



# EXECUTIVE MEMBER DECISION

**REPORT OF:** Executive Member for Growth and Development

**LEAD OFFICERS:** Director of Growth and Development

**DATE:** 25th October 2019

**PORTFOLIO/S AFFECTED:** Growth and Development

**WARD/S AFFECTED:** Blackburn Central Mill Hill and Moorgate

**SUBJECT:** Griffin Housing Site Appropriation

## 1. EXECUTIVE SUMMARY

1.1 This report seeks the Executive approval to authorise the Director of Growth and Development to appropriate the Council owned land known as the Griffin redevelopment site for planning purposes under section 122 of the Local Government Act 1972.

The appropriation is for the purpose of enabling the construction of 141 new two, three and four bed family homes of mixed tenure.

1.2 The Council identified 165 sub-standard homes for clearance and the land to be redeveloped to provide new housing to meet the Borough's aspiration and need. 163 properties have been bought along with the decommissioned Griffin Inn public house which was also purchased and included in the land assembly

Properties bought for clearance have been demolished as full terraces had been assembled. The cleared sites were seeded to improve their visual impact across the neighbourhood

1.3 A procurement exercise was carried out in 2018 and a preferred developer was chosen to carry out the redevelopment of the site. The preferred developer is currently finalising the scheme layout and plan to submit a planning application in November.

14. Since appointing the preferred developer, the Council has been considering the effect that the proposed development will have on residents who may have enjoyed the benefit of using the cleared site and treating the land as informal open space.

In order to implement the redevelopment proposals for the Griffin redevelopment site, the Council is now required to appropriate the land for planning purposes.

The site for appropriation is in the Council's ownership

## **2. RECOMMENDATIONS**

That the Executive Members:

- 2.1 Authorise the Director of Growth and Development to appropriate the land at Griffin shown edged red on plan attached Appendix A from housing to planning purposes in accordance with section s.122 of the Local Government Act 1972 and subsequent use of the Council's powers under s.203 – 206 of the Housing and Planning Act 2016 to override any third party rights and easements on the land
- 2.2 Authorise the Director of HR, Legal and Governance to advertise the proposal to appropriate in accordance with the statutory process under Section 122 of the Local Government Act 1972
- 2.3 Note that in authorising the commencement of the appropriation process of the Griffin regeneration site, the Council has considered the provisions of the Equalities Act 2010 and the Human Rights Act 1998 as set out in this report.
- 2.4 Authorise the negotiation and payment of any compensation claims emerging from this appropriation.

## **3. BACKGROUND**

- 3.1 Since 2008 the Council has been actively purchasing properties by agreement in the Griffin regeneration area. 165 properties had been identified for purchase and clearance through a Neighbourhood Renewal Assessment undertaken for the area.
- 3.2 The Council has successfully assembled a substantial portion of the clearance area, with only 2 properties remaining to be purchased which will be excluded from the appropriation.

Housing development can now be brought forward to complete the redevelopment programme. To ensure developer confidence the Council has undertaken a number of intrusive surveys along with securing additional grant funding from the One Public Estate Land Release Fund to support site remediation.
- 3.3 The Council more recently bought the Griffin public house which has been demolished with the site added to the larger site creating a more comprehensive housing site with main road frontage.
- 3.4 Planning permission to carry out Enabling Works was successfully secured under application number 10/18/0612
- 3.5 A preferred developer was selected through a procurement exercise through the Council's 'Contractor and Development Framework'

## **4. KEY ISSUES & RISKS**

- 4.1 During the Griffin site assembly, parcels of land where terraced properties had been demolished have been seeded and left to flower to make the site more attractive for residents still living in the clearance area.

All cleared parcels are surrounded by a perimeter of soil of around two feet high ('bunded') to deter illegal access or encampment. Some of the areas have been open to pedestrian access, children playing, and dog walkers and it is considered that some of the land could be considered to be 'open space' within the meaning of the Town and Country Planning Act 1990.

4.2 Due to this potential situation the Council plans to use the prescribed process that must be followed before it can dispose of such open space. Whilst this is a previous clearance area, it is situated in close proximity to Blackburn town centre and would provide much needed family housing for local people.

The most appropriate use for the site is family housing as outlined in the Local Plan (2015) and Griffin Supplementary Planning Document (2017). The site has potential to provide around 140 new family homes for sale and rent.

4.3 The site disposal strategy has been developed to ensure that family housing meets the needs of the local residents as well as from the whole Borough.

To prepare the site for development the Council has undertaken a number of actions, surveys and investigations on the site to ensure deliverability whilst creating developer confidence.

These included.

- Demolition of existing buildings
- Ecology survey
- Phase 1 Geo-Environmental Desk Study
- Phase 2 GIA survey
- Topographical survey
- Tree Survey
- Asbestos
- Ground penetrating Radar
- Air Quality Assessment

These surveys have helped us to understand any site constraints which could potentially affect Development proposals for the site and scheme viability.

The appointed preferred developer will undertake further surveys such as traffic impact assessment and drainage strategy. The developer is currently preparing a planning application which will be submitted over the coming months.

#### **4.4 APPROPRIATION**

4.41 The Council can appropriate land for any purpose for which it is authorised to acquire land by agreement. The appropriation process is set out in section 122(1) of the Local Government Act 1972 (1972 Act).

4.42 The Council should only resolve to appropriate land for another purpose if it is satisfied that the land in the Griffin Development site is not required for the purpose for which it is held. The clearance site has been assembled for redevelopment to provide family housing in line with the adopted Griffin Supplementary Planning Document (2017). A portion of the site has been previously used as a children's play area but has been decommissioned for a number of years and added to the development site.

The Griffin development site is included in the Council's Growth programme and has planning permission for enabling works to prepare the site for housing development so the proposed appropriation complements this permission and planning status.

4.43 Furthermore the Griffin development site is allocated as a housing site in the Council's Local Plan (2015). The adopted Supplementary Planning Document (2017) will help reshape development proposals for the site.

4.43 The Council considers there could be some informal private rights of way and other informal

easements over the Griffin development site due to the site being 'open' for a considerable period of time. Where land is appropriated for planning purposes, the Council may rely upon the provisions of Section 203 of the Housing and Planning Act 2016. The Council has this statutory power to override easements or rights of way affecting land.

## **5. POLICY IMPLICATIONS**

5.1 The Council's Local Plan sets a housing requirement to meet over the 15 year Plan period.

Development of the site will contribute to meeting this target and assist in improving the quality of the Borough's housing offer.

The adopted Supplementary Planning Document (2017) has been developed in consultation with the community and outlines plans to redevelop the clearance site for new family housing provision.

## **6. FINANCIAL IMPLICATIONS**

6.1 Section 204 of the Housing and Planning Act 2016 provides that compensation will be payable to those parties whose interests have been affected by any appropriation.

This is generally based on a diminution of property value bases. The primary liability for the compensation is the party interfering with the right and the Council can decide to take on that limited risk or seek an indemnity from the successful bidder before enabling the development to proceed should appropriation be approved.

## **7. LEGAL IMPLICATIONS**

7.1 The proposed development site comprises of land and properties that had been purchased from private owners.

7.2 The National Planning Policy Framework has replaced the National Planning Policy on Housing (PPS3). However, requirements still remain with the Council to demonstrate the provision of an adequate mix of housing developments and setting of targets for affordable housing. As any future proposed disposal is likely to be for the freehold of the land or a very long lease, then various aspects of S123 of the Local Government Act 1972 ("the Act") shall apply.

7.3 Firstly, the Council should be seeking to achieve best consideration reasonably obtainable for the site, unless the Council can apply the exemptions permitted by Government Circular. Although the Council has a general power of competence pursuant to s1 of the Localism Act 2011 to do anything that individuals can legally do, the Local Government Act 1972 and General Disposal Consent (England) 2003 to seek Best Consideration still applies and so this must be minded when the Council makes any decision to sell via any process, including an informal tender process.

7.4 Secondly, to the extent that the land to be disposed of is considered to be "open space" then s123 (2A) of the Act shall apply. This requires the Council to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.

7.5 "open space" is defined in section 336(1) of the Town and Country Planning Act 1990 as: "means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground" (emphasis added) And it is the conclusion in the body of the report that much of the site is reasonably likely to fall into that category to the extent that it would be

prudent for the Council to treat it as such. While there is case law on such matters, it may be sufficient to only look at the plain English language meaning of the phrase in this case.

- 7.6 Section 122(1) of the 1972 Act states: "Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned."
- 7.7 This appropriation process is a helpful avenue for the Council where agreement cannot be reached or the beneficiaries of any (possible) rights are unknown. Section 203 authorises the overriding of any private rights affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person authorised by that authority. The ability to interfere with these (possible) rights is important in the context of enabling any development to proceed. The power to override such rights does not prevent such rights being compensated.
- 7.8 Section 122(2) of the 1972 Act requires the Council, prior to any appropriation, to advertise the proposal twice over two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.

## **8. RESOURCE IMPLICATIONS**

- 8.1 Existing staff resources will be provided from the Council's Growth, Property, Planning and Legal teams along with some support from Capita

## **9. EQUALITY AND HEALTH IMPLICATIONS**

The Human Rights Act 1998 (HRA) has been in force since late 2000.

- 9.1 Provisions of the HRA which are relevant in relation to the proposed appropriation are:

- (1) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe.
- (2) The HRA still does not incorporate the Convention into UK law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects.
- (3) The main article of the Convention which is of importance in circumstances where the Council is considering appropriating land is Article 1 of Protocol 1 – the protection of property.
- (4) In appropriating land an authority must show that the appropriation is justified in the public interest.

- 9.2 Article 1 of Protocol 1 provides that:

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
- (2) No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.
- (3) However, the above rules shall not prevent a State enforcing such laws as it deems necessary

to control the use of property in accordance with the general interest.

(4) The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is a relevant factor in considering the balance.

(5) With regard to Article 1 of Protocol 1, it is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the interference with rights arising from the appropriation.

9.3 In addition to the HRA, the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:

(1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

9.4 The Council has carried out an equality impact analysis checklist. This first of all assessed from a relevance perspective whether a full impact assessment was needed. This assessment concluded that the proposed appropriation would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

Option 1 ☒ Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 ☐ In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 ☐ In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

## 10. CONSULTATIONS

Extensive stakeholder consultations have been undertaken during the course of developing a Supplementary Planning Document for the Griffin area Further consultations will be undertaken in line with statutory requirements during the Planning process for the development.

Previous consultation has also been undertaken in the development of the Council's Local Plan and Strategic Housing Market Assessment (SHMA)

## 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

## 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

<b>VERSION:</b>	<b>0.01</b>
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<b>CONTACT OFFICER:</b>	<b>Subhan Ali, Strategic Development Manager (Housing)</b>
<b>DATE:</b>	25 <sup>th</sup> October 2019
<b>BACKGROUND PAPER:</b>	Local Plan part 1 (2015), Griffin Supplementary Document (2017)