



REPORT OF:	HEAD OF PROPERTY
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TO:	EXECUTIVE
DATE:	18 May 2017
EXECUTIVE MEMBER:	COUNCILLOR NATALIE BRAMHALL

KEY DECISION REQUIRED:	YES
WARD (S) AFFECTED:	REDHILL EAST AND REDHILL WEST

SUBJECT:	APPROPRIATION OF LAND AT MARKETFIELD WAY TO ENABLE DEVELOPMENT AND REGENERATION
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RECOMMENDATION:

That the Executive resolves with immediate effect to appropriate land at the site known as Marketfield Way and held by the Borough Council for income purposes and as a Public Car Park to Planning Purposes (mixed use retail, cinema and residential development), under Section 122 of the Local Government Act 1972, in connection with the proposed development and regeneration of Redhill. The land is shown for identification purposes only edged red on the plan attached (**Annex 1**) to this report.

REASONS FOR RECOMMENDATIONS:

Redhill is one of the principal regeneration areas in the Borough. The delivery of the Marketfield Way site is a catalyst for regeneration. The site comprises a public car park and mixed use buildings with office and retail accommodation.

The site that is the subject of this report is in the freehold ownership of Reigate & Banstead Council. It has potential for development and is considered to be the most suitable opportunity in the town for the delivery of a mixed use retail and leisure scheme, which would help to meet identified growth needs and contribute positively to the regeneration of the town.

Appropriation under S122 of the LGA 1972 has the added benefit of engaging the provisions of S203 of the Housing and Planning Act 2016, which overrides third party interests in land and converts them to a compensatable sum. This is only engaged if the development carried out is in accordance with the planning permission for which the appropriation or acquisition for planning purposes specifically relates. If land is sold for development purposes, the buyer may also take advantage of S203 so long as the land is developed and used in accordance with a specific planning permission.

EXECUTIVE SUMMARY:

Redhill town centre is the borough's main town centre and one of the principal regeneration areas identified in the Council's Core Strategy.

The Marketfield Way site, which is located within the regeneration area, is considered to be the most suitable site in the town for provision of a mixed use development which helps to meet the identified needs for new retail and leisure provision whilst also contributing to the housing target set out in the Core Strategy.

The land is, at present, mixed use retail and offices with a public car park to the rear. The regeneration benefits to be gained from the provision of a cinema, mixed use retail and housing on the land, are considered to be of greater value to the local residents than the retention of the existing purpose. To put it another way, the benefits provided by the redevelopment scheme are considered to outweigh the desirability of retaining the land for the purpose for which it is currently held.

The land is currently held by the Council for investment purposes and a car park, which is inconsistent with its designation and proposed use. Furthermore, the land must be appropriated for planning purposes before it can be sold or developed.

It is considered that the requirements to justify appropriation have been met and it is recommended the Executive confirms that the land in question is no longer required for the purposes for which it is being held at present and resolves to appropriate the land for planning purposes as set out in S122 of the Local Government Act 1972 relating directly to the proposed regeneration scheme of Redhill and any planning permission related to this specific development scheme.

The Executive has authority to make the above recommendation.

STATUTORY POWERS

1. Section 122 of the Local Government Act 1972 confers powers on local authorities that have acquired land for any statutory purpose and are holding that land for the purposes for which it was acquired, and for which it is no longer required, to appropriate that land for planning purposes.
2. Appropriation of land is an Executive function under Section 9D of the Local Government Act 2000.

POLICY FRAMEWORK

3. Redhill town centre is the borough's main town centre and one of the principal regeneration areas identified in the Council's Core Strategy.
4. To support Redhill's regeneration and enhance its position as a shopping and leisure destination, the Core Strategy seeks to focus large scale retail and leisure development in the town centre. The need for additional leisure, food and beverage outlets and larger shop units in order to grow market share and develop the evening economy is particularly highlighted within the Council's evidence.
5. The Marketfield Way site occupies a prominent location within the designated primary shopping area of the town. It is considered to be the most suitable

opportunity to deliver these needs within the boundary of the town centre, having previously been identified through the draft Redhill Area Action Plan.

6. Development of a cinema and a range of A1, A2 and A3 retail space will contribute directly to growth and regeneration objectives in the Core Strategy. Provision of a significant housing element on the site reflects the Council's policy of promoting the use of previously under developed land and will make a positive contribution to meeting housing needs.

LEGAL IMPLICATIONS & POWERS OF APPROPRIATION

7. The Council acquired different parts of the land at different times. The detailed schedule of land holdings, identifying the current purposes for which the land is held, is discussed within the exempt report at item 11 on this agenda.
8. The benefit of S203 of the Housing and Planning Act 2016 is that third party interests in land are overridden and converted to a compensatable sum where land is either acquired or appropriated for planning purposes. As such, table 2 of the schedule of land holdings identifies those plots of land which were acquired for planning purposes and, therefore, do not need to be appropriated.
9. The Council has the power to acquire and hold property for various statutory purposes to perform its functions. In order to use land for a purpose other than the one for which it was acquired the land must be "appropriated" for a different purpose. Appropriation is a statutory process which allows the Council to reallocate property within its ownership from one purpose to another.
10. It is entirely within the Council's discretion to decide that a certain parcel of land or a certain property that has been acquired or held for one purpose should now be used or appropriated for another purpose. The Council is the sole judge of whether or not the land is still required for the purpose for which it is held and its decision cannot be challenged, other than by way of judicial review if the decision is made outside of the Council's powers or the relevant procedural requirements have not been complied with.
11. 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 land. The Council must first determine that the land is no longer needed for the purpose for which it is held immediately prior to the appropriation and then appropriate it for another purpose, in this case planning purposes.
12. Appropriation of the land under S122 of the LGA 1972 requires the Council to consider the following factors:
 - (i) that the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land or is required for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated;
 - (ii) such development will contribute to the promotion of the economic, social and/or environmental well-being of the area;

- (iii) the provisions of the development plan, whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the land;
 - (iv) that the land is no longer required for the purpose for which it is held immediately prior to the proposed appropriation.
13. These conditions are all considered to have been met. Factors (i) to (iii) are justified by the objectives and policies of the Core Strategy, the previous identification of the site in the draft Redhill Area Action Plan and, more generally, the contribution which the proposed development on the site will make to the regeneration of the town centre. Factor (iv) is met by the need for provision of high quality mixed use development on the site. These improvements in the area are considered to be of greater value to the local residents than the desirability of retaining the land for the purposes for which it is currently held. It should be noted by the Executive that the statutory purposes for which the land is held and the physical use to which the land is put are not one and the same. It matters not that the physical use of the land may be the same prior to and after appropriation.

OPTIONS

14. There are two options open to the Council:
- (a) Not to appropriate the land under S122 of the LGA 1972. If the Council considers that the land is still required for the statutory purpose(s) for which it is being held at present then, the statutory test in section 122 of the Local Government Act 1972 would not be met. This option is not recommended as appropriation for planning purposes will enable the delivery of the regeneration of the land in accordance with the planning application due to come forward and will have the added benefit of engaging S203 of the 1990 Act.
 - (b) To decide that the land in question is no longer required for the statutory purpose(s) for which it is being held at present and confirm the appropriation of the land for development planning purposes. It is considered that this will facilitate development of the site and further the regeneration of Redhill town centre, which is a key corporate and planning policy objective. This is the recommended option.

FINANCIAL IMPLICATIONS

15. There are no financial implications directly arising as a result of these proposals, though it is of note to consider that the engagement of S203 of the 1990 Act will translate third party interests to compensation. The benefit of S203 can also be engaged by the purchaser of Council-owned land which has been lawfully appropriated, though it should be noted that if the developer was to fail to pay the compensation due to those parties whose rights have been overridden, the Council can be pursued for these monies. This does not, however, preclude the ability of the Council to seek an indemnity in respect of these costs from a future developer.
16. Disposal of the site would result in a capital or revenue receipt and Members will receive a further report on that issue in due course. It is important to note that S203 of the 1990 Act can only be engaged where the planning purpose for which the land is held directly relates to a planning permission and only for the life of that permission (i.e., whilst the land is used in compliance with that specific planning permission).

EQUALITIES IMPLICATIONS

17. There are no equalities implications arising as a result of these proposals.

OTHER IMPLICATIONS

18. None

CONSULTATION

19. The Leader, Deputy Leader and Executive Members for Property and Planning Policy and Finance and officers in Policy & Regeneration have received verbal or written briefings about this matter.

Background Papers:

REIGATE AND BANSTEAD BOROUGH COUNCIL (MARKETFIELD WAY) APPROPRIATION PLAN

Annex 1

