

Classification: Part A - Public

Key Decision: No

Gravesham Borough Council

Report to: The Leader of the Executive

Date: 3 July 2015

Reporting officer: Assistant Director (Governance and Law)

Subject: The appropriation of Rathmore Road Car Park for planning purposes

Purpose and summary of report:

This report seeks authorisation for the appropriation of Rathmore Road Car Park (as shown on the attached plan at Appendix 2) for planning purposes in order to relieve the land from any potential claims to prescriptive rights of way over the car park by local residents.

Recommendations:

The Leader of the Executive is requested to give their authority to appropriate the specified land for planning purposes, and to authorise the Assistant Director (Governance and Law) to take all steps necessary to secure appropriation.

1. Background

- 1.1 Kent County Council is due to undertake a scheme for improvement of the highway and car park in this area (as shown on the attached plan at Appendix 3) and in the initial stages of preparing for this project, the Council has discovered that a number of properties along Cobham Street, which backs on to the car park, now have pedestrian and/or vehicle accessways out on to the car park, which is owned and run by the Council. Originally it was the County Council's intention to resolve this by taking compulsory purchase action, but it was not considered appropriate.
- 1.2 In accordance with the planning permission granted for this development the exercise of such rights would be inconsistent with the car park scheme proposed. A method of extinguishing these rights is sought in order to avoid any disruption to the development both now and in the future.
- 1.3 The Council holds land for various statutory purposes in order to provide its functions. Such land is used only for the purpose of the function for which it was

originally acquired until such time as the land is disposed of or “appropriated” for another purpose.

- 1.4 Appropriation is the statutory procedure to change the purpose for which land is held from one statutory purpose to another provided that the land is no longer required for the purpose for which it was held immediately before the appropriation.

2. The Law

- 2.1 Land owned by a Local Authority can be appropriated by the council from use as central car park to planning purposes using its powers under S122 of the Local Government Act 1972, in particular those purposes set out under Section 226/227 of the Town and Country Planning Act 1990.
- 2.2 By virtue of section 237 the erection, carrying out, construction, use or maintenance of any building or works on such land is authorised if done in accordance with planning permission, even if it interferes with third party rights such as legal easements. In essence, the section operates to convert a right in or over land to a right to compensation. s.237 is effective to convert rights over the land into rights to compensation only once the land has (i) been properly appropriated by the Council for planning purposes, (ii) development is to be carried out on the land or use made of the land either by the Council or a person deriving title under them and (iii) that development or use is carried out in accordance with a relevant planning permission.

3. Key Considerations

- 3.1 The decision to appropriate land is one which is open to challenge. However the decision cannot be challenged unless it is made in bad faith or if it is a decision that no reasonable authority could possibly have taken.
- 3.2 When making the decision to authorise the appropriation for planning purposes it is advised that Section 122 of the Local Government Act 1972 provides that a council must make a proper finding that the site is no longer required for the purposes for which it is currently held.
 - 3.2.1 The land is currently held as ‘Central Car Park’ and there are ample car parking facilities in the local area to this land. The existing Rathmore Road car park site comprises of 224 car parking spaces. Approximately two-thirds of land comprising the site will be transferred to the ownership of Kent County Council by agreement for the purposes of creating the New Rathmore Road Link. The new link is part of a long held council ambition to reduce town centre traffic by re-routing the existing one way system away from the main shopping area in New Road. The link also enables the possible completion of a transport interchange at Barrack Row/Garrick

Street which brings public transport (buses, trains and taxis) together into a single town centre location.

3.3 It is also advised that the Council must have a good reason that the interference with the rights is necessary.

3.3.1 During construction of the new town centre route the entirety of the car park will need to be closed to allow for the completion of construction work on the link road. Access across the site will not be possible during works. Once the development is completed in accordance with the planning permission granted for this land the current accessways will then be adjacent to new parking spaces and therefore the use of the accessways will be inconsistent with the scheme proposed and potentially pose health and safety risks.

3.4 Furthermore it is advised that in making the decision to appropriate this land the Council must be satisfied that the appropriation to planning purposes will facilitate the carrying out of development, re-development or improvement on or in relation to the site.

3.4.1 By appropriating, any possible interference with the construction progress of the new Rathmore Road, caused by rights of way, will be removed as an impediment. Any access rights which are left unaddressed could have an impact on any future use of the remainder of the site once the current development has been completed.

3.5 Finally, when making the decision whether or not to appropriate this land, it is advised that the Council must hold that the development of the Site is likely to contribute to one or more of the three well-being objectives, economic, social or environmental well-being of the Council's administrative area.

3.5.1 The implementation of the new Rathmore Road will take traffic away from the main shopping area thereby enhancing the environment for shoppers by reducing both noise and pollution in the adjacent areas. The building of the link also enables the building of a bus interchange which would not otherwise be possible. These activities will also therefore contribute to the economic vitality of the town centre by creating an improved shopping environment and enhancing accessibility in order to encourage a greater number of town centre visitors.

4. Compensation

4.1 Where lawful rights/easements exist, appropriation of the land for planning purposes has the benefit of allowing the council to override such rights subject to

the payment of compensation. The advantage is that claimants are prevented from holding up developments.

- 4.2 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 rather than a claim for equitable damages.
- 4.3 This exact sum is unknown at this stage but is expected to be significantly less than the alternative of paying to indemnify Kent County Council against any future claims over the land or for any delays in the development which a claim to a right of access may cause.
- 4.4 Any legal work necessary in accordance with the appropriation of land and negotiations will be carried out internally without any additional cost to the Council.

5. Conclusions

- 5.1 There are clear benefits to the Council in seeking to appropriate the land for planning purposes.
- 5.2 The appropriation of the land will facilitate the carrying out of the redevelopment of the land within the Authority's area which will result in the promotion or improvement of the economic, social and environmental well-being of their area.
- 5.3 The decision whether to appropriate the Site and thus interfere with potential third party rights over the Site needs to be properly and carefully made while balancing the competing local interests. There appears to be no reason why this decision cannot be reasonably made.

6. BACKGROUND PAPERS

- 6.1 There are no background papers to this report.

IMPLICATIONS**APPENDIX 1**

The authorisation to appropriate here will allow the development to proceed without the risk of third party claims to rights of way over the land.

Legal	The Council have powers to appropriate land under S122 of the Local government Act 1972, in particular those purposes set out under S237 of the Town and Country Planning Act 1990.		
Finance and Value for Money	Any costs in connection with the appropriation of land can be met within the existing budget. The exact financial implications associated with any potential claims for compensation is unknown at this stage but will be reported to Members in due course.		
Risk Assessment	The risks associated with third party claims are set out within the body of the report.		
Equality Impact Assessment	Screening for Equality Impacts		
	Question	Answer	Explanation
	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?		N/A
	c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A
	<i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i>		
Corporate Business Plan	Of the the five strategic objectives of the Council, “working with partners to ensure that Gravesham remains a thriving borough, attracting development opportunities” is engaged.		
Crime and Disorder	No direct implications under section 17 of the Crime and Disorder Act 1998.		

