

General Power of Appropriation

A general power to appropriate land is conferred on principal councils under section 122 of the Local Government Act 1972 ("LGA 1972"). A principal council may appropriate land belonging to that council that is no longer required for the purpose for which it is held for any other purpose for which it is authorised by statute to acquire land.

Therefore, a principal council can only appropriate land under section 122(1) of the LGA 1972 if the land is no longer required for the purpose for which it is currently held. In reaching this decision, the council must consider the public need within the area for the existing use.

It is for the principal council to determine whether the land is no longer required for the purpose for which it is held – the council is the sole judge of this.

There is no statutory requirement to advertise or consult on a proposal or decision to appropriate land under the general power contained in section 122 of the LGA 1972, unless the appropriation relates to special categories of land – open space land is one such category. Before appropriating open space land, a council must (i) advertise its intention to appropriate the open space land for two consecutive weeks in a newspaper circulating in the local area; and (ii) consider any objections of the proposed appropriation (section 122(2A), LGA 1972).

If a principal council appropriates open space land under section 122(2A) of the LGA 1972, it is released from any trust for the enjoyment of the public imposed by section 164 of the Public Health Act 1875 or section 10 of the Open Spaces Act 1996 (section 122(2B), LGA 1972).

The land at the Garden Village which is owned by the Council includes land which is currently used as open space. As such the Council will be required to observe the requirements of section 122(2A) of the LGA 1972 should a decision be taken to proceed with the proposal to appropriate it.

Appropriation for Planning Purposes

Land can be appropriated for planning purposes pursuant to section 122 of the LGA 1972.

The phrase – "*the appropriation of land for planning purposes*" – is defined by section 246(1) of the Town and County Planning Act 1990 ("TCPA 1990") as a reference to the appropriation of land for purposes for which land can be (or, as the case may be, could have been) acquired under section 226 or section 227 of the TCPA 1990. Acquisition under these sections is permitted (whether by compulsion or by agreement) where such acquisition facilitates the carrying out of development, re-development or improvement on or in relation to the land, provided that such development, re-development or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the relevant local authority's area.

When considering appropriation, the Council needs to have regard to the same issues, and take the same approach, as if they were seeking to promote a compulsory purchase order. The same degree of "requirement" or "necessity" is to apply.

Power to Override

The appropriation of land for planning purposes engages the power to override easements and other rights contained in section 203 of the Housing and Planning Act 2016 ("HPA 2016") and, in doing so, can be used to facilitate development.

Section 203 of the HPA 2016 enables a person to interfere with easements and other rights when undertaking building or maintenance works on, or using, land which is vested in or acquired by a "specified authority" or which has been appropriated by a local authority for planning purposes provided that the following conditions are satisfied:

- a. The land has become vested in or acquired by a specified authority on or after 13 July 2016 (or appropriated by a local authority for planning purposes) or the land is "other qualifying land" as defined in section 205(1);

- b. There is a planning consent for the building or maintenance work or use;
- c. The specified authority could acquire the land compulsorily for the purposes of the building or maintenance work or for the purposes of erecting or constructing a building or carrying out any works, or for the use; and
- d. The building or maintenance work or use is for purposes related to the purposes for which the land was vested in or acquired by the specified authority (or appropriated by the local authority).

The satisfaction of condition (a) is a matter of fact to be determined in each case. The same is true of condition (b). Condition (b) will be satisfied in the case of the Garden Village upon the grant of permission for planning application reference ref. 19/0623M.

Turning to condition (c), at the time the relevant building or maintenance work is carried out, or the use instituted, the specified authority must be able (having the necessary “enabling powers” in legislation) to acquire the land compulsorily, in the sense that it could exercise its powers of compulsory acquisition in relation to the land. In circumstances where the specified authority owns the land, the land is to be treated as if it were not currently owned by the authority.

Finally, condition (d): it should be noted that the building or maintenance work or use does not have to be for the same purpose as that for which the land was vested or required (or appropriated), but for a related purpose, and as a result, there is a degree of flexibility which can be applied in securing the satisfaction of this condition.

#### Payment of Compensation

Section 204 of the HPA 2016 sets out the provisions governing the payment of compensation when easements and other rights are overridden in reliance upon section 203.

Section 204(1) states that *“a person is liable to pay compensation for any interference with a relevant right or interest or breach of a restrictions that is authorised by s.203”*.

Section 204(2) goes on to confirm that *“the compensation is to be calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965”*. Sections 7 and 10 of the Compulsory Purchase Act 1965 are concerned with compensation payable in respect of injurious affection, where legal rights held over land are interfered with, but no interest is acquired from the beneficiary of the right (“the claimant”). The measure of compensation is the reduction in value of the claimant’s land as a result of the aforesaid interference with the right.

The obligation to pay compensation lies with the person who undertakes the relevant building and maintenance works in breach of the relevant right or restriction. However, if that person fails to discharge their liability, the liability becomes enforceable against the local authority (see section 204(3)). In the case of the Garden Village, any compensation liability will rest with the Council.

However, it is considered that the compensation due for any interference with / breach of the easements and other rights affecting the land at the Garden Village which is owned by the Council is likely to be minimal having regard to the relevant legal principles (details of which have been provided to the Council as part of the external legal advice commissioned).

It is possible that betterment attributable to the development proposals for the Garden Village could outweigh any diminution in value attributable to the interference with the Rights.