

Meeting of the Cabinet – 24th March 2022

Report of the Director of Regeneration and Enterprise

Update on the Towns Fund Bid

Purpose

1. To pass a resolution that the Council agrees to use its compulsory purchase powers for the acquisition of land necessary for the development of the site currently occupied by the K2 Security and Castle Hill Banqueting Suite as shown on the draft order plan Appendix 1 to be able to build a higher education institute.

To advise members of the intention to use Section 203 of the Housing & Planning Act 2016 (HPA) to override the restrictive covenants on the site occupied by the former Hippodrome and the Plaza Cinema, Titles SF23236 and SF87425 ('The Land') and to approve the submission of a further report providing evidence to appropriate The Land for Planning purposes.

To provide delegated authority for the Director of Regeneration and Enterprise, following consultation with the relevant Cabinet Member, to agree Heads of Terms for a lease agreement for the completed Health Innovation Dudley building to be granted upon its completion.

Recommendations

2. It is recommended
 - That the Cabinet agree to make a Compulsory Purchase Order (a CPO) under section 226(1)(a) of the Town and Country Planning Act 1990 for the acquisition of land and rights within the area edged red on the Draft Order Map for the purposes of facilitating development, redevelopment, and improvement of the Order Land; and, where necessary, acquisition of new rights under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and appropriation pursuant to section 203 of the Housing and Planning Act 2016.

- That the Deputy Chief Executive and the Director of Regeneration and Enterprise, following consultation with the Cabinet Member for Regeneration and Enterprise, be authorised to affect the making, confirmation, and implementation of the CPO and to take all necessary steps to give effect to the CPO in respect of the Order as set out in paragraph 4.2
- That the Council note the intention to appropriate the site of the former Hippodrome and Cinema Site for the intended purpose as set out. In order to make a proper, lawful decision under subsection 122(1) of the Local Government Act 1972 to appropriate both sites for the proposed planning purposes (i.e. in order to facilitate the redevelopment of both sites as part of the Site for the proposed development), the Council will need to consider and determine certain factors set out in the advice that the Council obtained from leading Counsel. The evidence for this will follow in a forthcoming report to Cabinet.
- That Cabinet provide delegated authority to the Director of Regeneration and Enterprise, following consultation with the Cabinet Member, to agree Heads of Terms for the lease agreement for the completed Health Innovation Dudley building to be granted upon its completion. Negotiations have commenced with Dudley College, which is the Council's chosen partner to become a long leaseholder for the building.

Background

3. Dudley Town Centre is one of 100 centres invited by Government to bid for the £3.6bn Towns Fund. The aim of the Fund is to secure long term economic growth and improved productivity. This will be achieved through investment in connectivity, land use, skills, and enterprise infrastructure. DMBC made submission in January 2020 and July 2020 it was confirmed we had been successful and received approval to submit the Stage 2 FBC to confirm the project and enable payment of £25 million grant monies.

Officers gained approval for submission of the Stage 2 Full Business Case to DLUHC at December Cabinet. We now intend to submit in April 2022 after taking advice from Amion, our business case advisors, that further detail of the lease agreement between DCoT and Dudley Council was required. We are now progressing lease negotiations aiming to agree a Heads of Terms before the April FBC submission date.

Planning Permission was granted for the scheme at November Planning Committee under application P21/1505. After a short period to confirm the application would not be called in by DLUHC the application planning consent was granted on 16 December 2021.

The latest detailed programme is contained in Appendix 2 showing the impacts of a CPO on programme.

4. Land Acquisition/Compulsory Purchase Order

Since Autumn 2021 the council have been negotiating through consultant Gateley Hamer to acquire the third party titles SF83889 (known as Castle Hill Banqueting Suite) and WM478657 (known as K2 Security or the MMA Studio). Land under the day-to-day control of the Zoo will also be required to implement the scheme. Negotiations to acquire the MMA studio are progressing and an alternative site has been identified. However, we have been advised that the use of a CPO on Castle Hill Banqueting Suite is likely to be required.

To acquire the land using a CPO, officers will need to carry out the following procedural steps in consultation with the Cabinet Member for Regeneration and Enterprise

- i. finalise a Statement of Reasons setting out the Council's reason for making the CPO;
- ii. making the CPO, the publication and service of any press, site and individual notices and other correspondence for such making;
- iii. acquire for planning purposes all interests in land and new rights within the Order Land as may be necessary to facilitate the Scheme, either by agreement or compulsorily, including entering negotiations with a third parties for the acquisition of their land interests and/or for new rights over their land (as appropriate), the payment of compensation and dealing with any blight notices served in connection with the CPO;
- iv. approve agreements with landowners or statutory undertakers as applicable, setting out the terms for withdrawal of any objections to the CPO, including where appropriate seeking exclusion of land or new rights from the CPO;
- v. make any necessary additions, deletions, or amendments to the plans at Appendix 1 and to seek any requisite modifications to the CPO Order and any CPO maps;
- vi. seek confirmation of the CPO by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act 1981) (the 1981 Act), including the preparation and presentation of the Council's case at any Public Inquiry which may be necessary;
- vii. publication and service of notices of confirmation of the CPO and thereafter to execute and serve any general vesting declarations and/or notices to treat and notices of entry, and any other notices or correspondence to acquire those interests within the area, including, if required, High Court Enforcement Officer notices; and
- viii. referral and conduct of disputes, relating to compulsory purchase compensation, at the Upper Tribunal (Lands Chamber) This is subject to the Deputy Chief Executive being satisfied that the funding set out in this report is in place.

5. Restrictive Covenants

The Council are aware of a restrictive covenant affecting the land occupied by the former Hippodrome and the Plaza Cinema, Titles SF23236 and SF87425 ('The Land').

We have taken independent legal advice from Tim Mould QC of Landmark Chambers on the nature of the covenant and methods to override the restriction. We now in possession of legal opinion that shows the use of Section 203 of the Housing & Planning Act 2016 (HPA) to override the restrictive covenants on the site is an appropriate and legally sound route for the council to pursue. Further details are provided in the Legal Implications section.

This report signals our intention to use this mechanism to override the covenants. To enable this, officers will bring a further report to cabinet in the coming months to approve to appropriate The Land for Planning Purposes. This report will provide the necessary evidence that the development will benefit the residents of Dudley borough and the current covenant is restricting the development of the site.

6. Lease agreement between Dudley MBC and Dudley College of Technology

The Stage Two FBC process has highlighted the need for a Heads of Terms to be in place for the lease agreement of the completed Health Innovation Dudley building from DMBC to DCoT. Negotiations with Dudley College, have commenced and we are working towards a semi-commercial arrangement that meets our legal commitments surrounding the disposal of land for less than best consideration. The council's current proposal involves an initial rent free period, to allow for the build-up of student numbers and associated revenues, followed by a lease on commercial terms. This is subject to negotiation with Dudley College.

This report seeks to gain delegated authority for the Director of Regeneration and Enterprise, following consultation with the Lead Portfolio Member, to agree a Heads of Terms for a lease agreement on the completed Health Innovation Dudley building.

Financial implications

7. The current forecast total cost for the provision of the Higher Education facility at Castle Hill is £27.26m. This is to be funded by £25m from the Towns Fund grant, with the balance to be funded from other external resources.

The costs incurred in preparing the Stage 2 Business Case are to be funded by resources held by the Regeneration & Enterprise Directorate.

Law

8. Section 111 of the Local Government Act 1972 empowers the Council to do anything calculated to facilitate the discharge of any of its functions.

Pursuant to Section 1 of the Localism Act 2011, the Council has the general power of competence to do anything that individual generally may do.

Section 123 Local Government Act 1972 provides that the Council should obtain best consideration reasonably available in respect of any disposal of land (as in this case a lease in excess of seven years). The Council's approved Protocol for Best Consideration must also be considered by the Council – please see Appendix 4.

The land shown edged red on the attached plan is subject to restrictive covenants that may have an impact on the development. DMBC have sought the advice of leading counsel who has advised that there is a risk that a third party may be able to enforce the covenants.

Section 203 Housing and Planning Act 2016 (HPA) allows landowners to override covenants affecting the land in some situations in order to carry out proposed development of the land for planning purposes. In order to achieve this counsel advises that the Council should make a fresh decision to exercise its powers under section 122(1) of the Local Government Act 1972 ('the LGA') to appropriate both the Cinema Site and the Hippodrome Site for planning purposes, with the particular objective of facilitating the redevelopment of those two vacant sites as part of the proposed development and relying on the powers conferred under section 203 HPA to override the restrictions imposed by the Conveyance.

In order to be able to invoke the powers conferred by section 203 of the HPA in the present case, the Council can show that constructing the proposed development (and its subsequent use as a higher education facility) would breach a restrictive covenant as to the user of the Cinema Site and the Hippodrome Site by virtue of a contract. It is clear that both carrying out the proposed development and its subsequent use for a higher education facility would be in breach of the restrictive covenants imposed on title of both the Cinema Site and the Hippodrome Site

In order to be able to use S.203 HPA the Council would need to:

- a) Have gained planning permission for the scheme (HPA subsections 203:2, 203:3, 203:5 and 203:6)
- b) Demonstrate that the restriction adversely affected the land (HPA Subsection 203:1)
- c) Demonstrate the proposed development contributes to the objective of promoting or improving the social well-being of the Borough. (Section 226(1A) of the Town and Country Planning Act 1990).

- d) Have substantial evidence that the land is no longer required for the purposes of which it was acquired (as per deed) and no longer required for the purposes for which it was purchased.

For S.203 HPA to be used, it will be necessary first to have appropriated that site for planning purposes and so to satisfy condition (b) of subsections 203(2) and 203(5) of the HPA, which apply to land appropriated for planning purposes on a date since 13 July 2016. The advice received is that it would be prudent for the Council to freshly consider and to determine the case for an appropriation of both the Hippodrome Site and the Cinema Site for the particular planning purposes of bringing forward the proposed development.

The Council may, therefore, use S.203 to override the covenants but must appropriate the land for the intended purpose in order to do so.

Risk Management

9. The strategic risk register for the project is contained in Appendix 3. Exercise of the powers conferred under section 203 HPA incurs a liability to pay compensation for breach of restrictive covenants imposed on the title to the property (section 204 HPA). There presently appears to be no evidence that any person is entitled to the benefit of those restrictive covenants or to enforce them. If that is indeed the position, it is unlikely that any significant amount of compensation will become payable in this case. Nevertheless, the Council may wish to consider budgeting an appropriate sum by way of contingency

Equality Impact

10. The provision of a Health Innovation university building in the town will have positive impact on people with different protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, or belief, sex, and sexual orientation) by providing access to health science courses in the borough.
11. The Council's Equality and Diversity policies will be applied throughout the delivery of this project.
12. Extensive consultation was carried out as part of the Stage 1 submission using a variety of different methods which allowed the council to reach a wider than normal demographic included more below 25 years old than normal. Generally, the responses were very positive to building a university in the borough.

Human Resources/Organisational Development

13. Any staffing requirements resulting from this decision will be accommodated within existing resources and therefore the decision has no specific impact for HR/OD.

Commercial/Procurement

14. All contractual agreements associated with the delivery of this project will be let in accordance with the requirements of the Contract Standing Orders.

There are no direct commercial implications associated with this report.

Council Priorities

15. This project primarily links to the Regeneration and Enterprise section of the Council Plan – particularly regenerating the borough and growing a stronger visitor economy. The project links to wider regeneration activity in Dudley Town Centre.
16. The project will contribute to the 2030 Borough Vision through;
- Full of vibrant towns and neighborhoods, offering regeneration of current disused sites
 - Better connected with high quality and affordable transport, combining road, tram, rail, and new cycling and walking infrastructure
 - A place to visit and enjoy that drives opportunity.
17. The project contributes to our seven aspirations as well as Forging a Future for all. In particular for this project:
- Home to hard graft, enterprise, and innovation
Home to the skilled workforce of tomorrow
18. The project will align with objectives as laid out in the Local Enterprise Partnership's Strategic Economic Plan (SEP) and Local Industrial Strategy; by contributing to bring a strong specialism in economic development strategy, local skills and by ensuring that skills training and opportunities link to local labour market and skills needs.

19. The project is to provide a new Higher Education building at the head of Castle Hill, to provide Health and Medical training to the area, thereby improving skills of the Town and local community.
20. The project will have a positive impact on the area and will align with other regeneration activity taking place in Dudley and around the Castle Hill area. As part of the wider activities and design there will be more accessibility, public realm, and green spaces.
21. The new building will be designed and constructed to meet net zero carbon emissions. The design, orientation and mass of the building has been designed to maximise the use of natural light and solar gain; the building will be powered by photo-voltaic and will be heated by air source heat pumps. The external works have been designed to provide shade and minimise water run-off.



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Appendices

Appendix 1 – CPO Draft order plan

Appendix 2 – Programme

Appendix 3 – Risk Register

Appendix 4 – DMBC procedure for disposals of Best Consideration