

APPROPRIATION OF LAND AT THE FORMER HINCKLEY BUS STATION
REPORT OF DEPUTY CHIEF EXECUTIVE (CORPORATE DIRECTION)



WARDS AFFECTED: HINCKLEY CASTLE

1. PURPOSE OF REPORT

- 1.1 To seek approval to appropriate land under section 122 of the Local Government Act 1972 so that it is held for planning purpose to support the redevelopment of Hinckley town centre and to enable section 237 of the Town and Country Planning Act 1990 to be relied upon. This is being timed to coincide with the handover (upon practical completion) of Block C from the Developer to the Council.

2. RECOMMENDATION

- 2.1 That Council approves the appropriation of the land (shown on plan 1 appended to this report) in accordance with Section 122 of the Local Government Act 1972 from commercial purposes to planning purposes.

3. BACKGROUND TO THE REPORT

- 3.1 Outline planning permission was granted on 18 January 2011 for a mixed-use development comprising retail (A1-A3 uses), leisure (D2 uses) and offices (B1a uses), together with all associated infrastructure and plant, public realm, landscaping and servicing, including the provision of a part undercroft/part surface public car parking area and a new bus station (known as the “Crescent development scheme”).
- 3.2 A compulsory purchase order was made by the Council on 11 May 2011 for the purposes of a mixed use development scheme including a new bus station, retail, leisure and office facilities, car parking and other development with associated public realm enhancement works (“the CPO”). These purposes would include the Crescent regeneration scheme. The CPO was confirmed by the Secretary of State on 2 April 2012.
- 3.3 Land was acquired pursuant to the CPO and the Developer started on site in 2014. Some of the land has been retained by the Council and other parts of the land have been transferred to the developer, Tin Hat Regeneration Partnership. This report concerns the land retained by the Council known as Block C, which is shown on the plan appended to this report.
- 3.4 As would be expected for a redevelopment of this nature, there is a small number of rights and restrictions on the title that are historic in nature and for the benefit of unknown beneficiaries. Whilst the CPO has enabled the Council to acquire freehold and leasehold interests in the land, it does not have the effect of acquiring third party interests in, or easements or rights over, the land which has been acquired. In these circumstances, Section 237 of the Town and Country Planning Act 1990 (“TCPA”) can be relied on, which states at that:

“the erection, construction or carrying out or maintenance of any building or work on land which has been acquired or appropriated by a local authority for planning purposes (whether done by a local authority or by a person deriving title under them) is authorised by virtue of this section if it is done in accordance with planning

permission notwithstanding that it involves ... an interference with a right or interest to which this section applies”.

- 3.5 Section 237 also provides that the subsequent use of land which has been acquired or appropriated for planning purposes is authorised notwithstanding that it involves an interference with an interest or right or a breach of a restriction as to user of land arising by virtue of contract.
- 3.6 Section 122 of the Local Government Act 1722 (“LGA”) permits a Council to appropriate land for any purpose which it is authorised to acquire land by agreement and which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation.
- 3.7 To engage Section 237, it is therefore necessary to demonstrate that:
- 3.7.1 the land is no longer needed for its current purposes;
 - 3.7.2 the development is carried out in accordance with a planning permission;
 - 3.7.3 the work is done by the Council or a person deriving title under them; and
 - 3.7.4 the land has been acquired or appropriated by the local authority for planning purposes.

Each of these elements is considered in turn below.

- 3.8 The land is no longer needed for its current purposes – the Council has checked its records and it is not clear for what purposes Block C is held. There are also no relevant decisions which would help to identify the purposes. In the absence of any formal designation or other evidence, it is most likely that the land is held as commercial estate and for commercial purposes. The land is now needed for the Crescent regeneration scheme and therefore is no longer needed for general commercial purposes.
- 3.9 The development is carried out in accordance with a planning permission – planning permission was obtained in 2011 as explained above.
- 3.10 The work is done by the Council or a person deriving title under them – here, the work is being undertaken by a contractor on behalf of the Council.
- 3.11 The land is held for planning purposes – this is defined in Section 246 TCPA which refers to an acquisition made under Section 226 or Section 227 TCPA. These powers allow the Council to acquire land by agreement or compulsorily if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land which is likely (under Section 226 (1A)) to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.
- 3.12 On the basis that it is most likely that the land is held for commercial purposes, it will be necessary to appropriate the land for planning purposes using the power in Section 122 LGA, which enables the Council to appropriate for any purpose land which belongs to the Council and is no longer needed for the purpose for which it is held immediately before the appropriation.
- 3.13 Before appropriating the land, it is necessary to consider whether:
- 3.13.1 the land is no longer required for the purpose for which it is held;
 - 3.13.2 the appropriation will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land;
 - 3.13.3 the Council thinks that the development, redevelopment or improvement will contribute towards the achievement of the promotion or improvement of the economic, social or environmental well-being of its area;

- 3.13.4 rights capable of being overridden by Section 237 exist;
- 3.13.5 interference with such rights is necessary;
- 3.13.6 it is in the public interest that the development is carried out; and
- 3.13.7 interference with the rights is proportionate.

Each of these elements is now considered in more detail:

- 3.14 The land is no longer required for the purpose for which it is held – as explained above, the land is needed for the Crescent redevelopment scheme and is therefore no longer needed for general commercial purposes.
- 3.15 The appropriation will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land – the land was previously used for car parking, retail and office / commercial premises. The land will now be used for a mixed use development scheme including a new bus station, retail, leisure and office facilities, car parking and other development with associated public realm enhancement works. The redevelopment is supported by planning policy and planning permission has been granted.
- 3.16 The development, redevelopment or improvement will contribute towards the achievement of the promotion or improvement of the economic, social or environmental well-being of its area – the Crescent regeneration scheme is a long standing ambition of the Council which will improve the retail provision in the town centre, provide employment opportunities and improve the town centre environment.
- 3.17 Rights capable of being overridden by Section 237 exist – there are restrictive covenants on the title which fall within the categories of rights and restrictions to which Section 237 applies.
- 3.18 Interference with such rights is necessary – to achieve comprehensive redevelopment, it will be necessary to develop the land which is affected by the third party rights. It has not been possible to establish the beneficiaries of the rights to date – they were not identified as part of the land referencing exercise undertaken prior to the making of the CPO and they have not come to light since. The Land Registry does not hold this information either. However, if a beneficiary does emerge, the Council would seek to treat with them in the usual way.
- 3.19 It is in the public interest that the development is carried out – as explained above, the Crescent regeneration scheme is a long standing ambition of the Council to bring about comprehensive redevelopment and environmental, economic and social benefits.
- 3.20 Interference with the rights is proportionate – in view of the significant regenerative public benefits which would be delivered through the Crescent redevelopment scheme, it is considered that the interference with third party rights is proportionate in this case. The Inspector appointed to run the inquiry into the CPO concluded that there was a compelling case in the public interest to recommend that the CPO was confirmed and the Secretary of State upheld that recommendation. The land in question has also never been designated as housing land or open space.
- 3.21 Once the land is held for planning purposes, the benefit of easements, covenants and relevant rights is converted into a right to compensation, which is calculated on the basis of the diminution in the value of the land if the benefit of the right is lost. Whilst any compensation payable is ultimately the responsibility of the Council, the Developer will indemnify the Council in respect of compensation liabilities arising out of the development, including under Section 237, in accordance with the terms of the CPO indemnity agreement dated 31 July 2009.

4. FINANCIAL IMPLICATIONS [IB]

4.1 None arising directly from this report. However any future compensation costs arising from the CPO will be covered by the Developer.

5. LEGAL IMPLICATIONS [MM]

5.1 The legal implications are considered in the Background section above.

6. CORPORATE PLAN IMPLICATIONS

6.1 Creating a vibrant place to work and live.

7. CONSULTATION

7.1 None.

8. RISK IMPLICATIONS

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 Positive impact on business community and all residents of the Borough.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Procurement implications
- Human Resources implications
- Planning implications
- Data Protection implications
- Voluntary Sector

Background papers: None

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