

WATERSIDE NORTH PHASE 1 – APPROPRIATION OF LAND FROM CAR PARK TO PLANNING PURPOSES

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1 Purpose

- 1.1 Cabinet is asked to consider the appropriation of the land at Waterside North Phase 1 from its existing car parking use to use for town planning purposes to enable phase 1 of the Waterside North mixed-use scheme to proceed.
- 1.2 The purpose of the appropriation, which is made pursuant to Section 122 Local Government Act 1972, is to engage Section 237 Town and Country Planning Act 1990, which converts any third party rights, which might otherwise inhibit redevelopment, into a right to compensation which the Council would then required to meet. A plan of the land to be appropriated is attached to this report as Appendix A and marked in red (“the Land”).
- 1.3 The report also highlights the outcome of an independently commissioned Rights Of Light survey and how any claims should be dealt with.

2 Recommendations for decision

- 2.1 That pursuant to Section 122 Local Government Act 1972 (as amended), Cabinet authorises with immediate effect, the appropriation of the land shown edged red on the attached Appendix from its existing use as a temporary car park and purposes associated therewith to use for town planning purposes to facilitate its redevelopment to provide a mixed-use scheme of up to five new café/restaurant units on the ground floor, with apartment accommodation on three levels above and improvements to the public realm in accordance with an Outline Planning Permission granted February 2015 under reference 14/1794/AOP or any other planning permission varying or replacing the same.
- 2.2 That Cabinet notes the position with regard to Right of Lights survey set out in the confidential part of the report.

3 Supporting information

- 3.1 Following a successful public consultation of in summer 2014, outline planning permission was granted (ref:14/01794/AOP) for the redevelopment of land within its ownership at Exchange Street car park to provide a mixed use scheme of up to five new café/restaurant units on the ground floor, with apartment accommodation on three levels above and a new public square.
- 3.2 Following a tender exercise to find a development partner for the delivery of Phase 1 of the Waterside North Scheme, and at its meeting on 2 December 2015, full Council approved the recommendation of Cabinet to appoint Durkan as its development partner to build out the scheme and to take a 150 year ground lease of the residential element on completion of the redevelopment.

- 3.3 The land, which currently remains within the Council's ownership, is being taken out of its existing use as a temporary car park and its proposed redevelopment will promote and improve the economic, social and environmental well being of Aylesbury town centre.
- 3.4 However, there are third party rights affecting the land which, if the land is not appropriated for planning purposes, might otherwise inhibit the carrying out of the proposed redevelopment. A detailed examination of the Council's titles has been carried out to identify third party rights so far as these are documented. A physical examination has also been carried out to identify any subsisting third party rights which may not have been documented. A Rights of Light Survey has also been carried out, details of which are set out in the confidential part of the report.
- 3.5 Notwithstanding the appropriation, officers will continue to take all possible steps to identify all third party rights affected by the appropriation and seek negotiated solutions which, so far as is reasonably possible, will minimise any detriment to the enjoyment of any affected properties.

Legal Issues

- 4.1 Section 122 Local Government Act 1972 enables a principal council to appropriate for any other authorised purpose any land which belongs to the Council and is no longer required for the purpose for which it was previously held.
- 4.2 Section 237 Town and Country Planning Act 1990 (as amended) (Power to override easements and other rights), states that the carrying out of building work or use of land which has been acquired or appropriated by a local authority for planning purposes, is authorised if it is done in accordance with a planning permission notwithstanding that it involves interference with any third party right (other than rights belonging to public utilities)
- 4.3 Because the unilateral extinguishment of third party rights engages the First Protocol of the Human Rights Convention (no-one shall be deprived of his possession except in the public interest), and Article 8 to the Convention (the right to respect for private and family life, home and correspondence), Cabinet is required by the Human Rights Act 1998 to have appropriate regard to those implications in any decision to appropriate. In this case it is not considered that the extinguishment of these third party rights will affect anyone's enjoyment of their home and that any extinguishment of other third party rights can be adequately compensated in financial terms.

Financial Implications

- 5.1 Engagement of Section 237 Town and Planning Act 1990 following appropriation of the Land to planning under Section 122 Local Government Act 1972, involves the Council in potential liability to financially compensate any third party suffering actual loss as a result of the extinguishment of their rights. Such compensation will be assessed by the Upper Tribunal Lands Chamber if not agreed.

Resource implications

5.2 There are no known resource implications arising from the appropriation.

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Background Documents	Rights of Light Assessment dated 19 January 2016, prepared by Rights of Light Consulting Chartered Surveyors Report to Council 2 December 2015