

**Appropriation of the land (shown edged on the plan) at Appendix A for planning purposes as 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 purpose 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, re-development or improvement on or in relation to the land. This includes development of the sort contemplated in the redevelopment of the subject former parking and storage depot. The power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides 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 the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility. There are clear economic social and environmental and social benefits associated with the provision of new warehouse and industrial development, namely providing people with employment opportunities from the construction works and in the finished development. Accordingly the Council may appropriate land for the purposes of the development proposals land that it already owns if that land is no longer required for the purposes for which it is held. The land shown on the plan at Appendix A is no longer required for its current purposes for the reasons set out below and is not needed in the public interest for those purposes. The land can therefore be appropriated from its current use. As the appropriation will facilitate the new development proposals it may be appropriated for planning purposes.

3. Where land has been appropriated for planning purposes Section 203 of the Housing and Planning Act 2016 (power to override easements and other rights) applies such that the erection, construction or carrying out or maintenance of any building or work on the land (by the council or a person deriving title from the council) is authorised if it is done in accordance with planning permission, notwithstanding that it interferes with certain private rights such as restrictive covenants and easements. The effect of triggering section 203 is that private rights are effectively overridden and converted into a claim for compensation pursuant to s 204. The level of compensation for interference with rights or breach of 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. An important consequence of the operation of Section 203 is that a claimant cannot secure an injunction, to prevent the development from going ahead - as indicated above, their remedy is a claim for compensation.

4. Prior to developing land it is usual practice to make prudent enquiries of what rights might exist over the land, this will involve 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 ones may not always be recorded at the Land Registry. The application of the power to override rights contained in s203 therefore mitigates this risk. In this case an historic right of way has come to light that was not recorded on the Council's title to the land.

5. The right to claim compensation for the depreciation in value caused by the loss of right is enforced against the owner of the land which in this case is the Council. The Council will obtain an indemnity from the developer of the land to meet the cost of any compensation that may be payable. Since the right of way is historic and has not been used for many years it is not thought that any compensation that may become payable will be a significant sum since the property benefitting from the right is not in practice using it.

### **Rationale for appropriating the subject site to planning purposes**

6. The former lorry park is under utilised in land use terms and the need for new warehousing including workspace available at affordable rent levels exceeds the existing use need. The Council has disposed of the site on a long lease to a developer who will develop it in this way, subject to planning permission. Construction of the consented scheme or any future scheme may interfere with the right of way in favour of a nearby property, and appropriation will eliminate any risk of that adjoining owner applying to the court for an injunction. If an injunction is granted, the scheme will not be able to proceed. In any event, the risk of an application for an injunction is such that it will deter the developer from constructing the new warehouse and workspace development. In these circumstances it is appropriate to utilise the powers of section 203 to overcome this risk and enable the development to be built.

7. As indicated above, the land is now required to be held for planning purposes to facilitate the redevelopment proposals associated with the planning permission for new Industrial development. When land has been appropriated for section 203 purposes it will continue to benefit from its over-riding provisions even when the land is no longer held for planning purposes.

8. The appropriation of the land whilst denying the beneficiaries of any third party rights over the land the ability to frustrate the regeneration of the land will not take away their ability to claim for compensation in respect of any diminution in the value of their land as a result of their rights being overridden.