

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL
EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE
CABINET

Date : 8th June 2016

Report Title: **Appropriation of property for Planning Purposes:
Development sites at:-
(i) the former St Giles & St Georges school, Barracks Road and;
(ii) land at Ryecroft, including the former Sainsbury's and the
current Civic Offices.**

Submitted by: **Executive Director Regeneration & Development**

Portfolio: **Planning and Assets**

Ward(s) affected: **Town**

Purpose of the Report

To ensure that these development sites, which were declared as surplus (Council 23/09/2015) are held for planning purposes under S.237 of the Town and Country Planning Act 1990 (as amended).

Recommendation

That Cabinet authorises all property within the red line boundaries on plan 1 and plan 2 be appropriated, in accordance with section 122 of the Local Government Act 1972 (as amended), from use for commercial purposes to use for planning purposes under S.237 of the Town and Country Planning Act 1990 (as amended).

Reasons

The effect of the appropriation(s) will be to make any third party interests that might exist, subject to compensation only and prevent any injunction being sought that could delay the redevelopments from proceeding.

1. Background

- 1.1 At its meeting 23rd September 2015 Council authorised that these two sites (identified edged red on plans no.s 1 & 2 herewith) be released for redevelopment; in the case of the former St Giles & St Georges School, for the purpose of constructing a new partnership hub and in the case of the Ryecroft site, a mixed use retail-led redevelopment.
- 1.2 The acquiring organisations' solicitors have since asked for confirmation that the properties are held for planning purposes, owing to them having both concerns that there may possibly be third party interest(s) in the land which, if exercised, could potentially give the third party an opportunity to seek an injunction to preserve a right, (e.g. an easement) the consequence of which would be to delay or prevent development.

1.3 It is usual for local authorities to allocate (i.e. 'hold') property for specific purposes under different statutory powers and the appropriation of property (land and buildings) refers to the process whereby a council alters the purpose for which it is held.

2. **Issues**

2.1 If any third party were able to establish that it had a right over property, e.g. an easement, then the consequence of this could be delay, or to even prevent development proceeding.

2.2 Your officers are advised that the possibility of delay and uncertainty over the existence of third party interests being claimed can be resolved if the land is appropriated (using powers under S122 of the Local Government Act 1972 (as amended)) from use for commercial purposes to use for planning purposes, in particular those purposes set out under S.237 of the Town and Country Planning Act (TCPA) 1990 (as amended). Any third party beneficiaries of such rights may claim compensation (equal to the loss in value of their property caused by losing the right) but would be unable to seek an injunction to delay or terminate the development.

2.3 Cabinet is advised that Section 122 of the Local Government Act 1972 (as amended) provides that a council may appropriate land from one purpose (in this case, commercial) to another (planning) if the land is no longer required for the purpose for which it is held.

2.4 Provided that the land is validly appropriated for planning purposes, then under section 237 of the TCPA 1990 (power to override easements and other rights) the erection, construction or carrying out or maintenance of any building or work on the land is authorised if it is done in accordance with planning permission, despite the fact that it may interfere with certain private rights such as restrictive covenants and easements.

2.5 Appropriations of land are an executive function under the Local Government Act 2000 and so any decision to appropriate land has to be taken by the Cabinet (in the case of this Council).

2.6 If, having appropriated the land for planning purposes, the council transfers that land to another party (i.e. as in the case of the new Hub development), that other party will benefit from being able to override third party rights that may arise during construction work. This is important because it gives them certainty that the work will not be stopped as a result of a third party seeking an injunction from the court. Such an injunction could delay the construction project and give rise to considerable additional financial costs.

2.7 Prior to developing land it is prudent to make enquiries of what rights might exist over it. This involves inspecting the land to see if there are any obvious rights and checking land ownership information. However, some rights may not be apparent from inspection and historic rights may not always be recorded at the Land Registry or Land Charges Registry.

2.8 The council has no record of any third party rights affecting the property and has not, to this date, been made aware that any party might have acquired any rights over the property although this possibility cannot be ruled out. The application of Section 237 of TCPA 1990 (as amended) therefore mitigates the risk of there being unknown interests.

2.9 Appropriation of the property will ensure that any scheme for which planning permission has been granted will not be prevented from proceeding.

3. **Options Considered**

- 3.1 To appropriate the property(s) to S.237 TCPA 1990 (as amended) will convert any private rights claimed by a third party into a claim for compensation.
- 3.2 If the property(s) is not appropriated to S.237 TCPA 1990 then if a third party were to make and substantiate a claim for rights over the property, it could have potentially serious and detrimental consequences for its redevelopment, causing either delay or even preventing it from taking place.

4. **Proposal and Reasons for Preferred Solution**

- 4.1 Appropriation for planning purposes will facilitate the carrying out of development that is likely to contribute to the economic, social and environmental wellbeing of the area.

5. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 5.1 The potential development of these two sites for the purposes described would contribute positively to the corporate priority of "Borough of opportunity".

6. **Legal and Statutory Implications**

- 6.1 There are no legal or statutory implications arising directly from this report.

7. **Equality Impact Assessment**

- 7.1 It is considered that this report does not raise issues which require an Equality Impact Assessment.

8. **Financial and Resource Implications**

- 8.1 If a third party were to prove it had an interest in the property, then the Council is liable to compensate for its loss.

9. **Major Risks**

- 9.1 Costs and reputational damage of delay or even prevention of development(s) proceeding if a third party right were substantiated.

10. **Key Decision Information**

- 10.1 The content of this report is not considered as such.

11. **Appendices**

- 11.1 Appendix A – plans showing the subject sites.

12. **Background papers**

- 12.1 Report to Council entitled 'Proposed Newcastle-under-Lyme Public Sector Hub dated 23 September 2015.
- 12.2 Report to LPA Committee entitled Former St Giles and St Georges Primary School, Barracks Road dated 05 January 2016.