors to carry adequate and appropriate insurance cover;
19. There is a significant risk that without adoption of relevant access as highway it is unlikely that solicitors would advise their clients to purchase houses on the scheme even with defective title indemnity insurance. Without the full facts of a scenario such as that raised in the question it is not possible to comment;
20. Please see answer to question 19.

In conclusion, for the reasons stated above, the compulsory purchase procedure is the only viable option for the Council to acquire the land necessary to allow for the development.

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## **Submission from Councillor Harker**

In relation to item 4, Central Park - Hybrid Business Innovation Centre:

That there is a need for such a centre, and the fact that DBC is able to facilitate its development is to be welcomed. I understand from the paper that will only proceed if DBC is successful in securing the full capital funding from ERDF and TVCA. Paragraph 33, notes that "The business case does not include any financial contribution to the project from the Council", and that should this event arise a further report would be brought back to a future meeting. What scenarios are envisaged where this need may arise:

- initial capital costs
- costs arising during build
- costs arising post build?

With the first, this is fine as Cabinet can make a further decision prior to commencement. However, if costs rise during construction will the risk and cost sit with the building contractor? If costs arise post build - for example through low occupancy rates, where does the risk sit - is it with DBC?

The timing of this report means unfortunately it is being considered at a very uncertain time for the economy. There is a reference to Covid-19 in the report, but only to note the cancellation of a previous meeting, and a need to draw down funding for development phase. The report notes that the Council has consulted with the operators of Business Central to gauge occupancy of Business Central, and hence of likely demand for a new centre. Those existing occupancy levels reflect a world pre-Covid-19. Should the UK, and Global economy suffer a long term downturn post Covid-19, there is presumably now a much higher risk of lower than expected occupancy levels. Whilst DBC cannot know what affect that will have - will there be costs associated with lower levels of occupancy? Has Council estimated those costs, based on a variety of occupancy levels - i.e. do we understand what any potential longer term financial risk might be to the Council?

## **Response to Council Harker**

Fundamentally we are trying to make a case for 100% funding (60% ERDF and 40% from TVCA) to cover capital costs and an element of revenue to cover early years. In addition just this morning TVCA have spoken to ERDF team and there is possibility of more ERDF and possibly more TVCA. We will continue to work on this.

We will work on a final price tender through scope thereby limiting exposure to capital cost rise.

On revenue - we want to procure an operator similar to the process we did with BC 1 which means that they take the upside and downside risk.

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**EXECUTIVE DECISION SESSION  
28 APRIL 2020**

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**NEASHAM ROAD – COMPULSORY PURCHASE ORDER**

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**Responsible Cabinet Member  
Councillor Alan Marshall – Economy Portfolio**

**Responsible Director – Ian Williams  
Director of Economic Growth and Neighbourhood Services**

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## **SUMMARY REPORT**

### **Purpose of the Report**

1. The purpose of this report is to seek authority to make and pursue the confirmation of a Compulsory Purchase Order to facilitate the acquisition of land at Snipe Lane, Darlington under section 226(1)(a) of the Town and Country Planning Act 1990.
2. The acquisition of the land in question (the ‘Order Land’) is necessary to allow the Council to dedicate and adopt part of Snipe Lane as a public road, and to enhance other public rights of way, as part of the Scheme.

### **Summary**

3. The use of powers for the compulsory purchase of land is sought in relation to a significant housing development being undertaken jointly by the Council and ‘Homes by Esh’. The proposed development is referred to in this report as the “Scheme”.
4. This Scheme will bring economic, social and environmental benefits to the Borough.
5. The Scheme delivery of 449 additional residential dwellings has the potential to maintain and develop a strong and vibrant community, in a high-quality built environment. The construction of a mix of 2, 3, and 4-bedroom dwellings, and a 65% majority of affordable housing will help to increase the range and type of dwellings and tenures available within the locality.
6. The Council has freehold title to virtually all of the land required for the Scheme. The parcels of land within the Council’s ownership are shown in the plan at **Appendix 1**.

7. However, it can be seen from the plan that although the Council has private rights of way along Snipe Lane, the Council is not able to prove title to the land within the boundaries of Snipe Lane, one of the main accesses to the Scheme.
8. Unfortunately, the ownership of Snipe Lane is unknown, and in spite of enquiries and searches, and planning consultation with regard to the planning application for the Scheme, the Council has been unable to discover any owner of the land in question.
9. The Scheme promises significant improvements to Snipe Lane itself, but these improvements and the Scheme as a whole, cannot be realised without clear and definitive rights over Snipe Lane, such as would allow dedication to public use and adoption of the access to be constructed along Snipe Lane.
10. It should note that the compulsory purchase legislation makes provision for the acquisition of land even where there is no known owner, and that this procedure is capable of vesting a good freehold title in the acquiring authority (the Council).
11. Details of the land proposed to be acquired compulsorily (Order Land) is shown shaded pink on the Plan attached at **Appendix 2**.
12. Section 226(1)(a) of the Town and Country Planning Act 1990 empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement *on or in relation to the land*. The Council must not use this power unless it also thinks that the development, redevelopment 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 the Council's area;
  - (b) the promotion or improvement of the social well-being of the Council's area; and
  - (c) the promotion or improvement of the environmental well-being of the Council's area.
13. Given that the overriding purpose of acquisition of land within Snipe Lane is facilitation of the Scheme for the development of land which will bring significant improvements to the social and economic well-being to the Borough, and some environmental benefits, the section 226(1)(a) power is considered appropriate.
14. The officer view is as follows.
15. Delivery of new roads and footpaths is central to the delivery of the Scheme as a whole, which will deliver the full range of social and environmental benefits as outlined above and considered in the Planning Statement.
16. The need for the Scheme and, in delivering the Scheme, the necessity of acquiring the Order Land is demonstrated.



17. Officers consider that there is a reasonable prospect that all phases of the Scheme to which the Order Land relates will be delivered and that as negotiations to acquire the Order Land are either impossible or unlikely to materialise, there are no likely realistic alternatives to the compulsory acquisition of the Order Land to achieve the purposes of the proposed by that acquisition.
18. Virtually all of the land required for the Scheme is already in Council ownership. In effect the value of this land is already committed to the Scheme. The costs of construction, including the construction of roads and footpaths to adoptable standards on the Order Land and elsewhere on the Scheme land, are secured under a joint venture between the Council and Homes by Esh.
19. To the extent that the Order would affect individual rights, the officer view is that interference with those rights is prescribed by law (S.226(1) (a) of the Town and Country Planning Act 1990); is pursuant to a legitimate aim; is necessary in a democratic society and is proportional to the proposed outcome.
20. In the officers' view, there is therefore a compelling case in the public interest sufficient to justify the making of the Order for the acquisition of land closely related to, and part of, the Scheme.

## **Recommendations**

21. It is recommended that the Leader:
  - (a) Agree to the use of compulsory purchase powers for the purpose of the acquisition of the Order Land under the provisions of the Town and Country Planning Act 1990, section 226(1)(a) for the reasons and purposes set out in this report; and
  - (b) That in respect of the Order Land the Director of Economic Growth and Neighbourhood Services be authorised to:
  - (c) Take all necessary steps to secure the making, confirmation (where permitted) and implementation of the Compulsory Purchase Order, including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry;
  - (d) Take all necessary steps to negotiate and approve agreements with land owners and owners of affected interests setting out the terms for the withdrawal of objections to the compulsory purchase order, including where appropriate, seeking exclusion of land from the compulsory purchase order;
  - (e) Take all necessary steps to bring into operation the Compulsory Order if confirmed, including all further steps required to acquire land interests including but not limited to the making of any required general vesting declaration and the payment of appropriate compensation.
  - (f) Make such amendments and additions to the draft Statement of Reasons as the Director deems necessary to properly reflect the Council's reasoning

regarding the proposed CPO so as to properly present the Council's case at any inquiry;

- (g) Take all necessary steps to negotiate the acquisition of any qualifying interest in the Order Land in advance of making the compulsory purchase order.

## **Reasons**

22. The recommendations are supported by the following reasons: -

- (a) To facilitate a Scheme for the development of Council-owned land off Neasham Road for housing, including much needed affordable housing.
- (b) To enable the adoption of part of Snipe Lane, including enhanced footpath and cycleway provision, as part of that Scheme.
- (c) The Scheme has a realistic chance of early delivery, and once delivered will provide significant social and economic benefits to the Borough and will support the Council's planning targets for the provision of housing, including affordable housing.
- (d) Implementation of the Scheme and realising the benefits of the Scheme are dependent on acquiring the Order Land. The Council has no other way of acquiring good title to the land required in a reasonable timeframe.
- (e) Alternative options to the scheme have been considered and are explained above. For the reasons set out in the Full Report, Officers consider that there is no alternative to compulsory acquisition and no impediment to the developing the Scheme, including the Order Land.

**Ian Williams**  
**Director of Economic Growth and Neighbourhood Services**

## **Background Papers**

National Planning Policy Framework, DCHLG 2018  
*Guidance on Compulsory Purchase and the Crichel Down Rules*, DCHLG 2018  
Darlington Core Strategy DPD  
Darlington Housing and Employment Land Availability Assessment, 2018

Guy Metcalfe : Ext 6725

S17 Crime and Disorder	There is no direct impact on crime and disorder considerations.
Health and Well Being	No impact
Carbon Impact and Climate Change	There is no direct impact on carbon reduction arising from the issues in this report.
Diversity	There are no issues relating to Diversity which this report needs to address
Wards Affected	Eastbourne and Hurworth
Groups Affected	The impact of the report on any Group is minimal
Budget and Policy Framework	There is no change proposed to the budget and policy framework
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	This report supports the Perfectly Placed priority, through the Aspiring and Prosperous Themes, in facilitating the redevelopment of Neasham Road in Darlington
Efficiency	No impact
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

## MAIN REPORT

### Description of the Scheme

23. A general plan of the proposed layout of the Scheme is attached to this report at **Appendix 3**. The Scheme is described in detail in the attached Planning Statement **Appendix 4**.
24. The Scheme which the compulsory land acquisition is intended to facilitate provides for the construction of 449 new dwellings on land owned by the Council. The planning application for the Scheme is a hybrid application, part in detail and part in outline. 305 of the 449 new dwellings will be affordable dwellings, with approximately 150 affordable dwellings available for rent built first, followed by a further 144 affordable dwellings built as and when a registered provider of social housing is appointed and the reserved matters application for this element is approved. Open market dwellings will be built in accordance with progress of plot sales and demand.
25. The Scheme comprises a minimum of 65% affordable dwellings. Of the 294 affordable units, 150 dwellings (on Cell B) would be brought forward first by the Council, and a further 144 dwellings on (Cell C) by a Registered Provider of social housing.
26. The Scheme will also consist of a diverse mixture of 2, 3 and 4 bedroom open market properties (on Cell A) using a mix of house types and configurations from 'Homes by Esh'. This is considered an appropriate mix for families, young

professionals and older people and is provided in an inherently sustainable location close to Darlington town centre and key public transport links.

27. Homes by Esh are a wholly owned subsidiary and the house building division of the Esh Group. Having launched in 2013 and with previous experience under the Esh banner they have a proven track record of house building in the north of England, employing over 1,200 people and with a turnover of £220M in 2017. Homes by Esh are the Council's Joint Venture partner under an over-arching agreement for residential development of sites in both Council and private ownership. They have recently completed a development on land adjoining the Council's Eastbourne sports complex and are currently starting to develop Stag House Farm.
28. It is proposed that 'Homes by Esh' will be the principle contractors and they will construct all the adoptable civil, drainage, and road infrastructure requirements to service cells A, B and C enabling the Scheme to come forward as one development. This initial construction element is the catalyst for the provision of all of the affordable housing within the application Scheme. Estimated costs for the infrastructure have been received and actual costs are currently being determined. It is proposed to enter into a conditional sale of Cell A to Homes By Esh with obligations for them to construct the infrastructure but terms for this and the business case for the scheme will be subject to approval by Cabinet in a report to be submitted to Cabinet in the Spring.
29. As part of the initial infrastructure works both site entrances will be connected by the development loop road. This will be used for the new bus route servicing the proposed development. 'Homes by Esh' will be undertaking the loop road infrastructure together with both the North and South entrance junctions, allowing both developers to commit to building their proposed schemes at the same time.
30. An application for planning approval for the Scheme has been submitted to the Council by Homes by Esh on behalf of Homes by Esh and the Council jointly.

### **The Scheme: Planning Policy Considerations**

31. The Scheme has been progressed in consultation with Council planning officers and is considered to be compliant with national policy contained in the National Planning Policy Framework (NPPF): see paragraphs 5.1-5.29 of the Planning Statement.
32. With regard to Local Planning Policy, the Darlington Housing and Employment Land Availability Assessment (HELAA) was completed in March 2018, and the proposed development site falls within site reference 243 of that Assessment. The proposed development site therefore falls within land suitable for housing.
33. The Darlington Local Plan (draft 2016, consultation closed 2018) is still emerging.

34. The Development Plan for the area within which the application is located currently consists of the following core strategies:
  - (a) Core Strategy Policy CS2: Achieving High Quality, Sustainable Design.
  - (b) Core Strategy Policy SC10: New Housing Development.
  - (c) Core Strategy Policy CS11: Meeting Housing Needs.
  - (d) Core Strategy Policy CS15: Protecting & Enhancing Biodiversity & Geodiversity.
  - (e) Policy CS19: Improving Transport Infrastructure and Creating a Sustainable Transport Network.
35. The Scheme is designed to be in accordance with all of the policies above, and as such would be 'in accordance with the development plan', and unless other material considerations indicate to the contrary planning permission should be granted.
36. The planning summary in the Planning Statement notes the following points.
37. The layout affords an overall development that is socially inclusive, well connected and provides and promotes cohesion with the neighbouring South Darlington suburbs.
38. The application site is located on the edge of a well-established residential area and is located within 1km of Darlington Town Centre and other local facilities. The site is also accessible by both private and public transport with a new bus route being introduced into the Scheme.
39. This Scheme will bring economic, social and environmental benefits and the proposals represent sustainable development and should benefit from the presumption in favour of sustainable development.
40. The delivery of 449 additional residential dwellings has the potential to maintain and develop a strong and vibrant community, in a high-quality built environment. The construction of a mix of 2, 3, and 4-bedroom dwellings, and a 65% majority of affordable housing will help to increase the range and type of dwellings and tenures available within the locality.
41. The Scheme will be a positive contribution to the creation of a mixed and balanced community, as well as meeting identified housing needs within the local community of Darlington. The proposal will also contribute towards Darlington Borough Council meeting their housing land supply, and would assist Darlington with providing sustainable, high quality family accommodation to meet such needs in the Council's area.
42. The Scheme will make a positive contribution towards the quality of the built environment of the area through the careful design and layout of the proposed dwellings and amenity space.

43. The Scheme's landscaping proposal would also deliver a high-quality setting which corresponds with the requirements set out in Policy CS15 and NPPF part 16. This involves:
- (a) Retention of existing hedgerows and mature trees along the watercourse and access roads to create green corridors linking the housing blocks, public open space and wider site landscape;
  - (b) Creation of a connected network of green spaces that build on and enhance the existing green corridors;
  - (c) Creation of landscape buffer zone along the southern and eastern boundaries of the site to screen the A66 and Neasham Road from the proposed development and assist with noise attenuation; and
  - (d) Creation of an extensive Footpath / Cycleway network within the site that links to the existing network and beyond (see paragraphs 6.24 – 6.27 of the Planning Statement).

#### **The Scheme: Land Owned By The Council**

44. The Council has freehold title to virtually all of the land required for the Scheme. The parcels of land within the Council's ownership are shown in the plan at Appendix 1.
45. However, it can be seen from the plan that the Council is not able to prove title to the land within the boundaries of Snipe Lane, or the lane/track running northwards from Snipe Lane (at its western end), or the full width of Snipe Lane where it meets the adopted highway at Neasham Road (all land shaded green on the plan at Appendix 1).
46. Unfortunately, the ownership of Snipe Lane is unknown, and in spite of enquiries and searches, and planning consultation with regard to the planning application for the Scheme, the Council has been unable to discover any owner of the land comprising Snipe Lane.
47. Snipe Lane is a route that has been marked on maps for nearly two centuries, but is of uncertain status. It is possible that there is no known or traceable owner.
48. In effect, there is no party with whom the Council is able to negotiate with a view to securing title to the land.

#### **Roads, Footpaths and Access for the Scheme**

49. For clarity in relation to highways and public rights of way matters, Members are referred to the more detailed depiction of the public rights of way shown on the layout map at **Appendix 5**, and in particular it should be noted on the layout map the respective locations of:

- (a) Snipe Lane.
- (b) Footpath 17.
- (c) Footpath 14.
- (d) Proposed new lengths and width of footpaths/cycleways.
- (e) Proposed new estate and access roads.

(Additional information on the proposed new roads and transport can be seen on the general layout plan at Appendix 3.)

50. The Scheme promises significant improvements to Snipe Lane itself, and footpaths, but these improvements and the Scheme as a whole, cannot be realised without clear and definitive rights over Snipe Lane such as would allow dedication to public use and adoption of the access to be constructed along Snipe Lane.

### **The Need for Compulsory Acquisition of Land**

51. Officers have investigated the legal status of Snipe Lane, including taking Counsel's advice on the interpretation of the information available to them.
52. Snipe Lane is a public right of way on foot and is recorded on the definitive map as such. The width of the right of way on foot is not recorded in the Council's records, but from evidence on historic maps and on the ground is likely to extend to the full width of the lane, at least in parts. It is a moot point whether the footpath is 'adopted' as publicly maintainable by the Council, but on balance it is likely that statutory and other presumptions apply to make it so. However, footpath rights are of course very different from other, 'higher' rights.
53. Snipe Lane is not recorded as a right of way on horse, or for vehicles, by the Council. Historic maps refer to the part of Snipe Lane both to the east and west of the old railway line, as 'Bridle Way', but although clearly of sufficient width to be used by horses, it is unclear whether such a right over the lane was ever more than a private right of way. A similar interpretation applies to the right to use vehicles, including motor vehicles.
54. In relation to rights for vehicles Snipe Lane is not adopted as publicly maintainable by the Council.
55. Neighbouring landowners, including the Council, therefore seem to have private rights on foot and by all modes of transport, to use Snipe Lane for access to their property. The fact remains however that these private rights are not sufficient to permit dedication to public use by the Council of the relevant parts of Snipe Lane. Only the freeholder is able to make such a dedication under highways law, and the Council cannot demonstrate freehold title to the land under Snipe Lane.
56. The Council does have freehold title to the land either side of the relevant parts of Snipe Lane (see the map at Appendix 1) and this ownership gives rise to a presumption that the Council owns the land under the lane. However, this presumption is a rebuttable one: if another person or body can show a freehold

title over any part, the Council's claim would be seriously undermined. This is not an adequate basis on which to implement a development as significant as the Scheme.

57. If the land cannot be dedicated to public use then it is difficult to adopt, and adoption is considered necessary by officers to provide the benefits of the Scheme (the development proposal).
58. The Highways Act 1980 (section 228) contains a potential alternative method of adoption. The alternative involves the construction of works over the relevant parts of Snipe Lane by a person (a non-public body) other than the Council, and then for the Council to treat the constructed road as a 'private street' and serve notice on the frontagers (i.e. adjacent landowners) that the 'private street' is to be adopted. Landowners can object, but if there is no objection, or objections are overruled by the Magistrates Court, the street can be adopted. However, Counsel has advised that Snipe Lane cannot be considered a 'private street' given the public right of way on foot that runs across it, and the section 228 procedure is therefore unavailable.
59. The benefits of acquisition of land in Snipe Lane are that a clear title can be secured that allows full dedication of the rights required for the roads, paths and other access to the Scheme; such rights would not be to the exclusion of any existing private rights and would permit new public rights of way, a cycleway, road, and related planting, surface and safety enhancements (see the plan at Appendix 5). The land in question is already contiguous with Council ownership, and the land in question is not currently known to vest in any person.
60. Substantial efforts have been made by officers to identify owners of the proposed Order Land but have not been successful to-date. The land is considered therefore to be without an owner. Adjacent landowners other than the Council claim *private* rights over the lane (including with vehicles), but there is no evidence of title. Further efforts to identify any owner of the freehold to the land under the lane will continue to be made, both before and after the making of any compulsory purchase order.
61. It should be noted that the compulsory purchase legislation makes provision for the acquisition of land even where there is no known owner, and that this procedure is capable of vesting a good freehold title in the acquiring authority (the Council). The compulsory purchase procedure is summarised below.

### **The Proposed Order Land**

62. Details of the land proposed to be acquired compulsorily (Order Land) is shown shaded pink on the Plan attached at Appendix 2. More detail will be set-out in the Statement of Reasons for making an Order, a draft of which is attached at **Appendix 6**.
63. Note that the Order Land consists of three parcels of land, identified as distinct numbered plots 1, 2 and 3. Distinct numbering of plots is adopted as any



freehold owners discovered during the process might be different people, and because the rights over/use of each plot appears to differ from the others.

64. Appendix 2 also contains a written description of each plot of the Order Land, in a form similar to that required in the Order itself.

### **Statutory Powers**

65. Section 226(1)(a) of the Town and Country Planning Act 1990 ('TCPA') empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement *on or in relation to the land*. The Council must not use this power unless it also thinks that the development, redevelopment 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 the Council's area;
- (b) the promotion or improvement of the social well-being of the Council's area; and
- (c) the promotion or improvement of the environmental well-being of the Council's area.

66. Section 227 of the TCPA provides an equivalent power for the Council to acquire land (including rights over land) by agreement (as opposed to compulsorily) for the planning purposes described above.

67. Given that the overriding purpose of acquisition of land within Snipe Lane is facilitation of the Scheme for the development of land which will bring significant improvements to the social and economic well-being to the Borough, and some environmental benefits, the section 226(1)(a) power is considered appropriate.

### **The Compulsory Purchase Procedure**

68. If authority to the making of the Order is given, the main steps taken will include :
- (a) Making of the Compulsory Purchase Order.
  - (b) Notification to interested parties and publicity that the Order has been made, and that the Council intends to submit the Order for confirmation to the Secretary of State.
  - (c) Submission of the Order to the Secretary of State.
  - (d) Objections (if any) are made to the Secretary of State.
  - (e) If valid objections are not withdrawn, a local inquiry is held by a suitably qualified inspector from the Planning Inspectorate.

- (f) The Inspector reports to the Secretary of State.
  - (g) Secretary of State's decision.
  - (h) Notification and publicity for the Secretary of State's decision.
  - (i) Six weeks High Court challenge period.
  - (j) If the Order is confirmed, the Council proceeds to acquire the Order Land, and pays appropriate compensation to affected parties (assessed according to a well-established compensation code).
69. An estimated timetable for bringing a compulsory order into effect can be seen at **Appendix 7**.
70. Reasonable efforts to acquire land and rights by agreement would continue throughout the Order process.
71. The Order will include a schedule listing all owners, lessees, occupiers and others who are likely to have a claim for compensation. These parties are known as "qualifying persons" and it is these persons who must be served with notices and who may make representations/objections to the Secretary of State within a specified period after the Order is made.
72. Objections cannot be made on the basis that compensation is disputed or insufficient. Valid (but not necessarily persuasive) objections usually include assertions that compulsory powers are not necessary, or that the development which they are required to facilitate is not viable. If Objections to the Order are not withdrawn (and the parties do not agree to a written representation procedure), the Secretary of State is likely to arrange for a public local inquiry to be held and the Council and all objectors will be notified.
73. The inspector who holds the inquiry will report to the Secretary of State who will decide whether the Order should be confirmed without modification, modified, or rejected. If the Order is confirmed or modified the Council must publish notice of confirmation/modification and give individual notices to all qualifying persons with a copy of the Order. The date on which notice of confirmation is first published is the date from which the 6 weeks statutory High Court challenge period runs, and a three-year period within which the powers to acquire land under the Order must be "exercised".
74. The procedures provide for the acquisition of land where the owner is known or unknown. It is likely that if a compulsory purchase order is confirmed, the Order Land will be acquired by the Council, as acquiring authority, making a General Vesting Declaration. This is a procedure that allows title to be acquired without the completion of documentation other than by the Council.
75. So far as possible, claims for compensation will be settled by agreement. Rights to compensation include not only the value of land taken, but diminution in value

of land adversely affected but not acquired, and possible claims in respect of disturbance.

76. Compulsory purchase proposals may lead to a period of uncertainty for owners and occupiers. If Cabinet resolves to authorise the Order, the Council must therefore proceed with the statutory processes in a timely manner. Steps have therefore been taken by officers to ensure that in the event that Members resolve to make an Order, the statutory procedures can commence as soon as possible.

### **No Obstacles to Delivery of the Scheme**

77. The Secretary of State *does not* require that before confirming a Compulsory Purchase Order the Scheme to which the Order relates must already have planning permission.
78. However, the Secretary of State will need to be satisfied that there is no policy or other in-principle impediment to the granting of planning permission. The planning position above is discussed so that Members have the information before them as to absence of such in-principle impediments, as well as the planning benefits of the Scheme.
79. The Scheme does not include any listed building, scheduled monument, or conservation area, and neither the Scheme land (the land already owned by the Council) nor the Order Land is subject to any special considerations.
80. In particular, the Order Land and the Scheme land does not include any common, village green, land subject to inalienable interests of the National Trust, nor does it comprise any operational land owned by a statutory undertaker.
81. All land interests which are to be acquired by the Council, whether compulsorily or by agreement will be acquired for planning purposes (under section 226 or 227 of the Town and Country Planning Act 1990). As all of the Order Land is intended to be used for adopted roads, public rights of way enhancements and related infrastructure, no onward disposals of the Order Land are contemplated after acquisition by the Council other than to the Joint Venture for the purpose of the scheme.
82. Subject to securing planning permission and control of the land necessary to deliver the Scheme, construction is expected to start on site in early 2021. As indicated above, construction would begin with infrastructure works, and the roads network in particular.
83. The Scheme will be fully funded by the Council and 'Homes by Esh' in accordance with binding agreements already made between the two, no external funding needs to be secured to deliver the Scheme although Homes England funding has already been committed to the scheme.

84. The costs of compulsory purchase, including the compulsory purchase order procedures and compensation payable to owners of any land interests will be met by the Council from its own resources. Given the nature of the interests to be acquired the cost of the compensation element is expected to be low or negligible.

### **Overall Justification Whether There is a Compelling Case in the Public Interest for the Order**

85. Relevant considerations for Members in reaching their decision are set out throughout this report, but this section considers specifically the policy on compulsory purchase as set out in the DCHLG Guidance.

86. DCHLG guidance (paragraph 2) states as follows.

*“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.*

*The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.*

*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. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:*

- (a) plan a compulsory purchase timetable as a contingency measure; and*
- (b) initiate formal procedures”.*

87. The guidance goes on to say that, as an overarching consideration:

*“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 it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, 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.”*

88. In the context of the overarching consideration, the following issues should be considered in this case.

- (a) Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area;
- (b) The extent to which the Scheme would contribute to the achievement of the promotion and/or improvement of the economic, social or environmental well-being of the Council's area;
- (c) The potential financial viability of the Scheme, general funding intentions and the timing of available funding;
- (d) Any impediments to implementation and whether the Scheme has a reasonable prospect of going ahead;
- (e) Whether the purposes for which the proposed Order Land is to be acquired could reasonably be achieved by any other means.

89. The officer view on these matters is as follows.

90. The Scheme meets the Council's planning objectives and provides significant housing benefits, thereby contributing significantly to the improvement of the economic and social well-being of the area.

91. Delivery of new roads and footpaths is central to the delivery of the Scheme as a whole, which will deliver the full range of social and environmental benefits as outlined above and considered in the Planning Statement.

92. The need for the Scheme and, in delivering the Scheme, the necessity of acquiring the Order Land is demonstrated above, and in the draft Statement of Reasons.

93. There is a reasonable prospect that all phases of the Scheme to which the Order Land relates will be delivered and that as negotiations to acquire the Order Land are either impossible or unlikely to materialise, there are no likely realistic alternatives to the compulsory acquisition of the Order Land to achieve the purposes of the proposed by that acquisition.

94. Virtually all of the land required for the Scheme is already in Council ownership. In effect the value of this land is already committed to the Scheme. The costs of construction, including the construction of roads and footpaths to adoptable standards on the Order Land and elsewhere on the Scheme land, are secured under a joint venture between the Council and Homes by Esh.

95. The Council will meet all costs of the compulsory purchase process, as outlined in this report.

96. There are no special restrictions affecting the Scheme land, or the Order Land.

97. The impact on the human rights of those likely to be affected by the proposed Order is considered below.

98. The impact of the Scheme in the context of the Equalities Act 2010 is considered below.
99. The considerable public benefits to be derived from implementation of the Scheme outweigh any possible harm caused by interference with the human rights of those likely to be affected by the compulsory purchase.
100. In the officers' view, there is therefore a compelling case in the public interest sufficient to justify the making of the Order for the acquisition of land closely related to, and part, of the Scheme.

## **Human Rights**

101. In reaching their decision, Members should take account of the provisions of the European Convention on Human Rights and the Human Rights Act 1998. As a public authority, the Council must not act in a way which is incompatible with a Convention right or the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention.
102. As outlined above, in officers' view there are strong grounds on which to conclude that the proposed Scheme as a whole is in the public interest. Officers are also of the view that there is no unlawful derogation from or unlawful interference with the relevant human rights protected by the Convention, namely rights under Article 1 to the First Protocol, Article 6 and Article 8.

## **Article 1 to the First Protocol**

103. Paragraph 12 of the DCLG Guidance draws particular attention to the provisions of Article 1 of the First Protocol to the Convention.
104. The main provisions of Article 1 in the current context are that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.  
  
*"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...."*
105. Section 226(1)(a) of the 1990 Act, which authorises the Council to acquire land compulsorily subject to the procedures contained in the Acquisition of Land Act 1981, and therefore provides lawful authority. Officers are of the view that compulsory acquisition is necessary given the dearth of alternatives to securing title to the roads in question, and that if there is interference with rights by acquisition of the Order Land, the public benefit of the Scheme will outweigh any private loss arising from the acquisition.

106. Any owners who are later identified during the making of the Order and its publication will be entitled to object to the Secretary of State before a decision is made on whether or not the Order should be confirmed. Owners and persons directly affected by the Order will also be entitled to full compensation for any property acquired by the compulsory purchase process, and/or for other losses.
107. Legal advice to Members is that there will be no violation of rights under Article 1 to the First Protocol in this instance, as the steps to be taken are in the lawful, in the public interest, and proportionate. (Proportionality is further considered at the end of this section).

### **Article 6 of the Convention**

108. Article 6 provides that "In the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".
109. The statutory procedures require that all those likely to be affected by the Order are notified and given an opportunity to object. If there are objections the Secretary of State will arrange a public local inquiry so that their objections can be heard (unless all parties agree to the written representations procedure). The legislation provides for statutory review in the event of challenge to the decision of the Secretary of State on confirmation of the Order. Finally, if the Order is confirmed and becomes operative those persons directly affected by the Order may refer disputes over compensation for hearing at the Lands Chamber of the Upper Tribunal.
110. Legal advice to the Counsel is that these procedures satisfy the requirements of Article 6.

### **Article 8 of the Convention**

111. Where a compulsory order is made for the acquisition of property, the property in question may be a person's home. In such circumstances Article 8 of the Convention will be engaged.
112. Although the Order Land does not include any buildings, it is possible that the Order land supports private rights of access to property. In such circumstances Article 8 could be engaged if the rights of access are subject to interference (although there are no plans to interfere with such rights, other than to improve the surface over which the rights subsist).
113. Article 8 of the Convention provides that:
- "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
- "(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a*

*democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others".*

114. Article 8(1) is a qualified right. Interference with the rights afforded by Article 8(1) can be justified under Article 8(2) in appropriate cases.
115. Section 226(1)(a) of the 1990 Act, which authorises the Council to acquire land compulsorily subject to the procedures contained in the Acquisition of Land Act 1981, and therefore provides lawful authority. Officers are of the view that compulsory acquisition is necessary given the dearth of alternatives to securing title to the roads in question, and that if there is interference with rights by acquisition of the Order Land, the public benefit of the Scheme will outweigh any private loss arising from the acquisition.
116. In the particular circumstances of this case, therefore, officers are of the view that the compulsory acquisition of the Order Land will not conflict with the rights provided by Article 8(1) of the Convention, as the qualifications in Article 8(2) apply.

### **Proportionality and Human Rights Summary**

117. In deciding whether to proceed with the recommendations in this report, Members should consider the extent to which the decision may impact upon the human rights of any landowners affected, or those with any other interest, e.g. an easement, that may be affected, and to balance the effects of the proposed compulsory order against the overall benefits of the Scheme to the wider community. Members should be satisfied that the procedure does not derogate from the rights contained in Article 6, and that any interference with the rights under Article 8 and Article 1 Protocol 1 is justified.
118. Members may wish to bear in mind the following when considering the tests set out in the paragraphs above:
- (a) That no more land than is required to facilitate the Scheme has been included in the Order.
  - (b) That no person is currently known to own the Order Land or any part of it, and that there is therefore no viable alternative to obtaining title to the Order Land other than by way of compulsory acquisition.
  - (c) That acquisition of title to the Order Land is necessary to facilitate the Scheme, as other legal procedures would not provide clear and secure methods of adoption of the required parts of Snipe Lane.
  - (d) That the Order would be made under a statutory procedure with built-in safeguards that protect the rights of landowners and other persons.



- (e) That the Order is sought to allow the Order Land to be developed to facilitate a large-scale Scheme which is in the interests of the social and economic well-being of the area, as much needed homes (including a large number of affordable homes) will be delivered.
- (f) All of those persons whose rights under Article 8 of the Convention and under Article 1 of the First Protocol of the Convention would be affected by the Order will have an opportunity to object to the Order and to have their objection considered at a fair and public hearing, in accordance with their rights under Article 6 of the Convention.
- (g) Landowners and other persons with a proprietary interest in the Order Land will be entitled to proportionate compensation.
- (h) That officers' advice in this report is that the necessary resources are in place to achieve delivery of the Scheme within a reasonable timescale.
- (i) That legal advice is that the making of the proposed Order would not infringe the European Convention or Human Rights Act 1998. To the extent that the Order would affect individual rights, the interference with those rights is prescribed by law (S.226(1) (a) of the Town and Country Planning Act 1990); is pursuant to a legitimate aim; is necessary in a democratic society and is proportional to the proposed outcome.

## **Equalities Impact**

119. The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Section 149 of the Equality Act 2010 places the Council, as a public authority, under a legal duty ("the public sector equality duty"), in the exercise of all its functions, to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
  - (b) advance equality of opportunity between persons who share a "relevant protected characteristic" (i.e. the characteristics referred to above other than marriage and civil partnership) and persons who do not share it; and
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
120. Section 149 of the Equality Act 2010 and its predecessor provisions have been considered by the courts on a number of occasions. The principles derived from these cases include:
- (a) "due regard" requires more than simply giving consideration to the above factors, councillors should be aware of the special duties the Council owes to those with protected characteristics;

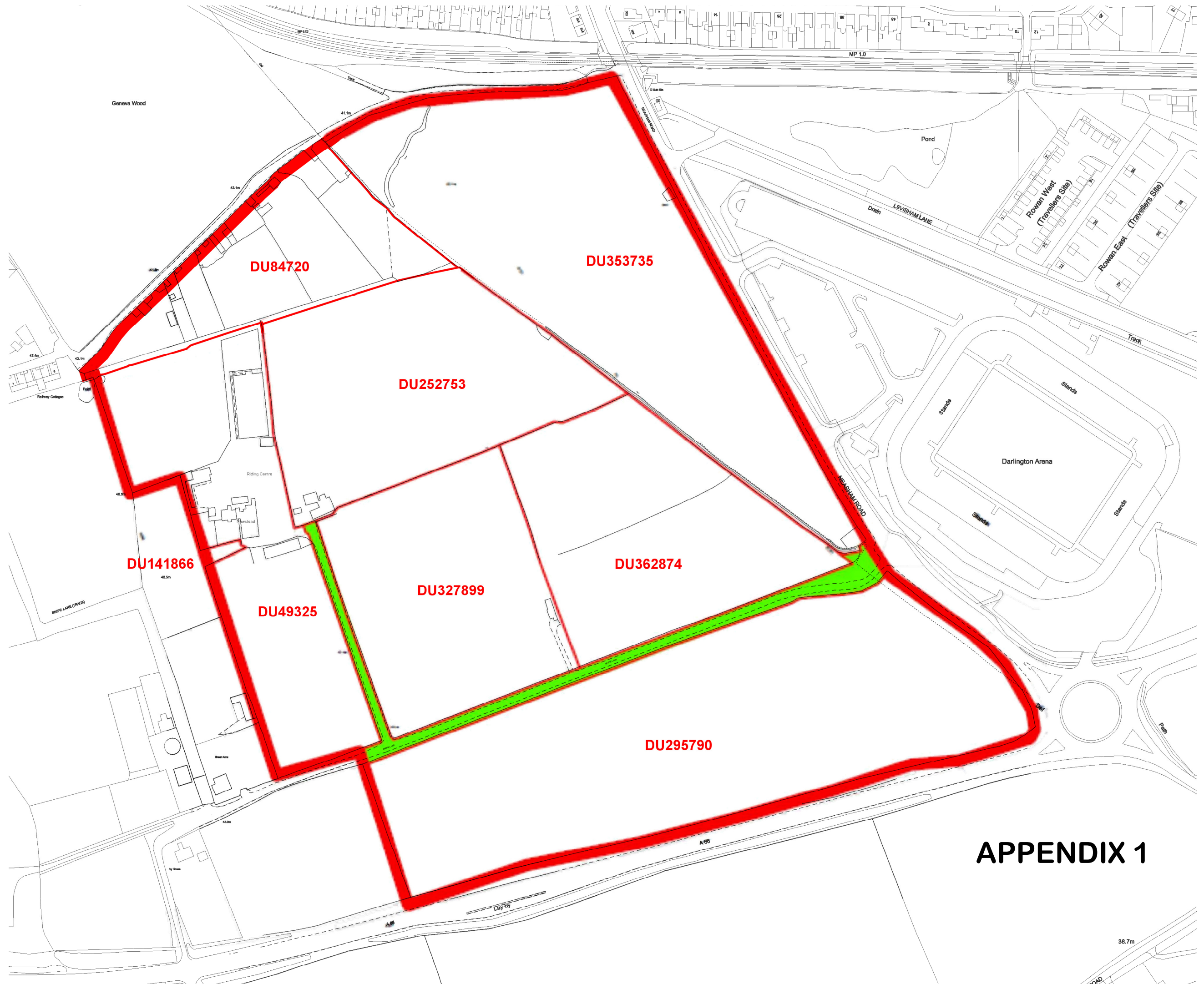
- (b) "due regard" is the regard that is appropriate in all the particular circumstances including, on the one hand, the importance of the areas of life of the members of the protected group that are affected and the extent of the effects; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing;
  - (c) no duty is imposed to take specific steps, it is a duty to have regard to the need to achieve the various goals referred to above;
  - (d) the duty must be fulfilled before and at the time that a particular policy which might affect protected groups is being considered. It involves a conscious approach and state of mind. It must be exercised in substance, with rigour and with an open mind. It is not a question of ticking boxes;
  - (e) the duty must be discharged by the public authority, it cannot be delegated; it is a continuing duty; and
  - (f) it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they have considered the public sector equality duty.
121. Officers have reviewed the proposed Order and Scheme. The Order Land, if acquired, will facilitate safer and easier access to Snipe Lane for all persons both compared to the current access, and for a range of users, on foot, of whatever ability, and/or with bicycles, horse, motor or other vehicles. Once delivered, the Scheme will facilitate accessibility to the public transport network for those people without access to cars, or who are mobility impaired. Officers advise that the Scheme will have a positive impact in terms of the Council's equalities obligations, and no adverse equalities impacts are foreseen.

### **Financial Risk of Compulsory Purchase**

122. If the Order is confirmed, the Council would meet all costs of procedures and compensation associated with the Order from existing resources within the Economic Growth group. Specific costs would be expected in relation to making and publicising the Order, dealing with objections, possible local inquiry, bringing the order into operation, acquiring the land, payment of compensation, land registry and court fees and internal staff and consultants' costs.
123. If objections to the Order are upheld the Council has to meet the costs (typically legal and/or surveyor's costs) of the person who made the objection. (There is no need for the objector to have behaved unreasonably for costs to be awarded.) Conversely, if the objection is not upheld the objector will have to meet their own costs. Such costs are difficult to estimate before the objection is known, but if the objection is heard at inquiry and is upheld, the costs are likely to be in the order of several thousand pounds.

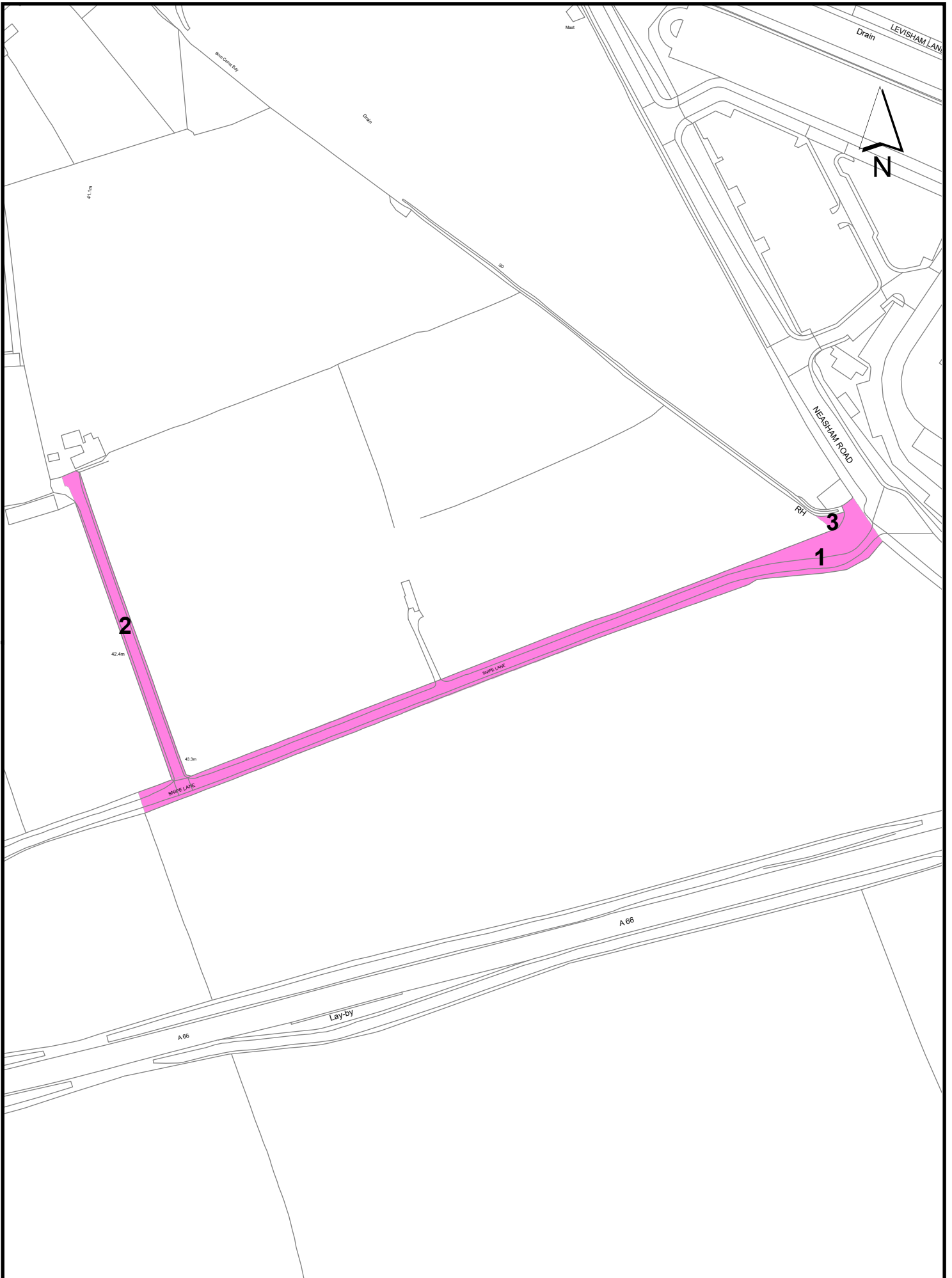
124. In contrast to a planning inquiry, the Council must also meet the costs of the inspector appointed by the Secretary of State. If there is an inquiry in this case, it is likely to be a short one of 1-2 days (although again before objections, if any, are known, estimates are inherently difficult to make).
125. There is therefore an inherent risk that if after an inquiry the Secretary of State refuses to confirm the Order, the Council may have incurred costs of up to about £20,000, and not be able to achieve the acquisition of the Order Land compulsorily. However, on the evidence currently available, the probability of such a risk materialising is considered by officers to be low.
126. Compensation will be payable to landowners only if the Order is brought into effect by the Council (or if a landowner can successfully argue that the making of the Order has rendered his/her land affected by statutory blight and is thereby diminished in value).

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# APPENDIX 1

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DARLINGTON BOROUGH COUNCIL  
 ECONOMIC GROWTH GROUP  
 CORPORATE LANDLORD TEAM  
 ESTATES & PROPERTY, TOWN HALL  
 FEETHAMS, DARLINGTON  
 Co. DURHAM, DL1 5QT

Project Title: **NEASHAM ROAD - SNIP LANE - C.P.O. ORDER PLOTS APPENDIX 2a**  
 Drawing Title: -

Scale: 1:2500 @A4  
 Date: 12 MAR 20  
 Drawn: NM

Ref: -  
 Area: -

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## APPENDIX 2b

Plot number	Brief description of the land	Freeholder or long leaseholder	Other interests, minor Interests, and mortgagees
1	A narrow strip of land comprising surfaced track and grass verge between hedges, orientated east-west and measuring approximately 4,477 square metres in area.	Unknown	None known  Caution against first registration recorded at HM Land Registry
2	A narrow strip of land comprising concrete track and grass verge between hedges, oriented north-south and measuring approximately 1,214 square metres in area.	Unknown	None known
3	A small triangular area of land between converging hedge lines and grass verge to the northern side of Snipe Lane and measuring approximately 69 square metres in area.	Unknown	None known

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## **Planning Statement**

**Proposed Development at  
Land off Snipe Lane,  
Neasham Road,  
Darlington**

**Date: February 2020**

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## 1.0 INTRODUCTION

### Statement Purpose

- 1.1 This Planning Statement has been produced by Queensberry Design Ltd (QDL) on behalf 'Homes By Esh'. This document supports the detailed planning application for: *Outline and Detailed Design of a proposed residential development of 449 dwelling consisting of 2, 3 and 4-bedroom family homes, at land off Snipe Lane, Neasham Road, Darlington.*
- 1.2 The application site has historically been used as pasture land, segregated into fields by a series of mature trees and hedgerows and bounded by Neasham Road and A66.
- 1.3 This planning statement provides an overall planning justification for the proposed development and in doing so, demonstrates that the proposals represent sustainable development that complies with, national planning policy and guidance, and in lieu of a local plan being adopted.
- 1.4 A full overview of the proposed development is provided in the accompanying Design and Access Statement, reference number QD1492-390-01,
- 1.5 The infrastructure, facilitating the provision of affordable housing, enabling the overall scheme

### Statement Structure

- 1.6 The statement will be divided into 5 elements relevant to the planning application.
  - **Section 2 SITE AND SURROUNDINGS:** will provide a description of the application site and its surroundings;
  - **Section 3 THE PROPOSED DEVELOPMENT:** gives details of the application proposals, sets out a planning history of the site and assesses the suitability of the site for the proposed development;
  - **Section 4 PLANNING CONTEXT:** provides a summary of national planning policy and development plan policy which is relevant to the application proposal;
  - **Section 5 PLANNING JUSTIFICATION:** provides the planning justification for the proposal in lieu of the of the emerging local development plan as well as other relevant material considerations;
  - **Section 6 CONCLUSION:** sets out conclusions on the proposals acceptability in planning terms.

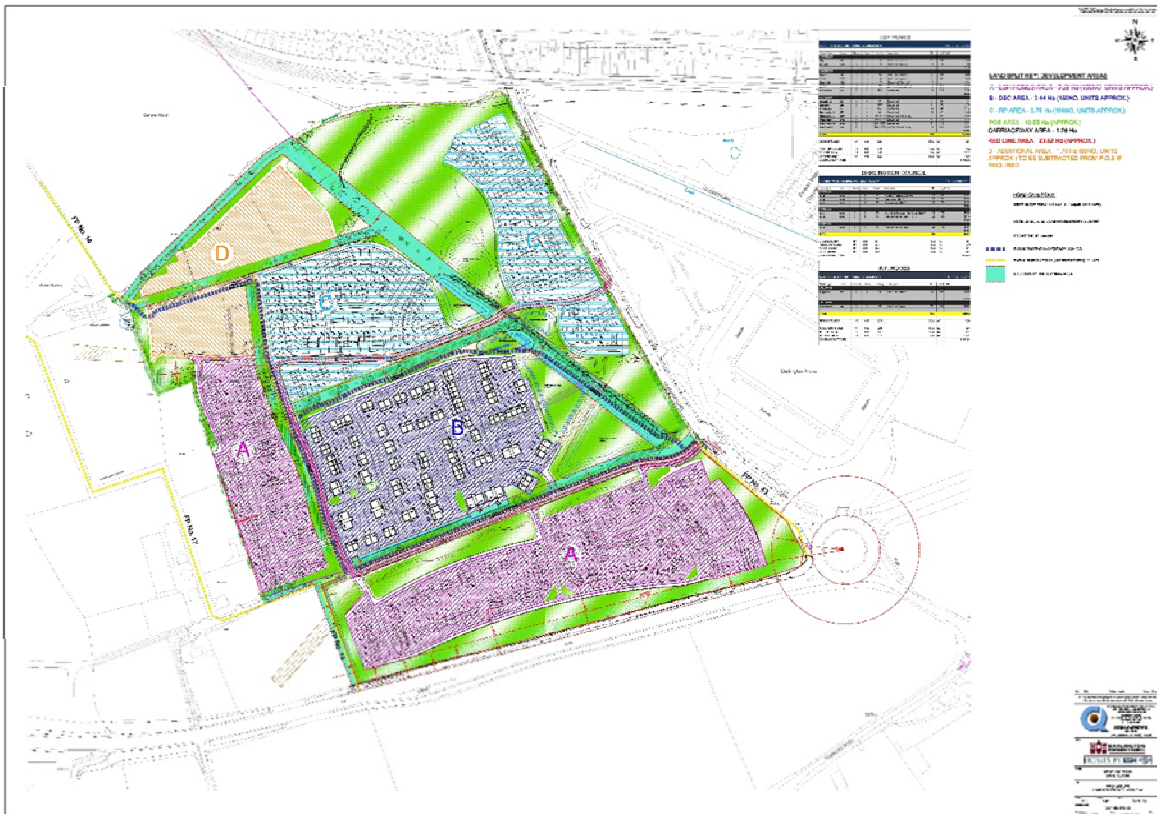
## 2.0 SITE AND SURROUNDINGS



Location Plan







Site Plan

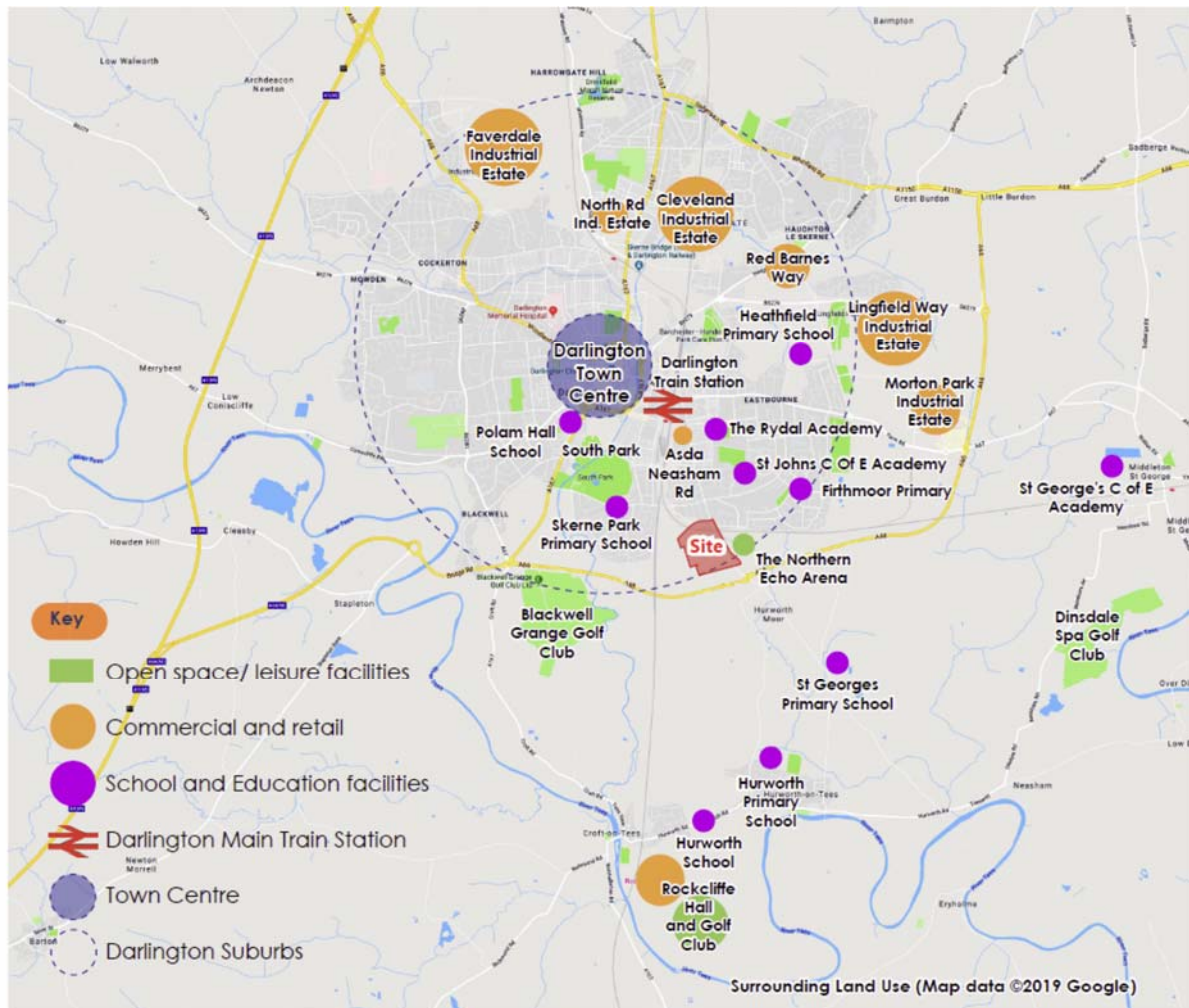
## Site Analysis

- 2.1 The development site is approximately 23.83 Ha, 238,300 square metres, located to the West of Neasham Road and South of the Darlington to Middlesbrough branch railway line. The site has historically been used as pasture land, segregated into fields by a series of mature trees and hedgerows. The Northern and Eastern boundaries are situated on the parish borders of the Eastbourne Ward and the Hurworth Ward. The Western boundary faces out towards the parish border of the Park East Ward.
- 2.2 The residential developments to the North of the site (Eastbourne and Bank Top Wards) date from 1930's and consists of mostly detached and semi-detached two storey houses, small apartment blocks and bungalows. To the East of Neasham Road adjacent to the site is Darlington Echo Arena and North East of the development a traveller's site. To the West is a row of railway cottages dating from early 1900's together with Newstead Farm and Ivy House further South.
- 2.3 Within the application site boundary are redundant livery, equine buildings and a farmhouse. As part of this application the developer seeks permission to demolish all of the redundant buildings and prepare the ground for development; subject to all ecology mitigation measures taking place
- 2.4 In regards to the wider context, the application site is located approximately 1.5 miles South of Darlington Town Centre, 15 miles West of Middlesbrough, 20 miles South of Durham and 19 miles West of Sunderland. The site is closely linked to the A1(M) via the adjacent A66 a direct route to Newcastle to the North and Yorkshire to the South.
- 2.5 The site topography is generally flat with small depression areas, including an area of made ground that forms a marshy area. There are also various ditches, an online water course and culvert which cross the site.

- 2.6 Utilities within the application site consist of 2no. live water mains between 900mm and 1200mm in width, foul drainage and electrical apparatus; both under and over ground.
- 2.7 The site is NOT within a Conservation Area.

### **The Surrounding Area**

- 2.10 The surrounding Tees Valley provides numerous countryside walks and activities including the public South Park within 20 minutes walking distance and a range of local golf clubs; Blackwell Grange Golf Club, Rockcliffe Hall Golf Club and Dinsdale Spa Golf Club.
- 2.11 There are further outdoor leisure facilities available at the council run Dolphin Centre and Eastbourne Sports Complex within 30 minutes walking distance, offering a range of fitness facilities including; swimming pool, 3G football pitches, squash courts, sports hall, athletics track, a gymnasium and fitness classes.
- 2.12 The site is served by local corner shops and ATM within the surrounding suburban area North of the Darlington to Middlesbrough railway line. Within a short drive are several major supermarkets including Asda on Neasham Road and Morrisons at Morton Park. Darlington Town Centre is 1.5 Miles from the site offering significant retail and commercial opportunities. Additional employment centres are close by at the many industrial estates to the North and East of the town. To access further regional centres the main train station is just 1-mile North of the site, with connections along the East Coast Main Line and regional line to Middlesbrough and Bishop Auckland.
- 2.13 There are a number of primary and secondary schools within a moderate distance of the proposed development. The adjacent map illustrates the location of local primary schools within 2km walking distance and secondary schools within 6km walking distance of the application site. The nearest schools are;
- Skerne Park Primary School - 1.4km - 18 minutes walk.
  - St, Johns C of E Primary School - 1.1km - 13 minutes walk
  - Hummersknott Academy - 5.7km - 59 minutes walk



## Planning History

2.15 The application site has received several applications. The applications have been predominantly for agricultural reasons; application ref: 97/00769/FUL and 14/01200/FUL and 1no. outline residential development application for 160 dwellings, application ref: 08/01004/OUT. A minor planning application for the erection of a mobile communication mast was granted 09 March 2005. Ref: 05/00037/FUL

## Land ownership

2.16 The site is with the ownership of Darlington Borough Council. A sitting agricultural tenant is located on a parcel of Farmland within the application site.

### 3 THE PROPOSED DEVELOPMENT

#### The Application Proposal

- 3.1 The proposal is to develop the application site and deliver a robust family development of 449no. dwellings.

#### Amount

- 3.2 As described the submission is for a total of 305no. dwellings submitted for detailed design and 144no by outline approval. The detailed design units will be split between 'Homes By Esh' and Darlington Borough Council and are broken down as follows;

Homes By Esh Units	Darlington Borough Council Units
<ul style="list-style-type: none"> <li>Ely: - 2 bedroom, 3 person dwelling</li> <li>Lincoln: - 2 bedroom, 4 person dwelling</li> <li>Ripon: - 3 bedroom, 5 person dwelling</li> <li>York: - 3 bedroom, 5 person dwelling</li> <li>Norwich: - 3 bedroom, 5 person dwelling</li> <li>Larch: - 3 bedroom, 5 person dwelling</li> <li>Lancaster: - 3 bedroom, 5 person dwelling</li> <li>Arundell: - 4 bedroom, 6 person dwelling</li> <li>Durham: - 4 bedroom, 6 person dwelling</li> <li>Lichfield: - 4 bedroom, 7 person dwelling</li> <li>Rochester: - 4 bedroom, 7 person dwelling</li> <li>Shrewsbury: - 4 bedroom, 7 person dwelling</li> <li>Winchester: - 4 bedroom, 7 person dwelling</li> <li>Westminster: - 4 bedroom, 7 person dwelling</li> <li>Southwark: - 4 bedroom, 7 person dwelling</li> </ul> <p>The accommodation mix will be split up into the following sections:</p> <ul style="list-style-type: none"> <li>2 bedroom dwellings = 26</li> <li>3 bedroom dwellings = 53</li> <li>4 bedroom dwellings = 76</li> </ul> <p><b>Total dwellings = 155</b></p>	<ul style="list-style-type: none"> <li>A100: - 2 bedroom, 4 person dwelling</li> <li>A101: - 3 bedroom, 5 person dwelling</li> <li>A102: - 4 bedroom, 7 person dwelling</li> <li>A103: - 2 bedroom, 4 person dwelling</li> <li>A104: - 2 bedroom, 3 person dwelling</li> <li>A105: - 3 bedroom, 5 person dwelling</li> </ul> <p>The accommodation mix will be split up into the following sections:</p> <ul style="list-style-type: none"> <li>2 bedroom dwellings = 86</li> <li>3 bedroom dwellings = 42</li> <li>4 bedroom dwellings = 22</li> </ul> <p><b>Total dwellings = 150</b></p>

#### Density

- 3.2 The density of the development by 'Homes by Esh' will be 30.8 units per hectare / 12.5 units per acre. The overall square footage per acre will be 12,325.
- 3.3 The density of the development by Darlington Borough Council will be 46.3 units per hectare / 18.8 units per acre. The overall square footage per acre will be 16,480.
- 3.4 The application site will be served by 2 junctions on Neasham Road. The Northern junction will predominantly serve area's B & C whilst the Southern junction will serve predominantly area's A & C.
- 3.5 The Northern junction will be framed using 2 apartment blocks and 2 storey dwellings to the North. They will be situated either side of a sweeping curved carriage way leading into the remainder of the development. This provides a strong vista point when first entering the site.
- 3.6 The Southern junction also has a sweeping curved carriageway with public open space on one side and private shared drive with 4 no. 2 storey dwellings overlooking the tree line watercourse on the other. The dwellings will consist of different house types giving an indication of the variation of units leading into the site.



- 3.7 The site is connected to the surrounding countryside by two existing Public Rights of Way that cross the site, these have been integral to the layout design and form a wider permeable network of proposed footpaths and cycleways.
- 3.8 The site is well served by existing bus stops on Neasham Road with services into Darlington. The development proposes the relocation on the Northbound bus stop on Neasham Road to make this more accessible to the new development and an additional stop within the centre of the development ensuring all houses are within 400m walking distance to a bus stop.
- 3.9 The development is within a reasonable walking and cycling distance of a good range of local facilities and has public transport connections to the wider area. Overall, the site is accessible by sustainable modes of transport and is considered an appropriate location for residential development.
- 3.10 The proposal adheres to promoting well-being by including a looped running circuit within the scheme. This will be 1km in length and will have minimal crossing points. The route taken will be accessed by all three development parcels and centred around the outline planning parcel (Area C)
- 3.11 Parking will be provided in line with Council standards at one space per 2-bedroom affordable unit and two spaces for open market properties, at least two spaces per 3-bedroom affordable and open market properties, and 2.5 spaces per 4-bedroom open market properties.

#### **Accompanying Documents**

- 3.13 Supporting documents which accompany this full planning application will comprise of:
- A Design and Access Statement prepared by Queensberry Design Ltd.
  - A Transport Statement prepared by Systra Ltd.
  - A Geo-Environmental Appraisal prepared by FWS Ltd.
  - Landscape Design and Planting Strategy prepared by TGP Ltd.
  - An Arboricultural Implication Assessment prepared by All About Trees.
  - A Habitat Regulation Assessment (HRA) prepared by Penn Associates Ltd.
  - Flood Risk Assessment prepared by Queensberry Design Ltd.

#### **4 PRE-APPLICATION MEETINGS**

- 4.1 The masterplan was developed in collaboration with 'Homes By Esh' and Darlington Borough Council. All parties within the design team consulted on the emerging masterplan in meetings which were attended by several council departments and were held throughout the project
- 4.2 Over the series of meetings the design team discussed several topics and embraced the consultees advice and recommendations which honed the masterplan and resulted in more robust and improved development proposal.
- 4.3 This plan was submitted for pre-application advice to the Local Planning Authority and received a positive outcome with minor tweaks needing to be made.
- 4.4 The plan was agreed upon by all parties and frozen so that detailed planning information could be produced for this hybrid planning application submission.

#### **5 PLANNING POLICY CONTEXT**

##### **National Planning Policy**

- 5.1 The National Planning Policy Framework (March 2012) 4.1 National planning policy for England; is set out in the Government's National Planning Policy Framework (NPPF). Policies that are relevant to the application are:

##### **NPPF Part 2 – Achieving High quality, Sustainable Design**

- 5.2 The NPPF argues that Planning should operate to encourage and not act as an impediment to sustainable growth and identify priority areas for economic regeneration, infrastructure provision and environmental enhancement.

##### **Policy Response**

- 5.3 The proposal provides stimulus to the construction sector in the procurement of the development. It also assists in addressing the lack of suitable housing in the Darlington Housing and Employment Land Availability Assessment (HELAA) and seeks to overcome the potential barriers to investment.
- 5.4 The provision of a very large addition of affordable housing within the Neasham Road area, this will strengthen the local community and provide opportunities for existing commercial interests to procure labour. Given the scale of the development, this is consistent with local need.

##### **NPPF Part 3 – Plan – Making**

- 5.2 The NPPF states that Planning should be genuinely plan-led and should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.

##### **Policy Response**

- 5.3 The proposal has been shaped by early, proportionate and effective engagement between the developer, the relevant council departments, infrastructure providers / operators, and statutory consultees. This has led to development proposal being prepared positively allowing a bus route to be formed first between the access points and connecting the development parcels. All of the development parcels will be broken up through use of generous green corridors and Public open space.

#### **NPPF Part 4 – Decision Making**

- 5.4 Local planning authorities should approach decisions on proposed development in a positive and creative way. They should work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

#### **Policy Response**

- 5.5 Early engagement has been significant and helped to improve the efficiency and effectiveness of the planning application information for all parties. Several preapplication discussion enabled better coordination between public and private resources resulted in a robust scheme design and taking into account, DBC and the client's aspirations for the site.
- 5.6 A number of issues were resolved at preapplication stage, including the need to deliver improvements in infrastructure and affordable housing and the greater benefits of public open space. The statutory planning consultees early, pro-active approach, providing advice in a timely manner throughout the development process helped ensure that any unnecessary delays and costs. To the applicant have been kept to a minimum.

#### **NPPF Part 6 – Delivering a sufficient supply of homes**

- 5.7 To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

#### **Policy Response**

- 5.8 The proposal provides a choice of properties consistent with the economic profile and requirements of the specific area of Darlington. This consists of delivering a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. The choice of 2 bed 4-person, 3 bed 5-person and 4 bed 7-person dwellings meets the size, type, tenure and range of housing that is currently required in this location of Darlington.

#### **NPPF Part 9 – Promoting sustainable transport**

- 5.9 In terms of transport and access, transport issues should be considered from the earliest stages of plan-making and development proposals, so that the potential impacts of development on transport networks can be addressed and opportunities from existing or proposed transport infrastructure, and changing transport technology and usage are realised. There should be opportunities to promote walking, cycling and public transport across developments and whilst creating patterns of movement, streets, parking and other transport considerations integral to the design of schemes, and contributing to making high quality places.

#### **Policy Response**

- 5.10 The proposal is in the South Darlington residential area and benefits from existing sustainable transport infrastructure. It is also bounded by the A66 and Neasham Road whilst complying with parking standards deemed suitable for this area. A new additional bus route will be introduced from Neasham Road linking the development into the Darlington Town Centre. In terms of parking standards there will be a minimum of one space per 2-bedroom affordable unit and two spaces for open market properties, at least two spaces per 3-bedroom affordable and open market properties, and 2.5 spaces per 4-bedroom open market properties

### **NPPF Part 11 – Making effective use of land**

5.11 Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Planning policies and decisions should:

- *encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside.*
- *recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;*
- *give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;*

5.12 Planning policies and decisions should support development that makes efficient use of land, taking into account the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it.

5.13 The design should also take into account local market conditions and viability, the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use.

5.14 The policy also requires the design to maintain the desirability of the area’s prevailing character and setting whilst securing the importance of well-designed, attractive and healthy places.

### **Policy Response**

5.15 The proposal makes a positive contribution to the street scene in terms of both form and variance of materials and respects the scale and grain of its surroundings. One cell of development will be attributed to open market family with the remaining two adjacent development cells used affordable and registered provider units.

5.16 Elevation treatments will be of high quality to make them tenure blind. Much of the development embraces the surrounding natural environment and aims to provide 40% of the site through biodiversity green corridors and buffer zones within the additional public open spaces and SUDS basins.

### **NPPF Part 12 – Achieving well designed places.**

5.17 The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

5.18 Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;



- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

5.19 Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests.

#### **Policy Response**

5.20 The proposal was developed in collaboration with 'Homes By Esh' and Darlington Borough Council. All parties within the design team consulted on the emerging masterplan in meetings which were attended by a number of council departments and were held throughout the project.

5.21 The layout seeks to maximise opportunity for informal interaction of the community in creating a safe informal open spaces while maximising active frontage and external views into the development (NPPF para 69).

5.22 Safe and legible pedestrian routes are provided through and round the site linking in with upgraded existing woodland walks around the site. Additional formal paths are to be created as part of the application to support the Safe Routes To School initiative adopted by the council to schools route. The use of Secure by design accredited products and designing and construction the development with SBD guidance is to be implemented.

#### **NPPF Part 14 – Meeting the challenge of climate change, flooding and coastal change**

5.23 The NPPF states in conjunction with various policies relating to flood risk, developments should *'support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.'*

#### **Policy Response**

5.24 The proposal responds to the standards above by providing six SuD's basins for the overall development along on the central watercourse. The basins will be situation public open space land maintained by a management company and calculated to take volumes of water up to 1 in 100-year storm events. It will also hold surface water storage generated by the individual development cells. A Flood Risk Assessment QD1156-FRA-01 details all the requirements, specifications and recommendations of the NPPF.

#### **NPPF Part 16 – Conserving and enhancing the natural environment**

5.25 The NPPF anticipates developments to;

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and

- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

5.26 The NPPF also states developments should;

- set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure; and
- maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast

### **Policy Response**

5.29 A separate ecology study has been completed and submitted as part of this application and reaffirms that habits and species which are affected by the development will have migration measures put in place. Bat and bird migration and foraging routes will be retained where possible and additional mitigation will be included within the development.

### **The Emerging Darlington Local Plan**

5.31 A new development plan for long term investment and growth for Darlington is being prepared for the next 20 years, up to 2036. It will set out where significant new development should go and will include policies to protect valued environments and heritage and ensure liveable places.

5.32 The Darlington Local Plan delivery has been paused to allow for further analysis to be completed before it is taken to Cabinet for approval. The Draft Darlington Local Plan and Sustainability Appraisal were consulted on in Summer 2018. The next stage will be a report to Members with recommendations based on the comments received. This is anticipated to happen in the New Year, with dates to be confirmed.

### **Local Planning Policy**

5.33 The Planning and Compulsory Purchase Act 2004 Section 38 (3A)(b) requires the determination of planning applications to be in accordance with the Development Plan unless the local planning authority to whom the proposal for the making of the plan has been made have not made the plan.

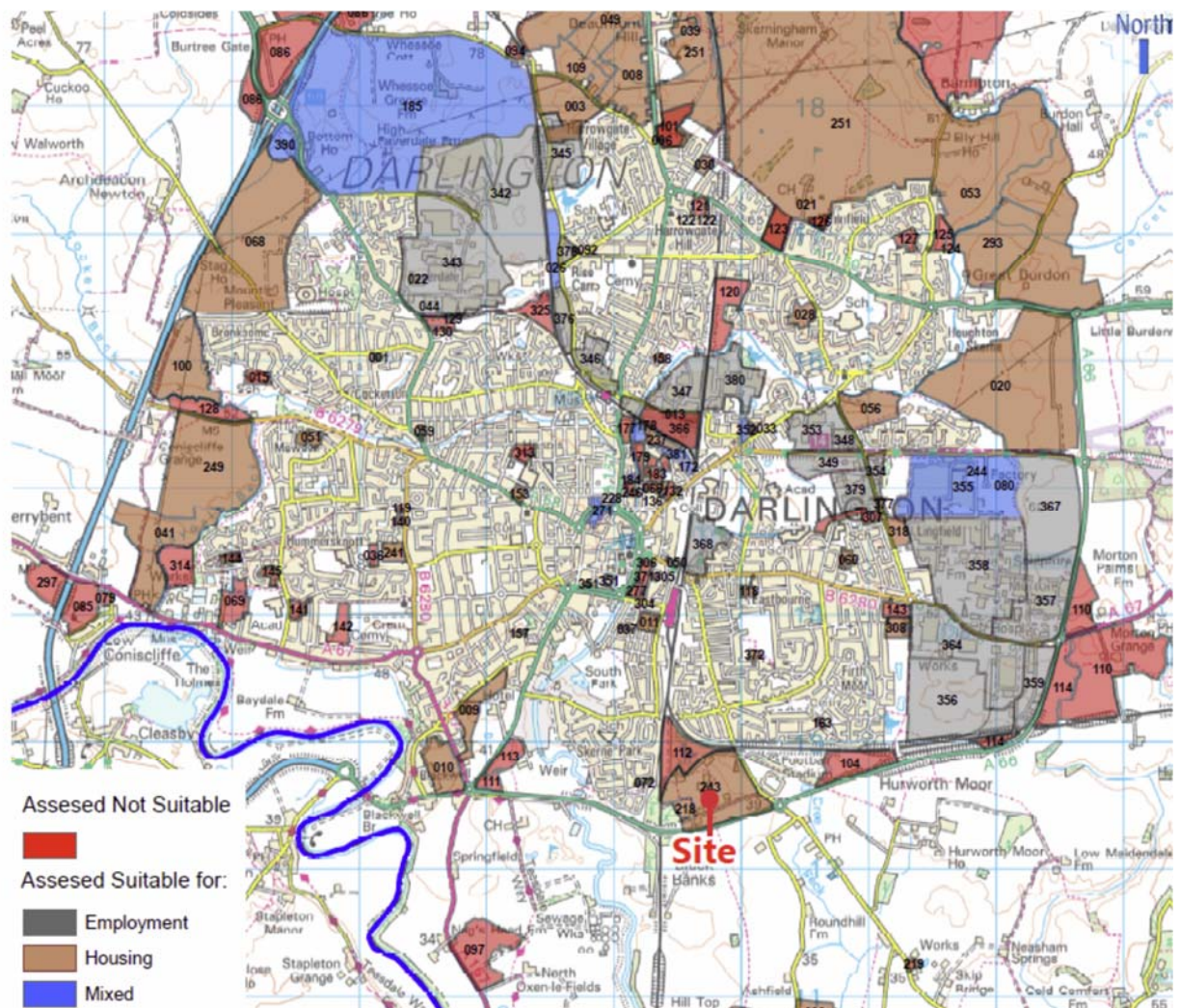
5.34 The Development Plan for the area within which the application is located is made up, for the time-being, of the following core strategies:

- Core Strategy Policy CS2: Achieving High Quality, Sustainable Design.
- Core Strategy Policy SC10: New Housing Development
- Core Strategy Policy CS11: Meeting Housing Needs
- Core Strategy Policy CS15: Protecting & Enhancing Biodiversity & Geodiversity
- Policy CS19: Improving Transport Infrastructure and Creating a Sustainable Transport Network

5.35 All policies accord with responses given to the earlier standards set out in the NPPF. We believe the proposed development meets all of the policies above and supports our application for planning approval.

## Land Use Designations

- 5.36 The Government's National Planning Policy Framework (NPPF) requires local planning authorities to prepare Strategic Housing Land Availability Assessments (SHLAA). The Darlington Housing and Employment Land Availability Assessment (HELAA) was completed in March 2018.
- 5.37 The study provides an assessment of the potential of the Local Authority area to accommodate housing development over the local plan period. It provides an assessment of the suitability, availability and achievability of potential new housing sites and informs housing and planning policy.
- 5.38 The plan below indicates that the proposed development site falls within land suitable for housing.

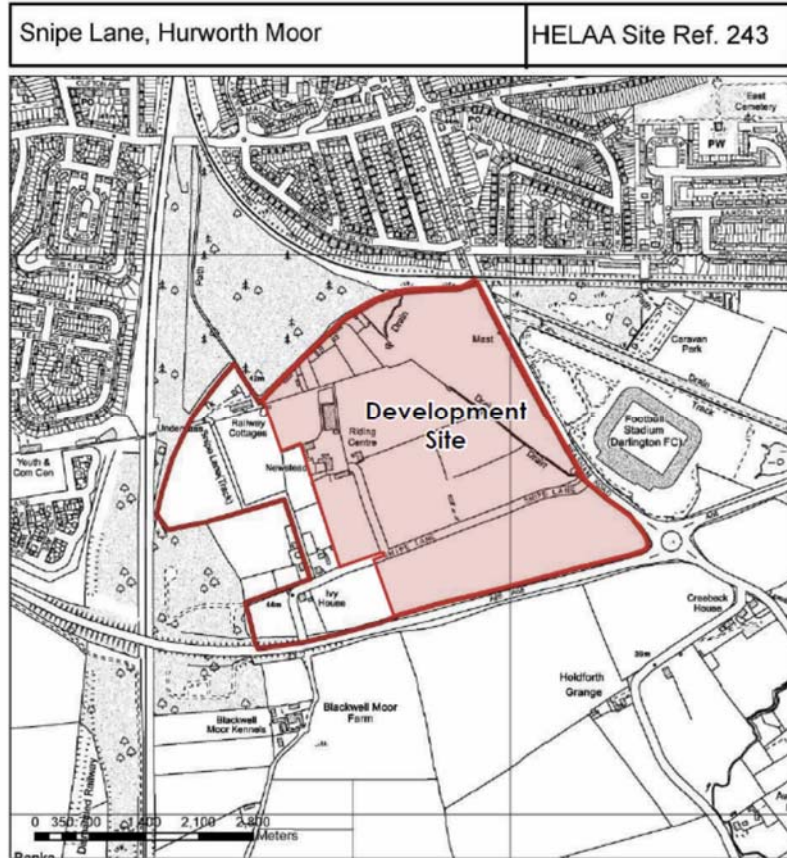


Extract from The Darlington Housing and Employment Land Availability Assessment (HELAA)



**Site Suitability (REF 243)**

5.39 The proposed development site off Neasham Road falls within site ref:243 of the Darlington Housing and Employment Land Availability Assessment. An extract from the HELAA below summarises the suitability, availability, achievability and constraints for the application site.



HELAA SITE PROFILE			
Site Reference	243		
Site Name	Snipe Lane, Hurworth Moor		
Address	West of Neasham Road and Mowden Park Rugby Stadium		
Ward	Hurworth		
Gross Site Area (ha)	31.70		
SITE ASSESSMENT			
Ownership Status	Not Owned by a Public Authority		
Geo X (Easting)	429920	Geo Y (Northing)	515032
Physical Constraints	Landfill Sites, PROW, Local Nature Reserve adjacent to the North		
Suitability Conclusion	Suitable		
Availability Conclusion	Available		
Achievability Conclusion	Achievable		
IF SUITABLE:			
PHASING OF DEVELOPMENT			
Next 5 years	6-10 years	11-15 years	15+ years
X	X	X	X
ACHIEVABLE			
Achievable for:	Housing		
YIELD: DEVELOPMENT POTENTIAL			
Units for Housing	Sqm for Employment		
882	-		

Extract from The Darlington Housing and Employment Land Availability Assessment (HELAA)

## 6 PLANNING JUSTIFICATION

- 6.1 'Homes by Esh' are the principle contractors who will be constructing all the adoptable civil, drainage, and road infrastructure requirements to service cells A, B and C and therefore, enabling the overall scheme to forward as one development. This initial construction element is the catalyst for the provision of all of the affordable housing within the application scheme
- 6.2 As outlined in the previous section of this Planning Statement, the site falls within the site allocation in the Darlington HELAA. This planning application aims deliver 449 new homes and provides positive regeneration of an allocated site in the South of the Darlington borough. Based on this the principle, we consider this development can be clearly demonstrated.
- 6.3 The delivery of 155 open market homes and 294 new affordable homes will form an important contribution to the Council's housing requirement and more broadly will assist the Council in demonstrating an adequate delivery of housing (as required by Central Government).
- 6.4 The granting planning permission for the proposed development would fully support the outcome of the plan-making process and would be in-line with the Darlington Borough Councils vision for the application site. By approving the application scheme, it would also be fully consistent with the NPPF's requirement that local planning authorities 'significantly boost' the supply of homes
- 6.5 The proposal comprises of a minimum 65% affordable dwellings, demonstrating full compliance with the NPPF part 6 and the local CSP Policy CS11. Of the 294no. affordable units, 150 dwellings (on Cell B) would be brought forward first by Darlington Property Services and a further 144 dwellings on cell C) by a Registered Provider in the outline part of the hybrid application. Further details regarding the affordable housing mix and tenures are set out in the accompanying Affordable Housing Statement.
- 6.6 The application scheme will also consist of a diverse mixture of 2, 3 and 4 bedroom open market properties (on Cell A) using a mix of house types and configurations from 'Homes By Esh'. This is considered an appropriate mix for families, young professionals and older people and is provided in an inherently sustainable location close to Darlington Town Centre and key public transport links. As stated above, further details regarding the open market housing mix and tenures are set out in the accompanying Affordable Housing Statement.
- 6.7 It is important that this construction element becomes a trigger point which ensures the open market and affordable is delivered at the at the same time.

### Other Development Justification Considerations

- 6.8 The following principles of development are presented in a manner that clearly demonstrates the site-specific requirements and how this application differs from all those that are currently submitted to Darlington Borough Council. This includes investigating the following areas:
- Design and Layout;
  - Highways;
  - Flood Risk and Drainage;
  - Ecology;
  - Landscaping;
  - Noise;
  - Ground Conditions;
  - Heritage and Archaeology.

## Design and Layout

- 6.9 The applications schemes design and layout have been sensitively considered as part of this proposed submission. A more in-depth and detailed description for the design elements and layout is provided in the accompanying Design and Access Statement. The submitted site plan provides a robust and desirable design rationalisation in delivering 449 new dwellings. It should also be emphasised the density of the development by 'Homes by Esh' will be 30.8 units per hectare / 12.5 units per acre. The overall square footage per acre will be 12,325.
- 6.10 The density of the development by Darlington Borough Council will be even greater, up to 46.3 units per hectare / 18.8 units per acre. The overall square footage per acre will be 16,480. This is a higher than standard density that would not normally be achieved on many other sites and therefore demonstrates an efficient use of the land in accordance with the broader national and local policy requirements.
- 6.11 The layout of the scheme would be bounded by the natural and utility constraints of the land as well as the existing ecological and bio-diversity routes. The land would subsequently be divided up into four discreet parcels and allow developers to provide a scheme with its own identity
- 6.12 This layout affords an overall development that is fully inclusive, well connected and provides and promotes cohesion with the neighbouring South Darlington suburbs

## Highways

- 6.13 The application scheme gives full details of the both site access points on to Neasham Road also, an evaluation of the proposal's impact upon the existing carriageway and A66. An accompanying transport assessment can be found apart of the application submission produced by Systra. The transport assessment concludes that the access arrangements and internal road network for the proposed development are acceptable and there will be no significant impacts from the development on the local highway network.
- 6.14 As part of the initial infrastructure works the both site entrances will be connected by the development loop road. This will be used for the new bus route servicing the proposed development from the outset of the proposal. 'Homes by Esh' will be undertaking the loop road infrastructure together with both the North and South entrance junctions, allowing the both developers to commit to building their proposed schemes at the same time.

## Flood Risk and Drainage

- 6.15 The flood risk assessment and drainage strategy has been prepared in accordance with the NPPF, Flood Risk and Coastal Change Planning Practice Guidance. The management of the surface water flows have also been considered in accordance with Building Regulations H3 Section 3. This is echoed in Paragraphs 155 to 165 of the NPPF.
- 6.16 The planning application is accompanied by a Flood Risk Assessment and Drainage Strategy prepared by Queensberry Design Limited which demonstrates there is low risk of flooding from fluvial sources with a probability of 1 in 1000 in any one year (<0.1%). The proposed development is classified as 'more vulnerable' and is located within FLOOD ZONE 1, therefore, the development is suitable within this flood zone in accordance with NPPF.
- 6.17 Employment of the mitigation measures stated in this report will ensure that the development will be safe and is suitable in this location. Flood risk from all sources have been considered and with mitigation where necessary it has been established that these sources do not pose a risk to the development.

- 6.18 The surface water discharge principle entails the discharge of flows to six SuDs detention basins located within the site. There will be two basins located for phase A, 3 for phase B and 1 for phase C. All six basins will be 'online' necessitating the provision of the surface must be in place before any additional development within the cells can be made.
- 6.19 As principal contractor 'Homes By Esh' will undertake this requirement together with the opening of culvert running through the application site in their strategic infrastructure.

### Ecology

- 6.20 The planning application is supplemented by an ecological assessment produced by Penn Associates. The report provides in depth analysis and all of the survey work undertaken for the application site. The ecology assessment remarks that several habitats or flora species are located on or directly adjacent to the application site.
- 6.21 There are several trees and mature hedgerows delineating the arable land across the site and Local Nature Reserves within close proximity. The ecology survey also identifies a number of species spread within a 2km search radius including birds, mammals, amphibians and invertebrates. Further details on the species found within the 1km search radius are provided in the Ecological Assessment.
- 6.22 The ecological assessment summarises the opportunity to increase the biodiversity in areas not being developed through the use of additional planting. Additional habits for a variety of species are to be included throughout the proposal.
- 6.23 The overall development retains a lot of the existing biodiversity infrastructure into the design of the scheme, creating generous corridors between the development cells. A minimum of 40% of the gross area of the application site is to be retained and enhanced, this high percentage allows for the proposed interconnecting landscaping and large public open spaces.

### Landscaping

- 6.24 The application scheme is supplemented by detailed proposed landscaping design provided by TGP Landscaping and cross references in the accompanying Design and Access Statement.
- 6.25 A large majority of the landscaping areas are created in the form of large public open spaces which will also be used as areas for Sustainable Drainage Systems (SuDs). The Design and Access Statement provides a summary of the aims and objectives of the landscaping approach in order to comply with previously mentioned Policy CS15 and NPPF part 16. The key components are as follows;
- Retention of existing hedgerows and mature trees along the watercourse and access roads to create green corridors linking the housing blocks, public open space and wider site landscape.
  - Creation of a connected network of green spaces that build on and enhance the existing green corridors.
  - Creation of landscape buffer zone along the southern and eastern boundaries of the site to screen the A66 and Neasham Road from the proposed development and assist with noise attenuation.
  - Creation of an extensive Footpath / Cycleway network within the site that links to the existing network and beyond.
  - Introduction of a variety of habitats to improve the biodiversity of the site. Provision of hibernacula and refugia for amphibians and hedgehogs at suitable locations.
  - Introduction of formal and informal recreation spaces, including a play area, to maximise

health and well-being benefits of the proposed development.

- 6.26 There have been several key character areas achieved around the application site. These are indicated on the accompanying proposed landscaping plans and details. The approach to landscaping on the application site aims to enhance the landscaped experience along the existing routes, bring into the public realm, what was once only arable land and connect seamlessly between the development cells and the existing wider green infrastructure.
- 6.27 It is concluded that this landscaping proposal delivers a high-quality setting to the application scheme which corresponds with the requirements set out in Policy CS15 and NPPF part 16.

### **Noise**

- 6.28 The NPPF part 16 (e) states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new developments from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution to a health and quality of life.
- 6.29 Due to the applications site's proximity to the main source of noise originating from the trunk road A66 on the Southern boundary, a Noise Impact Assessment was commissioned and accompanies this planning application submission. This assessment has been carried out by NJD Environmental Associates.
- 6.30 Measurements for the sound survey were collected from three different monitoring locations within the application site. The results concluded show a dominant background noise from traffic on the A66. The assessment also identifies locations along Neasham Road with the potential to produce traffic noise. It is recommended to mitigate the noise source, a 2m acoustic bund and a 2m high acoustic fence should be implemented along the Southern boundary to reduce noise levels to gardens.
- 6.31 The assessment recommends the use of a glazing and acoustic ventilation to be adopted across three site boundaries to achieve the appropriate internal noise levels. Further details are set out in the accompanying Noise Impact Assessment.
- 6.32 It is proposed the submitted scheme fulfils the requirements of NPPF part 16 (e) and therefore, demonstrate that the internal and external noise levels are suitable for residential development.

### **Ground Conditions**

- 6.33 The NPPF part 16 (e) which covers conserving and enhancing the natural environment also places emphasis on the soil contamination as well as noise. In addition to this, NPPF part 16 (f) explains that to ensure a site are suitable for proposed developments, decisions should take account remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.
- 6.34 A geo-environmental appraisal and remediation strategy report has been carried out for the application site by FWS Consultants Ltd. After exploring the history of the site and the ground investigations undertaken to date, FWS provided documentation in the form of a remedial strategy, gas monitoring and a validation process to accompany this application submission.
- 6.35 It is considered that after reviewing the documentation it is recommended that any mitigation measures highlighted in the reports are followed so the proposed development can address the relevant policies of the development plan and NPPF.



## Archaeology

- 6.36 The application submission includes an archaeological assessment prepared by Durham University Archaeological Services. The accompanying report investigated a number of fields with the application site for the historic development and the archaeological implications of the proposals.
- 6.37 The report findings concluded that archaeological features of potential prehistoric or Romano-British date were identified however, the development of the site has the potential to remove or truncate these deposits, and any other deposits which may be associated with them. Development of the remainder of the site is unlikely to impact on any significant archaeological deposits.
- 6.38 A programme of archaeological works is recommended to mitigate the impact of the development on a surviving archaeological resource within the application site. No further scheme of archaeological works is recommended in relation to the development of the remainder of the site.

## 7 CONCLUSION

- 7.1 This section summarises and concludes on the main points arising from the preceding sections of the Statement.
- 7.2 It is proposed that sufficient strategic infrastructure to open up the sites will be completed first, followed by the affordable housing and the market housing by the 'Homes By Esh' and Darlington Borough Council joint venture. The open market housing will be built in accordance with sales/demand but the 150 affordable housing is to rent will be built out immediately in two phases followed by the outline area consisting of 144 units once further reserve matters is approved and a registered provider is appointed.
- 7.3 The development proposal is in accordance with the core planning principles and policy requirements of the NPPF in respect of all areas listed above. This proposal will bring economic, social and environmental benefits and therefore we consider that the proposals represent sustainable development and should benefit from the presumption in favour of sustainable development.
- 7.4 The proposed development should be defined as sustainable development for the following reasons:

### Economic Role:

- 7.5 The proposed residential development of 449 dwellings will contribute to the economy through local construction jobs during the construction phase of the development.

- 7.6 Furthermore, the use of local tradesmen and services along with materials will help to sustain the local economy through supply chain multipliers. It will also generate a New Homes Bonus Payments based on 449 units and increase the annual Council Tax revenue for Darlington Borough Council.
- 7.7 Finally, once the dwellings are constructed, the addition of new residents to Darlington will result in a boost to the local economy and help sustain existing businesses through additional expenditure in local shops and services.

**Social Role:**

- 7.8 The delivery of 449 additional residential dwellings has the potential to maintain and develop a strong and vibrant community, in a high-quality built environment. The construction of a mix of 2, 3 and 4 bedroom dwellings, and a 65% majority of affordable housing will help to increase the range and type of dwellings and tenures available within the locality.
- 7.9 This will be a positive contribution to the creation of a mixed and balanced community, as well as meeting identified housing needs within local community of Darlington. The proposal will also contribute towards Darlington Borough Council meeting their housing land supply.

**Environmental Role:**

- 7.10 The proposed development will make a positive contribution towards the quality of the built environment of the area through the careful design and layout of the proposed dwellings and amenity space. The proposals are also capable of contributing to the protection and enhancement of the natural environment by minimising the use of natural resources and minimising waste and pollution.
- 7.11 The scheme will also provide features within the site to enhance the biodiversity value for local wildlife. A comprehensive approach will be taken to deliver high standards of energy efficiency, thus helping to minimise any adverse impact arising from the development.
- 7.12 It has been clearly demonstrated that there is a significant and growing need for new residential family accommodation within Darlington. If approved, the proposed development would assist Darlington with providing sustainable, high quality family accommodation to meet their needs in the area.
- 7.13 The application site is located on the edge of a well-established residential area and is located within 1km to Darlington Town Centre and other local facilities. The site is also accessible by both private and public transport with a new bus route being introduced into the scheme. As such, it has been explained that the application site is a suitable location for the proposed scheme.
- 7.14 The proposal will strengthen the residential character of the area and its anticipated to bring to a close any problems of anti-social behaviour or fly tipping on the secluded lanes on the site which, have caused past problems for local residents.
- 7.15 In view of the conclusions described within this statement we believe the proposal accords with all relevant national, regional and local core strategy policies and we respectfully request the Darlington Borough Council grant full planning permission for this application proposal.





APPENDIX 5

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 PROPOSED PUBLIC RIGHTS OF WAY  
 NEW & DIVERSION PLAN  
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**THE DARLINGTON BOROUGH COUNCIL  
(SNIPE LANE) COMPUSLORY PURCHASE ORDER 2020**

***DRAFT***

**STATEMENT OF REASONS**

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Statement of Reasons

of

Darlington Borough Council

for the making of a Compulsory Purchase Order under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981

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2. ENABLING POWERS
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5. SPECIAL CONSIDERATIONS AFFECTING THE ORDER LAND
6. NEGOTIATIONS FOR ACQUISITION OF THE ORDER LAND
7. JUSTIFICATION FOR MAKING THE ORDER
8. DESCRIPTION OF THE SCHEME
9. DELIVERABILITY
10. HUMAN RIGHTS CONSIDERATIONS
11. EQUALITIES CONSIDERATIONS
12. INQUIRY PROCEDURE RULES
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Appendix 2: Plan of Proposed new Highways and related works on the Order  
Land

Appendix 3: Definitive Map extract and register entry

Appendix 4: Land in Council Ownership

Appendix 5: Neasham Road, extent of Adopted Highway

DATE: [                      ] 2020

# ***DRAFT***

## **STATEMENT OF REASONS**

### **1 INTRODUCTION**

- 1.1 Darlington Borough Council ('the Council') resolved to make the Darlington Borough Council (Snipe Lane) Compulsory Purchase Order 2020 ('the Order') on [ ] 2020. The land to be acquired pursuant to the Order is referred to in this statement as the 'Order Land'.
- 1.2 The Order is made under section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) to acquire the land required to facilitate the development of adjacent land for housing development (the 'Scheme'). The Order Land will after acquisition become in part adopted public highway (road), and in part public footpath, but will also be an integral part of the Scheme.
- 1.3 The housing development in question is a significant development, which will provide a substantial number of much needed affordable dwellings in the Borough, together with market housing. The Scheme delivery of 449 additional residential dwellings has the potential to maintain and develop a strong and vibrant community, in a high-quality built environment. The construction of a mix of 2, 3, and 4-bedroom dwellings, and a 65% majority of affordable housing will help to increase the range and type of dwellings and tenures available within the locality.
- 1.4 A detailed depiction of the public rights of way shown the layout map at Appendix 2, which shows the locations of:
  - Snipe Lane; Footpath 17; Footpath 14;
  - Proposed new lengths and width of footpaths/cycleways; and
  - Proposed new estate and access roads.
- 1.5 The Scheme, including development of the Order Land, promises significant environmental and safety improvements to Snipe Lane itself.
- 1.6 Acquisition would allow dedication to public use and adoption of the relevant parts of Snipe Lane as shown on the layout map at Appendix 2. The Scheme



as a whole, including the improvements to the Order Land, cannot be realised without acquisition of the Order Land by the Council.

- 1.7 This Scheme will bring economic, social and environmental benefits to the Borough. The Scheme has a high likelihood of being delivered if the Order Land can be acquired to provide related access. There are no in principle reasons why planning permission cannot be granted, and financial provision for the Scheme is secure. The Council considers that there is a clear and compelling case in the public interest to acquire the Order Land.
- 1.8 The total area of the Order Land is approximately [5,764] square metres.
- 1.9 The schedule to the Order (the 'Schedule') does not list any owners, lessees, tenants or occupiers of the Order Land as to the best of the Council's information, the land is in unknown ownership. As there is nobody with whom to negotiate, it is considered the only means of securing title to the Order Land to facilitate the Scheme is through compulsory acquisition.
- 1.10 The map to the Order (the 'Order Map') identifies the Order Land and highlights the land proposed to be acquired in pink, in two plots (marked '1' and '2'). Individual plot boundaries and numbers on the Order Map correspond with those in first column of the Schedule.
- 1.11 The Order has been submitted to the Secretary of State for Housing, Communities and Local Government for confirmation pursuant to the Acquisition of Land Act 1981. If confirmed by the Secretary of State, the Order will enable the Council to acquire the Order Land compulsorily.

## 2.0 ENABLING POWERS

- 2.1 Section 226(1)(a) of the Town and Country Planning Act 1990 empowers the Council to acquire compulsorily land that the Council considers will facilitate the carrying out of development, redevelopment or improvement on or in relation to that land, where the Council thinks that the development, redevelopment or improvement in question 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 the Council's area;
  - (b) the promotion or improvement of the social well-being of the Council's area; and
  - (c) the promotion or improvement of the environmental well-being of the Council's area.
- 2.2 The acquisition of the Order Land pursuant to section 226(1)(a) to facilitate the development of the Scheme (including the Order Land) is considered



appropriate, given the benefits that the Scheme will bring to the Borough, and bearing in mind that it is not possible to acquire by agreement all interests that are required for the Scheme given that the Order Land is in unknown ownership.

- 2.3 The Council has considered the advice contained in the DCHLG Guidance (2019).
- 2.4 The Council is satisfied that section 226(1)(a) is the appropriate enabling power to rely upon pursuant to paragraphs 93-106 (Tier 2 Enabling Powers) of the DCHLG Guidance.
- 2.5 The Council recognises that a compulsory purchase order can only be made if there is a compelling case in the public interest (paragraphs) which justifies the interference with the human rights of those with interests in the Order Land.

### **3. THE ORDER LAND**

- 3.1 The Order Land as to one plot lies within or immediately adjacent to a linear way known as Snipe Lane, and as to the other plot within an un-named linear way running north-south and joining Snipe Lane. The part of Snipe Lane within the Order Land is orientated east-west.
- 3.2 The Order Land is in part surfaced with tarmac, but this is not well-maintained and there are significant potholes along the, and variable surfaces.
- 3.3 Snipe Lane is depicted and named as a 'Bridle Road' on the first edition (and subsequent editions) of the 6-inches to 1-mile scale Ordnance Survey Map. It is shown joining Neasham Road (as it still does) to the east, and to the west it runs beneath the railway, after which, in part, it is depicted by dotted lines, rather than clear boundaries.
- 3.4 Current extracts from the definitive map maintained by the Council, together with the register entry, are appended to this Statement at Appendix 3. It will be seen that there is footpath right, but no bridleway (or other rights) recorded. The Council's Rights of Way officer confirms that there is no other information known to him that specifies the width of the public right in Snipe Lane.
- 3.5 The schedule to the Order (the 'Schedule') describes the land to be acquired, including its extent, orientation, and area. No owners or persons with a legal interest are known.
- 3.6 The map to the Order (the 'Order Map') depicts in pink the Order Land, in two plots, marked '1' and '2'. Individual numbers on the Order Map correspond with those in first column of the Schedule.

- 3.7 The Council Officers has investigated the legal status of Snipe Lane, including taking Counsel's advice on the interpretation of the information available to them.
- 3.8 From evidence on historic maps and on the ground, the public right in Snipe Lane is likely to extend to the full width of the lane, at least in parts. It is a moot point whether the footpath is 'adopted' as publicly maintainable by the Council, but on balance it is likely that statutory and other presumptions will apply to make it so. However, no 'higher' public rights can be proved.
- 3.9 Historic maps refer to the part of Snipe Lane both to the east and west of the old railway line, as 'Bridle Way', but although clearly of sufficient width to be used by horses, it is unclear whether such a right over the lane was ever more than a private right of way. A similar interpretation applies to the right to use vehicles, including motor vehicles.
- 3.10 In relation to rights for vehicles, Snipe Lane is not adopted as publicly maintainable by the Council.
- 3.11 Neighbouring landowners, including the Council, therefore seem to have private rights on foot (and other modes of transport), to use Snipe Lane for access to their property. The fact remains however that these private rights are not sufficient to permit dedication to public use by the Council of the relevant parts of Snipe Lane. Only the freeholder is able to make such a dedication under highways law, and the neither the Council nor any other person is currently able to demonstrate freehold title to the land under Snipe Lane.
- 3.12 The Council does have freehold title to all of the land either side of and immediately adjacent to the relevant parts of the Order Land, and this ownership gives rise to a presumption that the Council owns the land under the lane. However, this presumption is a rebuttable one: if another person or body can show a freehold title over any part, the Council's claim would be seriously undermined. This is not an adequate basis on which to implement a develop a significant development scheme.
- 3.13 If the land cannot be dedicated to public use then it is difficult to adopt, and adoption is considered necessary by the Council to provide the benefits of the Scheme.
- 3.14 The Highways Act 1980 (section 228) contains a potential alternative method of adoption. The alternative involves the construction of works over the relevant parts of Snipe Lane by a person (a non-public body) other than the Council, and then for the Council to treat the constructed road as a 'private street' and serve notice on the frontagers, to the effect that the 'private street' is to be adopted. Landowners can object, but if there is no objection, or objections are overruled by the Magistrates Court, the street can be adopted. However, Counsel has advised that Snipe Lane cannot be considered a 'private street' given the public right of way on foot that runs across it, and the section 228 procedure is therefore unavailable.

- 3.15 The benefits of acquisition of land in Snipe Lane are that a clear title can be secured, so permitting full dedication of the rights required for the roads, paths and other access to the Scheme; such rights would not need to be to the exclusion of any existing private rights and would permit new public rights of way, a cycleway, road, and related planting, surface and safety enhancements (see the plan at Appendix 2).

#### **4.0 INTERESTS IN AND OVER THE ORDER LAND**

- 4.1 Substantial efforts have been made by officers to identify owners of the Order Land but have not been successful to-date. The Order Land is considered therefore to be without an owner. Adjacent landowners other than the Council appear to use and benefit from private rights over the lane (including with vehicles), but there is no evidence of title.
- 4.2 Further efforts to identify any owner of the freehold to the land under the lane will continue to be made.
- 4.3 The Council has freehold title to the land either side of the relevant parts of the Order Land, and this ownership gives rise to a presumption that the Council owns the land under the lane, but this presumption is a rebuttable, and so is not considered a secure basis on which to rely for one of the main accesses to the Scheme.
- 4.4 Neighbouring landowners, including the Council, seem to have private rights on foot and by all modes of transport, to use Snipe Lane for access to their adjacent property. However, these private rights are not sufficient to permit dedication to public use by the Council of the relevant parts of Snipe Lane. Only the freeholder is able to make such a dedication under highways law, and the Council cannot unequivocally demonstrate freehold title to the land under Snipe Lane.

#### **5.0 SPECIAL CONSIDERATIONS AFFECTING THE ORDER LAND**

- 5.1 There is no special category land within the Order Land, and no special considerations.
- 5.2 The Council has identified all the statutory undertakers affected by the Order and where the proposed development will interfere with any existing utilities or services in or around the vicinity of the Order Land the Council will enter into wayleave agreements to protect or, if necessary, relocate their equipment or services.
- 5.3 No operational land of any statutory undertaker is within the Order Land, or the Scheme.

5.4 There is no land within the Order Land that:

- is owned by another local authority;
- is Crown land;
- is owned by the National Trust;

or which forms part of a common, village green, open space land or fuel or field garden allotment.

5.5 None of the following is located within the Order Land:

- a listed building;
- a scheduled monument; or
- a protected tree.

Neither the Order Land nor the Scheme land lies within a Conservation Area.

## **6.0 NEGOTIATIONS FOR ACQUISITION OF THE ORDER LAND**

6.1 There have been no negotiations for the acquisition of the Order Land as the Councils has not been able to identify an owner of the Order Land, or any part of it.

## **7.0 JUSTIFICATION FOR MAKING THE ORDER**

7.1 A description of the Scheme to which the Order relates is described in the next section of this Statement of Reasons. In accordance with DCHLG guidance the Council has considered a number of issues in deciding that the making of the Order is justified.

7.2 The following advice appears in DCHLG guidance (paragraph 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.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

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. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures”.

7.3 The guidance goes on to say that, as an overarching consideration:

*“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 it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, 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.”* (Paragraph 12, DCHLG Guidance)

The Council’s consideration of the Human Rights effects of making the Order are discussed at paragraph 11 of this Statement of Reasons.

7.4 In the context of the overarching consideration, the Council as paid particular attention to the following issues:

Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area;

- The extent to which the Scheme would contribute to the achievement of the promotion and/or improvement of the economic, social or environmental well-being of the Council's area;
- The potential financial viability of the Scheme, general funding intentions and the timing of available funding;
- Any impediments to implementation and whether the Scheme has a reasonable prospect of going ahead;
- Whether the purposes for which the proposed Order Land is to be acquired could reasonably be achieved by any other means.

7.5 The Council’s view on these issues is as follows:

7.6 The Scheme meets the Council’s planning objectives and provides significant housing benefits, thereby contributing significantly to the improvement of the economic and social well-being of the area.

- 7.7 The Scheme has been progressed in consultation with Council planning officers and is considered to be compliant with national policy contained in the National Planning Policy Framework (NPPF).
- 7.8 With regard to Local Planning Policy, the Darlington Housing and Employment Land Availability Assessment (HELAA) was completed in March 2018, and the proposed development site falls within site reference 243 of that Assessment. The proposed development site therefore falls within land suitable for housing.
- 7.9 The Darlington Local Plan (draft 2016, consultation closed 2018) is still emerging.

The Development Plan for the area within which the application is located currently consists of the following core strategies:

Core Strategy Policy CS2: Achieving High Quality, Sustainable Design

Core Strategy Policy SC10: New Housing Development

Core Strategy Policy CS11: Meeting Housing Needs

Core Strategy Policy CS15: Protecting & Enhancing Biodiversity & Geodiversity

Policy CS19: Improving Transport Infrastructure and Creating a Sustainable Transport Network

- 7.10 The Scheme is designed to be in accordance with all of the policies above, and as such would be 'in accordance with the development plan', and unless other material considerations indicate to the contrary planning permission should be granted.
- 7.11 The planning summary in the submitted Planning Statement notes the following points.
- 7.12 The layout affords an overall development that is socially inclusive, well connected and provides and promotes cohesion with the neighbouring South Darlington suburbs.
- 7.13 The application site is located on the edge of a well-established residential area and is located within 1km to Darlington Town Centre and other local facilities. The site is also accessible by both private and public transport with a new bus route being introduced into the Scheme.
- 7.14 This Scheme will bring economic, social and environmental benefits and the proposals represent sustainable development and should benefit from the presumption in favour of sustainable development.
- 7.15 The delivery of 449 additional residential dwellings has the potential to maintain and develop a strong and vibrant community, in a high-quality built environment. The construction of a mix of 2, 3, and 4-bedroom dwellings, and

a 65% majority of affordable housing will help to increase the range and type of dwellings and tenures available within the locality.

- 7.16 The Scheme will be a positive contribution to the creation of a mixed and balanced community, as well as meeting identified housing needs within local community of Darlington. The proposal will also contribute towards Darlington Borough Council meeting their housing land supply, and would assist Darlington with providing sustainable, high quality family accommodation to meet such needs in the Council's area.
- 7.17 The Scheme will make a positive contribution towards the quality of the built environment of the area through the careful design and layout of the proposed dwellings and amenity space.
- 7.18 The Scheme's landscaping proposal would also deliver a high-quality setting which corresponds with the requirements set out in Policy CS15 and NPPF part 16. This involves:
- (a) Retention of existing hedgerows and mature trees along the watercourse and access roads to create green corridors linking the housing blocks, public open space and wider site landscape;
  - (b) Creation of a connected network of green spaces that build on and enhance the existing green corridors;
  - (c) Creation of landscape buffer zone along the southern and eastern boundaries of the site to screen the A66 and Neasham Road from the proposed development and assist with noise attenuation; and
  - (d) Creation of an extensive Footpath / Cycleway network within the site that links to the existing network and beyond.
- 7.19 Delivery of new roads and footpaths is central to the delivery of the Scheme as a whole, which will deliver the full range of social and environmental benefits as outlined above and considered in the Planning Statement.
- 7.20 The necessity of acquiring the Order Land is demonstrated in paragraph 3 of this Statement of Reasons. In particular there is no statutory process other than compulsory purchase that can provide the Council with title to the land, and the Council cannot negotiate as there is nobody to negotiate with.
- 7.21 The Council intends to acquire all interests in the Order Land (unless already within the ownership of the Council or expressly stated otherwise in the Schedule to the Order) either by agreement or by exercising its compulsory purchase powers as set out in this statement of reasons.
- 7.22 The Council considers that any interests and rights in the Order Land which may be vested in third parties do not present an impediment to the deliverability of the CPO scheme if the correct statutory procedures and/or negotiations are followed.

- 7.23 There is a reasonable prospect that all phases of the Scheme to which the Order Land relates will be delivered. Virtually all of the land required for the Scheme is already in Council ownership. In effect the value of this land is already committed to the Scheme. The costs of construction, including the construction of roads and footpaths to adoptable standards on the Order Land (and elsewhere on the Scheme land), are secured under a joint venture between the Council and Homes by Esh.
- 7.24 The estimated cost of all road work, infrastructure works, and the Council's build of affordable housing is estimated to be [                    ].
- 7.25 The Council will meet all costs of the compulsory purchase process, including compensation payments, from its own resources. [In any even the costs of compulsory acquisition of the Order Land are assessed by the Council's valuers as modest].
- 7.26 The impact on the human rights of those likely to be affected by the proposed Order is considered in section 11 below.
- 7.27 The impact of the Scheme in the context of the Equalities Act 2010 is considered in section 12 below.
- 7.28 The considerable public benefits to be derived from implementation of the Scheme outweigh any possible harm caused by interference with the human rights of those likely to be affected by the compulsory purchase.
- 7.29 In the Council's view therefore, there is a compelling case in the public interest sufficient to justify the making of the Order for the acquisition of the Order Land.

## **8.0 DESCRIPTION OF THE SCHEME**

- 8.1 The Scheme which the compulsory land acquisition is intended to facilitate provides for the construction of 449 new dwellings on land owned by the Council. The planning application for the Scheme is a hybrid application, part in detail and part in outline. 305 of the 449 new dwellings will be affordable dwellings, with approximately 150 affordable dwellings available for rent built first, followed by a further 144 affordable dwellings built as and when a registered provider of social housing is appointed and the reserved matters application for this element is approved. Open market dwellings will be built in accordance with progress with plots sales and demand.
- 8.2 The Scheme comprises a minimum of 65% affordable dwellings. Of the 294 affordable units, 150 dwellings (on Cell B) would be brought forward first by the Council, and a further 144 dwellings on (Cell C) by a Registered Provider of social housing.
- 8.3 The Scheme will also consist of a diverse mixture of 2, 3 and 4-bedroom open market properties (on Cell A) using a mix of house types and configurations



from 'Homes by Esh'. This is considered an appropriate mix for families, young professionals and older people and is provided in an inherently sustainable location close to Darlington town centre and key public transport links.

- 8.4 'Homes by Esh' are the principle contractors who will be constructing all the adoptable civil, drainage, and road infrastructure requirements to service cells A, B and C and therefore, enabling the Scheme to forward as one development. This initial construction element is the catalyst for the provision of all of the affordable housing within the application Scheme.
- 8.5 As part of the initial infrastructure works the both site entrances will be connected by the development loop road. This will be used for the new bus route servicing the proposed development from the outset of the proposal. 'Homes by Esh' will be undertaking the loop road infrastructure together with both the North and South entrance junctions, allowing the both developers to commit to building their proposed schemes at the same time.
- 8.6 An application for planning approval for the Scheme [was submitted/will be submitted] to the Council on behalf of ['Homes by Esh'] on [ ] 2020.
- 8.7 For clarity in relation to highways and public rights of way matters, a full depiction of existing rights and Scheme proposals is shown the layout map at Appendix 2, and in particular the respective locations of:

Snipe Lane

Footpath 17

Footpath 14

Proposed new lengths and width of footpaths/cycleways

Proposed new estate and access roads

(Additional information on the proposed new roads and transport can be seen on the general overlay plan at Appendix 1)

- 8.8 The Scheme promises significant improvements to Snipe Lane itself, and footpaths, but these improvements and the Scheme as a whole, cannot be realised without clear and definitive rights over Snipe Lane such as would allow dedication to public use and adoption of the access to be constructed along Snipe Lane.

## 9.0 **DELIVERABILITY**

- 9.1 All land interests which are to be acquired by the Council, whether compulsorily or by agreement will be acquired for planning purposes (under section 226 or 227 of the Town and Country Planning Act 1990). As all of the Order Land is

intended to be used for adopted roads, public rights of way enhancements and related infrastructure, no onward disposals of the Order Land are contemplated after acquisition by the Council.

- 9.2 Subject to securing planning permission and control of the land necessary to deliver the Scheme, construction is expected to start on site in early 2021. As indicated above, construction would begin with infrastructure works, and the roads network in particular. (Pre-application advice was sought from the Council's Planning Officer and the Scheme was considered acceptable when assessed against national policy and the Council's development plan.)
- 9.3 Once the Council has acquired freehold title to the Order Land the Council be able to dedicate the relevant parts of the Order Land to public use as highway and to formally adopt the same.
- 9.4 The Scheme will be fully funded by the Council and 'Homes by Esh', and in accordance with binding agreements already made between the two, no external funding needs to be secured to deliver the Scheme.
- 9.5 The costs of compulsory purchase, including the compulsory purchase order procedures and compensation payable to owners of any land interests will be met by the Council from its own resources. Given the nature of the interests to be acquired the cost of the compensation element is expected to be low or negligible.
- 9.6 Planning Permission will be needed for the CPO scheme together with any other necessary consents or licences required from the statutory undertaker need for the implementation of the Scheme.
- 9.7 The Acquiring Authority and its development partner are keen to commence the CPO scheme as soon as reasonably practicable, but there are no specific time constraints on the timetable for development. The present intention is for construction to commence in 2020/21 with an anticipated build period of less than 1 year for the development of the Order Land, and less than two years for the first phase of affordable housing construction on the Scheme land.
- 9.8 In the absence of any special land, or special considerations, the Council considers the Scheme eminently 'deliverable' within a reasonable timetable.

## 10. HUMAN RIGHTS CONSIDERATIONS

- 10.1 In deciding to make the Order the Council has taken into account the provisions of the European Convention on Human Rights and the Human Rights Act 1998, and in particular section 6 of the Human Rights Act 1998, which prohibits public authorities from acting in a way which is incompatible with the European Convention.

- 10.2 The Council has concluded as a result of this assessment that the making of the Order to facilitate the Scheme does not unlawfully derogate from or constitute any unlawful interference with relevant human rights protected by the Convention, namely rights under Article 1 to the First Protocol, Article 6 and Article 8.

### **Article 1 to the First Protocol**

- 10.3 Paragraph 12 of the DCLG Guidance draws particular attention to the provisions of Article 1 of the First Protocol to the Convention.

The main provisions of Article 1 in the current context are that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...."

- 10.4 Section 226(1)(a) of the 1990 Act, which authorises the Council to acquire land compulsorily subject to the procedures contained in the Acquisition of Land Act 1981, and therefore provides lawful authority.
- 10.5 The Council considers that compulsory acquisition of the Order Land is necessary given the dearth of alternatives to securing title to the land beneath the roads in question, and that if there is interference with rights by acquisition of the Order Land, the public benefit of the Scheme will outweigh any private loss arising from the acquisition.
- 10.6 Owners and persons directly affected by the Order will also be entitled to full compensation for any property acquired from them compulsorily, and may have the right to compensation for other losses.
- 10.7 The Council considers that there is no person who can prove ownership of the Order Land, however even if such ownership can be proved, or other rights are found to exist, in light of the above, the Council considers that there will be no violation of the rights of such persons under Article 1 to the First Protocol, as the steps taken are the lawful, in the public interest, and proportionate.

### **Article 6 of the Convention**

- 10.8 Article 6 provides that:

"In the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

- 10.9 The Council notes that the statutory procedures require all those likely to be affected by the Order are notified and given an opportunity to object. If there are objections the Secretary of State will arrange a public local inquiry so that their objections can be heard. The legislation also provides for statutory challenge in the High Court to the decision of the Secretary of State on confirmation of the Order. Finally, if the Order is confirmed and becomes operative those persons directly affected by the Order may refer disputes over compensation for hearing at the Lands Chamber of the Upper Tribunal.
- 10.10 In the Council's view, the steps available to landowners and other affected parties satisfy the requirements of Article 6.

### **Article 8 of the Convention**

- 10.11 Where a compulsory order is made for the acquisition of property, the property in question may be a person's home. In such circumstances Article 8 of the Convention will be engaged.
- 10.12 Although the Order Land does not include any buildings, it is possible that the Order land supports private rights of access to property. In such circumstances Article 8 could be engaged if the rights of access are subject to interference (although there are no plans to interfere with such rights, other than to improve the surface over which the rights subsist)
- 10.13 Article 8 of the Convention provides that:

*"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*

*"(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others".*

- 10.14 Article 8(1) is a qualified right. Interference with the rights afforded by Article 8(1) can be justified under Article 8(2) in appropriate cases.
- 10.15 Section 226(1)(a) of the 1990 Act, which authorises the Council to acquire land compulsorily subject to the procedures contained in the Acquisition of Land Act 1981, and therefore provides lawful authority. Officers are of the view that compulsory acquisition is necessary given the dearth of alternatives to securing title to the roads in question, and that if there is interference with rights by acquisition of the Order Land, the public benefit of the Scheme will outweigh any private loss arising from the acquisition.
- 10.16 In the particular circumstances of this case, therefore, officers are of the view that the compulsory acquisition of the Order Land will not conflict with the rights

provided by Article 8(1) of the Convention, as the qualifications in Article 8(2) apply.

### **Proportionality and Human Rights Summary**

- 10.17 In considering the proportionality of the action of making the Order, the Council has amongst other things borne in mind the following considerations.
- 10.18 That no more land than is required to facilitate the Scheme has been included in the Order.
- 10.19 That no person is currently known to own the Order Land or any part of it.
- 10.20 That there is no viable alternative to obtaining title to the Order Land other than by way of compulsory acquisition.
- 10.21 That acquisition of title to the Order Land is necessary to facilitate the Scheme, as other legal procedures would not provide clear and secure methods of adoption of the required parts of Snipe Lane.
- 10.22 That the Order would be made under a statutory procedure with built-in safeguards that protect the rights of landowners and other persons.
- 10.23 That acquisition of the Order Land allows the Order Land and the Scheme to be developed in the interests of the social and economic well-being of the area, as much needed homes (including a large number of affordable homes) will be delivered.
- 10.24 All of those persons whose rights under Article 8 of the Convention and/or under Article 1 of the First Protocol of the Convention will have an opportunity to object to the Order and to have their objection considered at a fair and public forum, in accordance with their rights under Article 6 of the Convention.
- 10.25 Landowners and other persons with a proprietary interest in the Order Land will be entitled to proportionate compensation.
- 10.26 The Council notes that the necessary resources are in place to achieve delivery of the Scheme within a reasonable timescale.
- 10.27 To the extent that the Order may interfere with individual rights, the Council considers that the interference with those rights is prescribed by law (S.226(1) (a) of the Town and Country Planning Act 1990); is pursuant to a legitimate aim; is necessary in a democratic society and is proportional to the proposed outcome.

### **11.0 EQUALITIES CONSIDERATIONS**

- 11.1 The Council has considered in making the Order its duty, as a public authority, under 149 of the Equality Act 2010 ('the public sector equality duty'), in the exercise of all its functions, to have due regard to the need to:

eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;

advance equality of opportunity between persons who share a "relevant protected characteristic" (i.e. the characteristics referred to above other than marriage and civil partnership) and persons who do not share it; and

foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 11.2 DCHLG guidance, paragraph 6 (2019), is that *“Throughout the compulsory purchase process acquiring authorities must have due regard to the need to: (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.”*
- 11.3 Having considered the Order and the Scheme in relation to the public sector duty, the Council considers that the Order Land, if acquired, will facilitate safer and easier access to Snipe Lane for all persons for a range of users, on foot, of whatever ability, and/or with bicycles, horse, motor or other vehicles. Once delivered, the Scheme will facilitate accessibility to the public transport network for those people without access to cars, or who are mobility impaired. The Scheme and the making of the Order are therefore expected to have a positive impact in terms of the Council’s equalities obligations, with no adverse equalities impacts being foreseen. The Council is also fully aware of its equalities duties during the compulsory purchase process, for example with regard to access to documents, premises, and informal advice.
- 11.4 The Council has given consideration to whether a full Equality Analysis is advisable in relation to the impact of the making of the CPO on protected groups. As there is no identified owner of the Order Land there is no evidence to suggest that the implementation of the CPO scheme would have any direct negative impacts on any person or any group of people with protected characteristics. (The position will be monitored and reviewed if necessary during the compulsory purchase process.)
- 11.5 Having had regard to its duty under section 149 of the Equality Act 2010, the Council believes therefore that there is in the public interest a compelling and sufficient case for making of the Order.

## 12. **INQUIRY PROCEDURE RULES**

This Statement of Reasons is not intended to be a statement of case in accordance with the Compulsory Purchase (Inquiries Procedure) Rules 2007.

### **13 INQUIRY DOCUMENTS**

The following documents may be referred to or put in evidence in the event of an inquiry. These may be inspected at the same venues and times as the Order (see paragraph 14 below).

#### **List of Documents:**

*Guidance on Compulsory Purchase and the Cribel Down Rules*, DCHLG 2018

National Planning Practice Guidance (DCHLG, online guidance)

National Planning Policy Framework, DCHLG 2018

Darlington Core Strategy DPD

Darlington Housing and Employment Land Availability Assessment, 2018

The Council's Equality and Diversity Policy

### **14. INSPECTION OF DOCUMENTS**

A copy of the Order, Order Map and other documents may be seen at The Town Hall, Feethams, Darlington, DL1 1QT, Monday to Friday between 9am and 4:30 pm.

Contact for copy documents: [jenny.dixon@darlington.gov.uk]

Tel. [                    ]

Appendix 1 – Comprehensive Scheme Plan

Appendix 2 – Plan of Proposed new Highways and related works on the Order  
Land

Appendix 3 – Definitive Map extract and register entry

Appendix 4 – Land in Council Ownership

Appendix 5 – Neasham Road, extent of Adopted Highway

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## APPENDIX 7

**TIMETABLE FOR MAKING AND BRINGING A COMPULSORY  
PURCHASE ORDER INTO EFFECT**

<b>Step</b>	<b>Progress (Weeks taken)</b>	<b>Estimated Date</b>
Authorisation of CPO by the Acquiring Authority (AA)	1	April 2020
AA makes the CPO	4	April 2020
Statutory objection period begins (minimum 21 days)	1	May 2020
Objection period ends	4	May 2020
<u>If no objections the CPO may be confirmed as unopposed</u>	2	June 2020
If objections are received, Secretary of State issues 'relevant date' letter (the start of the timetable for a local inquiry)	2	June 2020
Inquiry held	18-22	October 2020

<b>Step</b>	<b>Progress (Weeks taken)</b>	<b>Estimated Date</b>
Inspector reports to the Secretary of State who issues his decision and confirms the CPO. Alternatively, since 2018 there is now provision in simpler cases (like Snipe Lane) for the Inspector to issue the decision without reference to the minister	6/16	December 2020/ February 2021
Confirmation of the CPO is publicised by the Acquiring Authority and the 6 weeks High Court challenge period begins	1	December/ March 2021
If there is no High Court Challenge the Acquiring Authority can take steps to acquire the land	6	February/ April 2021

## EXECUTIVE DECISION SESSION 28 APRIL 2020

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### CENTRAL PARK – HYBRID BUSINESS INNOVATION CENTRE

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**Responsible Cabinet Member – Councillor Alan Marshall  
Economy Portfolio**

**Responsible Director – Ian Williams  
Director of Economic Growth and Neighbourhood Services**

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### SUMMARY REPORT

#### Purpose of the Report

1. The purpose of this report is to seek approval to develop a Hybrid Business Innovation Centre, comprising offices and clean workshop space, known as Business Growth Hub 2 on Central Park.

#### Summary

2. Following the success of Business Central incubation accommodation on Central Park, the Council has been developing plans to create additional business incubation / managed workspace accommodation for new and growing Small to Medium Sized Enterprise businesses (SMEs) in Darlington.
3. Supported by funding from the European Regional Development Fund (ERDF) and Tees Valley Combined Authority (TVCA), a design feasibility study and an independent demand study have been undertaken. The outcome of the demand study confirmed the demand and evidence of need for such accommodation within the Tees Valley region.
4. An outline application was submitted to the ERDF programme for £4.2m of the estimated capital cost of £7m and discussions are ongoing with TVCA to fund the balance. TVCA has provided funding of £500,000 to undertake detailed feasibility and design up to the end of RIBA Stage 4. A compliant, full ERDF bid needs to be submitted by 31 May 2020.
5. The Hybrid Business Innovation Centre will accommodate 2,370 sq m of business space. This provisionally includes plans to create three or four “clean” workshop spaces with the remainder being office accommodation. The site location is shown hatched on the plan in **Appendix 1**.
6. To meet the external funding deadlines the Council must now prepare the project for the next stages of development and delivery. The key funding deadline is that of the ERDF Programme, which needs to commit its funds as soon as possible, but no later than 31 December 2020. All ERDF funds must be spent by 31 December 2022. This means it is essential to progress the necessary

contractual arrangements as far as possible for the construction and operation of the building as well as all other associated legal agreements regarding operator leases and land transfers.

7. The following actions are required:

- (a) Undertake an OJEU-compliant competitive tender process in order to appoint an operator for the Hybrid Business Innovation Centre. Initially the successful operator will be required to advise on the specification of the building and enter into an agreement to lease the Hybrid Business Innovation Centre. Final contracts will only be put in place if all funding bids are successful, the operator bid is within pre-tender estimates, the construction works are within budget and the land required for the project is secured. Tenderers will be advised of these pre-conditions as part of the tendering process.
- (b) Through a further OJEU-compliant procurement process, the Council will appoint a third party to undertake the design and construction of the Hybrid Business Innovation Centre including any associated infrastructure works. The pre-conditions will be as stated in 7(a) above. Initially the appointment will be to undertake all the necessary work to achieve RIBA Stage 3, funded by TVCA. Final contracts will only be put in place if all funding bids are successful, the operator bid is within pre-tender estimates and the construction works are within budget. A contract to take the project to full design and construction will only be entered into once all pre-conditions have been met.
- (c) Acquisition of land at Central Park from Homes England to facilitate the development of the Hybrid Business Innovation Centre on the terms provisionally agreed with Homes England and as set out in this report.

## **Recommendations**

8. It is recommended that :-

- (a) the contents of the report (in particular paragraph 27) be noted and approve the release of the £500k development funding provided by TVCA;
- (b) funding bids for £2.8m from Tees Valley Combined Authority and £4.2m of ERDF funding be approved for the full design and construction phases of the project. A further report will be provided regarding the outcome and conditions associated with the funding if bids are successful;
- (c) delegated powers be granted to Procurement Board to:
  - (i) approve the appointment of a third party for the design, construction and associated infrastructure work with the appropriate breaks linked to the funding applications and planning; and
  - (ii) approve the Council entering into an agreement to lease with the chosen operator for the Hybrid Business Innovation Centre and subject to satisfaction of conditions of the operator lease terms.

- (d) the acquisition of land at Central Park from Homes England on the terms set out in this report, be authorised; and
- (e) the AD Law and Governance be authorised to document and to put in place all the necessary legal agreements and enter into contracts to deliver the project.

## Reasons

9. The recommendations are supported by the following reasons:-
- (a) To enhance the environmental, social and economic well-being of the Borough.
  - (b) To support actions arising from Darlington’s Economic Strategy.
  - (c) To support the delivery of the Enterprise Zone on Central Park.

**Ian Williams**  
**Director of Economic Growth and Neighbourhood Services**

## Background Papers

No Background papers were used in the preparation of this report

S17 Crime and Disorder	Design will have regard to managing crime and disorder issues.
Health and Well Being	The concept incorporates active travel options that contribute to health.
Carbon Impact and Climate Change	The project entails an aspiration to achieve BREEAM Excellent standard, minimising the building’s carbon impact.
Diversity	Diversity issues have been accommodated in the design of the building.
Wards Affected	Stephenson / Whole Borough
Groups Affected	Darlington new and growing SME businesses, local residents
Budget and Policy Framework	This report does not represent a change to the budget and policy framework
Key Decision	Yes
Urgent Decision	No
One Darlington: Perfectly Placed	This project particularly meets the ‘One Darlington’ priority of the Council’s SCS. It is providing support to new and existing local businesses that will better equip them to survive the early days of trading as well as improve prospects of growth and the creation of local, high-skilled and higher added value jobs.
Efficiency	This project relies wholly on capital funding from HCA and ERDF which could not be used for any other purposes
Impact on Looked After Children and Care Leavers	The project does not have an impact on looked after children and care leavers.

## MAIN REPORT

### Information and Analysis

10. Following the success of Business Central incubation accommodation on Central Park, the Council has been developing plans to create additional business incubation / managed workspace accommodation for new and growing Small to Medium Sized Enterprise businesses (SMEs) in Darlington.
11. A bid has been submitted to the ERDF programme for £4.2m and negotiations are taking place with TVCA for 2.8m. The ERDF and TVCA bids are submitted on a without-prejudice basis as neither the Council nor the funders are obligated to provide or accept funding. If the bids prove to be successful and offers of funding are received, a further paper will be provided with recommendations regarding the acceptance of funding and any associated conditions. It is anticipated that this will be in September 2020. The Hybrid Business Innovation Centre will create 2,370 sq m of hybrid business space of which 400-430 sq m of net lettable space will be to create three or four workshop spaces and 1,400 sq m of lettable business accommodation in total.
12. Darlington Hybrid Business Innovation Centre will be located on Central Park within the Enterprise Zone. The sectoral focus of the Central Park Enterprise Zone is health and digital and as such any eligible businesses based within the area identified will benefit from Business Rate Relief. The site however is also suitable for other sectors and these are encouraged to also occupy the commercial area within Central Park to help create an active and buoyant commercial environment. This project will provide much-needed entrepreneurial and business growth space and will therefore act as the catalyst for further economic development opportunities in the Borough.
13. Although the project does not include revenue costs for direct business support activities it will forge strong working relationships with organisations such as Teesside University, CPI, Tees Valley Business Compass and NEBIC to enable SME tenant businesses to access existing business support and sectoral support provision in the Tees Valley.
14. This project is seeking ERDF funding to support the development of high-quality business premises. This will help to address the relative underperformance of the North East in terms of business formation, sustainability and productivity. It will contribute to a new enterprise activity in the North East and although it will not focus exclusively on disadvantaged areas, the project will benefit these areas by enabling new and growing SMEs to create jobs and wealth in a disadvantaged part of Darlington.
15. The project offers a great opportunity for Darlington to address a key market failure through creating the environment that will nurture and focus on entrepreneurship and business growth for new and existing SME's. The Council has consulted with operators in Business Central on Central Park who confirmed that they are experiencing high levels of occupancy (c.90%) and that the Hybrid Business Innovation Centre is likely to complement rather than compete with this facility and it is understood that there is demand for the proposed development.

16. The building is forecast to be ready for SMEs to move in to by January 2022 and be financially complete by March 2022.

### **Rationale for the Project**

17. The project has been developed to meet an identified need and to support the delivery of the Council's economic strategy. The project need is based on:-
  - (a) Identified business underperformance in the North East and Darlington
  - (b) A lack of entrepreneurship
  - (c) Low Business Start Up rates
  - (d) High Business failure rates
  - (e) Low business growth and small increase in GVA
  - (f) Lack of serviced offices in relation to surrounding areas
  - (g) No provision of smaller office unit accommodation (15 – 50m<sup>2</sup>)
  - (h) Lack of suitable accommodation for companies seeking clean workshop / office space to exploit space
  - (i) Lack of private sector speculative developments in times of recession
18. Market research also found that the market will not support sector-specific accommodation, therefore the Hybrid Business Innovation Centre will be open to all new and existing SME's (however those from the digital sector may benefit from business rate relief through the Enterprise Zone).
19. The key aim of this project will be to:-
  - (a) Support SME business growth and job creation
  - (b) Create of Business Growth space
  - (c) Encourage innovation, entrepreneurship and collaboration
  - (d) Regenerate an under-used area and kick start Enterprise Zone development
20. This project will seek to deliver the following outputs/results:-
  - (a) Brownfield land reclaimed
  - (b) Business premises developed
  - (c) Creation of new jobs
  - (d) Safeguarding of existing jobs

- (e) Attracting businesses to the region
- (f) Net increase in GVA
- (g) Net increase in employment

### **Capital Build**

21. The overall capital project comprises the construction and fitting out of a Hybrid Business Innovation Centre as well as hard and soft on-site landscaping, provision of services and car parking to access the building; alongside all associated professional and design fees.

### **Building Operator**

22. An operator will be secured through an open competitive tender process to manage the building and services as a tenant under the terms of a long lease. In order to make this attractive to an operator, it will be necessary to offer a contract of sufficient duration (potentially a minimum of 20 years) to enable the operator to recoup any shortfalls in income in the first few years during which the building will become established and occupancy rates will increase.
23. The current business growth hub does not have a revenue requirement and it is hoped that the same will be achievable in this case with the appropriate lease terms. If there is a revenue demand, then the Council will look at relevant options prior to reporting back to members.
24. It is proposed to appoint an operator conditionally, on the basis that the funding will be secured for the capital works, that planning permissions be obtained, and the works completed by a specified date. The operator can be involved prior to the finalisation of the building design so that designs can be adjusted to best meet their needs; therefore, greatly increasing the likelihood of it achieving high occupancy rates soon after completion. The Council will review this position prior to committing to the full build contract for the Hybrid Business Innovation Centre.

### **Procurement Strategy for Capital Works**

25. The Council's Contract Procedure Rules require that all contracts in excess of £100,000 be considered for designation as either strategic or non-strategic based on value and significance to the authority. The contract for the construction of the Business Growth Hub is automatically designated as strategic because of its value. Due to the timescales imposed by the ERDF funding regime, that is, to have the building complete and handed over to an operator by January 2022, the Council is proposing to use the SCAPE framework to procure the capital works on a design and build basis.
26. The SCAPE framework has been established through an open competitive process which meets the competitive tendering requirements of the Council, ERDF and TVCA. The key benefit of procurement through the SCAPE framework is that it will decrease the lead-in time between securing funding, approval for the building design and start on site. It is also an established framework with a successful track record for delivering major capital projects. The capital project will be managed by



the Council's Capital Projects Team. As the procurement is strategic the decision to award the construction contract will be delegated to Procurement Board.

27. **Note – this report was originally intended to go forward to the 31 March Cabinet but was cancelled because of the Covid 19 lockdown. In order to give sufficient time to meet deadlines an urgent decision was made on 14 April by the Managing Director in consultation with the Leader to progress the design development phase (drawing down £235,000 of TVCA funds).**

### **Procurement Implications**

28. A contract for the operator will be let through an open tender process.
29. The terms of the lease will be a full repair and insuring lease for the hybrid business innovation centre on a similar basis as was adopted for Business Central (1). This will include a keep-open requirement to operate the building in accordance with the specification as an incubator and in full compliance with the requirements of ERDF and TVCA. It will be for a duration of up to 20 years in order to give operators the ability to absorb and offset any initial start-up costs and lower levels of occupation against longer-term revenues. The Council will also investigate what options may be available to minimise any risk of it becoming liable for any gap in revenue costs.
30. As part of the SCAPE framework the provider is required to deliver the services at the tendered framework rates. DBC will engage its own Quantity Surveyor to verify the project costs are in line with the framework to ensure value for money and compliance with procurement legislation and funding terms.
31. As part of the SCAPE framework the contractor is required to provide social value benefits as an addition to the contracted services. These may include the mandated use of the local (Darlington) supply chain where a suitable local supplier exists, the creation of apprenticeships where appropriate and the delivery of other community benefits. The social value benefits delivered on this contract will be recorded on the Council Social Value register and reported back to members.

### **Land Issues**

32. Homes England own the freehold interest in a number of separate areas on Central Park extending to 2.1292 ha (5.2912 acres) shown shaded grey on the attached plan (**Appendix 1**). The Council owns the remainder of the undeveloped land. In informal negotiations Homes England have provisionally agreed to transfer all of their land holdings in Central Park to the Council for £1 but on the basis that the Council may only dispose of any sites at open market value, net of abnormal development costs, with the net value being treated as a receipt under the terms of the existing Central Park Collaboration Agreement between the Council and Homes England. It is considered that this acquisition meets the principles of best value and it will allow the Council to carry out any maintenance, site investigations, development, marketing and sales without needing further approval from Homes England.

### **Financial Implications**

33. The business case does not include any financial contribution to the project from the Council. In the event that there becomes a need for the Council to make a

financial contribution to the cost of the building or if it is not possible to secure external funding to cover any possible revenue (operating) shortfalls; a further paper will be brought to a future meeting.

### **Legal Implications**

34. The operator will ultimately operate the building on the land shown in Appendix 1 that is to be acquired by the Council and to be leased to the operator as set out in the terms of this report.
35. The Council has the relevant powers to enter into the acquisitions and disposal as described in the report under local government legislation and the Localism Act 2011.
36. Initial title reports and due diligence for the land proposed for acquisition and disposal do not indicate any issues with the proposed uses and, subject to approval of the recommendations in this report, further due diligence will be carried out as part of the relevant disposal / acquisition.
37. There are no open space areas or assets of community value included in the land concerned which require consideration.
38. Section 123 of the Local Government Act 1972 deals with the statutory requirements for a Local Authority in relevant disposals of land. In general, the Council is required to achieve the 'best consideration reasonably obtainable' for such disposals based on an open market disposal. The Council will ensure it obtains best value by running an open process to determine (if any) the consideration for the lease. In the event that the operator ceases to operate the services of the incubator then the lease will be terminable at the insistence of the Council.
39. On the basis of the disposal through a tender process there are no state aid or competition issues arising as there is no transfer of value from the public sector to an undertaking.

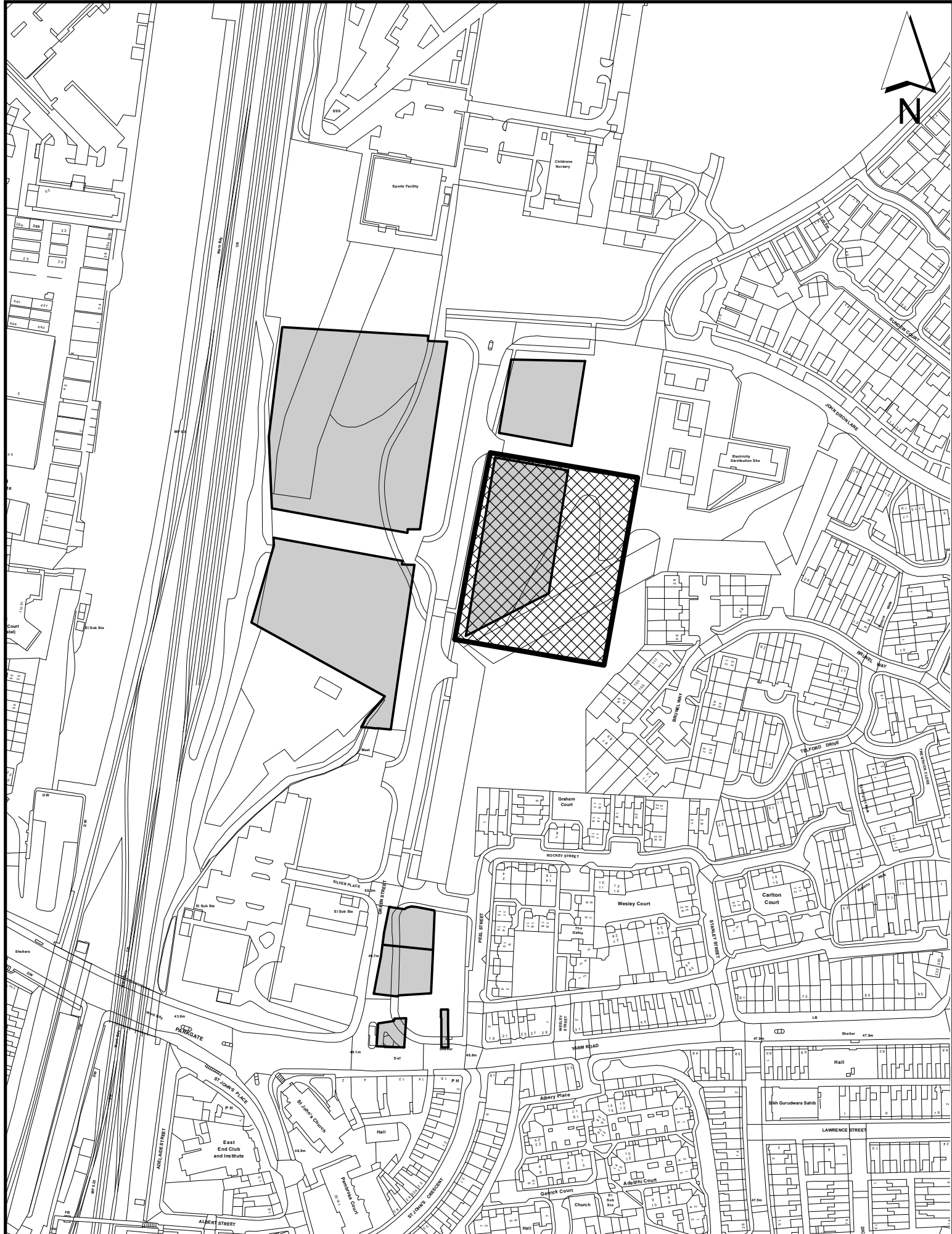
### **Risks**

40. There are a number of key risks associated with this project that the report highlights:-
  - (a) The Council cannot enter into legally binding contracts for either the capital works or the building's operation until all capital funding is in place. This is being managed through conditional appointments.
  - (b) It would be unrealistic to commit to a construction contract until an operator has been selected who can demonstrate the building can be operated either wholly from incomes generated from lettings and services or with minimal public subsidy, identified through the tender process. The early procurement of an operator and break clauses in the project's development seeks to mitigate this risk.
  - (c) The project will be dependent on external funding from ERDF and TVCA. If funding offers are received, funding will be conditional on achievement of

outputs and results as well as ensuring that the building remains operational solely for the purposes of providing accommodation for SME businesses for 20 years. This is a significant commitment and the ability to keep the building operational will be dependent on the demand from businesses for such accommodation. The Council has identified that there is demand for such space and will actively pursue an operator who can deliver these outputs.

- (d) There is a need to ensure that all aspects of the project are undertaken in an ERDF compliant manner. The Council's Investment and Funding Team is experienced in ERDF funding and will manage this process. The lease to the operator will include the requirement for the operator to directly covenant with ERDF in the required form.
- (e) The ability to deliver the project is dependent on the outcome of ongoing discussions with TVCA regarding the future of development agreement for Central Park. Discussions are at an advanced stage and this risk is being mitigated.
- (f) The business case does not include any financial contribution to the project from the Council. In the event that there becomes a need for the Council to make a financial contribution to the cost of the building or if it is not possible to secure external funding to cover any possible revenue (operating) shortfalls; a further paper will be brought to a future meeting.
- (g) Risks arising during the construction phase are mitigated by the use of a design and build contract. The contractor will also be required to provide a parent company guarantee and appropriate warranties from the professional service providers involved in the project (ie architectural and engineering warranties).

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DARLINGTON BOROUGH COUNCIL  
 ECONOMIC GROWTH GROUP  
 ESTATES AND PROPERTY,  
 TOWN HALL, FEETHAMS,  
 DARLINGTON,  
 Co. DURHAM, DL1 5QT

Project Title: **LAND AT CENTRAL PARK**  
 Drawing Title: **HE LAND = SHADED GREY  
 CROSS HATCH = PROPOSED INNOVATION CENTRE**

**APPENDIX 1**

Scale: <b>1 : 2500</b>	Ref: <b>AT A4</b>
Date: <b>09/03/20</b>	Area:
Drawn: <b>RMH</b>	

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**EXECUTIVE DECISION SESSION  
28 APRIL 2020**

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**SCHEDULE OF TRANSACTIONS**

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**Responsible Cabinet Member – Councillor Charles Johnson  
Resources Portfolio**

**Responsible Director – Ian Williams  
Director of Economic Growth and Neighbourhood Services**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To consider and to seek approval of the terms negotiated in respect of the Schedule of Transactions as set out below.

<b>TRANSACTION</b>	<b>PURPOSE OF TRANSACTION</b>	<b>MINUTE REF</b>
Lease Surrender and Renewal	Extension of lease term and change of tenants' company status/identity	Not applicable
Freehold Acquisition	Acquisition of 74 acres of land at Faverdale for long-term availability of land for employment related development	C125/Mar/20
Freehold Acquisition	Acquisition of 270sqm of land at High Northgate for viewing platform for £5 note bridge in connection with Railway Heritage Scheme	C94(6)/Jan/20

**Summary**

2. It is necessary to approve terms negotiated by the Director of Economic Growth and Neighbourhood Services on behalf of the Council to enable contractually binding contracts to be completed. The Part III **Appendix 1** details the terms negotiated for consideration and approval.

**Recommendation**

3. It is recommended that the schedule be approved, and the transactions completed on the terms and conditions detailed therein.

## Reasons

4. Terms negotiated require approval before binding itself contractually to a transaction.

**Ian Williams**  
**Director of Economic Growth and Neighbourhood Services**

## Background Papers

No background papers were used in the preparation of this report.

Guy Metcalfe : Extension 2735

S17 Crime and Disorder	This report has no implications for Crime & Disorder
Health and Well Being	There are no issues relating to Health & Wellbeing which this report needs to address
Carbon Impact and Climate Change	There are no impacts
Diversity	There are no issues relating to Diversity which this report needs to address
Wards Affected	The impact of the report on any individual Ward is considered to be minimal
Groups Affected	The impact of the report on any Group is considered to be minimal
Budget and Policy Framework	This report does not represent a change to the budget and policy framework
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	This report does not adversely impact on the Strategy
Efficiency	The terms set out in the Schedule of Transactions appended to this report are considered to be in the Council's best interest and ensure the Council's business is conducted efficiently
Impact on Looked After Children and Care Leavers	There are no issues in relation to Looked After Children and Care Leavers



By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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## Executive Decision making during Coronavirus Lockdown

Decisions taken by Councils are classified as either executive or non-executive decisions.

Some decisions (non-executive decisions) are made by Council, or Council Committees (such as Planning or Licensing Committee) or are delegated to officers to make by Council.

Executive decisions can be made by the Leader alone, collectively by the Leader and Cabinet, by individual Cabinet members or by Officers under delegation.

In this Council the more significant executive decisions (including key decisions) are taken by Cabinet at monthly meetings with other decisions being taken by officers under delegation.

Little use has been made of single member executive decision making in this Council. The practice varies in other Councils but some do hold regular single member executive decision making sessions.

Coronavirus has meant that it is not currently possible to hold conventional 'in person' Cabinet meetings and as a result a number of matters due to be considered by Cabinet have been postponed.

Regulations allowing 'virtual' rather than in person meetings came into force on 4 April. At the moment we are not in a position to host virtual meetings but are looking at how we can hold virtual meetings while the lockdown continues. We have been networking with colleagues in the north east and also learning from the experience of some of the Councils who are beginning to hold virtual meetings. The technology side of virtual meetings, is not straightforward and it will need to work well. Some of the participants will require additional support, before and during each meeting.

In the interim a greater use will be made of single member executive decision sessions in place of Cabinet meetings.

Before any a single member executive decision is made details about the matter to be decided will be published on the Councils forward plan. Before the decision session takes place an agenda and reports will be published in the same way as a conventional Cabinet meeting. Decisions will be taken by the Cabinet member (likely to be the Leader) alone in consultation with relevant Cabinet portfolio members and advised by chief officers as appropriate. It will not be a public meeting, but there will be an opportunity for members and the public to make representations about the reports (to be received by 5pm the preceding day), A decision record will be published after the meeting setting out the decision taken. As with decisions made at Cabinet meetings single member executive decisions can be subject to call in by the relevant Scrutiny Committee.

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