

Classification: Open	Decision Type: Key
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Report to:	Cabinet	Date: 13 December 2023
Subject:	Prestwich Village Regeneration – Appropriation of land at Fairfax Road and Rectory Lane for planning purposes (Part A)	
Report of	Leader and Cabinet Member for Strategic Growth	

Summary

1. Cabinet approved the formation of the Prestwich Regeneration LLP (the joint venture or JV) between Bury Council and Muse Places Ltd in October 2021 and has received reports on progress of the Prestwich Village proposals, most recently in the report to Cabinet on 12 July 2023.
2. A large part of the Council's Land included in the Prestwich Village proposals is currently open to public access (being a public car park) and may be impacted to varying degrees by adverse third-party rights or interests arising from the use of the Council's Land.
3. Any person who holds the benefit of such a legal right or interest and who suffers a relevant loss when development takes place would be entitled to claim statutory compensation pursuant to section 204 of the Housing and Planning Act 2016.
4. When land which is held for planning purposes is subsequently developed those who can demonstrate that they had a third-party right or interest in the land may claim compensation for the loss of that right or interest. Liability for the payment of such compensation lies with the Council in the first instance. Section 204 of the Planning and Housing Act 2016 provides that such compensation is assessed on the basis of the diminution in value of the land affected by the loss of such right.
5. The Human Rights of persons who would be affected by a decision to appropriate the Council's Land have been taken into account in this Cabinet report and it has been concluded that interference with any such rights is proportionate in the context of the public benefits of the scheme proposals that would be facilitated by appropriation and that there is a compelling case in the public interest to do so.
6. The details of the statutory compensation are commercially sensitive and linked information which is likely to reveal the identity and financial position of individuals is personally sensitive and is therefore exempt from this Part A Cabinet report. Such details are set out in a Part B Cabinet report.

Recommendation(s)

Cabinet is recommended to:

7. Approve the appropriation of the Council's Land for planning purposes to facilitate the development of the Council's Land by the Prestwich Regeneration LLP.
8. Note the criteria to be met before development that may interfere with third-party rights may take the benefit of section 203 of the Housing and Planning Act 2016.
9. Note the potential for claims for compensation arising from the interference with third-party rights. And to ensure that prior to the commencement of any development that might cause such interference, sufficient funds have been reserved by the Council before its development of the Council's Land and/or an indemnity has been put in place with the Prestwich Regeneration LLP as a condition to the drawdown and development of the Council's Land by them to meet the likely compensation arising from such claims.
10. Approve for the Executive Director of Place in consultation with the Executive Director of Law and Democratic Services to have delegated authority to enter into an indemnity agreement with the Prestwich Regeneration LLP and settle compensation claims that may be submitted.

Reasons for Recommendation(s)

11. The Council's Land may be impacted by third-party rights or interests that could affect the development to be carried out by the Prestwich Regeneration LLP.
12. The owners and beneficiaries of third-party rights may take legal action to protect those rights.
13. The appropriation of the Council's Land for planning purposes would convert any third-party rights or interests to an entitlement to compensation allowing the development to be carried out.
14. The criteria to be satisfied before the powers within section 203 of the Housing and Planning Act 2016 may be relied on have been clearly identified and it has been made clear that the carrying out of building or maintenance work may not be undertaken in breach of a private right or interest unless those criteria are met.
15. The Human Rights of third parties, who may claim to have the benefit of rights over the Council's Land have been considered and the interference with any such rights would be proportionate in the context of the public benefits of the

scheme proposals and that there is a compelling case in the public interest to do so.

Alternative Options Considered and Rejected

16. The scheme proposals could be designed in such a way as to avoid the infringement of potential rights or interests but the constraint that would place on the development proposals would significantly reduce or potentially negate the regeneration benefits of the scheme.
17. In some cases, it is possible to identify the beneficiaries of every private right or interest over land and negotiate the release of such right or interest, but the nature and uncertainty of the potential rights or interests in this case do not make that feasible or achievable within a reasonable timescale.
18. Another alternative to appropriation of land for planning purposes would be for the Council to seek title indemnity insurance, but such insurance would not overreach any claimed rights, leaving a residual risk that a third party could prevent the redevelopment of the Council's Land.
19. It is therefore considered that the best option to deal with any third-party rights is to appropriate the Council's Land for planning purposes.

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Background

20. As part of the Authority's vision for 2030, we are working collaboratively with our communities to achieve faster growth than the national average alongside lower levels of average deprivation. The 'Let's do it!' strategy focuses on building a better future for our children and young people, promoting inclusion, improving our environment, and delivering improvements in quality of life.
21. In line with this vision, the Council's ambition is to bring forward a cohesive programme of regeneration in Prestwich, developing a new village centre which is inclusive, sustainable, reflects the needs and aspirations of local residents,

and delivers an attractive urban environment alongside a thriving local economy.

22. Cabinet approval was given in October 2021 for the Council and Muse Places Ltd to form the Prestwich Regeneration LLP to bring forward a multi-phase mixed use regeneration scheme.
23. As noted in previous Cabinet reports, notably the report to the 12 July 2023 Cabinet, the regeneration scheme has the potential to bring in significant capital investment, which will help to deliver regeneration, economic growth, and environmental improvements in Prestwich.

Title Investigations

24. As a standard step in the redevelopment process, detailed title investigations have been carried out of the land at Fairfax Road and Rectory Lane owned by the Council (the Council's Land) which is required for the development. The Council's Land is shown on the plan at Appendix A that accompanies this Cabinet report.
25. A large part of the Council's Land is currently open to public access (being a public car park) and may be impacted to varying degrees by adverse third-party rights or interests arising from the use of the Council's Land. The existence of third-party rights has the potential to constrain the development of the Council's Land.
26. It is sometimes possible to negotiate the release of third-party rights through negotiation but in this case the nature and extent of such rights is unknown, and the negotiation of releases is not considered feasible or achievable within a reasonable timescale.
27. The Council could seek title indemnity insurance, but such insurance would not overreach any claimed rights leaving a residual risk that a third party could still seek to prevent the redevelopment of the Council's Land.
28. In the circumstances, the Council has been advised that the best course of action is to appropriate the Council's Land for planning purposes. Appropriation is a term given in local government legislation to an internal process of a Council that allows land acquired or held for one purpose to be used for another.

Appropriation of Council Land for Planning Purposes

29. Where land of a local authority is held for planning purposes, section 203 of the Housing and Planning Act 2016 would enable relevant rights and interests (such as easements which benefit other land) and contractual restrictions on

the use of the Council's Land (such as restrictive covenants) to be overridden when development is carried out.

30. Any person who holds the benefit of such a legal right or interest and who suffers a relevant loss when development takes place would be entitled to claim statutory compensation pursuant to section 204 of the Housing and Planning Act 2016.
31. It has been established through an assessment of the Council's records that the land forming part of the Council's Land is held (or in use) either as a property asset or for highway purposes. As part of the proposed regeneration and redevelopment, the Council's Land will not be required for the current purposes and will instead need to be held for planning purposes to enable the scheme to be developed.
32. The proposed appropriation of the Council's Land will not affect any public rights of way or the status of any adopted highway. Should any highway require stopping up as part of the proposed redevelopment, that will be the subject of a separate statutory process.
33. It is therefore proposed that the Council should now confirm that the land which is held or being used for other purposes is no longer required for those purposes and that the Council should now appropriate the Council's Land for planning purposes using the powers in section 122 of the Local Government Act 1972 and section 227 of the Town and Country Planning Act 1990.
34. Although the Council's Land will remain in use as, for example a car park or public highway until redeveloped, the purpose for which it is to be held going forward is planning purposes as defined by Section 226 of the Town and Country Planning Act 1990 consistent with the Council's regeneration objectives for Prestwich.
35. Under section 122(1) of the Local Government Act 1972 the Council can appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement. Section 227 of the Town and Country Planning Act 1990 authorises the Council to acquire land by agreement for a purpose for which the Council is authorised to acquire land under section 226 of the Town and Country Planning Act 1990.
36. Section 226 of the Town and Country Planning Act 1990 authorises the acquisition of land in the Council's area for planning purposes where the Council believes the acquisition is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or any part, of the area in the interests of the proper planning of the area.

37. It is considered that the appropriation of the Council's Land for planning purposes would achieve the objectives specified in section 226 of the Town and Country Planning Act 1990.

Subsequent Reliance on Section 203 of the Housing and Planning Act 2016

38. When land has been appropriated for planning purposes, reliance may be placed on section 203 of the Housing and Planning Act 2016 that allows building or maintenance work to be carried out or land to be used in breach of a private right or interest.
39. The criteria that must be satisfied before the powers in section 203 may be relied on are:
 - a. There is a planning consent in place for the works or the use of the land that has been acquired or appropriated;
 - b. The works or use must be intended to be carried out on land that has been appropriated for planning purposes;
 - c. The land is land which the Council could acquire compulsorily for the purpose of the works or use; and;
 - d. The works or use is for the purpose for which the land was vested, acquired or appropriated by the Council.
40. Compliance with these criteria cannot be demonstrated at this stage but will need to be demonstrated before development commences in reliance on the provisions of section 203 of the Housing and Planning Act 2016.

Compensation

41. When land which is held for planning purposes is subsequently developed those who can demonstrate that they had a third-party right or interest in the land may claim compensation for the loss of that right or interest.
42. Section 204 of the Planning and Housing Act 2016 provides that such compensation is assessed on the basis of the diminution in value of the land affected by the loss of such right or interest. This is commonly looked at on the basis of what the land owned by the third-party land would have been worth with the benefit of the right or the interest and what it would be worth without it.
43. The Council through the Prestwich Regeneration LLP has received a report from surveyors Keppie Massie on the potential value of such compensation claims. Details of this can be found in the Part B report.

44. The potential for claims for compensation arising from the interference with third-party rights should be noted and the Council should ensure that prior to the commencement of development that might cause interference with third-party rights, sufficient funds have been reserved by the Council before its development of the Council's Land and/or an indemnity has been entered into with the Prestwich Regeneration LLP as a condition to the drawdown and development of the Council's Land by them to meet the likely compensation arising from such claims.
45. Approval for such funds will be obtained from Cabinet alongside future budget approvals for further stages of the Prestwich Village redevelopment scheme.

Publicity for Proposals

46. Although the Council's Land does not include any land within categories where advertisement of an intention to appropriate is required by legislation, the Council has voluntarily advertised its intention to appropriate the land for planning purposes in site notices erected around the land between 1st November 2023 and 23rd November 2023 and available to view at Prestwich Library and Bury Town Hall for the same time period and through advertisements in the Bury Times for two consecutive weeks on 2nd November 2023 and 9th November 2023.
47. The site notice and press advertisement invited any person who considers that they have the benefit a legal right which might be interfered with or breached by the development of the Council's Land and who wishes to comment on the proposed appropriation before a decision was reached to contact the Council.
48. One response to the notice has been received requesting a copy of the plan identifying the Council's Land and this has been sent to the requestee.

Human Rights

49. Advice contained in government guidance: "Compulsory Purchase process and the Cichel Down Rules", which applies by analogy to the appropriation of land for planning purposes, says this:

"...When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land effected. The officers report seeking authorisation for the compulsory purchase order should address human rights issues..."
50. Under the Human Rights Act 1998 the Council is obliged to act in accordance with the European Convent on Human Rights (ECHR). Article 1 of the First Protocol of the ECHR entitles any person to peaceful enjoyment of their possessions. Section 203 of the Housing and Planning Act 2016, by allowing

interference with a person's rights, engages with Article 1. However, Article 1 is a qualified rather than absolute right, as the Article permits the deprivation of a person's possessions where it is in the public interest and subject to conditions provided by law.

51. A balance has to be struck between the public interest and the private interest of individuals whose rights may be affected. Such interference must be proportionate, that is to say be no more than is necessary to achieve the lawful objective of appropriation.
52. In this case it is considered that the significant public benefits (as summarised in the background section of this report) outweigh the private rights of any individuals to peaceful enjoyment of those rights, and that the appropriation of the Council's Land for planning purposes to facilitate the use of section 203 of the Housing and Planning Act 2016 is a proportionate interference in the circumstances and that there is a compelling case in the public interest to support the decision to do so.
53. Furthermore, the entitlement to compensation by those affected by appropriation in the event of interference is relevant to the question of proportionality.

Conclusion

54. In conclusion, the appropriation of the Council's Land for planning purposes is the best option for addressing third-party rights or interests that might otherwise prevent its development in accordance with the scheme proposals.
55. Adequate publicity has been given to the intention to appropriate and any representations received by the Council have been considered.
56. The significant public benefits from the scheme proposals outweigh any private rights that may be affected and the proposed interference with rights is proportionate in accordance with the requirements of the Human Rights Act 1998 and the ECHR.
57. Where legal rights are interfered with in the carrying out of the development, compensation may be payable in accordance with the provisions of section 204 of the Housing and Planning Act 2016.

Links with the Corporate Priorities:

58. The redevelopment of Prestwich Village supports delivery of the 'Let's do it' strategy and the four principles that underpin it. They all have a correlation to how The Council will design the future of our towns:

- a. **Local Neighbourhoods:** The proposed Prestwich Community Hub building will re-provide a modern-day library, adult learning, civic facilities, and other health related services will be a true connection to the community and integrated public service teams in the village centre. The building of new homes will endeavour to meet the eco-homes standard. The implementation of active travel, walking and cycling routes will connect people with local amenities, decrease public sector emissions and increase the availability of green infrastructure via the creation of public open space. This will enable the community in Prestwich to thrive.
- b. **Enterprise to drive economic growth and inclusion:** Investment in physical infrastructure (roads, cycle ways and public transport); creating more flexible and innovative/digital workspaces and providing modern retail space to encourage more businesses to open and remain in Prestwich; to ensure residents have the best chance to access good jobs. The Prestwich Town Centre is one of the regeneration plans mentioned in the strategy.
- c. **Delivering Together:** Making sure that everyone's voice is heard via community engagement/consultation at various stages of the development of the scheme and through a variety of media platforms, including a dedicated website.
- d. **A Strength-Based Approach:** Community groups have and will continue to be encouraged to be part of the community engagement/consultation process and all local groups have been reached out to. Links have been made with Bury VCFA. It is hoped that having flexible community space in the community hub and outdoor space for events will promote and increase community wealth building and capacity within the village.

Equality Impact and Considerations:

59. A full Equality Impact Assessment has been carried out and it has been concluded that there will be a neutral effect on all groups of people with protected equality characteristics as the need to appropriate the Council's land is an enabling process to allow the land to be redeveloped.

Environmental Impact and Considerations:

60. The appropriation of the Council's Land for planning purposes will help to deliver sustainable development.
61. As noted in the report to the 12 July 2023 Cabinet, delivering sustainable developments is now a primary goal for the Prestwich Regeneration LLP, and as such it has adopted Muse's Sustainability Strategy which includes a Sustainable Development Brief and Sustainable Action Plan which will be

utilised on the regeneration scheme (together which makes up the Sustainable Development Strategy).

Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation
Risk: Third-party claiming that it was not aware of the intention to appropriate and was deprived of the opportunity to protect their interests.	Wide publicity has been given to the intention to appropriate through site notices, advertisements in the press, and through the general publicity given to Cabinet meetings.
Risk: High compensation claims for interference with third party rights.	The Council through the Prestwich Regeneration LLP has received advice from specialist surveyors that there is a low risk of compensation claims and that value of any such claims if brought would be low and would be covered by compensation and/or an indemnity from the Prestwich Regeneration LLP.
Risk: Spurious third-party claims to rights or interests.	No compensation would be paid in respect of a claimed right or interest unless evidence demonstrating a lawful entitlement to compensation was proved.
Risk: Scheme not proceeding and Council wishing to use the land for other purposes.	The Council may appropriate land to other purposes in the event that it was no longer required for planning purposes.

Legal Implications:

1. The Council can rely on its powers in section 122 of the Local Government Act 1990 and section 227 of the Town and Country Planning Act 1990 to appropriate the land for planning purposes.
2. The overarching joint venture agreement governs the carrying out of the development by the Prestwich Regeneration LLP.
3. The Human Rights of persons who would be affected by the overriding of easements and other interests in the Council's Land have been taken into account in the main body of this report and interference with those rights is considered to be proportionate.
4. The liability to pay compensation arising from the operation of section 203 of the Housing and Planning Act 2016 rests with the Council. The Council will therefore need to ensure that prior to the commencement of development that might cause interference with third-party rights, sufficient funds have been

reserved by the Council before its development of the Council's Land and/or an indemnity from the Prestwich Regeneration LLP is secured as a condition to the drawdown and development of the Council's Land by them to make any such payments that are properly due and payable pursuant to s.204 of the Housing and Planning Act 2016.

Financial Implications:

1. There are no immediate financial implications from the appropriation of land for planning purposes.
2. When land which is held for planning purposes is subsequently developed those who can demonstrate that they had a third-party right or interest in the land may claim compensation for the loss of that right or interest. Liability for the payment of such compensation lies with the Council in the first instance. Section 204 of the Planning and Housing Act 2016 provides that such compensation is assessed on the basis of the diminution in value of the land affected by the loss of such right.
3. The Council through the Prestwich Regeneration LLP has received a report from surveyors Keppie Massie on the potential value of such compensation claims – please refer to paragraph 6.

Appendices:

Appendix A: Plan identifying the Council's Land.

Background papers:

Report to 12 July 2023 Cabinet.

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
Appropriation	Appropriation is a term used in local government legislation to an internal process of a council designed to allow flexibility in its use of land. It allows land acquired or held for one purpose to be used for another.
Council's Land	As identified on the map in Appendix 1.
Diminution in value	Means the amount by which an interest in land is reduced by the loss of a right or interest in other land.
Planning purposes	Means purposes that achieve the promotion or improvement of the economic, social or environmental well-being of the whole, or

Term	Meaning
	any part, of the area in the interests of the proper planning of the area
Prestwich Regeneration LLP	The joint venture company that comprises of Bury Council and Muse Places Ltd that has been established to deliver the Prestwich Village regeneration scheme.
Proportionate	Proportionate means no more than is necessary to achieve the lawful objective of appropriation
Third Party Rights	Means rights and interests (such as easements which benefit other land) and contractual restrictions on the use of land (such as restrictive covenants)