

Report to:	EXECUTIVE
Relevant Officer:	Alan Cavill, Director of Communications and Regeneration
Relevant Cabinet Members:	Councillor Lynn Williams Leader of the Council and Councillor Ivan Taylor Deputy Leader of the Council
Date of Meeting:	12 July 2021

PROPOSED APPROPRIATION AND DISPOSAL OF LAND AT BLACKPOOL CENTRAL

1.0 Purpose of the report:

1.1 To seek approval to appropriate for planning purposes, a parcel of land to the rear of the Former King Edward Apartments within the Blackpool Central Site as shown edged blue and coloured green on the attached plan 1 (“the Subject Land”), pursuant to Section 122 of the Local Government Act 1972 (“LGA 1972”), conditional upon the grant of the hybrid planning permission with application number 21/0517 to enable the building of a Multi-Storey car park which is the ‘Enabling Phase’ (as illustrated edged green on plan 2) of the Blackpool Central development and to invoke section 203 and section 204 of the Housing and Planning Act 2016 (“HPA 2016”).

2.0 Recommendation(s):

- 2.1 To delegate authority to Director of Communications and Regeneration, subject to the planning permission pursuant to the hybrid planning application numbered 21/0517 being granted, to appropriate for planning processes the Subject Land under section 122 of the Local Government Act 1972 and invoke section 203 and section 204 of the Housing and Planning Act 2016.
- 2.2 To delegate authority to the Director of Communications and Regeneration to negotiate and enter into legal agreements with third parties in order to secure the modification or release of rights or covenants (and the grant of new rights) (“the Rights) which may otherwise be an impediment to the ‘Enabling Phase’ of the Blackpool Central Site.
- 2.3 In the absence of legal agreements being entered into to release the Rights, to delegate authority to the Director of Communications and Regeneration to deal with the settlement of any claims for compensation made pursuant to section 204 of the Housing and Planning Act 2016 that may arise by virtue of the operation of the overriding power contained in Section 203 of the Housing and Planning Act 2016.

2.4 To authorise the Head of Legal Services to enter into any such documentation as may be necessary to give effect to or flowing from the appropriation for planning purposes of the Subject Land.

3.0 Reasons for recommendation(s):

- 3.1 i) To facilitate the commencement of the major leisure development by removing the Rights over the Subject Land to allow the 'Enabling Phase' of the development to commence with the building of the Multi-Storey car park.
- ii) The appropriation for planning purposes of the Subject Land is necessary as the programme of works for the 'Enabling Phase' means that the Developer requires a safe working space around the 'Enabling Phase' prior to the anticipated date of confirmation of the Compulsory Purchase Order (The Blackpool Borough Council (Blackpool Central No1) Compulsory Purchase Order 2021). This safe working space relates to the "Subject Land".
- iii) The engagement of these powers is considered to be proportionate and justified, notwithstanding the interference with the Rights of the leaseholders over the Subject Land which is owned by the Council.
- iv) Appropriation for planning purposes of the Subject Land under section 227 of the Town and Country Planning Act 1990 ("TCPA 1990") and any subsequent use of section 203 and section 204 powers pursuant to the Housing and Planning Act 2016 will enable the development to proceed without the risk of an injunction from adjoining leaseholders and convert the rights into compensation

3.2 Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.3 Is the recommendation in accordance with the Council's approved budget? Yes

4.0 Other alternative options to be considered:

4.1 The Council to agree by negotiation and by way of private treaty the acquisition of the remaining interests in the King Edwards units. This would effectively extinguish the Rights across the 'Subject land', thereby meaning the appropriation is not necessary. This course of action is being pursued in line with the proposed Compulsory Purchase, which was subject to a separate Executive Decision EX4/2021.

4.2 The appropriation of the land is required to enable the Developer to deliver the proposed Multi-Storey car park. Failure to appropriate the land could result in significant delays to the 'Enabling Phase', which could potentially have much wider implications and put the whole project in jeopardy.

5.0 Council priority:

5.1 The relevant Council priority is: “The economy: Maximising growth and opportunity across Blackpool”.

6.0 Background information

- 6.1 At the meeting of the Executive on 10th December 2018 (EX57/2018 refers) the Council approved the ‘Blackpool Central Masterplan’ (“the Masterplan”) presented by Nikal Ltd and Media Invest Entertainment (“the Developer”) and as such officers were authorised to negotiate terms for a sale of the Blackpool Central site
- 6.2 The Developer had an Exclusivity Agreement whilst they produced the Masterplan, and at the Executive Meeting of 25 February 2019 (EX22/2019 refers) the terms of the sale by way of a premium for a long lease were approved.
- 6.3 Blackpool Central will see significant regeneration of the inner area of the town with a £300m leisure-led development at the heart of the visitor economy. The development will bring world class leisure attractions to the site, with the potential to generate significant economic growth and investment within the town. The scheme will boost the local economy with a forecasted 1000 additional jobs, around £75m of additional visitor spend and an additional 600,000 visitors per annum, helping Blackpool to maintain its position as the one of the leading tourist / visitor destinations in the UK.
- 6.4 On 13th January 2020 the Council and the Developer signed an Agreement for the disposal of the land (“Land Sale Agreement”). The terms of the Land Sale Agreement were delegated to the Chief Executive EX22/2019 and provide for the disposal of land in phases (“Proposed Phasing Plans”). There is the facility to change the Proposed Phasing Plans within the Land Sale Agreement subject to the amended phasing plans being served on the Council for approval.
- 6.5 At the meeting of the Executive on 13 July 2020 (EX33/2020) authority was given to the relevant officers to commence the preparatory work for the making of a Compulsory Purchase Order to support the site assembly of the land required for the regeneration of the Blackpool Central Development, whilst continuing to negotiate with third party interests to acquire the land needed by private treaty.
- 6.6 The Developer served amended phasing plans on the Council as shown on the attached Plan 2. The amended phasing plans show the ‘Enabling Phase’ in a different location; the Multi-Storey car park is now to be built closer to the former King Edward Apartments which form part of the Land Sale Agreement.

- 6.7 The 'Enabling Phase' (shown edged green on Appendix 11b) would see the creation of a Multi-Storey car park to replace the existing surface level car park.
- 6.8 The Council have received confirmation that all of the Subject Land will be required by the Developer to facilitate the building of the Multi- Storey car park to ensure that there is a safe working perimeter around it. The Developer will enter into a separate legal agreement regarding its use of this land at the same time that the 'Enabling Phase' land is drawn down pursuant to the terms of the Land Sale Agreement
- 6.9 To ensure the safety of the remaining leaseholders (below the Former King Edward Apartments) during the building phase of the Multi- Storey car park the Rights as noted in clause 6.11 by virtue of the Leases noted at clause 6.10 in respect of the Subject Land will need to be extinguished.
- 6.10 The following leases remain in place in respect of the ground floor of the former King Edward Apartments ("the Leases"):
- 13-17 Central Drive under a lease dated 6 November 1987 registered with Land Registry under title number LA577637
 - 19 Central Drive under a lease dated 23 March 1988 registered with Land Registry under title number LA578712
 - 21 Central Drive under a lease dated 11 March 1988 registered with Land Registry under title number LA578711
 - 31 Central Drive under a lease dated 17 June 1988 registered with Land Registry under title number LA616518
 - 33 Central Drive under a lease dated 3 May 1988 registered with Land Registry under title number LA578710
- 6.11 The Leases provide the following covenants and rights are exercisable in respect of either the lease/ and on or over the Subject Land:
- *Covenant*
(xvii) so far as may be possible and practical to ensure that all goods for delivering to or despatch from the demised premises are loaded or unloaded within the boundaries of the car park of the Lessor at the rear of the demised premises and not from any of the public highways or from any of the Superior Lessors lands which abut the demised premises save as necessary

- *Schedule 2*

Full right and liberty for the Lessee at all times hereafter by day or night and as circumstances permit to pass and repass for all purposes connected with the enjoyment of the demise premises with or without vehicle or any description whether laden or unladen over and along the land shown green and blue on the said plan annexed hereto.

The Rights noted above relate to the Subject Land.

- 6.12 Additionally for the Leases relating to 21, 31 and 33 Central Drive respectively there is an additional right to:

The right (at the Lessee's expense) to require the Lessor to create an exit door in the rear wall of the demised premises to allow access as the demises for loading and unloading of goods (as circumstances in the car park permit) at the rear of the premises

- 6.13 On review it is considered that whilst there is no specific requirement to remove this right from the Leases the right will become ineffective as there will be no right of access over the car park. Where the Rights are removed by agreement prior to the Council invoking clauses 203 and 204 of the Housing and Planning Act 2016 the relevant agreement should seek to clarify the position noted at clause 6.12.
- 6.14 In addition to the formal rights given under the Leases an additional implied right has been permitted at the lease for 13-17 Central Drive. The Leaseholder is likely to be able to establish that the Council have by their lack of enforcement action given rise to a right to park one vehicle within the demise of the property. The access and egress to this parking space is over the Subject Land and the widely drafted right of access noted at Schedule 2 of their lease provides this right of access without the need to obtain any additional rights from the Council. In extinguishing the right of access the leaseholder will lose their implied right to park a vehicle within the demise of the lease for 13-17 Central Drive.
- 6.15 Pursuant to rights contained with the LGA 1972, the TCPA 1990 and the Housing and Planning Act 2016 the Council has the power to appropriate the Subject Land (for which the Council own the freehold) for planning purposes and subsequently to convert these third party property rights and covenants into a right to the payment of compensation. The Council require the use of these powers in order to facilitate the 'Enabling Phase' of the development by ensuring the smooth draw down of the 'Enabling Phase' and the building of the Multi-Storey car park which is the gateway for the remainder of the Blackpool Central Development.

- 6.16 Council Officers are advised by the Developer that any delay of the draw down of the 'Enabling Phase' may impact of the ability to provide the Blackpool Central Development as originally envisaged.
- 6.17 Under the terms of the Land Sale Agreement, the Council has the responsibility for ensuring that every effort has been made to acquire all necessary land and property interests by agreement. These negotiations have been pursued under the Council's compulsory purchase powers, however, it is highly unlikely that compulsory purchase powers or attempts at negotiation will be concluded before the drawdown of the 'Enabling Phase'. In order to progress the development the Council must now seek to remove the Rights which prevent the Council from being in a position to move forward with the 'Enabling Phase'.
- 6.18 It appears that there is no reasonable prospect that the Rights over the Subject Land adjacent to the 'Enabling Phase' can be extinguished in a timely manner, without resorting to powers of appropriation for planning purposes and the conversion of these rights to a right of compensation. Negotiations to acquire these rights by private treaty will continue throughout the appropriation process.
- 6.19 Under section 122 of the LGA 1972 the Council may appropriate land belonging to the Council that is no longer required for the purpose for which it is held for any other purpose for which it is authorised by statute to acquire land. Therefore, the Council can only appropriate under section 122 if the land is no longer required for the purpose of which it is currently held. Land can be appropriated for planning purposes pursuant to section 122 and the phrase "appropriation of land for planning purposes" is defined by section 246(1) of the TCPA 1990 as a reference to the appropriation of land for which land can be (or as the case may be, could have been) acquired under section 226 or 227 of the 1990 Act. Acquisitions under these sections is permitted (whether by compulsion or agreement) where such acquisition facilitates the carrying out of development, redevelopment or improvement on or in relation to the land provided that such development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the Council's area. When considering appropriation, the Council needs to have regard to the same issues and take the same approach as if they were seeking to promote a compulsory purchase order. The same degree of "requirement" or "necessity" applies.
- 6.20 Under section 203 of the Housing and Planning Act 2016, a local authority can override rights in land that has been appropriated for planning purposes, subject to payment of compensation under section 204 of the Housing and Planning Act 2016.
- 6.21 Under section 203 of the Housing and Planning Act 2016 the Council can erect, construct, or carry out or maintain any building or work on land that has been appropriated by it for planning purposes, even if that work or use involves an interference with a breach of a contractual restriction.

6.22 There are four statutory requirements that must be fulfilled in order for section 203 of the Housing and Planning Act 2016 to apply:

1. the land must be acquired or appropriated by a local authority for planning purposes;
2. there is planning permission for the building or maintenance work or use;
3. a local authority could (if not already the owner) acquire the land needed compulsorily for the purposes of carrying out works (including construction and maintenance works), or for the use of the land permitted by the relevant planning consent
4. the work or use in question relates to the purposes for which the land was appropriated.

6.23 In advance of the Council invoking section 203 of the HPA 2016, the Council needs to seek a release of those rights by private treaty negotiations. The Council have previously been negotiating with the leaseholders identified at clause 6.10 regarding the purchase of their leases in advance of a Compulsory Purchase Order. In order to rely of Section 203 of the Housing and Planning Act 2016 specific negotiation will need to take place with the leaseholders about the extinguishment of the Rights.

6.24 Where the Council is unable to negotiate the extinguishment of these rights and relies on the use of Section 203 the compensation under section 204 of the HPA 2016 is assessed on the basis of the loss in value of the land that had the benefit of those Rights as a consequence of the interference or breach.

6.25 Under section 233(1) of TCPA 1990 Act (as amended), a local authority can dispose of appropriated land as the local authority believes is expedient to obtain one of the following:

- The best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it.
- The erection, construction or carrying out on it of any buildings or works appearing to the authority to be needed for the proper planning of its area.

6.26 On 10 May 2021 and as per the terms of the Land Sale Agreement the Developer served a copy of the hybrid planning application on the Council for approval as landowner (“the Planning Application Condition”). The Council gave formal approval to the Planning Application Condition in a letter dated 11 June 2021.

The planning application was submitted to the Council’s planning department and was validated and given planning application reference number 21/0517.

It is anticipated that the application will be considered at Planning Committee during September 2021.

The decision to formally appropriate will be made once planning permission has been granted.

6.27 Does the information submitted include any exempt information? No

7.0 List of Appendices:

7.1 Appendix 11a – Plan 1 Subject Land
Appendix 11b – Plan 2 - Amended Phasing Plan showing the location of the ‘Enabling Phase’

8.0 Financial considerations:

8.1 The Council is already in negotiations with the leaseholders of 13-17, 19, 21, 31 and 33 Central Drive and made offers for acquiring the respective leasehold interests, and therefore has established an opinion as to the market value of the respective leasehold interests. S204 of the Housing and Planning Act 2016 requires compensation for the diminution of value of the property. Should the Council proceed to acquire the leasehold interest then the amount of compensation paid under s204 of the Housing and Planning Act 2016 will be an advance of the purchase price paid for acquiring the leasehold interest and is therefore not considered to be an addition cost to the council.

9.0 Legal considerations:

9.1 The Council has statutory powers which enable the appropriation of Council owned land for planning purposes pursuant to section 122(1) of the LGA 1972. This is a statutory process which may assist in situations such as this in order to secure the development of Council owned land. This is because where land is appropriated in this way easements and other rights and interest in the land can be overridden where they would otherwise be an impediment to development pursuant to section 203 of the Housing and Planning Act 2016. At the point the rights are overridden they are converted into a right to compensation pursuant to section 204 of the HPA 2016.

10.0 Risk management considerations:

10.1 The proposed appropriation, as set out in this report, is required in connection with the land sale agreement entered into relating to the Blackpool Central site. Should the proposed appropriation and subsequent use of Section 203 powers not be invoked the Blackpool Central Development scheme will be severely delayed, which will have significant impacts on the successful implementation of the project.

10.2 The proposed appropriation will not take place unless and until the planning permission has been granted.

10.3 The Council's statutory duties as local planning authority and local highway authority are separate to its duties as land owner relating to the consideration of the proposed appropriation and disposal of land. The consideration of any matters relating to planning application will be dealt with separately and interested parties will have the opportunity to make representations as part of that process

11.0 Equalities considerations:

11.1 The purpose of this report is to consider the statutory process.

11.2 The planning application for the 'Blackpool Central' development has been submitted by the Developer. The planning submission will be validated and publicised in accordance with statutory requirements with the community and interested parties being given opportunity to comment on the applications and developers proposals in accordance with statutory planning process.

11.3 In considering the recommendations of this report the Council must be satisfied that the purposes for which the Subject Land is to be appropriated and for which the rights are to be overridden sufficiently justify interfering with the human rights of the Leaseholders.

11.4 Under the Human Rights act 1998 the Council is required to act in accordance with the European Convention on Human rights ("ECHR") in deciding whether or not to engage section 203 of the HPA 2016. Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions.

11.5 The appropriation of the Subject Land for planning purposes in order to engage section 203 of the HPA 2016 and to permit infringement of the Rights will involve interference with a person's right under the above mention Article. However, the right to peaceful enjoyment of possessions is qualified. The deprivation of a person's possessions is authorised where it is prescribed by law, is pursuant to a legitimate aim, is necessary in a democratic society and is proportionate.

11.6 The interference with an individual's private rights must be necessary and proportionate to the public interest of facilitating the Blackpool Central Development. In this context, "proportionate" means that the interference must be no more than is necessary to achieve the identified legitimate aim of such interference. A fair balance is required to be struck between the rights of the individual and the rights of the community as a whole.

11.7 In light of the significant public benefits arising from the Blackpool Central Development, the public interest in facilitating the development outweighs the private interests identified and the proposed engagement of section 203 of the Housing and Planning Act 2016 will amount to a proportionate interference with the rights and availability of statutory compensation to those who are deprived of the benefit of an existing right is of relevance to the issue of proportionality.

12.0 Sustainability, climate change and environmental considerations:

12.1 Not applicable.

13.0 Internal/external consultation undertaken:

13.1 Internal: Growth and Prosperity Programme Director, Growth and Prosperity Board, Finance, Legal, Community and Environmental Services.

13.2 The statutory procedures explained in this report direct that external consultation for appropriation for planning purposes is not required. To rely on S203 of the 2016 Act direct consultation and negotiation has been undertaken with directly affected parties.

14.0 Background papers:

14.1	EX57/2018	Executive Decision:	Blackpool Central Development Proposals
	EX22/2019	Executive Decision:	Blackpool Central (update report)
	EX33/2020	Executive Decision:	Blackpool Central Preparatory Site Assembly Works
	EX4/2021	Executive Decision:	The Blackpool Borough Council (Blackpool Central No. 1) Compulsory Purchase Order

15.0 Key decision information:

15.1 Is this a key decision? No

15.2 If so, Forward Plan reference number:

15.3 If a key decision, is the decision required in less than five days? No

15.4 If **yes**, please describe the reason for urgency:

16.0 Call-in information:

16.1 Are there any grounds for urgency, which would cause this decision to be exempt from the call-in process? No

16.2 If **yes**, please give reason:

TO BE COMPLETED BY THE HEAD OF DEMOCRATIC GOVERNANCE

17.0 Scrutiny Committee Chairman (where appropriate):

Date informed: N/A

Date approved:

18.0 Declarations of interest (if applicable):

18.1

19.0 Executive decision:

19.1

20.0 Date of Decision:

20.1

21.0 Reason(s) for decision:

21.1

22.0 Date Decision published:

22.1

23.0 Executive Members in attendance:

23.1

24.0 Call-in:

24.1

25.0 Notes:

25.1