



PART I DECISION NOTICE
Non-Key Executive Decision taken by the Leader

KEY DECISION

Title: SG1 – Appropriation and Use of S.203 Powers for Phase 1a

Person Taking Decision: Councillor Richard Henry

Decision has been included on Forward Plan?:

No. Therefore 28 days' notice has not been given.

Decision is Urgent i.e. permission to waive the call-in rules is sought:

Yes

If 'Yes' the reason for urgency is:

The UK Government has introduced the new Building Safety Act 2022 (BSA 2022), which will introduce a rigorous new building safety regime for certain residential buildings. From 1 October 2023, approved inspectors can apply to become registered building control approvers, and they must do so by 6 April 2024 in order to continue their work. This means that essential groundwork including the installation of 2 piles in Phase 1a, must be completed and inspected by April 6th 2024. If this deadline is missed the initial notice will automatically cease and a fresh application will need to be made for building control approval, this time to the Building Safety Regulator. Works will be delayed by anything between 3-6 months. Causing a severe delay on the SG1 regeneration programme, incur further costs on development fees for the Council and public uncertainty for regeneration for the town.

The Council needed to invoke its Section 203 powers for Right to Light to ensure that there is no further delay in agreeing the Joint Venture Agreement with its development partner Mace to progress this scheme before the scheduled development programme begins on the 1st March 2024, to ensure the piling is installed in time. It is considered low risk for this site due to securing full planning permission in May 2023, the 6 storey building that was already in place on site previously and the small aspect of property the development will affect.

Public Interest Test: That having considered the reasons for the attached report being exempt from publication, it is considered that maintaining the exemption from disclosure of the information contained therein outweighs the public interest in disclosure.

Decision:

- 1) The Leader resolves to appropriate the land shown edged red on the plan at Appendix 1 (“the Site”), subject to compliance with all necessary legal requirements, in exercise of statutory powers to appropriate the Site for planning purposes, exercising powers under Section 122 of the Local Government Act 1972 for the planning purposes of facilitating redevelopment of the Site.**
- 2) The Leader resolves that the Site is no longer required for the commercial purposes for which it is currently held.**
- 3) The Leader approves the use of powers to override easements, restrictions and other rights in respect of the Site pursuant to section 203 of the Housing and Planning Act 2016.**

Reasons for the Decision:

As identified in greater detail in the Anstey Horne Daylight & Sunlight Report at **Appendix 2**, the re-development of the Site may infringe private rights (predominantly rights of light). The Daylight & Sunlight Report identified eight categories of property that are likely to experience potentially actionable rights of light infringements. The Daylight & Sunlight Report identified eight categories of property where rights to light may be affected. Further information is included in Part II Appendix 2.

Due to the risk of an injunction to prevent the scheme being delivered and the associated settlement cost, the appropriation of the Site for planning purposes will facilitate the redevelopment of the Site for the provision of residential accommodation, commercial accommodation car parking, new landscaping and public realm and associated works. Without appropriation of the Site for planning purposes, the proposed scheme of redevelopment would not be delivered due to the associated risk of injunction.

Amongst other criteria discussed in further detail in the report, s.203 of the Housing and Planning Act 2016 provides a power to override certain rights and easements where building or maintenance work will take place on land that has been appropriated for planning purposes.

Noting this power, the appropriation of the Site will therefore facilitate the carrying out of development, redevelopment or improvement of land which will contribute to the economic, social or environmental wellbeing of the area. It is considered that the public benefit of appropriation of the Site for planning purposes will outweigh any private rights which may be interfered with as a result of said appropriation.

Detailed reasons for the Decision, including an assessment against each of the applicable legal tests, are set out in the attached report.

Other Options considered: As set out in the attached report

Declaration of Interest: None

Dispensations granted by Standards Committee: None

Authorisation

Having considered the attached report and with regard to all relevant considerations and the views of those consulted (see below), I authorise the above decision.

**Signed: Richard Henry
[SIGNATURE REDACTED]**

**Position:
Leader of the Council**

Name:

Date: 4 March 2024

Assistant Director (Finance) – to approve the financial Implications:

Signed: [SIGNATURE REDACTED]

Name: Brian Moldon

Date: 4 March 2024

Borough Solicitor – to approve the legal implications

Signed: [SIGNATURE REDACTED]

Name: Simon Pugh

Date: 1 March 2024

Member Consultation:

I have been consulted on this issue and support the decision

Signed: [SIGNATURE REDACTED]

**Position: Resources Portfolio
Holder**

**Name: Councillor Jeanette
Thomas**

Date: 4 March 2024

Chair of Overview & Scrutiny Committee (if required – delete paragraphs that do not apply)

In accordance with the Council's Overview and Scrutiny Rules, I hereby agree that the above decision is urgent and that the Call-in rule be waived.

In accordance with the Council's Access to Information Procedure Rule 15, I agree that the decision be taken as a matter of Special Urgency, as it cannot be reasonably deferred and therefore agree that the Non-Key Decision can be taken in Part I even though details were not published at least 28 days in advance of the date of the decision.

Signed: [SIGNATURE REDACTED]

Name: Councillor Martin-Haugh

Date: 4 March 2024

To be completed by Constitutional Services –

Date of Decision: 4 March 2024

Date of Circulated to Members of the Council: n/a

Call-in Deadline: n/a

Date of Implementation: 4 March 2024

DECISION NOTICE

Non-Key Executive Decision taken by the Leader

NON-KEY DECISION

This report seeks authority to appropriate land from commercial purposes to planning purposes pursuant to section 122 of the Local Government Act 1972 and section 226 of the Town and Country Planning Act 1990. This will facilitate the redevelopment of Phase 1A of SG1 (for the provision of residential accommodation, commercial accommodation car parking, new landscaping and public realm and associated works) by enabling the Council to utilise statutory powers to override third party rights which may otherwise prevent the implementation of the proposed development.

DECISION TAKER:

Name: Cllr Richard Henry
Job Title: Leader of Stevenage Borough Council
Date: 4 March 2024

DECISION TAKEN:

- 4) The [Leader] resolves to appropriate the land shown edged red on the plan at Appendix 1 (“the Site”), subject to compliance with all necessary legal requirements, in exercise of statutory powers to appropriate the Site for planning purposes, exercising powers under Section 122 of the Local Government Act 1972 for the planning purposes of facilitating redevelopment of the Site.**
- 5) The [Leader] resolves that the Site is no longer required for the commercial purposes for which it is currently held.**
- 6) The [Leader] approves the use of powers to override easements, restrictions and other rights in respect of the Site pursuant to section 203 of the Housing and Planning Act 2016.**

BACKGROUND:

On 23 October 2020, planning permission was granted for the reconfiguration of parking spaces and access road (reference 20/00060/FP) contained within the Site.

On 30 May 2023, planning permission (part outline, part full) was granted for redevelopment of the Site and a wider area (such wider area shown edged [blue] on the plan at Appendix 1), with the following description:

“Outline planning permission for the demolition of existing buildings on the site and the mixed use redevelopment of Plots A-K including new retail and food and beverage uses (A1-A5), leisure (D2), office (B1), community (D1) and residential (C3). New buildings to comprise residential accommodation (Class C3), retail floorspace Class (A1/A2/A3/A4/A5 floorspace), leisure floorspace (D2), office floorspace (Class B1), Public Services Hub (Class D1/B1/A1/A3), primary school (D1), plant and storage, servicing, new vehicle and pedestrian accesses and circulation, new public amenity space, new and amended car parking, new landscaping and public realm and associated works. Full details (access, appearance, landscaping, layout and scale) are submitted for Plots A and K and all matters reserved for Plots B to J (“the Development”).”

The Site is currently vacant, save for part of the Site which is used as a car park. It has historically been used, and held, primarily for commercial purposes. As is explained further below, the land is no longer required for such commercial purposes.

The Site comprises an area of 8,069 square metres of land known as Phase 1A of the SG1 Development Site, in Stevenage Town Centre. The freehold of the Site is owned by the Council.

As identified in greater detail in the Daylight & Sunlight Report at Appendix 2, the re-development of the Site may infringe private rights (predominantly rights of light although other rights may also be infringed). The Daylight & Sunlight Report identifies 3 properties that are likely to experience potentially actionable rights of light infringements.

Due to the risk of an injunction to prevent the scheme being delivered and the associated settlement cost, the appropriation of the Site for planning purposes will facilitate the redevelopment of the Site for the provision of residential accommodation, commercial accommodation car parking, new landscaping and public realm and associated works. Without appropriation of the Site for planning purposes, the proposed scheme of redevelopment would not be delivered due to the associated risk of injunction.

Amongst other criteria discussed in further detail below, s.203 of the Housing and Planning Act 2016 provides a power to override certain rights and easements where building or maintenance work will take place on land that has been appropriate for planning purposes.

Noting this power, the appropriation of the Site will therefore facilitate the carrying out of development, redevelopment or improvement of land which will contribute to the economic, social or environmental wellbeing of the area.

It is considered that the public benefit of appropriation of the Site for planning purposes will outweigh any private rights which may be interfered with as a result of said appropriation.¹

Section 122 of the Local Government Act 1972

Under section 122, before the Site can be appropriated for planning purposes,

the Council must be satisfied that the Site is no longer required for the purposes for which it was held immediately before appropriation. This means that it is necessary to establish the purpose(s) for which the Site is currently held.

The main use of the Site was as an office block previously utilised by the Council. The office block was demolished in 2022. The Site also contained a leisure facility, which was demolished in the 1990s; that part of the Site has been used as a car park following demolition.

It is considered that the Site is no longer required for any commercial purpose, including for the former office block use, leisure or car park use.

In relation to the car park, this is required to facilitate the development of Phase 1A and it will be closed on a temporary basis for such purposes. The area will be used as a site compound during the construction period. Thereafter, the car park will be re-configured and the existing access relocated during such works the car park will also need to remain closed. Once those works are completed, the revised car park will be re-opened.²

Planning permission has been granted in respect of the Development, and accordingly the principle of redevelopment has been assessed as being acceptable in planning terms.

Section 226 of the Town and Country Planning Act 1990 Appropriation for planning purposes

A local authority who has acquired land for a statutory purpose must hold the land for that purpose. An authority can only change the purpose for which they hold land by using statutory powers of appropriation. The power to appropriate land for planning purposes involves formally changing the purpose for which land is held, in this case so that it is then held for “planning purposes”.

“Planning purposes” means that the appropriation will facilitate the carrying out of development, redevelopment or improvement of land which is likely to contribute to the economic, social or environmental wellbeing of the area, or which is required in the interests of the proper planning of the area in which the land is situated.

The development of the Site will lead to a wide variety of economic, social and environmental benefits, as follows:

- (i) The use of previously developed land within the Council’s ownership will be optimised.
 - (ii) Up to 261 residential dwellings, housing between 340 and 680 people, are planned across the development of the Site. This supports social wellbeing in the locality and will assist the Council in realising and delivering a 5-year supply of new homes.
 - (iii) The development of the Site includes a new retail unit adding to
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employment and economic benefits to the Town Centre.

- (iv) The development of the site will provide a positive boost to the Town Centre's regeneration momentum, helping make Stevenage Town Centre a destination centre, attracting new people to live in Stevenage, providing modern quality residential homes.
- (v) The development of the Site will unlock opportunities for the Council to improve public spaces. These spaces will assist pedestrian connectivity and support the health and wellbeing of the public.

Section 203 of the Housing and Planning Act 2016

In order to deliver the proposed development, and to realise the wider public benefits, it is necessary to ensure that there are no third party rights that could prevent the proposed development of the Site from being delivered.

Section 203 of the Housing and Planning Act 2016 provides that any restrictive covenants and other adverse rights or interests affecting the proposed land to be appropriated for planning purposes (as set out in this report) can be overridden, thereby releasing the proposed scheme of development from the risk of a third party beneficiary of such rights from obtaining an injunction to restrain the development and converting their entitlement (if any) to monetary compensation. Those rights are not extinguished or removed from existence by the use of section 203, but the development can proceed notwithstanding any interference with or breach of those rights.

However, compensation is payable for any interference with a relevant right or interest or breach of a restriction that is authorised by section 203 and this is addressed in section 204 of the Housing and Planning Act 2016. Section 204(2) confirms that compensation should be calculated on the same basis as compensation payable under section 7 and 10 of the Compulsory Purchase Act 1965. The amount of compensation payable is the diminution in the value of the affected interest. Any dispute about compensation payable may be referred or determined by the Upper Tribunal.

In order to rely on the powers at section 203, the following limitations apply:

- (i) Planning permission must have been obtained for the building or maintenance work or use of the land.

In this instance, planning permission for the re-development of the Site and the wider area has been granted, with reference 19/00743/FPM, on 30 May 2023, and with reference 20/00060/FP, on 23 October 2020.

- (ii) The Council could acquire the land in question compulsorily for the relevant building or maintenance work or for the use of the land permitted by the relevant planning consent.

The Council is already the freehold owner of the Site. If it was not the freehold owner, the Council would have compulsory purchase powers conferred by section 226(1)(a) of the Town and Country Planning Act 1990, for the reasons set out above.

- (iii) The work or use in question of the land is for the purposes for which the land was appropriated.

The anticipated works to the Site, forming part of the proposed development, would be for the same purpose for which the land is being appropriated.

REASONS FOR DECISION:

It is accepted that appropriating the Site for planning purposes and carrying out the Development on the Site may infringe private rights (described in greater detail in the Daylight & Sunlight Report at **Appendix 2**).

The re-development of the Site will result in a limited interference with the rights of individuals under Article 1 of the First Protocol of the European Convention on Human Rights (protection of property). The right to peaceful enjoyment of property under article 1 is a qualified right and not an absolute right, and interference is permitted where it is “in the public interest and subject to the conditions provided for by law...”. As discussed above, there is a significant public benefit associated with the re-development of the Site therefore this infringement must be considered in that context. It is considered that the likely benefits which would result from the development of the Site (as set out above) will significantly outweigh any harm arising as a result of infringement of private rights. In addition, the method of interference is provided for by law (i.e. s.203).

A decision to override easements and other rights would also represent an interference with Article 8 of the First Protocol of the European Convention on Human Rights (right to respect for private and family life, home and correspondence). This right is a qualified right and not absolute, and interference is permitted “in accordance with the law and [...] is necessary in a democratic society in the interests of [...] the economic well-being of the country”. As discussed above, there are significant economic benefits associated with the redevelopment of the Site, and this infringement must be considered in that context. It is considered that the likely benefits which would result from the development of the Site will significantly outweigh any harm arising from an interference with Article 8 rights.

It is considered that there is a compelling case in the public interest for the land to be appropriated to enable the proposed development to proceed.

Appropriating the Site for planning purposes will infringe private rights, however the Council considers this infringement to be wholly justified in the context of the public interest and the promotion of economic, social and environmental well-being.

The Council has not negotiated with holders of affected rights in order to resolve impacts on their interests by agreement. The Council considers that the process of negotiating with holders of affected rights would lead to an unacceptable level of delay to the proposed development. The urgent nature of the proposed development is driven by:

- Changes resulting from the Building Safety Act 2022 which may lead to further programme delay. The UK Government has introduced the new Building Safety Act 2022 (“BSA 2022”), which will introduce a rigorous new building safety regime for certain residential buildings. From 1 October 2023, approved inspectors can apply to become registered building control approvers, and they must do so by 6 April 2024 in order to continue their work. This means that essential groundwork including the installation of 2 piles in Phase 1A, must be completed and inspected by April 6th 2024. If this deadline is missed the initial notice will automatically cease and a fresh application will need to be made for building control approval, this time to the Building Safety Regulator. Works will be delayed by anything between 3-6 months. Such additional period would cause a severe delay on the wider SG1 regeneration programme, incur further costs on development fees for the Council and public uncertainty for regeneration for the town.
- In order for the development programme to be achieved, it is necessary to complete a Joint Venture Agreement with the Council’s development partner (Mace) to progress this scheme before 15th March 2024 pursuant to which such agreement will require good title to be secured and piling installed before the 6th April 2024.
- The Council have invested significant amounts of money to help unlock the Site and progressing Phase 1A with Mace. Further delay could pose further costs to the Council through Development Fees and Professional Fees.
- The Council have obtained £599,705 of One Public Estate Funding, that must be spent as part of the enabling works of the Site. Potential disruption or delay in undertaking such work may cause the Council to lose this funding.

The redevelopment of the Site is consistent with good public administration and the delivery of the development of the Site is considered to be in the public interest. Any affected party will also retain the right to claim appropriate compensation. In this context it is considered that the use of section 203 powers would be proportionate and justified. Overall the Council considers that the impacts on private and public rights through appropriation and reliance on section 203 of the Housing and Planning Act 2016 are limited in practice and that any impacts are greatly outweighed by the benefits of redevelopment.

At this stage, it is recommended that the Leader of the Council resolves to appropriate the Site for planning purposes and to approve the use of powers

to override rights and interests in respect of the Site pursuant to section 203 of the Housing and Planning Act 2016.

OTHER OPTIONS CONSIDERED AND REJECTED:

Do nothing option: if the Council decides not to appropriate the Site then there is the potential that affected private property owners could commence proceedings for an injunction which could stop the re-development of the Site or significantly delay its delivery. This would put at risk the public benefits identified above. In addition, the Site will remain vacant and an under-utilised asset. The carrying out of the development of the Site is dependent upon adhering to a delivery programme. That programme cannot be met unless those entitled to rights of light and/or other private rights agree to infringements or the infringements are authorised by s203.

FINANCIAL IMPLICATIONS:

The Council have invested significant amounts of money to help unlock the Site and progressing Phase 1A with Mace. Further delay could pose further costs to the Council through Development Fees and Professional Fees.

The Council have obtained £599,705 of One Public Estate Funding, that must be spent as part of the enabling works of the Site. Potential disruption or delay in undertaking such work may cause the Council to lose this funding.

By not invoking Section 203, there could be wider implications to the delivery of the Phase 1A regeneration. The construction value of the development is circa £45m with a GDV of £67m; there is a risk in the Council going into dispute with its affected neighbours and losing confidence from its development partner Mace to develop the whole site.

LEGAL IMPLICATIONS:

Legal implications have been highlighted in the body of the report.

EQUALITIES AND DIVERSITY IMPLICATIONS:

A high level EQIA has been considered by officers in relation to the development. It is noted that development of new housing within the town centre will provide good accessibility to amenities within the town centre. There are accessible units within the scheme, cycling storage solutions and a retail unit that will provide additional benefit to the town from an EQIA perspective. Mitigation actions will be required to help manage the impact of works during the construction phase, particularly related to impacts on those with disabilities or restricted mobility. Further details of the EQIA can be provided upon request.³



— Phase 14 Boundary
— SGI Masterplan Boundary



ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 DIMENSIONS TO FACE ARE TO BE USED FOR CONSTRUCTION. DIMENSIONS TO CENTERLINE ARE TO BE USED FOR LOCATION. DIMENSIONS TO CENTERLINE ARE TO BE USED FOR LOCATION. DIMENSIONS TO CENTERLINE ARE TO BE USED FOR LOCATION.

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1:100
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SGI Plot A
 Site Plan Existing

Plot No. 1
 SGI - PRP - A31 - DL - DR - A - 0300
 Date: 11/20/2023
 Scale: 1:100

PRP