
Market Street Land Appropriation

Committee considering report:	Council on 1 March 2018
Portfolio Member:	Councillor Graham Jones
Date Portfolio Member agreed report:	25 January 2018
Report Author:	Bill Bagnell / Shiraz Sheikh
Forward Plan Ref:	C3373

1. Purpose of the Report

- 1.1 To seek approval to appropriate the Council's land at Market Street in order to facilitate the development of the site by Grainger of its consented scheme.

2. Recommendations

- 2.1 The Council resolves

- (1) To authorise the appropriation of the land at Market Street, Newbury (the Site) for planning purposes (as shown on the plan at Appendix B which is owned freehold by the Council edged red and edged green) under the provisions of Section 122 of the Local Government Act 1972 to enable the Council to override third party rights and easements pursuant to Section 203 of the Housing and Planning Act 2016; and
- (2) That in doing so the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 contained in paragraph 6.9 of this report, so far as they might be applicable in deciding whether or not to authorise the appropriation, and with regard to Article 1 of Protocol 1 Part II of Schedule 1 of the Human Rights Act 1998, it is considered that in balancing the rights of the individuals who may be affected by the appropriation against the benefit to the community of proceeding with the appropriation, the appropriation resulting in the interference of individual rights is justified in the interests of regenerating the area.

3. Implications

- 3.1 **Financial:** It is not believed that this land appropriation will involve compensation. Powers of Appropriation allow the Council to extinguish rights of way, covenants and other 3rd party benefits but subject to compensation where the owners of those rights and benefits are known. In the case of this appropriation, historic 3rd party rights and their owners are not identified in land titles / supporting documentation. Grainger plc has agreed to provide the Council an indemnity against compensation before enabling the development.
- 3.2 **Policy:** Market Street regeneration fulfils a key regeneration target first identified in the Newbury Vision, dated October 2003.

This target has been restated in all subsequent versions of the Newbury Vision and is similarly identified in the Local Development Plan.

3.3 **Personnel:** None

3.4 **Legal:** As referred to in the Report. The Council entered into a development agreement with Grainger Newbury Limited (**Grainger**) which requires the Council to exercise its powers of Appropriation.

3.5 **Risk Management:** None

3.6 **Property:** This report deals with appropriation of land as provided for in the Conditional Development Agreement with the Council and the Developer in 2013.

3.7 **Other:**

4. Other options considered

None as the Council has entered into a development agreement with Grainger and the agreement provides for such appropriation to be approved following planning consent which has been achieved.

Executive Summary

5. Introduction / Background

- 5.1 This report seeks the approval of the Council to authorise the appropriation of land owned by the Council at Market Street Newbury to facilitate the redevelopment by Grainger pursuant to a scheme which secured planning permission in April 2017.

6. Proposal

- 6.1 The Council has sought to redevelop the Market Street site (the Site) for a number of years. In 2005 a development brief for the Site was produced (Market Street Planning and Design Brief Supplementary Planning Document, June 2005). That brief included aspirations for the Site which focused on a high-density residential development, as part of a mixed-use scheme. The Council entered into a development agreement with Grainger Newbury Limited (**Grainger**) in February 2013 to enable the redevelopment of the area to proceed. Planning permission was granted in April 2017 for a scheme applied for by Grainger which permits the redevelopment of the land to deliver 232 dwellings (including some affordable housing) with associated car parking as well as mixed uses for commercial floor space including retail leisure and office uses as well as a multi-storey car park.
- 6.2 The majority of the Site is within the Council's ownership. As the title has been secured through a series of different acquisitions there are various entries of rights and interests on the title which could be interfered with as part of the redevelopment. These include rights of way throughout the site, rights in relation to service media, restrictive covenants on use and restrictions on alterations to buildings. As part of the redevelopment proposals the Council has successfully completed the merger of its various titles at the Land Registry (now registered with title BK101684).
- 6.3 The development proposed by the planning permission includes buildings with a number storeys. The analysis of the massing of the buildings to be constructed through modelling by Grainger has identified the potential for material loss of light and thus the potential to interfere with rights to light of those properties which are adjacent to the Site. Any interference without lawful authority could create a risk of an injunction being sought by those whose rights and interests are interfered with. Grainger has acquired the third party interests needed for the redevelopment within the planning application boundary including the acquisition of 2 Highfield Avenue. It is also in discussions with an adjoining owner to agree a deed of release to authorise interference with rights by agreement
- 6.4 The Council does have a statutory power of appropriation available to it for land that it owns, the effect of which is to authorise the interference with third party rights over land but subject to the payment of compensation. The basis of the assessment of compensation is on the depreciation of the value of the interest affected and not any share in the development value of the scheme interfering with those rights. As part of the Council's contractual agreement with Grainger the Council can be asked to consider the appropriation of the land in its ownership. Grainger has made that request. The Appropriation process is detailed below.

Appropriation

- 6.5 The Council can appropriate land for any purpose for which it is authorised to acquire land by agreement. The appropriation process is set out in the Local Government Act 1972 (1972 Act). Section 122(1) of the 1972 Act provides:

Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned.

- 6.6 The Council is a principal Council and so must follow the process set out in Section 122 of the 1972 Act. The Council should only resolve to appropriate land for another purpose if it is satisfied that the Market Street site (the Site) is no longer required for the purpose for which it is held. Whilst the Council currently holds the Site for a number of purposes including car parking, the freehold of the bus station and some residential units, it is required as part of the contractual commitment with Grainger as well as a stated planning policy objective to be redeveloped. The Site benefits from planning permission as set out above.
- 6.7 There are private rights of way and other easements over the Site as well as the potential for interference with rights to light and restrictive covenants. Where land is appropriated for planning purposes, the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016. This has been in force since July 2016 and has replaced what was section 237 of The Town & Country Planning Act 1990. The Council has this statutory power to override easements, rights of way and restrictive covenants affecting land. This appropriation process is particularly necessary where agreement cannot be reached or the beneficiaries of any rights are unknown as is the case here. Section 203 authorises the overriding of any private rights (such as restrictive covenants and including rights of light) affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person authorised by that authority. That being so, statutory undertakers are exempt from the provisions of Section 203 such that their rights cannot be overridden.
- 6.8 The ability to interfere with these rights is important in the context of enabling the development to proceed. Whilst the power exists to override such rights it does not prevent such rights being compensated. Section 204 of the Housing and Planning Act 2016 provides that compensation will be payable to those parties whose interests have been affected by the appropriation. The primary liability for the compensation is the party interfering with the right i.e. Grainger and the Council is seeking an indemnity from Grainger before enabling the development to proceed should appropriation be approved.

Human Rights and Equalities Impact

- 6.9 The Human Rights Act 1998 (HRA) came into force on 2 October 2000.

6.10 Provisions of the HRA which are relevant in relation to the proposed appropriation are:

(1) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe. Whilst the United Kingdom was instrumental in drafting the Convention it was never incorporated into United Kingdom law.

(2) The HRA still does not incorporate the Convention into United Kingdom law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.

(3) The main article of the Convention which is of importance in circumstances where the Council is considering appropriating land is Article 1 of Protocol 1 – the protection of property.

(4) In appropriating land an authority must show that the appropriation is justified in the public interest.

6.11 Article 1 of Protocol 1 provides that:

(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

(2) No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.

(3) However, the above rules shall not prevent a State enforcing such laws as it deems necessary to control the use of property in accordance with the general interest.

(4) The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is an important factor in considering the balance between the two.

(5) With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the interference with rights arising from the appropriation.

6.12 In addition to the HRA, the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:

(1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 6.13 The Council carried out an equality impact analysis on 11th December 2017. This first of all assessed from a relevance perspective whether a full impact assessment was needed. This assessment concluded that the Scheme would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.

7. Conclusion

- 7.1 This report recommends that the Council appropriate the land within its ownership for planning purposes to enable development to proceed at Market Street. The appropriation will enable third party rights to be overridden and interfered with but subject to the payment of compensation once the interference takes place. The primary responsibility for the compensation rests with Grainger and the Council is seeking an indemnity from them before development proceeds.

8. Appendices

- 8.1 Appendix A – Equalities Impact Assessment
- 8.2 Appendix B – Drawing 160276-3DR-00-10 0010 showing extent of land to be appropriated edged red and edged green

Appendix A

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:***
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;***
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; this includes the need to:***
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;***
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;***
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.***
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.***
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”***

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Executive to make:	The Council is using its powers to appropriate its own land assets for an authorised purpose. This has been provided for in Development Agreement. The land in question is surplus to requirement and may be restricted by existing rights and covenants which cannot historically be identified, the removal of which are necessary in order to deliver to the Council's development partner an unencumbered development site.
Summary of relevant legislation:	The Land Appropriation process is covered under Section 122(1) of the Local Government Act 1972 (1972 Act). Also relevant to proposals is Section 203 of the Housing and Planning Act 2016
Does the proposed decision conflict with any of the Council's key strategy priorities?	No
Name of assessor:	Bill Bagnell
Date of assessment:	11 th Dec 2017

Is this a:		Is this:	
Policy	Yes	New or proposed	Yes
Strategy	Yes	Already exists and is being reviewed	No
Function	No	Is changing	No
Service	No		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To appropriate Council land and thereby pass to Grainger an unencumbered development site.
Objectives:	To bring forward major urban regeneration in Newbury.
Outcomes:	To create a new gateway into Newbury from the station, to provide new town centre housing and create good quality public realm with updated signage.
Benefits:	The whole regeneration scheme by Grainger's will improve the lives of all those who live in Newbury as

	commuters, as those who come to Newbury to work and those visiting Newbury town centre by train for leisure purposes. The development itself will provide much needed town centre housing providing those living there with a well-connected and vibrant residential area.
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2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.

(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)

Group Affected	What might be the effect?	Information to support this
Age	Positive effect	Consented development proposals will create new public realm, fully accessible and providing a new direct link into the town centre from the station which is not the case at present.
Disability	Positive effect	As above
Gender Reassignment	No effect	
Marriage and Civil Partnership	No effect	
Pregnancy and Maternity	No effect	
Race	No effect	
Religion or Belief	No effect	
Sex	No effect	
Sexual Orientation	No effect	
Further Comments relating to the item:		

3 Result

Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?

No

Please provide an explanation for your answer:

Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	No
Please provide an explanation for your answer:	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

4 Identify next steps as appropriate:	
Stage Two required	N/A
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name: Bill Bagnell

Date: 11th December 2017

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) (rachel.craggs@westberks.gov.uk), for publication on the WBC website.