

APPENDIX 2

Appropriation of the land shown edged in black at Appendix 1 for purposes set out in s226 of the Town and Country Planning Act 1990

Background to appropriation

1. Under section 122 (1) of the Local Government Act 1972 the council may appropriate land for any purposes for which it is authorised to acquire land when the land is no longer required for the purposes for which it is held.
2. Under section 226 (1) (a) and 227 of the Town and Country Planning Act 1990, the Council may acquire land if they think the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. This would include development of a nature proposed for the council land. The power in section 226 (1) (a) is subject to subsection (1a) of section 226. This requires that the acquiring authority must not exercise the power unless it considers the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of economic, social and environmental and well-being of the area for which the acquiring authority has administrative responsibility.
3. There are clear economic, social and environmental benefits associated with the proposed development set out below:
 - New quality housing
 - New better community and sports facilities
 - Revenues generated from the sale of the adjoining owner's land to be re-invested into the running of the new facilities
 - Better educational attainment
 - Employment opportunities generated from running the new Hollington Club and from the construction of the development
 - Secure cycle parking to encourage a healthier mode of transport to and from the new facility
 - Better social inclusion and wider community participation.
4. The council may appropriate land for the purposes of the development that it already owns if that land is no longer required for its current purposes for the reasons set out below and it is not needed in the public interest for those purposes. The land can therefore be appropriated for planning purposes from its current use to facilitate the proposed development.
5. Where land has been appropriated for planning purposes, section 203 of the Housing and Planning Act 2016 applies such that the erection, construction or carrying out or maintenance of any building or work on the land (by the council or person deriving title from the council) is authorised if it is done in accordance with planning permission, notwithstanding that it interferes with particular private rights such as restrictive covenants or easements.
6. The effect of triggering section 203 is that private rights are effectively overridden and converted into a compensatable claim pursuant to s204. The level of compensation for interference with a right or breach or

restrictive covenant is assessed on the basis of the loss in value of the claimant's land as a consequence of the interference or breach of covenant.

7. The principle behind the use of a power such as section 203 is that a claimant cannot secure an injunction to frustrate the development from happening and their remedy translates into a claim for compensation.
8. In carrying out its due diligence, the council will make enquiries as to what rights might subsist over the land, which would include a physical inspection to see if there are any obvious rights and from researching title information at the Land Registry. This is because some rights may not be apparent from inspection and historic ones may not always be recorded at the Land Registry. The application of s203 to override third party rights therefore mitigates the risk.
9. 9. The right to claim compensation for the depreciation in value caused by the loss of a right is enforced against the owner of the land which in the case is the council.

Rationale for appropriating the council land for planning purposes

10. The council land is under-utilised and the requirement for new housing at affordable rent levels and new, better community and sports facilities would exceed the existing use of the land. In pursuance of the key commitments adopted in the Council Plan and the need to specifically address a need for new quality housing and better sports and community facilities in the area for residents, the council land has been identified to be redeveloped to accommodate such uses.
11. A planning application is yet to be submitted to the Local Planning Authority but one is expected to be submitted by the developer on behalf of the adjoining land owner for the proposed development sometime in spring 2019 following another round of community engagement with local residents.
12. Although it is extremely unlikely that there will be a significant impact on loss of rights to sun or day light from part of the development that occupies the council land to nearby residents from the consented development, appropriation will eliminate the risk of one or more of them applying to court for an injunction.
13. If an injunction is granted, the development will not proceed. The risk of an application for an injunction is such that it may result in a substantial risk contingency for the developer which might undermine construction costs.
14. In these circumstances, it is appropriate to utilise the powers of section 203 of the Housing and Planning Act 2016 to overcome this risk and enable the development to proceed
15. As mentioned, the council land is now required to be held for planning purposes to facilitate the proposed redevelopment associated with the grant of a planning consent. When council land has been appropriated for section 203 purposes it will continue to benefit from its over-riding provisions even if the land is no longer held for planning purposes.

16. The council land shown edged in black on the OS plan at Appendix 1 is therefore no longer required to be held for housing purposes. It is required to be held for planning purposes to facilitate the redevelopment proposals associated with the planning permission.