

## APPENDIX 6

### ASSESSMENT OF SCHEME AGAINST CONSIDERATIONS OF THE PUBLIC INTEREST CASE FOR APPROPRIATION

#### 1. The use of Statutory Powers is necessary

The development has the benefit of planning permission and there is a financial budget in place for its delivery. The statutory provisions require appropriations for the planning purposes of delivering the scheme of required land and specifically allow for the appropriation of land previously used as open space. While Mulberry Square has not been formally designated as open space it has been generally used as such since the 1990s. The appropriation of the land for the planning purposes of delivering the scheme is necessary to enable the scheme to progress.

Appendix 4 describes rights that have been identified which could impact on the deliverability of the scheme. Many of these rights have passed to the Council as owner of relevant land with the recent acquisitions of adjacent sites. But some rights either cannot be identified or are not clearly defined and so it is not known in every case who might or would benefit from the rights. This has limited the Council's ability to discuss any specific rights with possible relevant beneficiaries. However some rights as they exist may still impact on the deliverability of the scheme.

The Rights to Light Report that supported the planning application indicated that there may be some impact from the development upon some rights to light although it is difficult to ascertain the position without knowing more details. If any such rights do exist they will need to be properly addressed and the appropriation under Section 203 would allow any beneficiaries to be compensated if indeed they do. Such compensation would have to be negotiated with those who can prove the benefit of these rights but the Council is taking steps to ensure that it does not carry the risk of the scheme being stopped or changed with any ongoing costs and delays associated with legal challenges.

#### 2. The use of statutory powers will facilitate the carrying out of the development

The Council owns all the land required and has secured planning permission for the scheme. There remains the need to appropriate the open space from its current purpose (on the basis that it is no longer required) to the planning purpose in order to be able to deliver the development. In conclusion, the appropriation addressed in this report is required under the statutory provisions described elsewhere in this report and is necessary to enable residual rights to be addressed and to enable the implementation of the planning permission for the scheme. The land would have been included in a Compulsory Purchase of all land required to deliver the scheme, but such action is no longer required because all the land not previously owned by the Council has been acquired by private agreement and is now owned by the Council.

#### 3. The development will contribute to the promotion and improvement of the economic, social, or environmental well-being of the area

Benefits arising from the development were set out in the reports to Cabinet in November 2017 and December 2018 and Corporate Overview and Scrutiny Committee in November 2018. The development will enable consolidation and improvements in the way the Council provides its services and other benefits described elsewhere in this report.

As a major employer and service provider, the Civic Offices supports the economy of the town centre and the extension would further consolidate that support. There is a range of potential economic benefits for Grays town centre arising from the proposed extension, including;

- Direct net additional Full Time Equivalent Jobs=22.5
- Indirect Net Full Time Equivalent Jobs=2
- Direct net additional GVA over 10 years=£9million
- Indirect net additional GVA=£0.9million
- Additional household expenditure from residential redevelopment of the CO1 site.

The development maintains and enhances the Council's civic presence in Grays town centre. The extension is the first phase of the transformative redevelopment of the town centre which will bring further and significant planned benefits for the town centre economy.

The extension enables a permanent shift in service provision towards self-service, which has proven to be beneficial through current approaches used in CO2, improving resident's interactions with the Council, reducing waiting times, providing information at the level required and reducing the costs of service provision.

It will also provide meeting and events spaces which will be hired out to business and community groups, meeting a qualitative need for such space that is not currently available in Grays town centre.

The relocation of the Registrars to a new purpose built facility enables consolidation that provides more space for services to customers. As a modern purpose built facility, it will be better suited to the provision of this important, sensitive and statutory service. It also will offer more free space within the Thameside complex to enable the realisation of other objectives of the Council's regeneration strategy for Grays.

#### 4. **The benefits of the development could not be achieved without giving rise to the infringements of the identified rights**

The selected option was identified as the only one that would maximise the benefits from the scheme. This report has discussed the economic and social benefits which were also considered by the Council's Cabinet as previously referenced, including the approach to service provision, and the benefits of the scheme to the public realm and economy of the town centre provided by the scheme. The Council's Planning Committee have balanced the impact of the scheme and its benefits and found it to be a positive benefit in planning terms. These processes have established that the scheme is the best way in which the benefits can be realised.

## **5. Is it in the public interest that the development is carried out**

The public benefits of the scheme have been considered in detail at previous cabinet meetings and by Planning Committee, as previously referenced and discussed throughout this report. The discussion at item 3 of this appendix identifies the economic and social benefits of the project. These show a clear public interest case supporting the scheme.

The scheme is the first phase of the GSRA and would result in the loss of a relatively small area of informal open space. In April 2017, Cabinet approved a budget and scheme for an underpass and new public squares which will be phase 2 of the redevelopment scheme. These public squares will replace the informal open space lost in Mulberry Square, and larger areas of open space will be made available to the public on both sides of the rail line.

The scheme for redevelopment has the benefit of a planning permission and there is a financial budget in place for its delivery. The statutory provisions allow for the appropriation of required land for the planning purposes of delivering a scheme and this can specifically include land previously used as open space.

While Mulberry Square has not been formally designated as open space, it has been of some use to the general public since the Council demolished some old buildings on the land in the early 1990s and laid the space out to avoid it being seen as unkempt and untidy. This area is not a very big piece of open space and not very well utilised but provides some use, more as a walk-through and access area for pedestrians who pass to and from the High Street during certain hours of the day. It is not perceived to be a valuable area that can be enjoyed by several members of the public at all times, because it is closed during certain hours.

The Civic Offices extension (the subject of this report) is the first phase of the Council's Grays South Regeneration Area ("GSRA"). In April 2017, the Council's Cabinet agreed a project and budget for the delivery of the second phase of the GSRA, comprising a replacement means of access across the rail line and larger areas of public open space. These open space areas are larger than the space that exists at present, and are purpose-designed as town centre squares, and will be accessible at all times. In conclusion, the appropriation of this land for planning purposes is wholly necessary, to enable the redevelopment scheme to progress and to offer all its important benefits for the public.

A number of memorial benches have been placed in Mulberry Square which can be relocated in the new public squares to be provided as part of the wider Grays South Regeneration Area.

## **6. Whether the use of Section 203 is proportionate with any interference with the human rights of those persons affected**

Human Rights issues arise in respect of the proposed arrangements. The Government guidance on compulsory purchase process and the Crichel Down rules

advises that compulsory acquisition and therefore appropriation for planning purposes under Section 122 (1) of the Local Government Act 1972 or Section 122 (2A) Local Government Act 1972, which have the effect, by virtue of Section 203 of infringing convention rights should consider:

“.....When making and confirming an order acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the Human Rights of those with an interest in the land affected. The officer’s report seeking authorisation for the compulsory purchase order should address human rights issues...”

Furthermore, under the Human Rights Act 1998, the council is required to act in accordance with the European Convention on Human Rights (“ECHR”) in deciding whether to implement the arrangements. Article 1 of the first protocol of the ECHR provides that every natural or legal person be entitled to peaceful enjoyment of his or her possessions.

Engagement of Section 203, to allow interference with private rights, involves interference with a person’s rights under this Article. However, the right to peaceful enjoyment of possessions under Article 1 is a qualified rather than an absolute right as the wording permits the deprivation of an individual’s possessions where it is in the public interest and is subject to the conditions provided for by law, and (in relation to the right to respect for private and family life and a person’s home) Article 8 (2) allows for interference which “is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the protection of health and morals, or for the protection of the rights and freedoms of others.”

There must therefore be a balancing exercise between the public interest and the individual’s rights whereby any interference in the individuals’ rights must be necessary and proportionate. “Proportionate” in a context means that the interference must be more than is necessary to achieve the identified legitimate aim. A “fair balance” must be struck between the rights of the individual and the rights of the public. It is for the council to consider the issues raised in this Report and to strike that “fair balance” in coming to its decision.

The Right to Light report that informed the design process and the planning application established that the possible impacts on light are within acceptable parameters. Impacts on rights of access are limited and alternatives are, where required, available along High Street and New Road. Weighed against these impacts must be the considerable benefits discussed earlier in this report of implementing the scheme.

It is therefore clear that the public interest in this case outweighs any potential impact on private rights and the use of Section 203 is proportionate.