

11 March 2020		ITEM: 16 Decision: 110525
Cabinet		
Purfleet Centre Regeneration		
Wards and communities affected: West Thurrock and South Stifford	Key Decision: Key	
Report of: Councillor Mark Coxshall, Portfolio Holder for Regeneration and Strategic Planning		
Accountable Assistant Director: David Moore, Interim Assistant Director Place		
Accountable Director: Andrew Millard, Corporate Director Place		
This report is Public		

Executive Summary

The purpose of this report is to approve the appropriation of land in 'Phase 1A' of the Purfleet Centre Regeneration Limited masterplan ('Purfleet Centre Project'/the Project'), from its existing use, to planning purposes in accordance with S.122 Local Government Act 1972.

1. Recommendation(s)

It is recommended that Cabinet agrees to:

- 1.1 approve the appropriation of the areas of land referred to in this report and shown edged red and on the plan at Appendix 1a to this report, for planning purposes in order to facilitate the development of 'Phase 1A' of the Purfleet Centre Regeneration Limited masterplan.**
- 1.2 in respect of the areas of land shown edged red on the plans at Appendix 1a to this report:**
 - (i) to note that the consequence of taking the decision in (a) above is to enable easements and other rights to be overridden in accordance with the provisions of section 203 of the Housing and Planning Act 2016; and**
 - (ii) to authorise Officers to take such necessary administrative and accounting steps to give effect to the appropriation.**

2. Introduction and Background

The Purfleet Centre Project (“the Project”) is one of the six Growth Hubs in the Borough, and is a key part of the Council’s regeneration programme. An outline planning application for the Project was granted on 20th December 2019 (planning application reference 17/01668/OUT) which establishes the principle of comprehensive redevelopment of central Purfleet with a residential-led, mixed-use development, including a film, television and media studio complex, a new primary school and new local facilities.

Reserved matters for Phase 1A of the Project were approved by Thurrock Planning Committee on 9th January 2020 (planning application reference number 1/00313/REM).

- 2.1. Cabinet will be aware that the Council has been seeking to acquire the land within the Development Agreement’s redline boundary by private treaty for many years. Significant progress has been made with this task and the Council now owns c. 60% of the required site area.

The land in Phase 1A is approximately 2.36 hectares in size, and is shown edged red on the plan at Appendix 1a. It is bounded by Caspian Way to the north, London Road and existing Botany Terrace to the south, Church Hollow to the west and car park and open storage to the east. The land also encompasses a woodland area known as Hollow Woods, which extends to 1.5 hectares.

- 2.2. With regards to Hollow Woods, it is proposed to appropriate 0.9 hectares of this area to planning purposes, to permit the construction of new family housing and a new road running east to west across the site. The remaining 0.6 hectares of Hollow Woods will be retained and enhanced as publicly accessible open space. This will enable the provision of significantly improved amenity green space in an area where there is currently little to no formal access, thereby increasing usage by local residents.
- 2.3. PCRL, under a licence from the Council, intend to remediate the land held within Phase 1A in preparation for development to progress. The site preparation work is intended to commence in spring 2020 with the first tranche of 61 homes due to commence construction by summer 2020.

3. Issues, Options and Analysis of Options

Use of Powers

- 3.1. This report seeks approval to appropriate the Council owned land to planning purposes to facilitate the Phase 1A development. This is necessary because the Council’s land within Phase 1A is subject to third party rights which (if enforced) could stop the Phase 1A development from proceeding.

- 3.2. At Appendix 6 to this report is a schedule, which describes the land that is proposed to be appropriated including its nature, current use, ownership position and third party rights that have been identified. It can be seen from the schedule that the Council's existing freehold land ownership is subject to a variety of third party rights such as rights of way, rights to lay and maintain services and rights of access (including for vehicles).
- 3.3. Where land is held by a local authority for planning purposes, it is possible to rely on section 203 of the Housing and Planning Act 2016 to carry out development, even if that means that doing so will breach third party rights. Those rights can be overridden and the person with the benefit of them will not be able to seek an injunction to stop the development. Instead, compensation may become payable to those whose rights are overridden.
- 3.4. The Council does not currently hold the land within Phase 1A for planning purposes, so as to be able to rely on the powers to override third party rights. It is therefore necessary for the Council to first appropriate its land to planning purposes in accordance with Section 122 of the Local Government Act 1972.
- 3.5. To appropriate the land to planning purposes, the Council must consider whether the land is no longer needed for the purposes for which it is currently held. As the purpose of the appropriation is to engage the provisions of section 203 of the Housing and Planning Act 2016, the Council should not resolve to appropriate unless it has good reason to think that the interference with the private rights affected is necessary and proportionate to enable the Phase 1A development to be carried out.
- 3.6. Furthermore, before appropriating the land to planning purposes to enable section 203 to take effect, the Council will also need to be satisfied that it could have compulsorily acquired the land. This means that the Council must be satisfied that the appropriation of the land would facilitate the carrying out of development, redevelopment or improvement of the land which would be likely to contribute to the promotion or improvement of the economic, social and/or environmental well-being of its area. It is also necessary to consider whether those objectives could have been achieved by other means, such as by securing the release of the third party rights by agreement.
- 3.7. Officers have carried out a series of necessary tests, including the following:-
 - Checked ownership and current use of the land
 - Carried out a two day survey of Hollow Woods, which showed that no members of the public accessed the land or attempted to use the land for enjoyment or recreational purposes
 - Placed notices advising about the intended appropriation in local newspapers (no objections were received)
 - Wrote to identified beneficiaries of title (where beneficiaries were known), but no responses were received
 - Checked that the appropriation of the land will deliver important economic, social and environmental benefits

- Considered whether the development could proceed without interfering in the rights identified.

3.8. These tests have been considered and are detailed in Appendix 7, attached to this report. It is the view of officers that these tests have been met.

4. Reasons for Recommendation

4.1. Taking all the above into account, it is recommended that the Council determines that the land in question is no longer required for the purposes for which it is being held at present and confirm the appropriation of the land for planning purposes. The appropriation is necessary in order to facilitate the delivery of Phase 1A of the Purfleet development, which is a long-standing objective of the Council. There is a clear need and justification for proceeding with the appropriation as soon as practicable, and the potential interference with third party rights is considered to be proportionate and justified in the circumstances.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1. As required under section 203 of the Housing and Planning Act, notices were placed in two consecutive editions of the Thurrock Gazette on 2nd January 2020 and 9th January 2020. No objections to the proposed appropriation have been received.

5.2. Known beneficiaries have been written to and again no objections to the proposed appropriation have been received.

6. Impact on corporate policies, priorities, performance and community impact

6.1. As set out above, the Project is referenced in the Council's Economic Development and Regeneration Strategies and the Local Development Framework. In particular, the Project fulfils the requirements of Policy CSTP5 (Neighbourhood Renewal) which identifies Purfleet as a priority regeneration area.

6.2. The Project is also in accordance with the principles set out in the NPPF and the NPPG, and complies with the spatial objectives of the Council's Core Strategy which promote Purfleet as a centre for regeneration. The Project also broadly complies with a number of adopted Core Strategy Spatial and Thematic policies set out in the Council's Core Strategy and Local Plan.

6.3. The proposals under consideration will make a significant contribution to achieving the Council's vision for Purfleet and will be of great benefit to new and existing residents.

7. Implications

7.1. Financial

Implications verified by: **Rosie Hurst**
Senior Financial Accountant

There are no financial implications directly arising as a result of these proposals, though it is of note to consider that the engagement of section 203 of the 1990 Act will translate third party interests to compensation. Should compensation requests arise it is thought at this stage that this could be covered under the existing land assembly budgets allocated to the project.

7.2. Legal

Implications verified by: **Tim Hallam**
Acting Assistant Director Law & Governance, Head of Legal, & Monitoring Officer

The benefit of section 203 of the Housing and Planning Act 2016 is that third party interests in land are overridden and converted to a right to claim compensation where land is either acquired or appropriated for planning purposes. In practice, this 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.

Section 122 of the Local Government Act 1972 enables the Council to appropriate land for any statutory purpose for which it is authorised to acquire the land, provided that the Council is satisfied that the land is no longer needed for its current purpose.

In addition under section 122(2A) of the Local Government Act 1972, the Council may not appropriate any land comprised in open space without first advertising its intention to do so, and considering any objections received. As referenced in the body of the report, notices of the Council's intention to appropriate the land were published in the Thurrock Gazette on 2nd January 2020 and 9th January 2020. The consultation period concluded on 24th January 2020 and no representations were received.

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.

Section 226 empowers a local authority, on being authorised to do so by the Secretary of State, to acquire compulsorily land in 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)).

The power conferred by section 226(1)(a) is the most appropriate for the planning purposes to be realised at the Phase 1A development. Section 226(1A) of the TCPA 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

As set out above, Officers consider that the land within the area shown on the plan at Appendix 1a / 1b is no longer required for the purpose for which it is currently held, because it is required instead to meet important planning purposes, namely, to facilitate its development and use, in conjunction with other land, as part of the comprehensive redevelopment of Phase 1A of the Project, which in turn will deliver economic, social and environmental benefits to the Purfleet area.

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.

Given the clear and substantial public benefits associated with the development proposals referred to in the body of the report, the fact that there is no feasible alternative means of achieving those public benefits, 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, it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate.

The Council's internal legal team has reviewed the content of this report and is in agreement that the powers described have been used appropriately and that due process has been followed.

7.3. Diversity and Equality

Implications verified by:

Natalie Smith

**Strategic Lead, Community Development
and Equalities**

The Development Proposals for this phase of the Project support long-term achievement of the Council's equality objectives and specifically those associated with resident's access to services in addition to supporting community integration and cohesion. Through construction to delivery, employment opportunities will be introduced along with the provision of new community facilities and a diverse mixture of housing types in Purfleet.

The appropriation outlined in this paper is supported by a statutory process that is compliant with all relevant equality legislation including the Equality Act 2010.

As noted in previous Cabinet papers concerning the proposed development, the supporting regeneration scheme will be informed by all relevant equality legislation with community equality impact assessments being undertaken in consultation with local residents and communities to inform and develop projects and phasing of the same.

The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups

The broad purpose of this duty is to integrate considerations of equality into day business and keep them under review in decision making, the design of policies and the delivery of services.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Outline planning application (ref 17/01668/OUT)
<https://regs.thurrock.gov.uk/online-applications/>
- Reserved matters approval (ref 18/00313/REM)
<https://regs.thurrock.gov.uk/online-applications/>
- Cabinet report dated 14th March 2018 – Purfleet Centre Update
<https://democracy.thurrock.gov.uk/mgAi.aspx?ID=7313>

9. Appendices to the report

- Appendix 1a / 1b: Appropriations Plans
- Appendix 2: Phase 1A Reserved Matters Outline
- Appendix 3: Phase 1A Build Plan Dwelling Mix
- Appendix 4: Hollow Woods Survey
- Appendix 5a / 5b: Copy Letters / Belway and Fabrevan
- Appendix 6: Appropriations Schedule
- Appendix 7: Detailed Legal Tests

Report Author:

David Moore

Interim Assistant Director

Place Delivery