

Report to Cabinet

22nd March 2018



By the Cabinet Member for Local Economy and the
Cabinet Member for Finance and Assets

DECISION REQUIRED

Not Exempt (Exempt Appendix 2)

Appropriation of land to facilitate redevelopment of Piries Place Car Park

Executive Summary

On the 21st September 2017, Council approved a proposal to demolish the existing Piries Place Car Park and to construct a new car park on the site (Minute EX/33). The proposal was approved following detailed consideration of the quality of the existing car park and a survey undertaken by consultants, which forecasts that Horsham Town Centre will have insufficient car parking capacity by 2031. The proposed new car park will meet the medium term demand and provide an improved facility.

A planning application for a new 516 space car park, consisting of a ground plus 4 upper floors was approved by Planning Committee (North) on the 6th February 2018. The Planning Committee considered officers comments that the proposal would adversely impact the rights of adjoining building owners, but that the proposal was in the public interest.

In the private sector, negotiations to deal with owner's rights, such as Rights to Light and other easements, are dealt with by commercial negotiation depending on the bargaining position of the parties and settlements can include a share of development gain. In the public sector, Local Authorities can appropriate land, which enables the interference with property rights with payment of fair compensation. Appropriation of land can take place if the local authority owns the land and proposes to develop it to promote or improve the economic, social or environmental well-being of their area and/or if the future use provides different facilities to the current use. The car park at Piries Place satisfies these requirements and therefore may be appropriated by the Council.

The process for appropriation is for Cabinet to resolve to appropriate the car park for planning purposes in accordance with the Constitution.

Recommendations

That the Cabinet is recommended:

- i) That Cabinet resolve to appropriate the land edged red on the plan attached as Appendix 1 for planning purposes under Section 122(1) of the Local Government Act 1972.

Reasons for Recommendations

Reasons for recommendations:

- i) The appropriation of the car park is necessary and in the public interest to secure the benefits of redevelopment of the site to provide a new car park with improved facilities.
- ii) Appropriation of the site will enable the development to proceed without the risk of an injunction from adjoining landowners.
- iii) Appropriation will limit the level of compensation payments to the value of the diminution in value of affected properties.

Background Papers

See appendices

Wards affected: Denne and Horsham Park

Contact: Brian Elliott, Head of Property. Tel: 01403 215328

Background Information

1 Introduction and Background

- 1.1 The purpose of this report is to seek authorisation to appropriate Piries Place Car Park (Car Park) to enable its redevelopment. Appropriation for planning purposes provides a way for local authorities to develop land even if the development interferes with third party rights, such as a right to light or other forms of easement.
- 1.2 Appropriation of the Car Park, as provided for under Section 122 of the Local Government Act 1972, is necessary to enable the Council to engage Section 204 of the Housing and Planning Act 2016, the effect of which is to limit compensation payable in respect to rights to light infringement and any other rights. Appropriation prevents an injunction being issued by neighbouring landowners, which might delay or obstruct the development.
- 1.3 The Council has secured planning consent for the demolition of the Piries Place Car Park and its replacement with a new car park. The consent is for a 516 space car park (DC/17/2511) set across five deck levels. The scheme includes new and improved layouts, dedicated parent and child bays, electrical vehicle charging bays, and new accessible/baby changing and Changing Places toilet facilities. The new development is a substantial improvement on the existing facility and will promote or improve the economic, social or environmental well-being of the area.
- 1.4 Planning Committee (North) made the decision to grant planning permission on 6th February 2018. The planning permission was issued on 7th February 2018.

2 Relevant Council policy

- 2.1 The appropriation of Piries Place Car Park would support a number of priorities within the 2016/17 Corporate Plan; relating to the Economy (Theme 2) and Efficiency (Theme 3), by enabling a development that would improve car park quality and capacity in the town centre to support the Horsham Town Centre Vision Statement.
- 2.2 The provision of a new modern expanded car park to help deliver the Council's town centre parking strategy would help provide much needed parking capacity in the town centre, helping to boost the economy of the town whilst generating additional income for the Council.

3 Details

- 3.1 The existing Piries Place Car Park forms an aging 24 hour public car park with capacity for 330 spaces, including 10 disabled spaces. The car park was constructed in the late 1980's, in association with the adjacent retail development at Piries Place (formerly Burtons Yard).
- 3.2 The Car Park is dated and does not meet current user requirements. The car park has no parent and child spaces, no electric charging spaces, and poor lines of sight,

which encourage crime and anti-social behaviour. Further, its scale across four split levels, which step down to two storeys to the front, does not make an efficient use of this important town centre site. A large proportion of the existing bays are narrow and interrupted by columns making for difficult manoeuvring of modern vehicles.

- 3.3 The Car Park is located in a well-known and prominent position in the town centre, adjacent to Piries Place shopping centre, which is currently undergoing redevelopment to create a mixed-use shopping and entertainment quadrant; comprising restaurant units, retail units, a hotel and a cinema. Completion of the Piries Place redevelopment is programmed for mid 2019, when it is expected to re-open fully to the public.
- 3.4 To improve the quality, capacity and facilities of the Car Park and to meet forecast additional parking requirements within the town centre, the Council approved the principle of demolition and redevelopment of the car park on the 18th October 2018 and allocated a capital budget.
- 3.5 Planning permission for the construction of a new Car Park (DC/17/2511) set across five deck levels, was approved by Planning Committee (North) on 6th February 2018, with the respective planning permissions issued on 7th February 2018. The scheme provides for up to 516 parking spaces capable of accommodating modern vehicle sizes, including 12 accessible (disabled) spaces, 11 parent and child spaces and 8 electric charging bays. New public toilet facilities are also proposed; including a Changing Places disabled toilet facility, the first of its kind in the town centre.
- 3.6 Owners of buildings that benefit from Rights of Light or other easements can apply to the Courts for an injunction if their Rights to Light or other easements are negatively impacted by development proposals. The Court would then decide the appropriate remedy, which may include a temporary injunction, followed by a permanent injunction or an award for damages. In the private sector parties normally negotiate claims and the amount of compensation largely depends on the commercial bargaining position of the parties and can be related to the value of the development being undertaken.
- 3.7 Section 122 of the Local Government Act 1972 empowers councils to ‘appropriate’ land. The effect of appropriation (via section 203 of the Housing and Planning Act 2016) is to remove the threat of an injunction and to ensure that compensation paid to the affected neighbouring owners is a reasonable compensatory sum for the interference caused to the right of light or other easement. Appropriation depends on three conditions being satisfied: Firstly, the purpose of the appropriation is one for which the Council are authorised to acquire land by agreement, secondly that the Council owns the land, and thirdly that the land “is no longer required for the purpose for which it is held immediately before the appropriation”.
- 3.8 By sections 226 and 227 of the Town and Country Planning Act 1990 the Council is authorised to acquire by agreement any land which they require to facilitate the carrying out of development, re-development or improvement on or in relation to the land, where they think that this will contribute towards the promotion or improvement of the economic, social or environmental well-being of their area. Therefore, this is also an authorised purpose of appropriation. In this instance the Council owns the Car Park and so the second condition has been met. In order to

address the third condition, the necessary test to satisfy is essentially one of need, namely whether there is greater local need for the existing 330 space car park and its associated facilities or the proposed larger car park of up to 516 spaces along with its associated new and improved facilities.

- 3.9 For the reasons stated above, in its current layout and condition, the Car Park does not adequately serve the public interests or needs of the locality. The proposed Car Park would be a significant improvement on the existing, with additional parking and disabled parking spaces, new dedicated parent and child spaces, new dedicated electrical vehicle parking spaces, and new toilet facilities including an accessible/baby changing unit and Changing Places disabled toilet facility. In addition, the re-development would provide for a more attractive building as part of the wider regeneration of Piries Place, reducing opportunities for crime and anti-social behaviour, and providing greater capacity to meet the growing needs of Horsham town centre as the primary retail and economic centre of the district. All of these issues were considered by Council when the budget for the development was approved.
- 3.10 These represent significant public benefits, which would not arise from the retention of the existing Car Park and satisfy the third test required in order for the Council to appropriate the land.
- 3.11 Appropriation of the land for planning purposes engages section 203 of the Housing and Planning Act 2016, authorising the Council to carry out the redevelopment even if it interferes with rights of light or other easements. Under section 204 of the Housing and Planning Act 2016, compensation is payable for such interference, but it is limited to diminution in value of the land caused by the interference with the owners' rights. The estimated value of compensation is set out in Appendix 2 (exempt).
- 3.12 The new car park would have an impact on the amenities of adjacent occupiers, and this was discussed in the associated planning report to Planning Committee (Appendix 3). The recommendation of the planning officer was that the harm to the amenity of neighbouring occupiers, is outweighed by the benefits of the development. These benefits are set out in this report and the appendices attached. Members of the Planning Committee agreed with this assessment and granted planning permission accordingly. There are no reasons to deviate from this conclusion in the consideration of whether to appropriate the land.
- 3.13 It is therefore recommended that the significant public benefits to be derived from the proposed redevelopment of the car park are of sufficient magnitude to justify the appropriation. Accordingly, it is recommended that Piries Place Car Park be appropriated in order to help deliver the significant public benefits for the town and wider district that would arise from its redevelopment.

4 Next Steps

- 4.1 Parties who are affected by the proposed development will be notified that the Council has appropriated the car park.

5 Views of the Policy Development Advisory Group and Outcome of Consultations

- 5.1 There is no statutory requirement to advertise or consult on a proposal or decision to appropriate land under Section 122 of the Local Government Act 1972. The views of the Policy Development Advisory Group were not sought.
- 5.2 The Council's Monitoring Officer and Director of Corporate Resources have been consulted on the contents of this report to ensure legal and financial probity.

6 Other Courses of Action Considered but Rejected

- 6.1 The alternative course of action is to pursue the re-development of Piries Place Car Park without appropriation. This alternative approach would place the development at risk of injunction and therefore being blocked by affected parties.
- 6.2 Such a course of action is not held to represent an appropriate use of statutory functions granted to Councils to enable development to come forward in the public interest, and would not represent an efficient use of Council resources, including its use of public money.

7 Resource Consequences

- 7.1 The financial consequences are set out in the exempt appendix and have been included in the budget cost for the project.
- 7.2 The Director of Corporate Resources has been consulted and her comments are incorporated in this report.
- 7.3 The Monitoring Officer has been consulted and her comments are incorporated in this report.
- 7.4 The Finance and Assets Policy Development and Advisory Group has been consulted and the Group support the recommendation.

8 Legal Consequences

- 8.1 The Council holds the statutory powers of appropriation under Section 122 of the Local Government Act 1972 and section 203 of the Housing and Planning Act 2016. By Section 204 of the Housing and Planning Act 2016 the local authority is liable to pay compensation, in accordance with the statutory provisions, in respect of the interference of rights affected by the carrying out of building or maintenance works. The proposals contained in this report are consistent with the exercise of the above mentioned statutory powers of the Council in relation to Piries Place Car Park.
- 8.2 It is considered that the exercise by the Council of its statutory powers of appropriation in the circumstances referred to in this report is reasonable and proportionate.

9 Risk Assessment

- 9.1 There are a number of risks associated with this project, which are set out in the Report to Cabinet dated 22nd March 2018 titled Piries Place Car Park – Redevelopment Proposal.

10 Other Considerations

- 10.1 The proposal improves access to the town centre by providing additional disability parking bays and parent and child bays. A Changing Places facility will be included, funded by s106 contributions. Electric charging points will also be included.

APPENDICES TO REPORT

Appendix 1:

Red line Site Plan

Appendix 2: Exempt

Details of compensation

Appendix 3:

Officer report to Planning Committee North relating to the preferred 516 space scheme (DC/17/2511)

Appendix 1

Piries Place Car Park

