

London Borough of Hammersmith & Fulham

Report to: Cabinet

Date: 02/03/2020

Subject: Civic Campus programme – Land Appropriation

Report of: Cabinet Member for the Economy - Councillor Andrew Jones

Summary

In order for the redevelopment of the Civic Campus to proceed it is necessary to appropriate the site for Planning purposes. This will allow the Council to utilise powers to override third party rights that may prevent the implementation of the proposed development.

The civic campus programme will bring significant benefits to the local economy, including 204 new homes, of which half will be affordable, new offices for the Council and a cinema, retail, restaurant and affordable workspace.

Recommendations

It is recommended that Cabinet:

- 1 Resolves that the areas of land at the Civic Campus referred to in this report and shown edged red on the plans at Appendix 1 are no longer required for the mixed commercial and civic purposes for which they are currently held.
 - 2 Approves the appropriation of the areas of land edged red on the plans at Appendix 1 pursuant to section 122 of the Local Government Act 1972 for the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 226 of the Town and Country Planning Act 1990
 - 3 Approves the use of powers to override easements and other rights in respect of the land pursuant to section 203 of the Housing and Planning Act 2016.
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Wards Affected: Hammersmith Broadway

H&F Priorities

Our Priorities	Summary of how this report aligns to the H&F Priorities
<ul style="list-style-type: none"> Building shared prosperity 	<p>The programme represents a significant opportunity for the Council to improve the use of its public assets, drive efficiency of operation and enhancement to public services whilst simultaneously creating social and economic value through development of a new cinema and much needed affordable housing.</p>
<ul style="list-style-type: none"> Creating a compassionate council 	<p>The programme will further the Council's ability to provide compassionate, high-quality services that residents can rely on.</p>
<ul style="list-style-type: none"> Doing things with local residents, not to them 	<p>Through the bottom up approach taken at numerous public consultations and feedback sessions, as well as, the co-production of design with the Disabled People's Commission.</p>
<ul style="list-style-type: none"> Being ruthlessly financially efficient 	<p>The investment in the programme will generate a significant return, both financially and socially for local residents.</p>

Financial Impact

The Financial Impact of the wider Civic Campus scheme have been set out in various decision reports, this report focuses on the need to appropriate the land to enable the scheme to progress and the Financial Impact is limited to the recommendations in this report.

The appropriation of land for planning purposes does not involve any significant external cost, with costs relating to officer time relating to the decision.

As set out in the report, beneficiaries of right to light that are interfered with as a result of the carrying out of the development will be entitled to compensation which will be calculated on the basis of the diminution in value of their land. The conditional agreement for lease includes an indemnity in respect of these costs and to ensure that any costs arising are picked up by the developer rather than the council.

Legal Implications

The legal powers available to the Council to appropriate land and override third party rights are identified and explained in this report. Cabinet approved a report in March 2018 which set out the six considerations for using these legal powers. These considerations have been complied with as set out elsewhere in this report.

As explained in the body of this report as a local authority, the Council has the power under section 203 of the Housing and Planning Act to carry out a development on land even though the development would interfere with the rights of adjacent land

owners, if it has appropriated the said land for planning purposes. These rights include rights of light and easements. But for this provision the adjacent landowner could apply for an injunction to stop the development.

However, the Housing and Planning Act 2016 further provides that the Local Authority must compensate those affected by the exercise of the Section 203 power. Under Section 204 of the 2016 Act there is a liability to pay compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by Section 203 of the 2016 Act. The compensation is calculated on the same basis as compensation payable under the Compulsory Purchase Act 1965 i.e. based on the diminution of the value of the affected property because of the interference with the right. In the use of the power it is considered that it should be consistent with the Ministry of Housing Communities and Local Government's Guidance on Compulsory Purchase and Crichel Down Rules (July 2019)

Gowlings Solicitors have provided legal comments on this report and the use legal powers set out in this report.

The Council is entitled to rely on their advice in considering how to proceed. The legal comments have been verified by Adesuwa Omoregie Chief Solicitor (Planning and Property).

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Background Papers Used in Preparing This Report

Not Applicable

DETAILED ANALYSIS

Proposals and Analysis of Options

Background and Current Development Proposals

1. This Civic Campus (formerly West King Street Renewal Project) programme is a major regeneration programme for the Council.
2. The overall objective for the Civic Campus programme is to reduce the inefficiencies with the Council and to regenerate the West King Street neighbourhood by opening a number of currently underutilised sites adjacent to the existing Town Hall. It will offer transformational public services, a quality working environment for employees and utilise public assets for the benefit and growth of the local community, improving the high street retail offer and connecting communities through the development of this part of King Street.
3. It will transform West King Street into a civic, cultural and commercial destination; delivering a new four-screen cinema, commercial space (with affordable business space), 204 homes (of which 52% are affordable homes for local people), café, restaurant and retail establishments, a public events space and the extension and renewal of the Grade II-listed Town Hall. It will transform the way the Council operates and delivers its services to residents.
4. The Cabinet approved the strategic business case for the Civic Campus Programme in December 2018, concluding that:

“The programme represents a significant opportunity for the Council to improve the use of its public assets, drive efficiency of operation and enhancement to public services whilst simultaneously creating social and economic value through development of a new cinema and much needed affordable housing.”
5. The project will help the borough meet ambitions set out in its industrial strategy, Economic Growth for Everyone, to make the borough one of the best places in Europe to do business. It will provide new attractive start-up and flexible workspace, while the refurbished town hall and new council workspace will reduce the Council's expenditure on maintenance and increase Council efficiency.
6. The programme will contribute to the borough's housing ambitions by building 204 new homes, of which 50% will be affordable. The borough's Local Plan, adopted in 2018 outlines the plans to deliver a considerable number of new homes for the borough, of which a substantial portion will be affordable housing opportunities. The Local Plan seeks to meet the needs of local residents by delivering a minimum of 1,031 additional dwellings per annum, half of which should be affordable.
7. The programme will be delivered by the Council in a joint venture partnership with A2Dominion Housing Group.

8. In March 2018, Cabinet agreed in principle to the appropriation of the area of land edged red in Appendix 1 for to the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 122 of the Local Government Act 1972. This was needed to override easements covenants and other third party rights in respect of the land pursuant to section 203 of the Housing and Planning Act 2016 subject to the requirements set out in the legal implications section of the report having been satisfied and a further report for approval being made to Cabinet.

The Need for Appropriation

9. There is a need to appropriate the site from mixed commercial and civic uses to planning purposes in order to override third party rights, the existence of which would otherwise prevent the implementation of the proposed development.
10. Section 122 of the Local Government Act 1972 provides a power to the Council to appropriate land from one purpose to another. This purpose can be any purpose for which the Council is authorised to acquire land by agreement. However, the appropriation of land pursuant to this provision does not result in the overriding of third party rights. This is facilitated by the powers set out in Section 203 of the Housing and Planning Act 2016 ("**section 203**"). This, so far as relevant to the facts of this case, provides that building or maintenance work/use which interferes with rights or breaches restrictions as to user is authorised if:
 - planning consent exists for the building works or use;
 - the work is carried out on land that has been appropriated by the Council for planning purposes after 13th July 2016
 - the land could be compulsorily acquired by the Council for the purposes of the building works or maintenance/use of buildings or works constructed; and
 - the building work or maintenance/use is for purposes related to the purposes for which the land was acquired or appropriated.
11. In terms of process, case law has established that appropriation must involve more than a mere decision to hold land for a different purpose. The Council must consider whether the land is no longer needed in the public interest of the locality for the purpose for which it is held. As the purpose of the acquisition is to engage the provisions of section 203 of the 2016 Act the Council should not make the appropriation unless it has good reason to think that that interference with the rights affected is necessary.
12. Case law has also established that appropriation is the equivalent of compulsory purchase of the Council's own land and the same degree of necessity must apply in each case.

13. In practice, section 203 means that any beneficiaries of third party rights that are interfered with as a result of the carrying out of the development cannot prevent the development from proceeding by seeking an injunction from the courts, and as a result the development proposed can proceed. However, those with the benefit of the rights that are interfered with will be entitled to compensation which will be calculated on the basis of the diminution in value of their land.
14. Certain properties have been identified which are likely to benefit from a right to light over the civic campus site. Analysis by the joint venture shows that a number of properties identified are likely to experience an alteration in light following completion of the development. The existence of these rights means that unless the provisions of section 203 are engaged the development could be prevented from proceeding. Accordingly, the purpose of this report is to seek a resolution to appropriate the site to planning purposes so that the third party interests can be overridden, allowing the development to proceed.

Why the land is no longer needed for its current purpose

15. The most significant landholding in the civic estate is the Town Hall and the surrounding parcels. The site itself provides an imposing and impressive facade with the original rear facing towards King Street. The site is comprised of a dated and unfit for purpose Town Hall extension and a Grade II listed Town Hall. Before the offices were decanted the Town Hall and the Town Hall Extension were both used by council workers as well as for community functions and as a public event space.
16. The Town Hall has major life cycle investment requirements. The Town Hall Extension was opened in 1971 and the majority of the services, fixtures and fittings to building are the originals and are life expired. Whilst the basic structure is sound, detailed condition surveys have confirmed that it is in a very poor state both internally and externally, with inefficient systems, blown windows and poor natural heating control.
17. The future of the building has been in doubt since the mid-90's leading to only minimal/absolutely essential works or holding repairs being carried out. The backlog of maintenance to the building has grown considerably in the past twenty years. The estimated costs of addressing the critical and refurbishment items within a one-year programme (requiring decant) is £19m. The total costs of fully refurbishing the Town Hall Extension is £35m. This excludes any public realm improvements and any demolition of the adjoining structures between the Town Hall and the Town Hall Extension.
18. The other land holdings are the Council car park and old Register office that are no longer in use and the site of the former Odeon cinema.
19. The Council and the joint venture have also agreed terms with the London Quakers Property Trust to build a new Meeting House to free up the existing building to complete the new Civic Campus redevelopment site.

Planning purposes and public benefits

20. An appropriation for planning purposes is a reference to the appropriation of it for purposes for which it can be acquired under sections 226 or 227 of the Town and Country Planning Act 1990 (**TCPA**). In this case it is necessary to consider whether the land would be capable of being acquired under section 226 of the TCPA.
21. Section 226 empowers a local authority, on being authorised to do so by the Secretary of State, to acquire compulsorily land its area:
 - If the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land (section 226(1)(a)); or
 - which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which that land is situated (Section 226(1)(b)).
22. In this case it is appropriate to consider whether the land could be acquired compulsorily under the powers conferred by section 226(1)(a). Section 226(1A) of the Town and Country Planning Act 1990 provides that a local authority must not exercise its power of compulsory acquisition under section 226(1)(a), unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:
 - the promotion or improvement of the economic well-being of the area;
 - the promotion or improvement of the social well-being of the area; and
 - the promotion or improvement of the environmental well-being of the area.
23. It is the view of officers, supported by legal advice, that the Civic Campus site could be acquired compulsorily under section 226(1)(a) in order to facilitate the carrying out of redevelopment and that such redevelopment would advance all three objectives identified at Section 226(1A).
24. As, subject to satisfying the relevant requirements, the effect of appropriation would be to engage the override provisions of section 203 of the 2016 Act it is necessary to consider whether the facilitation of the development would justify an interference with the rights of third parties. In making that decision regard has been given to the advice and guidance contained in the current MHCLG Guidance on Compulsory Purchase (July 2019).
25. Fundamentally, the decision to appropriate in order to engage section 203 of the Housing and Planning Act 2016 should only be made where it is necessary, there is a compelling case in the public interest and the Council

should be sure that the purposes for which the powers are being exercised justify interfering with the human rights of those whose interests will be affected. Particular consideration should be given to the provisions of Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights and this is considered below.

26. Turning to the planning policy support for the Civic Campus redevelopment, for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004 the Statutory Development Plan for the area in which the site is situated comprises (1) the London Plan and (2) the Hammersmith and Fulham Local Plan 2018.
27. Strategic planning guidance within the London Plan and the proposed replacement London Plan sets demanding housing targets for all London Boroughs. The Council has been set an annual target of delivering approximately 1,609 new homes every year for the next 10 years.
28. In terms of affordable housing, the London Plan policy identifies a requirement that Boroughs seek to maximise the provision of affordable housing in new developments and that 60% of all affordable housing should be affordable or social rent and 40% intermediate housing. The Local Plan requires that 50% of all new housing, on developments of 11 or more units, is affordable and that 60% of this is affordable/social rent consistent with the London Plan target.
29. The Hammersmith and Fulham Local Plan was adopted in February 2018:
30. Local Plan Strategic Policy HRA sets a target of delivering 2,800 homes and 10,000 indicative new jobs within the Hammersmith Regeneration Area through encouraging the regeneration of the town centre and building upon the centre's major locational advantages for office and retail development. With particular regard to the proposal, Policy HRA seeks to actively engage with residents in delivering benefits for the surrounding area; supports a wide range of retail, office, local government services, leisure, arts, entertainment, community facilities and housing; promotes the continuation of the town centre as a key strategic office location through provision of modernised office blocks; supports proposals that extend Hammersmith's arts and leisure offer.
31. Policy HRA states that proposals within the regeneration area should respond positively to local character and history, taking opportunities to enhance heritage assets; improve pedestrian and cycle infrastructure; improve the range and quality of specialist shops and services; provide appropriate social, physical, environmental and transport infrastructure; secure economic benefits for the wider community through job opportunities and recruitment; and seek the creation of public spaces, architecture and public realm of the highest quality. Improving connections of Furnivall Gardens with the area is also sought.
32. Local Plan Strategic Policy HRA1 relates specifically to the Town Hall Extension, adjacent land and Nigel Playfair Avenue – the land comprising the site of the Civic Campus redevelopment less the Town Hall and Nigel Playfair.

This supports the upgrade of the Town Hall Extension and neighbouring land to provide refurbished or replacement council offices with a mix of other uses at street level to a high quality design. Proposals are expected to include replacement council offices and a mix of town centre uses; an active frontage to King Street; opening up the Grade II Town Hall frontage or refurbishing the Extension; provide a cinema and improve links to Furnivall gardens; ensure the building height is generally consistent with the existing height of the townscape with regard to enhancing the setting of the Town Hall and river views.

33. The Civic Campus redevelopment is key to regenerating this part of the town centre and Policy HRA1 supports a comprehensive redevelopment. The proposed development comprises housing, offices, retail at ground floor onto King Street, a new public realm, new civic square, the demolition of the Town Hall Extension and the refurbishment, retention and extension of the Town Hall as a civic space. The realignment and activation of Nigel Playfair West would improve links through the river and Furnivall Gardens, whilst the community was actively engaged in the development process.
34. The quantum of office and retail space is supported given the town centre location being cited as an appropriate location for the creation of Class B1 and A Class floor space.
35. There is therefore extensive planning policy support for the development proposals and planning permission was granted on 22th October 2019.
36. Officers have considered whether the Civic Campus redevelopment could be blocked by any physical or legal impediments to implementation. Officers are of the view that there are no obvious physical or legal impediments to implementation.
37. Cabinet should note that the Joint Venture is contractually committed to ensuring that the Civic Campus redevelopment can be delivered once a number of conditions precedent (in the land sale agreement), including the land appropriation, are satisfied.

38. Public Benefits

- The project will create a distinctive high quality, mixed-use development to include:
- At least 50% affordable housing for local residents;
- Demolishing the existing Town Hall extension to create a new public plaza;
- Staying within the massing and height of the former 2014 scheme;
- Opening up views of the Grade II Listed Town Hall;
- Renovating, refurbishing and extending Town Hall to create space for public and council use;

- A modern new cinema;
- New affordable, flexible office space for business start-ups;
- A new arts quarter alongside new cafes, shops and restaurants;
- Improved green spaces to help link King Street to the riverside, measures to green the environment and minimise the buildings' carbon footprint;
- Inclusive design to ensure excellent disability access

Steps taken to negotiate the release of rights by agreement

39. Before making a decision on the appropriation it is necessary to take reasonable steps to ascertain who may have a property right or interest that may be affected by the development proposals. With this in mind, reasonable enquiries were undertaken including land registry title searches, and in respect of Council-owned properties, checking the Council's leasehold and tenancy details to ascertain those whose rights may be interfered with as a result of the Civic Campus programme.
40. Avison Young's specialist rights of light consultants on behalf of the developer identified parties who may benefit from rights to light that could be infringed by the Civic Campus programme. These affected parties include the following:
 - All west facing units within 1-224 Riverside Gardens only those with long term property interests
 - 150-178A King Street (even numbers), excluding 162-170 King Street (even numbers)
 - 209-217 King Street (odd numbers)
 - 1-6 Cromwell Mansions only those with long term property interests
 - 1-48 Cromwell Mansions only those with long term property interests
 - 19-26 Marryat Court, Cromwell Avenue only those with long term property interests
41. In the week commencing 10th February 2020, letters were sent by the Council to all identified potentially affected parties with long term property interests indicating its intention to appropriate the Civic Campus site to planning purposes and inviting comments.
42. A verbal update on any feedback will be provided at the Cabinet meeting.

43. Avison Young, on behalf of the Council, is in discussion with all parties who have raised concerns over the impact on their properties. It is the view of officers that it is highly unlikely that it will be possible to reach agreement with all affected parties to release all necessary rights within a reasonable time or at all.
44. It is therefore clear that for the Civic Campus redevelopment to proceed within a reasonable timescale that it is necessary to appropriate the land to secure the benefits associated with the proposed scheme. As a result, officers are of the view that unless the land is appropriated for planning purposes in order to engage the override provisions of section 203 of the 2016 Act the redevelopment proposals for the Civic Campus will not go ahead at all or could be substantially delayed.

Could the Public Benefits Be Achieved in the Absence of the Interference with Rights?

45. Officers have considered whether the development could proceed without interfering with the rights identified. Officers are satisfied that the development could not proceed and the associated benefits could not be achieved without giving rise to all or some of the infringements for which section 203 is being engaged. A cut back analysis to the Civic Campus scheme has been undertaken to demonstrate how much of the proposed building would have to be removed in order not to cause any interference with the easement of light enjoyed by the surrounding property owners. This cut back demonstrates that, due to either the proximity of the surrounding properties, or their residential use, the proposed development would be significantly reduced in scale and massing. The resultant scheme would be reduced by c100,000 sq ft in order to remove the rights of light impact on surrounding buildings – a significant reduction in the development. This would then have a consequent impact on scheme viability and deliverability.
46. To conclude, any alternative approach to the development which seeks to avoid interference with the rights would reduce the deliverability or even prevent a development which will bring forward a new Civic Campus and 204 new homes, including 50% affordable homes, the refurbishment, retention and extension of the Town Hall as a civic space, as well as the modern office and retail space, new cinema, and accessibility and public realm improvements.

Human Rights Issues

47. As indicated above, consideration must be given to the interference with rights protected by the Human Rights Act 1998. In this case a decision to override easements and other rights represents an interference with rights protected under Article 1 of the Protocol to the European Convention on Human Rights. (the right to peaceful enjoyment of possessions) and Article 8 of the European Convention on Human Rights (right to respect for private and family life, home and correspondence). Any decision to interfere with such rights must strike a fair balance between the public interest associated

with the development proposals referred to above and the interference with private rights.

48. Given the clear public benefit associated with the development proposals referred to in the body of the report, the fact that there is no feasible alternative means of achieving that public benefit, and a compelling case in the public interest for the use of the powers to override rights and the availability of compensation to those whose rights are overridden calculated on a diminution in value basis, it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate. There is no feasible alternative scheme that would deliver the same benefits as this one.

Conclusion

49. Officers are satisfied that:
- The civic campus site is no longer needed for its current purpose;
 - There is a compelling case in the public interest to appropriate the sites to planning purposes in order to engage the override provisions of section 203 of the 2016 Act and the necessity test is satisfied
 - Any interference with the human rights of those who benefit from the rights to be overridden is justified and the use of section 203 represents a proportionate approach.

OPTIONS AND ANALYSIS OF OPTIONS

50. Appropriation is the only viable option that will enable the redevelopment of The Civic campus.

Reasons for Decision

51. The key reasons for this decision are:
- The civic campus is no longer needed for its current purpose;
 - There will a significant public benefit of the new development (see paragraph 38)
 - The new development will increase the supply of genuinely affordable housing;
 - Providing local economic investment, including job and training opportunities;
 - There is a compelling case in the public interest to appropriate the sites to planning purposes in order to engage the override provisions of section 203 of the 2016 Act and the necessity test is satisfied
 - Any interference with the human rights of those who benefit from the rights to be overridden is justified and the use of section 203 represents a proportionate approach.

Equality Implications

52. In deciding to proceed with the appropriation of land for planning purposes, the Council must pay due regard to its Public-Sector Equality Duty (PSED), as set out in Section 149 of the Equalities Act 2010 (the 2010 Act). The PSED provides that 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;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
53. Consideration must also be given to whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on an protracted group, or to take steps to promote equality of opportunity by, for example, treating an affected group more favourably.
54. Officers have previously taken this into account in the assessment of the planning and are mindful of this duty in making the recommendations in this Report. Generally, it is considered that the impacts of the Development are positive. The proposals comprise measures to ensure that the residential units are accessible and adaptable, with 10% of units having a layout and size specifically enabling use by a wheelchair users. The development as a whole has embraced the principles of accessible and inclusive design with the Town Hall and commercial uses being fully accessible. This is considered to be a significant improvement on the current offer.

Risk Management Implications

55. As part of the Civic Campus Programme, officers have considered the risks associated with the various stages of this programme and sought to put in place appropriate mitigations. Specifically, for this report, officers have sought appropriate external technical advice in respect of matters relating to appropriation, right to light and rights of access. Officers also need to confirm in the report that the financial risks, including potential compensation, will be managed by the Joint Venture and are incorporated in the Joint Venture's financial model.
56. It is recommended that officers continue to review, monitor, and escalate as appropriate until the programme objectives have been delivered and ensure that new risks identified are assigned to risk owners. The implications sections in this report identifies a number of legal and financial risks which will need to be closely monitored and managed and subject to regular reporting to Members.
57. Given the significance, value and complexity of the proposed programme, officers should, as advised in previous reports, set out the officer and member governance arrangements which will provide programme oversight and

assurance and ensure that costs are appropriately controlled, and key actions taken once appropriate consents and approvals have been confirmed.

Implications verified/completed by: David Hughes, Director of Audit, Fraud, Risk and Insurance, tel: 0207 361 2389

Property Implications

58. The Council's site assembly for the Civic Campus development has been previously outlined in previous Cabinet reports and this included setting out the reasons using powers under s203 Housing Act 2016. The Council has employed specialists in rights of light to undertake a strategy and outline next steps.

Implications verified/completed by: Nigel Brown, Head of asset strategy and portfolio management, tel: 07773 281039.

Consultation

59. Any affected properties will be specifically consulted.

List of Appendices:

Appendix 1 – Red line plan of the site