

Key Decision: Yes

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Cabinet

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Report Title: Appropriation for Planning Purposes of Land at the Garden Village, Handforth

Portfolio Holder: Cllr Nick Mannion - Environment and Regeneration

Senior Officer: Frank Jordan - Executive Director Place

1. Report Summary

- 1.1. The Garden Village at Handforth Scheme will create a new village community in the north of the Borough. The aim is to create a village that has housing of a high-quality design together with high levels of environmental performance. It will include 1,500 new homes, up to 12 hectares of employment land, a new local centre, a new school and extensive open space.
- 1.2. The Council is the lead developer for the Scheme and the delivery strategy and programme for the project were approved by Cabinet in September 2018.
- 1.3. Around 70% of the land allocated for the Garden Village is owned by the Council (the "Council Land"). This land is shown shaded pink on the plan at Appendix 1. The remaining 30%, which is shown shaded blue on the plan, is in third party ownership (the "Third Party Land").

The Council Land is subject to a large number of rights and interests, including but not limited to private rights of way and easements, most of which provide for access to the Third Party Land, as well as for services ("the Rights"). The beneficiaries of the Rights (the "Beneficiaries") are, for the most part, owners of the Third Party Land.

- 1.4. Where exercise of the Rights will impede or obstruct development of the Garden Village, they will need to be modified or released, with new rights being

granted as appropriate. The necessary alterations to the Rights will be sought by negotiation, but agreement may not be achievable in all cases, or negotiations may become protracted, causing delaying and putting at risk the delivery of the Garden Village.

- 1.5. The Rights therefore present a risk to the delivery of the Garden Village. This risk is however eliminated if the Council Land is appropriated and the overriding power is engaged.
- 1.6. Accordingly, this report seeks Cabinet approval to advertise the Council's intention to appropriate the Open Space Land for planning purposes and to delegate authority to the Director of Growth and Enterprise to consider any objections that may be received.
- 1.7. Subject to consideration of all objections received and if deemed appropriate following such consideration, Cabinet approval is also sought to proceed with the appropriation of the Council Land (which includes the Open Space Land) for planning purposes.

2. Recommendations

2.1. That Cabinet:

- 2.1.1. Authorise the advertising of the Council's intention to appropriate for planning purposes any part of the Open Space Land in accordance with the requirements of section 122(2A), LGA 1972.
- 2.1.2. Authorise the Director of Growth and Enterprise to consider any objections which may be received and to make a recommendation as to whether or not appropriation of any part of the Open Space Land should proceed;
- 2.1.3. Subject to the proper consideration by the Director of Growth and Enterprise of any objections received in response to the advertising of the Open Space Land in 2.1.1 above, authorise the Council to proceed with the appropriation of the Council Land pursuant to section 122(1), LGA 1972;
- 2.1.4. Delegate authority to the Director of Growth and Enterprise, in consultation with the Director of Governance and Compliance and the Section 151 Officer, to negotiate and enter into agreements with third parties in order to secure the modification or release of the Rights (and the grant of new rights) which may otherwise be an impediment to the development of the Garden Village; and
- 2.1.5. Failing such agreements being reached, delegates authority to the Director of Growth and Enterprise, in consultation with the Director of Governance and Compliance and the Section 151 Officer, to deal with the settlement of any claims for compensation made pursuant to section 204, HPA 2016 that may

arise by virtue of the operation of the overriding power contained in section 203, HPA 2016.

3. Reasons for Recommendations

- 3.1. To bring forward development throughout the Garden Village it is necessary to ensure that there are sufficient rights of access and provision for service routes across the Council Land.
- 3.2. In some cases, the existing Rights will be sufficient and can be exercised without giving rise to a conflict with the Council's development proposals. However, in other cases, the Rights will need to be modified or released in return for the grant of new rights. In the main, the necessary alterations to the Rights are expected to be achieved by agreement with the Beneficiaries but there is no guarantee that agreement will be achieved in every case or within a reasonable timeframe.
- 3.3. When development is carried out which interferes with the Rights, the Council will become liable to pay compensation. The measure of compensation is the diminution / reduction in the value of the land with the benefit of the Rights) that results from the Rights being interfered with. The calculation of compensation cannot include any ransom value. However, it can take into account any mitigation, such as the grant of alternative rights, as well as any betterment in land value which is attributable to the development proposals for the Garden Village, which will be facilitated by the interference with the Rights.
- 3.4. Furthermore, it is anticipated that appropriation of the Council Land will help to facilitate discussions between the Council and the Beneficiaries by removing the injunction risk and setting clear parameters for the calculation of any consideration to be offered to the Beneficiaries in exchange for a modification or release of the Rights and it will provide an increased level of certainty that the Council Land can be developed as proposed.

4. Other Options Considered

- 4.1. The option of working around the Rights to masterplan and construct the Garden Village has been considered but would be practically impossible.
- 4.2. Securing the necessary modification or release of the Rights by agreement is something the Council is actively pursuing but there is no guarantee that negotiations will succeed in every case, that this can be done within a reasonable timeframe nor at an acceptable cost (as this would be a negotiation).

5. Background

Planning Policy

- 5.1. The Garden Village is a site of approximately 120 hectares allocated in the Local Plan Strategy as a Strategic Site (LPS 33). The aspiration is to deliver a new exemplar sustainable community that will include:
- 1,500 new homes;
 - Up to 12 hectares of employment land;
 - A mixed-use local centre with retail, public house, hotel, children's day nursery and sports and leisure facilities;
 - A new primary school; and
 - High quality open spaces
- 5.2. In December 2018, the Council adopted The Garden Village at Handforth Supplementary Planning Document ("the SPD") to guide the development of the Garden Village. The SPD sets out a comprehensive masterplan, design guide and delivery programme for the project.
- 5.3. In May 2019, a hybrid planning application was submitted (ref. 19/0623M) seeking outline consent for a new village settlement and detailed consent for preparatory site and infrastructure works, including highway improvements to create new access routes into the Garden Village.
- 5.4. The development of the Garden Village in accordance with the hybrid planning permission will give rise to a range of public benefits, each with a social, economic and / or environmental dimension, the details of which are summarised later in this report.

Considerations

- 5.5. In approving the recommendations contained in this report, the following matters should be taken into account by Cabinet:
- the Rights and the extent of any interference with them;
 - whether interference with the Rights is necessary in order to allow the development proposals for the Garden Village to be carried out and, whether agreement can be reached for the modification or release of the Rights, on what terms and within what timescale;
 - whether the development of the Garden Village will contribute to the promotion or improvement of the economic, social or environmental well-being of the Borough or any part of it;
 - whether the benefits which the development of the Garden Village will give rise to could be achieved without interference with the Rights; and

- whether the benefits are proportionate to any infringement that will occur, particularly with regard to interference with rights guaranteed by the European Convention on Human Rights.

5.6. These matters fall to be considered alongside the objectives of the proposals for the Garden Village and the following public benefits:

- The development of the Garden Village is a long held policy objective of the Council. It represents an opportunity to create a new village settlement that will provide more than 1,500 new homes in part of the Borough where land available for development is scarce and housing demand is high;
- The proposals presented in the hybrid planning application accord with the land use requirements and site specific principles of development set out in the Local Plan Strategy (allocation LPS 33);
- Social objectives, which include: the creation of a sustainable, inclusive, diverse village, with 1,500 new homes (4% of the housing target for the Borough over the Local Plan Strategy period 2010-2030), providing a range of housing types and tenures for a wide cross section of the community that will improve housing choice and affordability;
- Environmental objectives, which include: the creation of a network of green infrastructure containing a diverse range of assets including: green corridors, children's play areas, arts and heritage trails, heritage assets, amenity green space, community food production, allotments and orchards, outdoor sports facilities, street trees, boundary treatments, parking courts and edge / buffer development landscaping; and
- Economic objectives, which include: the creation of employment opportunities with over 300 construction and 470 supply chain jobs during the delivery phase and a further 600 direct and 150 supported jobs from the new commercial and community uses to be delivered as part of the Garden Village and by increasing the level of expenditure in the local area and providing housing for workers to support forecast economic growth in the north of the Borough and beyond.

5.7. The benefits arising from the delivery of the Garden Village must be balanced against the likely impact caused by interference with the Rights.

5.8. It is not practically possible to plan and deliver the new settlement around the need to avoid conflict between the construction of the Garden Village and the Rights. Furthermore, where a conflict arises, the Rights affected will generally be capable of being modified or released with little or no impact on the Beneficiaries. Any losses which may be suffered can be compensated.

5.9. From the perspective of the Council and the wider community, the benefits of securing the timely delivery of the Garden Village are considerable and will

outweigh any adverse impact upon the Beneficiaries of the Rights. Any detriment suffered by the Beneficiaries is considered capable of being mitigated through the modification or release of the Rights and the grant of new equivalent rights. Any residual adverse impacts which may be experienced, notwithstanding the Council's proposed mitigation measures, can be compensated.

5.10. Accordingly, proceeding to appropriate the Council Land in order, where necessary, to engage the overriding power is considered to be proportionate and justified in the circumstances.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1 The Council has commissioned detailed advice on the appropriation of the Council Land from external legal advisors and a summary of that advice is set out in Appendix 2 to this Report.

6.1.2 The Council has statutory powers which enable the appropriation of Council owned land for planning purposes pursuant to section 122(1) of the Local Government Act 1972 ("LGA 1972"). This is a statutory process which may assist in situations such as this in order to secure the development of Council owned land. This is because where land is appropriated in this way, easements and other rights and interests in the land can be interfered with (pursuant to section 203 of the Housing and Planning Act 2016 ("HPA 2016")) and overridden where they would otherwise be an impediment to development. At the point the rights are overridden they are converted into a right to compensation (which can be claimed under section 204, HPA 2016). This paper seeks Cabinet approval to appropriate for planning purposes the Council Land pursuant to section 122 of the LGA 1972. (In this paper, all references to "appropriation" and "appropriated" mean appropriation and appropriated for planning purposes pursuant to the 1972 Act and all references to "overriding power" and "overriding" refer to the power granted in the S203 HPA 2016).

6.1.3 Some of the Council Land is presently in use as open space ("the Open Space Land"). The law requires that before appropriating land which is open space, a council must advertise its intention to appropriate it and give consideration to any objections that are received (section 122(2A), LGA 1972).

6.2 Finance Implications

- 6.2.1 The delivery of the Garden Village will necessitate interference with the Rights.
- 6.2.2. Most of the Beneficiaries of the Rights are in dialogue with the Council regarding the delivery of the Garden Village. A key element of the Council's delivery strategy is to ensure that all parcels of development land have the necessary rights for access and services. As such, where the exercise of an existing right is in conflict with the development proposals for the Garden Village, the Council is committed to either modifying that right or to releasing and replacing it with a new alternative right.
- 6.2.3. Therefore, regardless of whether the above-mentioned re-provision occurs as a consequence of a privately negotiated agreement with the Beneficiary or within the context of an existing right being overridden and converted into a right to compensation (via the appropriation process), the financial implications for the Council are anticipated to be minimal.
- 6.2.4. It is not possible at this stage to fully assess the amount of consideration or compensation that might become payable. However, for the reasons given earlier in this report, it is anticipated that the sums to be paid will be small and capable of being authorised via existing delegated authorities using already allocated budgets.

6.3. Policy Implications

- 6.3.1. Adoption of the recommendations contained in this report will facilitate the timely and cost effective delivery of the Garden Village and thereby contribute towards the achievement of the policy objectives of the Local Plan Strategy and, in particular, allocation LPS 33.

6.4. Equality Implications

- 6.4.1. Under s.149 of the Equality Act 2010 ("the 2010 Act"), a public authority (which includes a council) must, in exercise of its functions, have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the 2010 Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.4.2. In this regard, Cabinet must consider whether a decision in line with this report's recommendations will or could have a differential impact on persons or groups with protected characteristics, which include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation.

6.4.3. The integrated approach to the appraisal and assessment of the Local Plan Strategy (Local Plan Strategy Submission Sustainability (Integrated) Appraisal (May 2014)) incorporated an Equality Impact Assessment. The assessment undertaken concluded that there would be no disproportionate impact on groups with protected characteristics.

6.4.4. Accordingly, full regard has been had to the Council's statutory obligations under the 2010 Act and, in particular, its duty under s.149.

6.5. Human Resources Implications

6.5.1 No human resources implications have been identified.

6.6 Risk Management Implications

6.6.1. Appropriating the Council Land for planning purposes addresses the current risk of the Council being unable to deliver the Garden Village in a timely and cost effective manner due to the existence of the Rights and the conflict this gives rise to.

6.6.2. Having appropriated the Council Land for planning purposes, the main residual risk relates to the amount of consideration or compensation that may become payable to the Beneficiaries should interference with the Rights be necessitated in order to deliver the Garden Village. In order to manage this risk, opportunities to modify and / or release and re-grant the Rights so that the Beneficiaries are put in no worse a position will be fully explored and evaluated.

6.7 Climate Change Implications

6.7.1 No climate change implications have been identified.

6.8 Human Rights Implications

6.1.1. In considering the recommendations of this report, Cabinet must be satisfied that the purposes for which the Council Land is to be appropriated and for which the Rights are to be overridden sufficiently justify interfering with the human rights of the Beneficiaries.

6.1.2. 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 or not to engage section 203 of the HPA 2016. Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions.

- 6.1.3. The appropriation of the Council Land for planning purposes, in order to engage section 203 of the HPA 2016 and to permit infringement of the Rights, will involve interference with a person's rights under the above-mentioned Article. However, the right to peaceful enjoyment of possessions is qualified. The deprivation of a person's possessions is authorised where it is prescribed by law, is pursuant to a legitimate aim, is necessary in a democratic society and is proportionate.
- 6.1.4. The interference with an individual's private rights must be necessary and proportionate to the public interest of facilitating the development scheme for the Garden Village. In this context, "proportionate" means that the interference must be no more than is necessary to achieve the identified legitimate aim of such interference. A fair balance is required to be struck between the rights of the individual and the rights of the community as a whole.
- 6.1.5. In light of the significant public benefits arising from the development of the Garden Village (set out in Section 5 above), the public interest in facilitating the development outweighs the private interests identified, and the proposed engagement of section 203, HPA 2016 will amount to a proportionate interference with the Rights in all the circumstances. In this regard, the grant of alternative rights, and the availability of statutory compensation to those who are deprived of the benefit of an existing right or interest, is of relevance to the issue of proportionality.

7. Ward Members Affected

- 7.1. The ward councillors for Handforth are Cllr B Burhill and Cllr J Smith. Both members are aware of the proposals for the Garden Village.

8. Consultation & Engagement

- 8.1. Public consultation exercises were undertaken in respect of the original Allocation in the Local Plan, the SPD prior to its adoption in December 2018 and the Hybrid Planning Application during 2019.
- 8.2. Furthermore, the Beneficiaries are aware of the Council's proposals for the Garden Village and the delivery programme in place for its development.

9. Access to Information

- 9.1. All supporting documents are included within the appendices to this report.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

10.2. Name: Frank Jordan

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