

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	THE LEADER OF THE COUNCIL JOINTLY WITH THE CORPORATE DIRECTOR, ECONOMY
Report of:	Assistant Director of Property (Interim)
Date of Decision:	September 2018
SUBJECT:	ARENA CENTRAL – APPROPRIATION OF LAND FOR PLANNING PURPOSES
Key Decision:	No
If not in the Forward Plan: (please "X" box)	Relevant Forward Plan Ref: N/A
Relevant Cabinet Member:	Chief Executive approved <input type="checkbox"/>
Relevant O&S Chair:	O&S Chair approved <input type="checkbox"/>
Wards affected:	Councillor Ian Ward – Leader of the Council
	Councillor Tahir Ali - Economy & Skills
	Ladywood

1. Purpose of report:

- 1.1 To authorise the appropriation, for planning purposes, the Councils freehold land shown edged on the attached plan (Appendix 1) in order to avoid potential action by adjacent occupiers which may stop/delay further development via a court injunction, thereby impacting on further development of the site.

2. Decision(s) recommended:

The Leader of the Council jointly with the Corporate Director, Economy;

- 2.1 Approve the appropriation of the site shown edged black on the attached plan for planning purposes from its previous mixed use as local services, general purposes and economic development under S122 Local Government Act 1972, to planning purposes including commercial and residential uses under the Town & Country Planning Act 1990 subject to indemnities to be provided to the City Solicitor's satisfaction as set out in 4.2 of this report.
- 2.2 Authorise the City Solicitor to enter into the deed of indemnity with Arena Central Developments LLP pursuant to 4.3.3 of this report and complete any other necessary legal documentation to give effect to the above recommendation.

Lead Contact Officer(s):	Azmat Mir, Head of Property Consultancy Birmingham Property Services
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3. Consultation

3.1 Internal

- 3.1.1 The Leader of the Council has been consulted regarding the contents of this report and is fully supportive of the report proceeding to an executive decision.
- 3.1.2 The relevant Ward Members have been consulted and no adverse comments have been received to the reports content. The detail of this consultation is set out in Appendix 3 of this report.
- 3.1.3 The relevant officers from Finance and Governance and the Economy Directorate have been involved in the preparation of this report.

3.2 External

- 3.2.1 Arena Central Developments LLP has been consulted regarding the proposed appropriation and content of this report.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1.1 The proposal contributes towards the Council's Plan 2018-2022 Priority 2 "We will strive to maximise the investment in the city" through continuing to bringing forward the remainder of the development sites at Arena Central for re-use which will generate economic activity and create jobs. It will also contribute to the Council's financial position as per the Council Plan and Budget 2018+ in delivering a capital receipt.

4.2 Financial Implications (How will decisions be carried out within existing finances and Resources?)

- 4.2.1 As a result of the existing and future potential development of the site it has been identified that there is a significant likelihood of claims for rights to light. Under the current designated use owners of adjacent properties could stop or delay development proceeding by Court injunction on these grounds, or demand a ransom payment to withdraw or forbear from taking such action (please refer to 5.7 for further information). This could impact on the Council's ability to generate future capital receipts and revenue streams and also result in associated revenue pressures.
- 4.2.2 By appropriating the land for planning purposes under Section 122 of the Local Government Act 1972, compensation for loss of such rights is still payable but limited to that allowed by statutory codes without prejudice to the scheme, with the Council being the ultimate responsible body to which such claims would be made in the event the developer who has primary responsibility for payment of the statutory compensation does not pay. Whilst this appropriation will enable the development to progress and the Council's ability to generate future capital receipts is protected, any action that is taken may potentially still result in revenue pressures for the Council. The developer has therefore agreed to indemnify the Council for all costs associated with such loss of rights claims, including statutory compensation. This indemnity will be extended through any subsequent long leasehold interest.

4.3 Legal Implications

- 4.3.1 The power to acquire, dispose and manage assets in land and property is contained in Sections 120 and 123 of the Local Government Act 1972. The power to appropriate land for planning purposes from its previous uses is contained in Section 122, Local Government Act 1972. Subject to the land being vested or acquired by the Council or appropriated for planning purposes the power to override easements and third party rights is contained in Section 203 of the Housing and Planning Act 2016. Under Section 204 Housing and Planning Act 2016 (H&P Act 2016) a person is liable to compensation for interference with their rights pursuant to S203 H&P Act 2016.
- 4.3.2 Appropriating the land for planning purposes would avoid the risk of the proposed future development at Arena Central being frustrated by third party rights, which in turn could delay the remainder of the site being brought forward for development or render development of the remaining areas of Arena Central unviable.
- 4.3.3 The Council recognises the potential rights of third parties and will, in the event the due compensation under S204 (H&P Act 2016) is not paid where a legal basis for such payments is established, the Council will be liable to pay the compensation via the developers Indemnity Agreement.
- 4.3.4 Arena Central Developments LLP have confirmation from their solicitors the appropriation can take place at this stage and the City Solicitor has informed the solicitors acting on behalf of Arena Central Developments LLP the Council will not be providing any warranty to Arena Central Developments that it can rely on S203, that will be reflected in the deed of Indemnity.

4.4 Public Sector Equality Duty

- 4.4.1 A copy of the Public Sector Equality Duty statement pursuant to the Equality Act 2010 is included in this report.
- 4.4.2 The proposed appropriation for planning purposes was subject to an Equality Assessment no EQUA70 dated 08 August 2018, which disclosed that no further Assessment is required for this report and is attached at appendix 2 of this report.

5. **Relevant background/chronology of key events:**

- 5.1 The Arena Central site is the street block bounded by Broad Street to the north, Bridge Street to the west, Holliday Street to the south and Suffolk Street Queensway to the east and is shown edged black on the plan at appendix 1 (the Development Site). The Council has the freehold interest in the whole of the development site. The development site forms a key element of the Big City Plan as part of the Westside Area of Transformation alongside other sites such as Paradise Circus.
- 5.2 Previously, the Council agreed terms for a Development Agreement and Lease with Arena Central Developments LLP and this was approved by Cabinet on 8th June 2007. This set out the manner in which it was planned to bring forward the Development Site for development. Planning consent was granted on the 24th February 2010. A variation to the Development Agreement was agreed by Cabinet in November 2013 to allow further development. Since then, Arena Central Developments LLP have secured the refurbishment of the Crowne Plaza Hotel, sold a site to Dandara which is currently under

construction for a private rented sector scheme, developed a Holiday Inn Express to front Holliday Street and have completed the new head quarter building for HSBC and are in the process of constructing a new building for HMRC as well as putting in the infrastructure for future buildings to complete the development of this strategic site.

- 5.3 Further development by way of mixed use schemes will be compliant with the master plan for the area and compliant with the Council's planning policies.
- 5.4 In order to bring forward further development along the frontage of Bridge Street, Arena Central Developments LLP have requested the Council as freeholder, to appropriate the land edged on the attached plan at appendix 1 for planning purposes.
- 5.5 The Council holds land for various statutory purposes in order to provide its functions. Such land is used only for the purpose of the function for which it was originally acquired until such time as the land is disposed of or "appropriated" for another purpose.
- 5.6 Appropriation is the statutory procedure to change the purpose for which land is held from one statutory purpose to another provided that the land is no longer required for the purpose for which it was held immediately before the appropriation. In this instance the land has been held for transportation and local services, general purposes and economic development previously housing an underground and multi-storey car park on part of the site.
- 5.7 The scheme proposals and the fact the land has lain undeveloped for many years give rise to the possibility for claims to rights to light. These claims could include court injunctions to stop development taking place, and demands for ransom payments under the threat of such action. By appropriating the land for planning purposes under Section 122 of the Local Government Act 1972, compensation for loss of such rights is still payable but limited to that allowed by statutory codes without prejudice to the scheme.
- 5.8 Arena Central Developments LLP will be carrying out the scheme (as the long leasehold owner of the site) and it is they who will interfere with any easements/rights and therefore will be primarily liable for any statutory compensation payments; the Council will become liable if the developer fails to make the payments, as set out in 4.3.3 of the report. Arena Central Developments LLP has agreed to indemnify the Council for any associated costs.
- 5.9 Arena Central Developments LLP considers it essential to appropriate the land now in case of prejudicial claims against the scheme at an early stage.

6. Evaluation of alternative option(s):

- 6.1 Not to appropriate the site for planning purposes would potentially allow claimants of rights of light to stop development by way of a court injunction or to claim a ransom payment under the threat of such action.

7. Reasons for Decision(s):

- 7.1 To support Arena Central Developments LLP in its delivery of Arena Central, ensuring the remainder of the development is able to proceed to completion. This in turn will support delivery of associated outputs including significant employment opportunities, capital receipts for the Council and will contribute to key business priorities.

Signatures**Date**

Councillor Ian Ward
Leader of the Council

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Waheed Nazir
Corporate Director, Economy

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List of Background Documents used to compile this Report:

Relevant Officers file(s) save for confidential documents

Public Cabinet Report titled Arena Central – Lease Re-Gear, dated 22nd January 2007

Public Cabinet Member for Transportation and Street Services report , dated 29th July 2008,
titled Former Holliday Street Multi-Storey Car Park.

Public Cabinet Report titled Arena Central 6th October 2011

Public Cabinet report titled Arena Central Update 19th November 2013

List of Appendices accompanying this Report (if any):

Appendix 1 – Site Plan

Appendix 2 – Equalities Assessment Ref No EQUA70

Appendix 3 – Ward Member Consultation Record Sheet

Report Version Final

Dated 7th September 2018

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in section 4.4 of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

- 1 The Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) tackle prejudice, and
 - (b) promote understanding.
- 5 The relevant protected characteristics are:
 - (a) marriage & civil partnership
 - (b) age
 - (c) disability
 - (d) gender reassignment
 - (e) pregnancy and maternity
 - (f) race
 - (g) religion or belief
 - (h) sex
 - (i) sexual orientation