

To: Executive Director, City Regeneration

Date: 3December 2014 **Item No: 1**

Report from: Service Manager, Regeneration and Major Projects

Title of Report: Westgate Centre and adjoining land - appropriation and acquisition for planning purposes

Summary and Recommendations

Purpose of report: To agree in principle that certain Council-owned land at and adjoining the existing Westgate Centre should be appropriated to planning purposes in order to facilitate the redevelopment of the Westgate Centre and adjoining land for retail led mixed use purposes, that such intention to appropriate in respect of certain areas should be advertised pursuant to the relevant statutory provisions, to authorise such advertisement, and further to confirm that land currently owned by the Westgate Oxford Alliance Limited Partnership and to be acquired by the Council and leased back to WOALP pursuant to the existing development agreement will be acquired by the Council for planning purposes pursuant to s227 of the Town and Country Planning Act 1990.

Key decision? No

Executive lead member: Councillor Ed Turner

Policy Framework:

- Meeting housing need
- Stronger and active communities
- A vibrant and sustainable economy
- Cleaner Greener Oxford
- A Regeneration Framework for Oxford to 2026
- Oxford Core Strategy 2026
- West End Area Action Plan 2007-2016
- Oxford Local Plan 2001-2016
- Oxford Sites and Housing Plan 2013
- Oxfordshire Local Investment Plan

Recommendation(s)

- (a) To agree in principle that the area of Council owned land shown as Area B on the plan at Appendix 1 to this Report should be appropriated in accordance with Section 122 of the Local Government Act 1972 from general municipal purposes to planning purposes;
- (b) That prior to any final decision being made in respect of such appropriation, the Council advertises its intention to appropriate pursuant to the requirements of Section 122 of the 1972 Act (advertisement in the local press for two consecutive weeks) in respect of the areas within Area B shown hatched black on the plan at Appendix 1;
- (c) that the placing of the necessary advertisements as referred to above be authorised and undertaken;
- (d) that following the period of advertisement, an updated report is submitted for final decision in relation to the appropriation of Area B having regard to any objections and other representations received pursuant to such advertisement; and
- (e) that it is confirmed that the freehold interest in the land shown as Area C on the plan at Appendix 1 to this Report (currently owned by Westgate Oxford Alliance Limited Partnership and to be transferred to the Council and leased to WOALP pursuant to the development agreement of 14 May 2013), is to be acquired by the Council for planning purposes pursuant to Section 227 of the Town and Country Planning Act 1990.

Background

1. The existing Westgate Shopping Centre and adjoining land shown edged red on the plan attached at **Appendix 1** and marked 'Extent of Appropriation' (the Appropriation Plan) is proposed for re-development for mixed-use, retail led purposes. References in this report to the Site are to the area edged red on the Appropriation Plan. The Council owns the freehold of the majority of the Site with certain interests (freehold and leasehold) being held by Westgate Oxford Alliance Limited Partnership (WOALP), a joint venture between Land Securities Group and the Crown Estate.
2. In May 2013, the Council entered into a Development Agreement with WOALP in respect of the proposed re-development of the Westgate Shopping Centre. Outline planning permission for the re-development was granted on 16 October 2014 (see below).

3. The Site is within the St Ebbes area of the City within Carfax Ward. In the 1960s, the area was designated by the Council as a Comprehensive Development Area and was subject to extensive clearance. The Council already owned land within the area and acquired more land to facilitate the re-development drive. The existing shopping centre and multi-storey car park was completed in 1972 and was originally managed by the Council until 3 March 1986 when a long lease was granted to CIN Properties Limited. That lease is now vested in the two nominee companies of WOALP.
4. There have been previous proposals to re-develop the existing shopping centre and adjoining land. Permission was refused for proposals promoted in 1988. An application made in 2000 was withdrawn many years later following High Court challenge. New proposals were consented in 2007. Whilst some preparatory works were undertaken pursuant to that permission and 14 flats were constructed at Albion Place (under a separate permission) in replacement for residential units proposed to be lost at Abbey Place through that scheme, the 2007 scheme did not proceed. The Council also made a CPO under planning powers to support the 2007 scheme, but the powers to assemble the land under that CPO have since lapsed.

Current re-development proposals

5. On 16 October 2014, planning permission was granted for mixed use retail led re-development of the Site with a range of Class A uses and residential and leisure uses and associated parking, subject to a number of reserved matters which the Council resolved to approve on 25 November 2014. The proposals involve the demolition of the existing southern section of the existing shopping centre, with the exception of most of that part of the site currently occupied by Sainsbury's, with the northern part retained and refurbished whilst retaining the public library throughout construction and following completion of the development. The multi-storey car park and bridge connection to the shopping centre are also to be demolished, as are 14 residential units at Abbey Place, although these have already been replaced at Albion Place as referred to above. Entrance from Bonn Square is to be retained, as are the entrances from Pennyfathing Place and Castle Street.
6. WOALP has identified certain third party rights over the Site which will need to be physically interfered with in order to carry out the re-development in accordance with the planning permission. As things stand, unless the rights are released or overridden, those with the benefit of the rights could seek to prevent the re-development scheme proceeding so far as it interferes with their rights.
7. S237 of the Town and Country Planning Act 1990 (1990 Act) authorises interference with third party rights such as easements, restrictive

covenants etc in respect of land acquired or appropriated by a local authority for planning purposes, where the interference results from development in accordance with planning permission. The protection applies not only to the local authority, but also to anyone deriving title from it. Where s237 is engaged, any interference with a third party right is converted to an entitlement to compensation based on the reduction in value of the third party's land attributable to the interference with the rights attaching to it.

8. WOALP has invited the Council to consider using its applicable powers to confer the protection afforded by S237.

Purpose for which the Site is currently held and third party rights affected

9. The third party rights affected include rights relating to units within the existing Westgate Centre, the Library, the City College and rights to light which benefit a number of properties adjacent to the scheme. The areas affected by such rights are described in more detail below. Reference to an 'Area' is to an Area shown on the Appropriation Plan.

Area A

10. In 1968, Area A (which includes the land upon which the existing shopping centre and the adjacent multi storey car park are built) was appropriated from Highways Sewers and Lighting Committee to the Central Area Redevelopment Committee expressly 'for planning purposes'. The subsequent endorsement of that decision by Full Council in October 1968 notes that the land appropriated was required 'for closing certain roads and for Westgate Shopping Centre'.
11. No further appropriation by the Council has taken place since the original 1968 appropriation. The Council's freehold interest in Area A is thus already held for planning purposes connected with the shopping centre.
12. As the re-development involves renewing parts of the shopping centre and bringing it up to date generally, it is considered that the re-development is within the aegis of the original appropriation and that the protection in s237 already applies (and will apply to WOALP following the grant of the long lease) without the need for further action.

Area B

13. Area B on the Appropriation Plan includes areas of public highway adjoining the shopping centre and the multi-storey car park and the surface area car parks adjacent to the south of the existing shopping centre. This area is in the freehold ownership of the Council and the Council's records indicate that it is held for general municipal purposes.

Also included are some parcels of unregistered land, title to which is in the process of being registered to the Council.

14. The third party rights over Area B include rights benefitting the Library's land, the City College and rights to light in favour of a number of residential properties in Tennyson Lodge and Faulkner Street.
15. If s237 is to be engaged in relation to this area, the land would first need to be appropriated by the Council.

Area C

16. WOALP own the freehold interest in Area C. The third party rights over this area include rights benefitting units forming part of the existing shopping centre but which are not within Area A. These comprise the units occupied by New Look and Goldsmiths.
17. So far as can be ascertained, some (but not all) of Area C was previously in the ownership of the Council having been acquired in the 'shadow' of the 2007 CPO. It was then transferred to the previous developer and then on to WOALP. It is unclear whether the land acquired by the Council was acquired for planning purposes, and so whether s237 might already be engaged in respect of that land.
18. However, the Development Agreement entered into with the Council requires that WOALP's interests within the Site are to be transferred to the Council and that a long lease of the whole Site will then be granted by the Council to WOALP. Given the acquisition by the Council is related to the re-development scheme, then the appropriate power of acquisition will be for planning purposes as provided for in s227 of the 1990 Act. If the land is acquired for such purposes, then assuming the requirements of the section are otherwise satisfied, s237 would enable WOALP to carry out works pursuant to the planning permission notwithstanding those works interfered with third party rights.

Statutory Powers relating to appropriation/acquisition

19. Section 122 of the Local Government Act 1972 gives local authorities power to appropriate land from one purpose to another. Case law has indicated that this is not simply a decision that land held for one purpose should now be held for another -appropriation (and thus the matters to be taken into account) has been aligned with the compulsory purchase process. Further, before appropriating/acquiring to planning purposes, the requirements of s226 of the 1990 Act are required to be satisfied.
20. Before making any decision to appropriate Area B to planning purposes in order to engage s237 and enable third party rights to be overridden, a number of factors must be considered. These are set out below and officers views are expressed in respect of each consideration. Similar

considerations apply (save for (a)) in considering an acquisition for planning purposes where this is to engage s237.

(a) *Is the land is no longer needed for its current purpose?*

This has been held to mean no longer needed in the public interest of the locality which imports questions of degree and comparative need including the purpose to which the land is to be appropriated.

It is a long-standing ambition of the Council to regenerate the Westgate Centre and its environs and to that effect, the Council entered into the development agreement with WOALP. Planning permission has been granted for the re-development scheme and is supported by planning policy. Area B is currently held for general municipal purposes and in large part comprises surface area car parks which are considered to represent an inefficient use of land, suffer from deficiencies in terms of security and design and their retention would in any event be incompatible with the re-development scheme. Having regard to the public benefits to be secured by the re-development proposals, it is considered that the current use of Area A is no longer required in the public interest.

(b) *Is the Council of the view that the appropriation/acquisition will facilitate the development, redevelopment or improvement of the land concerned and also that it will contribute to the achievement of the economic, social or economic wellbeing of the area?*

The consented re-development proposals provide an opportunity for the City to re-establish itself as a sub-regional centre commensurate with that status and to bring substantial employment and other benefits to its residents, students and visitors alike. It has the potential to transform a sector of the City Centre which is tired and "down at heel" and act as a catalyst for the future regeneration of the wider West End and Oxpens areas. It is considered that appropriation to/acquisition for planning purposes and the engagement of s237 to ensure any third party rights do not prejudice delivery of the scheme will facilitate the re-development and contribute to the realisation of the well-being objectives in the greater public interest.

(c) *The third party rights which would be interfered with as a result of the development must be rights to which s237 apply.*

S237 defines the nature of the rights to which it applies, which include easements and such like as well as restrictive covenants. It is considered that the third party rights in question are rights to which s237 applies.

(d) *Is interference with the third party rights in question necessary? This includes both physical interference and also whether it is*

necessary because agreement might otherwise be reached for the release of the right.

Physical necessity

WOALP has advised that it is necessary to interfere with certain third party rights in Area B in order to construct a basement area on two levels providing both a car park and service yard for the development. In relation to rights of light, in order to provide the scale and range of facilities required for comprehensive development that meets the objectives of planning policy and is commercially viable, car parking and servicing, public space, large retail stores and other shops are provided over two trading levels and restaurants at roof level. The heights of the buildings have been set so as to accommodate these uses in a design that is acceptable in the context of the Council's policy that development should not generally exceed a height of 18.2m AOD. The building form means that rights to light benefitting certain properties in Tennyson Lodge and Faulkner Street may be interfered with.

Negotiations

WOALP are in negotiations with the third parties regarding the development, interference with the rights affected and the terms of agreement for a release of those rights. A summary of the current position regarding negotiations is appended to this Report at **Appendix 2**. Due to the nature of the rights/properties affected, it is not possible to identify the third party rights as they apply to the specific Areas. However, the plan marked 'Indicative Site Model' included within **Appendix 2** identifies the areas affected and can be read alongside the summary of negotiations.

WOALP has made good progress and with the assistance of the Council where appropriate will continue to negotiate with the third parties (where the third party is willing) to seek to deal with matters by agreement. WOALP has confirmed that this will continue notwithstanding that the Council may appropriate or acquire the relevant land for planning purposes, thus engaging s237. Indeed, WOALP remains confident that agreement can be achieved in most cases. There is, however, a concern that it may not be possible to conclude the negotiations with all third parties to enable the development to proceed on its current timetable, in which event, the programme for the works (and potentially the viability of the scheme) will be threatened.

The timescale for negotiations to be concluded needs to be balanced against the need to ensure the development programme is not unduly compromised in the event that negotiations fail. Given the programme for the scheme and the adverse consequences if it becomes delayed, officers consider it appropriate for the appropriation/acquisition for

planning purposes to proceed and for negotiations to continue against that background.

- (e) *Is it in the public interest that the development proposed should be carried out.*

This is addressed by the text at (b) above.

- (f) *Should s237 be engaged to override the third party rights and if so would that be proportionate? Human Rights are required to be considered.*

Consideration must be given to the protections in Article 8 of the Convention on Human Rights (right to respect for private and family life which applies in respect of residential occupiers) and Article 1 of the First Protocol (Protection of Property). In view of the significant regenerative public benefits which would be delivered through the re-development proposals, it is considered that interference with private rights is proportionate in this case. As indicated below, any third party interference with third party rights will carry a right to compensation in respect of any diminution in value which may occur in respect of the third party's land.

Compensation

21. Once the land has been appropriated or acquired for planning purposes, then in respect of those third party rights which are interfered with as a result of the development, compensation will be payable based on the extent of any diminution in value of the third party's land as a result of the interference with the right.
22. Compensation is payable by the person interfering with the right (WOALP), but the Council will retain residual liability under s237 in the event WOALP fail to pay the compensation. The development agreement and associated documents cover this issue, however, and provide appropriate indemnities/guarantees to the Council in respect of any s237 compensation payable.

Open space issues

23. Where land consists of or forms part of an open space, s122 of the 1972 Act provides that an authority cannot appropriate such land unless it has advertised its intention to do so for two consecutive weeks in a local newspaper and has considered any objections to the proposed appropriation. 'Open space' for these purposes has the meaning given in s336 of the 1990 Act: "land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground".

24. Within Area B and shown hatched black on the attached plan are a number of open areas as follows:
- (a) A grassed area to the rear of the Westgate Centre (incorporating the Roger Bacon plaque);
 - (b) A planted flower bed surrounded by pavement at the junction of Turn Again Lane and Old Greyfriars Street;
 - (c) A strip of land which wraps around the northern and eastern boundaries of the existing multi-storey car park where it fronts Old Greyfriars Street and Castle Street;
 - (d) A planted area adjacent to Castle Street to the south of the existing multi-storey car park;
 - (e) An area of tree-lined highway verge located between the surface car park and Old Greyfriars Street; and
 - (f) An area of tree-lined verge to the south of the existing multi-storey car park adjacent to the car park exit onto Old Greyfriars Street;

Photographs of these areas are attached to this Report (**Appendix 3**). The grassed area between Old Greyfriars Street and the existing Westgate shopping centre is proposed to be used for cycle parking and seating. The other areas south of and west of Old Greyfriars Street fall either under the new building or within the public highway on the east side of Norfolk Street.

25. The only part of the definition of open space in Section 336 of the 1990 Act which could apply to these areas is land 'used for the purposes of public recreation'. Officers consider it is doubtful that any of these areas fall within the definition. In relation to the areas which are planted up, officers are not aware of any use for public recreation, nor could these areas reasonably be so used. In relation to the other two areas (a) and (b) above, it is understood that people occasionally walk across these areas and that workers from the shopping centre sit out on it and eat their lunch from time to time when the weather is fair on the area referred to at (a), but officers consider that such use does not reasonably amount to use for 'public recreation'.
26. Notwithstanding officers views, given there could be doubt over whether the areas in question are open space as defined, officers consider it would be prudent to advertise the intended appropriation in accordance with s122 of the 1972 Act and thus approval is sought to place the necessary advertisements.

Conclusion

27. It is considered that the basis for appropriation of Area B as set out in this Report is satisfied in principle. In relation to the areas shown hatched black on the Appropriation Plan, however, the intention to appropriate should first be advertised pursuant to the requirements of s122 of the 1972 Act. Following the end of the advertisement period, this Report and its recommendations regarding the appropriation of Area B will be updated as necessary and appropriate to reflect the responses (if any) received and the question of the appropriation of Area B presented for final decision.
28. It is considered that Area C to be transferred to the Council by WOALP pursuant to the Development Agreement ahead of the grant of a long lease is appropriately an acquisition for planning purposes pursuant to s227 of the 1990 Act and this should be confirmed accordingly.

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List of background papers:

West Area Planning Committee Report and Minute 11 March 2014
Planning Permission dated 16 October 2014
Documents relating to 1968 appropriation

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