

17 June 2020		ITEM: 10 Decision: 110512
Cabinet		
Grays South Regeneration Area: Appropriations		
Wards and communities affected: Grays Riverside	Key Decision: Key	
Report of: Councillor Mark Coxshall, Portfolio Holder for Regeneration and Strategic Planning		
Accountable Assistant Director: David Moore, Interim Assistant Director of Place Delivery		
Accountable Director: Andy Millard, Director of Place		
This report is Public		

Executive Summary

The Grays South Regeneration area comprises a range of interventions that will support the economic and social vitality of Grays. In December 2018, Cabinet agreed proposals for an extension to Civic Offices providing space for Council functions as well as other ancillary and associated uses. This scheme forms the first phase of the Grays South Regeneration Area. In September 2019 planning permission was granted and the project has now moved into delivery.

The Council own all the land required for the scheme, however, the land known as Mulberry Square now needs to be appropriated to planning purposes from its existing use as informal open space to enable delivery to commence.

This report outlines the purpose of appropriation and describes the public consultation undertaken and the legal considerations that have been assessed in order to determine that the appropriation is proportionate and justified.

The report concludes that the process undertaken satisfactorily addresses these considerations and therefore seeks approval for the appropriation of the site to facilitate the redevelopment of the land and to address any residual rights over it.

1. Recommendation(s)

1.1. That Cabinet resolves to:

- a. approve the appropriation of the area of land referred to in this report and shown edged red on the plan at Appendix 2, for

planning purposes to facilitate the redevelopment of land to extend the Civic Offices.

- b. in respect of the area of land shown edged red on the plan at Appendix 2 to this report:**
- (i) to note that it is necessary to use Section 203 of the Housing and Planning Act 2016 to facilitate the development and improvement of the land as part of the planning permission in order for any and all private rights and restrictions that affect the land to be overridden.**
 - (ii) to note that no objections were received as a result of the public consultation exercise.**
 - (iii) to authorise Officers to take such necessary administrative and accounting steps to give effect to the appropriation (including settling claims for compensation arising out of the extinguishment of any rights in the appropriated land pursuant to Section 203 of the Housing and Planning Act 2016).**

2. Introduction and Background

- 2.1 In December 2018, Cabinet approved a scheme for an extension of the Civic Offices in Grays and authorised Council officers to submit a planning application for the extension. In September 2019, the Council's Planning Committee resolved to grant planning permission for the Civic Office scheme under the Council's planning reference 19/00617/FUL.
- 2.2 The Site of the scheme is shown on the plan at Appendix 1. The Council has acquired 1-3 New Road, 81 and 83 High Street to enable delivery of the scheme. Mulberry Square is held by the Council as informal open space and needs to be appropriated from its current use as informal open space to planning purposes to enable the delivery of the scheme (as shown on the plan at Appendix 2). The demolition of buildings immediately outside the area of Mulberry Square has already started and construction of the new extension is expected to be completed in Spring 2022.
- 2.3 The Grays Town Centre Framework Refresh (approved in November 2017) provides a regeneration framework that highlights the role of Grays town centre as the main town centre serving the Borough and as the centre for the Borough's civic and administrative services. The Civic Office extension is the first phase of the Grays South Regeneration Area (GSRA) programme, and subsequent phases will include an underpass to replace the level crossing in High Street, new public realm and developments for new residential, leisure and retail units in Grays town centre.

Description of the site for redevelopment

- 2.4 The site to be developed is shown outlined red on the plan that accompanied the planning application (in Appendix 1). Part of the site shown on the plan in Appendix 2 is an informal area of open space owned by Thurrock Council and known as Mulberry Square; it covers an area of c.1,800 sq.m and was created following the demolition of buildings in the early 1990s. The area has not been designated formally as public open space although it has been laid out as a park and has been used informally as such since the early 1990s. This part of the site now needs to be appropriated from an informal open space to planning purposes for the purpose of delivering the scheme.
- 2.5 The rest of the site required for the scheme was a terraced block of two storey, commercial units with postal addresses of 81 and 83 High Street and 1 to 3 New Road. These have been acquired by the Council to enable the scheme, following negotiation and agreement with the previous owners. The buildings on this part of the site have now been demolished.

Proposals for Development

- 2.6 The scheme comprises the current Civic Offices (CO) 2 building, which was built in the early 1990s, and land to the west, including informal open space known as Mulberry Square and properties at 81-83 High Street and 1-3 New Road.
- 2.7 The development will be a three-storey building, facing High Street and New Road, to provide Council Services, including customer services with an enhanced self-service offering and purpose-built confidential meetings rooms, and a public cafe. Members' accommodation, Council Chamber, committee rooms and the Registry Office would be relocated into the new building from other locations.

3. Issues, Options and Analysis of Options

Use of Powers

- 3.1 The Council has already acquired 1-3 New Road and 81 and 83 High Street to enable the delivery of the scheme. Mulberry Square has been held as informal open space and this report seeks approval for its appropriation from that use to enable delivery of the scheme. The statutory powers for this purpose are discussed in detail later in this report. In summary, the Council needs to show that appropriation is necessary and required for the redevelopment.
- 3.2 Appropriation enables easements and other third-party rights to be addressed and overridden. Appropriation translates any rights which might exist into an entitlement for compensation.

Legal Provisions and considerations

- 3.3 The Council is authorised by Section 122 of the Local Government Act (“the Act”) to appropriate land within its ownership for any purpose if the land is no longer required for the purpose for which it was held immediately prior to its appropriation. The appropriation of the Council-owned land known as Mulberry Square for planning purposes is to enable the use of the land for the redevelopment scheme. The Act requires that the intention to appropriate the open space is advertised for a period of at least two weeks in a local newspaper, and that any objections received are considered before proceeding with the appropriation.
- 3.4 To enable the appropriation of land, it is necessary to demonstrate that there is a public interest case to use the powers and that the use of the powers is proportionate and justified. Where land has been appropriated for planning purposes, the consequence (under Section 203 of the Housing and Planning Act 2016) (“HPA 2016”) is that the erection, or carrying out of other works in accordance with a relevant planning consent is authorised notwithstanding that it may involve interference with third party rights.
- 3.5 In this case, there are a number of rights that either may exist or may be inferred. These are described in detail in Appendix 3 and include rights of access to and across the land, Rights to Light, and easements. Under Section 204 of the HPA 2016 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 HPA 2016. Most rights across the land passed to the Council when it acquired 1-3 New Road, and 81 and 83 High Street, however, some residual rights remain where the beneficiary is not specified. The Rights to Light Report submitted with the planning application indicated that there may be residual rights to light for some properties.
- 3.6 Best Practice in cases where Rights to Light may be affected suggests six ‘considerations’ that apply;
1. Whether the use of Statutory Powers is necessary
 2. Whether the use of Statutory Powers will facilitate the carrying out of the development and that the land would have been compulsorily purchased had that been necessary.
 3. Whether the development will contribute to the promotion and improvement of the economic, social, or environmental well-being of the area.
 4. Whether the benefits of the development could not be achieved without giving rise to the infringements of the identified rights
 5. Is it in the public interest that the development is carried out?
 6. Is the public interest to be achieved proportionate to the private rights being infringed?
- 3.7 An assessment of the appropriation of the land against these legal considerations is contained in Appendix 6 to this report. This assessment provides the basis for the conclusions and recommendations contained in this report.

3.8 The following paragraph contains comments taken from the detailed responses in Appendix 6, in answer to the six considerations set out above, suggesting that the considerations are met:-

1. *Whether the use of Statutory Powers is necessary*

“The appropriation of the land for the planning purposes of delivering the scheme is necessary to enable the scheme to progress.”

“Compensation would have to be negotiated with those who can prove the benefit of these rights but the Council is taking steps to ensure that it does not carry the risk of the scheme being stopped or changed with any ongoing costs and delays associated with legal challenges.”

2. *Whether the use of Statutory Powers will facilitate the carrying out of the development*

“The land would have been included in a Compulsory Purchase of all land required to deliver the scheme, but such action is no longer required because all the land not previously owned by the Council has been acquired by private agreement and is now owned by the Council.”

3. *Whether the development will contribute to the promotion and improvement of the economic, social, or environmental well-being of the area.*

“The development maintains and enhances the Council’s civic presence in Grays town centre. The extension is the first phase of the transformative redevelopment of the town centre which will bring further and significant planned benefits for the town centre economy”.

4. *Whether the benefits of the development could not be achieved without giving rise to the infringements of the identified rights*

“The Council’s Planning Committee have balanced the impact of the scheme and its benefits and found it to be a positive benefit in planning terms. These processes have established that the scheme is the best way in which the benefits can be realised”.

5. *Is it in the public interest that the development is carried out?*

“In conclusion, the appropriation of this land for planning purposes is wholly necessary, to enable the redevelopment scheme to progress and to offer all its important benefits for the public.”

6. *Is the public interest to be achieved proportionate to the private rights being infringed?*

“It is therefore clear that the public interest in this case outweighs any potential impact on private rights and the use of Section 203 is proportionate”.

4. Reasons for Recommendation

4.1 Taking all the above into account, it is recommended that the Council confirm the appropriation of the land for planning purposes. The appropriation is necessary in order to facilitate the delivery of the proposed scheme, which is a

priority 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 The scheme has been the subject of previous reports to Overview and Scrutiny Committee and to Cabinet throughout the development of the design.
- 5.2 As required under Section 122 of the Local Government Act, notices were placed in two consecutive editions of the Thurrock Gazette (on 23 and 30 April 2020) and in the public notices section of the Council's website on 23 April 2020 (see Appendix 4). The consultation period ended at 5 pm on the 14 May 2020.
- 5.3 The Council received one response to the public consultation by the deadline for the end of the period of consultation, and the response is detailed in Appendix 5. The response was a request from a property company to provide a map for the area to be appropriated. This was provided and no further correspondence was received.

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

- 6.1 The development supports the Council's Local Plan and Town Centre Framework which identify Grays as a Growth Hub where development and regeneration activity will be concentrated. These policy documents identify the role of Grays as the Civic heart of the Borough as a key element for growth and for sustaining the role of the town centre as the principle town centre serving the whole Borough.

7. Implications

7.1 Financial

Implications verified by: **Rosie Hurst**
Interim Senior Management Accountant

In December 2018, Cabinet reviewed the costs of the project and approved the funding required, based on the cost work that has supported design. Compensations have been included in the budgets for land acquisition if required. Insurance is in place to address any costs arising from challenge.

7.2 Legal

Implications verified by: **Tim Hallam**
Deputy Head of Law and Deputy Monitoring Officer

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 23rd and 20th April 2020. The consultation period concluded 14th May and one representation was received.

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.

An appropriation is the equivalent of compulsory purchase for "planning purposes" 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 have been 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 and 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/or
- 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 2 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, to deliver the scheme approved under Planning permission reference 19/00617/FUL which in turn will deliver economic, and social for the area.

Human Rights

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 and the appendices, 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.

7.3 **Diversity and Equality**

Implications verified by: **Becky Lee**

Team Manager - Community Development and Equalities

The Council has a duty under S.149 of the Equality Act 2010 to ensure that the equalities impact of the scheme is properly defined and addressed. Consultation to date has included the council's in-house networks and the Corporate Workforce Group. However, all new build and interior design will meet or exceed current access and use standards. Diversity and Equalities issues will need to be addressed through a Community & Equality Impact Assessment informed and developed by appropriate stakeholder engagement during the design stages.

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.

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None

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):

- Grays Town Centre Framework
- Previous Cabinet reports

9. **Appendices to the report**

1. Site Plan; Planning application site plan
2. Site Plan: Land to be appropriated
3. Press notice and Council's website notice
4. Description of Rights across the land
5. Summary and review of responses received.
6. Assessment of considerations

Report Author:

David Moore

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