

To: Executive Director, City Regeneration

Date: January 2015

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 update the Executive Director, City Regeneration following the Executive Director's decision of 3 December 2014 and to recommend that the Executive Director agrees 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, 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

Recommendations:

(a) To agree that the area of Council owned land shown as Area B on the plan at Appendix 1 to this Report be appropriated in accordance with Section 122 of the Local Government Act 1972 from general municipal purposes to planning purposes;

(b) To confirm that the freehold interests 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.

Appendices

Appendix 1 – Plan – Appropriation land to transfer

Appendix 2 – Appropriation Report 03/12/2014 (available on website in earlier decision)

Appendix 3 – Rights benefitting Freehold Titles (Includes associated plans 1,2,3,4,5,5A,6,7,8,9 and 9A)

Appendix 4 – Tenant Rights (Includes associated plans New Look 1 & 2, Goldsmiths 1 & 2)

Appendix 5 – Rights to Light (Including two schedules Rights to Light 1 and Rights to Light 2)

Appendix 6 – Negotiation Schedule (Freehold and Tenant Rights)

[Confidential]

Background

1. On 3 December 2014, following a Report from the Service Manager, Regeneration and Major Projects (**December Report**), the Executive Director, City Regeneration decided as follows:
 - (a) That in principle, 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 should advertise 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 be 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 the freehold interest in the land shown as Area C on the plan at **Appendix 1** (currently owned by WOALP 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 (**1990 Act**).
- 2. The purpose of this Report is to update the Executive Director on matters following his decision of 3 December 2014 and to seek a final decision on the appropriation of Area B as referred to in the December Report. The Executive Director is also asked to re-confirm that the purpose of acquisition of WOALP's land (Area C) is for planning purposes pursuant to s227 of the 1990 Act.
- 3. The Appendices to the December Report have also been updated where appropriate and updated versions are attached to this Report as relevant. References to an "Appendix" in bold is a reference to an Appendix to this Report.
- 4. A copy of the December Report is attached to this Report at **Appendix 2**. A copy of the December Report was published on the Council's website on 11 December 2014, together with a Minute of the Executive Director's decision.
- 5. Following the Executive Director's decision on 3 December 2014, the intention to advertise the appropriation of the areas of potential open space as referred to at paragraph 1 above was duly advertised in the Oxford Mail on 11 December 2014 and again on 18 December 2014.
- 6. It should be noted that there are two factual inaccuracies in the December Report which came to light following the Executive Director's decision of 3 December 2014. These inaccuracies were not such as to affect the substance of the Executive Director's decision and were immediately drawn to his attention. The errors in question are that:
 - a) at paragraph 24(c) of the December Report, the description of the area of open space referred to is stated to be on the "eastern" side of the Westgate Centre rather than the "western" side, as is the correct orientation; and
 - b) at paragraph 24(f) of the December Report, reference was made to "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". This area lies within Area A which is already held for planning purposes and is not to be appropriated. There was

therefore no requirement to advertise this area as open space and it has not been so advertised.

7. No objections or other representations have been received in respect of the proposed appropriation of the open space areas in response to the advertisements in the Oxford Mail or otherwise in connection with the appropriation generally.
8. The Executive Director is referred to the December Report. Paragraph 20 of the December Report set out the factors to be considered when deciding whether to appropriate or acquire land for planning purposes. By way of further consideration of these factors, additional commentary is provided below which augments and elaborates upon the information provided in the December Report. The additional information is also relevant to the acquisition of WOALP's freehold interests (Area C) as referred to in the December Report which is why, for completeness, the Executive Director is asked to re-confirm the acquisition under s227 of the 1990 Act.
9. References to paragraphs and questions posed are references to paragraphs and questions posed in the December Report.
10. Paragraph 20(a)

As explained at Paragraph 20, the Council remains satisfied that the land is no longer needed for its current purpose.

11. Paragraph 20 (b) (and (e))

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 comments below also apply to the question posed at paragraph 20(e) of the December Report: *Is it in the public interest that the development proposed should be carried out?*

As explained in the December Report, unless the third party rights over Area B and Area C are released or capable of being overridden, those with the benefit of those rights potentially have the ability to prevent the development proceeding.

As set out in the December Report, Officers consider that the appropriation of Area B and the acquisition of Area C will, in each case, facilitate the development and improvement of the land in question. Officers also consider that the appropriation/acquisition will contribute to the achievement of the stated well-being objectives as follows:

- (i) In relation to the promotion or improvement of environmental well-being, the re-development will:
- provide new streets, pedestrian and cycle routes;
 - deliver public realm improvements, including covered areas with seating, providing a comfortable pedestrian environment;
 - deliver an inclusive design and connections to ensure integration of the development with the built and historic environment;
 - provide improved public transport infrastructure with new bus stops, waiting areas and a bus priority route;
 - include enhanced sustainability and energy efficiency measures in excess of policy requirements.
- (ii) In relation to the promotion or improvement of social well-being, the re-development will:
- provide employment training opportunities, including, in particular, opportunities for young people and disadvantaged groups;
 - have a positive effect on safety and fear of crime;
 - contribute to housing requirements, including affordable housing (through an off-site contribution);
- (iii) In relation to the promotion or improvement of economic well-being, the re-development will:
- provide a net increase of between 2,790 and 3,695 FTE jobs;
 - provide employment training opportunities and assist in 'up-skilling' the local workforce;
 - provide opportunities for local businesses;
 - strengthen the City's retail offer commensurate with the City's status as a sub-regional centre;
 - bring the potential to act as a catalyst for the future regeneration of the wider West End and Oxpens areas;
 - provide new eating, drinking and leisure facilities enhancing the entertainment offer of the City, encouraging more visitors and adding to the vitality of the City.

12. Paragraph 20(c)

The third party rights which would be interfered with must be rights to which S237 apply

S237 of the 1990 Act defines the nature of the rights to which it applies. It applies to '...any easements, liberty, privilege, right or advantage

annexed to land and adversely affecting other land, including any natural right to support' (S237(2)). The section also applies to interference with any user restriction (i.e. restrictive covenant).

As identified in the December Report, the Council's freehold title to Area B and WOALP's freehold title to Area C are affected by various rights or covenants. Information provided by WOALP shows that these comprise:

- (a) the rights and covenants identified in **Appendix 3**(with accompanying plans);
- (b) the tenants' rights identified in **Appendix 4**(with accompanying plans); and
- (c) the rights to light in favour of the residential properties at Tennyson Lodge and Faulkener Street and other properties which are identified in **Appendix 5**;

The tenants' rights identified in **Appendix 4** are believed to relate to Area C, although it is difficult to be categorical due to the scale and base of the various plans involved. It may be that the rights could also stray into land comprised within Area B.

Appendix 3 and **Appendix 4** also identify the category within s237(2) such right is considered to fall into or, as relevant, whether the right is in the nature of a restrictive covenant (s237(1A)). The rights to light referred to in **Appendix 5** are considered to be rights annexed to land and adversely affecting other land within the meaning of s237(2)

13. Paragraph 20(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 interference

In addition to setting out the rights affected (other than rights to light), **Appendix 3** and **Appendix 4** identify whether/how the rights are to be interfered with (where the specific area of land affected by the right can be identified). In a number of cases, whilst rights/covenants affecting Areas B and C can be identified, it has not been possible to establish the specific part of those areas which the right/covenant relates to. In those cases, it is not therefore possible to say whether those rights will be interfered with as a result of the development

Appendix 5 deals with the rights to light and also includes a summary table highlighting any interference considered actionable. As a general rule of thumb, a room is considered to retain sufficient light if more than 50% of its area will retain an adequate level of light. If a room is

already poorly lit, any light loss, unless de minimis, is considered actionable. There are a number of industry “markers” to determine whether the injury is “small”. The more markers which are met, the more likely the injury is to be considered “small”. WOALP’s rights to light surveyors have assessed the extent of the injury in line with these markers and, in respect of each interference, assessed whether the risk of injunction is “low”, “medium” or “high”.

In addition to the information in the Appendices regarding interference, WOALP has provided information as to the design process and how certain rights have been considered as follows:

County Council

In relation to the County Council’s rights, most of the rights which will be interfered with as part of the development relate to land which is within Area A as referred to in the December Report and so is already held for planning purposes. WOALP advise that they have been aware from the outset that the proposed development would interfere with access rights which the County Council enjoys and as a result the access rights have been incorporated into the scheme design to ensure that access can be maintained at all times, both during and post-construction.

New Look/Goldsmiths

WOALP has advised that it is fundamental to the success of the scheme to reconfigure the unit currently occupied by Primark and divide it into individual units. Reconfiguration of the Primark unit will result in existing service and escape corridors, over which New Look and Goldsmiths have rights, being replaced with retail space and it was not possible to design the scheme in a way that would avoid interference with the New Look or Goldsmiths rights. However, it has always been the intention to relocate these tenants into the new development to minimise the impact on their rights. As can be seen from **Appendix 6** (discussed below), an agreement has now been reached with Goldsmiths for their relocation within the development. Negotiations with New Look are at an advanced stage.

Rights to light

WOALP advise that at outline stage, the impact of the scheme on existing rights to light was considered based on a worst-case scenario, i.e. on the basis that the development would be constructed to its maximum parameters. This established the impact of the development on rights to light and was one of the factors influencing the reserved matters design as it progressed. As a result, the development has not been built to its maximum parameters and therefore the impact on rights to light is less than originally anticipated, but considered the minimum necessary to deliver a redevelopment of this nature and

scale(the December Report explained the issues regarding the scale and range of facilities required for comprehensive development that meets the objectives of planning policy and is commercially viable).

Negotiations

Appendix 6(non-rights to light) updates the position regarding negotiations with third parties (where the rights and beneficiaries are known) since the December Report. **Appendix 5** includes information on negotiations regarding rights to light. WOALP continues to make good progress.

The current timetable for the project is as follows:

Start on Site for the Enabling Works	January 2015
Start design works with Main Contractor	January 2015
Place Main Contract	February 2015
Start on Site for the Main Contractor	March 2015
Practical Completion	22 September 2017
Centre Opening	20 October 2017

WOALP has advised that delivery of the project on this timetable is essential because of the impact of rising tender prices. Tenders for enabling works and for the main contract were invited in the summer of last year in order to fix the level of construction costs required to deliver the project against the above programme. If the project were to be delayed, the design solution required in this location would quickly become unviable/undeliverable in the context of rising tender prices.

Whilst WOALP remains confident that agreement can ultimately be achieved with the third parties in most cases, the position remains that it will not be possible to conclude the negotiations with all third parties to enable the development to meet its current timetable.

The timescale for negotiations to be concluded needs to be balanced against the need to ensure the development programme is not unacceptably 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. WOALP have confirmed that they will continue to seek agreement with the third parties where possible and the Council will support that process where it can.

14. Paragraph 20(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.

In considering whether to proceed where s237 will be engaged, consideration must be given to the protections under Human Rights legislation.

Under Article 8 of the Convention on Human Rights (Right to private and family life):

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as 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 prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Under Article 1 of the First Protocol (right to peaceful enjoyment of property):

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 8 of the Convention is of relevance to residential occupiers (and so applies to those with the benefit of rights to light at Faulkener Street and Tennyson Lodge for example). Article 1 of the First Protocol applies to both individuals and other legal persons and so is also of application to the rights held by corporate entities for example.

The action must be proportionate and represent a fair balance between public interest and private rights. The key question is whether the interference with the rights in question is (in the case of Article 8 rights) necessary in a democratic society in the interests of the economic well-being of the country and is proportionate and whether (in the case of Article 1 Protocol 1 rights) the interference is in the public interest and is proportionate? The nature and extent of the interference with third party rights (where the area affected and beneficiary are known) has been explained in this Report and the December Report, and relevant Appendices.

Having regard to the significant regenerative, well-being and other public and economic benefits to be delivered through the redevelopment proposals, it is considered that the degree of interference is necessary in the interests of the economic well-being of the country (in the terms set out in Article 8), is in the public interest (in the terms set out in Article 1, Protocol 1 rights) and is proportionate in each case.

As referred to in the December Report, any interference with third party rights will carry a right to compensation in respect of any diminution in value caused to the third parties' property as a result of the interference.

It should perhaps also be noted that in the Inspector's report into the Oxford City Council (Redevelopment and Extension of the Westgate Shopping Centre) Compulsory Purchase Order 2007 (and subsequent decision of the Secretary of State), it was concluded that whilst the CPO would cause disturbance to the interests of owners and occupiers of properties and land, and that there would be widespread interference with property rights under Article 1 and Article 8, the pressing need to promote and improve the environmental, social and economic well-being of Oxford justified the interference, striking a balance between the public interests of worthwhile long-term regeneration and the private interests of owners.

Conclusion

15. In all the circumstances, it is considered that the basis for appropriation of Area B to planning purposes in accordance with Section 122 of the Local Government Act 1972 is satisfied and the Executive Director is asked to agree that Area B be appropriated accordingly.
16. 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 the Executive Director is asked to confirm accordingly.

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List of background papers:

Planning Permission dated 16 October 2014
Documents relating to 1968 appropriation