

Notice of:	EXECUTIVE
Decision Number:	EX62/2021
Relevant Officer:	Alan Cavill, Director of Communications and Regeneration
Relevant Cabinet Member:	Councillor Mark Smith, Cabinet for Business, Enterprise and Job Creation
Date of Meeting:	6 December 2021

APPROPRIATION OF LAND FOR PLANNING PURPOSES AT KING STREET, BLACKPOOL

1.0 Purpose of the report:

- 1.1 To appropriate for planning purposes the land within Talbot Gateway Phase 3 (the “Subject Land”) as shown edged red on plan 1 (Appendix 3a, to the Executive report) and thereby invoking section 203 of the Housing and Planning Act 2016 powers to interfere with rights over the land.

2.0 Recommendation(s):

- 2.1 To delegate authority to Director of Communications and Regeneration, to appropriate for planning purposes the Subject Land under section 122 of the Local Government Act 1972 hereby invoking 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 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.
- 2.3 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 To facilitate the commencement of Talbot Gateway Phase 3 development by removing any rights over the Subject Land to allow the development of the Subject Land to commence with the building of the 7 storey King Street Office Development (“KSOD”)

The engagement of these powers is considered to be proportionate and justified, in order to facilitate the development of the Subject Land thereby achieving the promotion and/or the improvement of the economic social and environmental well-being of the area.

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 and convert any 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 Subject to being able to identify any such parties, including any such potential party, the Council could agree by negotiation and by way of private treaty the acquisition of any right to light which may exist in respect of the development of the Subject Land thereby meaning it will not be necessary to invoke section 203 of the Housing and Planning Act 2016.

Failure to invoke Section 203 of the Housing and Planning Act 2016 and subsequently convert any existing rights into compensation could result in significant delays to delivery of the development, putting the whole project or elements of it 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 The Executive will be aware that the land required for Talbot Gateway Phase 3 development was acquired over time with some of the land already in Council ownership, other acquired by negotiation or vested in the Council’s name under a General Vesting Declaration on 26 June 2021.

6.2 The Executive will also be aware that at the Executive meeting of 25 January 2012 (EX8/2012) it was agreed to appropriate all the land within the Central Business District for planning purposes. It should be noted that whilst East Topping Street Car Park was within the Council ownership at the time, the rest of Talbot Gateway Phase 3 was not in Council ownership and therefore could not be appropriated at that time.

- 6.3 For the avoidance of doubt, the Cabinet Member decision (PH32/2012) of March 2012 confirmed that that term “Central Business District” and “Talbot Gateway” have the same meaning.
- 6.4 The properties numbered 5-7, 9, 11, 13, 15, 25, 27-29 and 31 King Street, 2, 4-6 and 8 Kings Street, 2 Charles Street and 3 Cookson Street were all acquired by negotiation prior to the General Vesting. 23 King Street was acquired at auction and 17-21 King Street, 5 Cookson Street and 3 parcels of unregistered land were acquired following Vesting.
- 6.5 Whilst 5-7, 9, 11, 13, 15, 25, 27-29 and 31 King Street, 4-6 and 8 Kings Street, 2 Charles Street and 3 Cookson Street were acquired for the purpose of Talbot Gateway Phase 3 development, 2 King Street was acquired prior to the scheme being proposed.
- 6.6 A hybrid planning consent(20/0751) was granted on 17 March 2021 for outline consent regarding a seven storey office development and full consent for change of use of part of the site for a dentist practice (“The Hop Inn”2, King Street).
- 6.7 A reserved matters application (21/0654) was approved at the Planning Committee on 16 November 2021 which provided details as to the actual height of the proposed seven storey office development together with detail of the external appearance. One objection was raised but this related to the loss of parking spaces and not the actual development.
- 6.8 This report seeks authority to, now that reserved matters under reference 21/0654 was granted on 16 November 2021, to appropriate the Subject Land for planning purposes thereby invoking the powers under section 203 of the Housing and Planning Act 2016 which converts any rights interfered with or restrictions breached by the development to claims in compensation.
- 6.9 This is required to facilitate the implementation of the Talbot Gateway phase 3 development. On 29 September 2021 the Council and the Secretary of State for Housing, Communities and Local Government(“HCLG”) signed an Agreement for the HCLG to take a lease of the King Street Office Development, once it is completed, with the Council subsequently entering into a (Third)Supplemental agreement with Muse Development (the “Developer”) and contract for them to deliver King Street Office Development.
- 6.10 Pursuant to rights contained with the Local Government Act 1972, the Town and Country Planning Act 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 Talbot Gateway Phase 3 development and now that Planning Permission for

Reserved Matters has been granted, to invoke Section 203 of the Housing and Planning Act 2016 in respect of the Subject Land to ensure the smooth draw down of the land and the building of King Street Office Development

- 6.11 As part of its commitment to provide King Street Office Development to HCLG, the Council has agreed to work towards delivering the development in a timely manner and any delay of the draw down of the land may impact of the ability to provide the King Street Office Development as originally envisaged.
- 6.12 Under section 122 of the Local Government Act 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 Town and Country Planning Act 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.
- 6.13 Under section 203 of the Housing and Planning Act 2016, a local authority can interfere with 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.
- 6.14 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 been 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.
- 6.15 Should any claim be made as a consequence of invoking Section 203 the compensation under section 204 of the Housing and Planning 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.
- 6.16 The four criteria mentioned in 6.14 above have now been met and therefore the decision to formally appropriate to the Subject Land can now be made
- 6.17 Does the information submitted include any exempt information? No

7.0 List of Appendices:

7.1 Appendix 3a - Plan 1 Subject Land

8.0 Financial considerations:

8.1 Section 204 of the Housing and Planning Act 2016 requires the payment of compensation for the diminution of value of the property.

8.2 Should any party be identified with a right to light compensation under section 204 of the Housing and Planning Act 2016 will be assessed on the basis of the loss in value of the land that had the benefit of those rights/covenants as a consequence of the interference with any such rights/covenants.

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 Local Government Act 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 interfered with pursuant to section 203 of the Housing and Planning Act 2016 where they would otherwise be an impediment to development.

10.0 Risk management considerations:

10.1 The proposed appropriation, as set out in this report, is required in connection with the development of the King Street Office Development. Should the proposed appropriation and subsequent use of Section 203 powers not be invoked the Talbot Gateway Phase 3 Development scheme will be at best severely delayed and at worst prevent implementation of the project.

11.0 Equalities considerations:

11.1 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 any rights are to be interfered with sufficiently justify interfering with the human rights of the beneficiaries.

11.2 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 Housing and Planning Act 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. Blackpool Council as a public authority had had due regard to the Public Sector Equality Duty (“PSED”) under s 149 of the Equality Act and the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not, and to foster or encourage good relations between people who share a protected characteristic and those who do not. The Council does not consider that the development proposed would result in undue/unacceptable/unlawful discrimination or inequitable access or treatment on the basis of the protected characteristics of any category of person. Paying due regard to the Public Sector Equality Duty, the Council does not consider that the appropriation of the land for planning purposes and any subsequent invocation of section 203 of the Housing and Planning Act 2016 would breach its duty.

11.3 The appropriation of the Subject Land for planning purposes in order to engage section 203 of the Housing and Planning Act 2016 and to permit interference with 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.

11.4 The interference with an individual’s private rights must be necessary and proportionate to the public interest of facilitating the implementation of the Talbot Gateway Phase 3. 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.

11.5 In light of the significant public benefits arising from the Talbot Gateway Phase 3, 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 None directly.

13.0 Internal/external consultation undertaken:

13.1 Internal: Growth and Prosperity Programme Director, Growth and Prosperity Board, Finance, Legal, Community and Environmental Services.
The statutory procedures explained in this report direct that external consultation for appropriation for planning purposes is not required.

14.0 Background papers:

- 14.1 a) EX8/2012 Executive Decision: Appropriation of Central Business District
- b) Hybrid planning consent 20/0751
- c) Reserved matters planning consent 21/0654

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: N/A

18.0 Declarations of interest (if applicable):

- 18.1 None

19.0 Summary of Discussion:

19.1 Mr Alan Cavill, Director of Communications and Regeneration, introduced the report to the Executive and highlighted that appropriation was considered necessary to ensure that the scheme did not suffer significant delays to delivery of the development. The Executive noted that Subject to being able to identify any such parties, including any such potential party, the Council could still agree by negotiation and by way of private treaty the acquisition of any right to light which may exist in respect of the development of the Subject Land thereby meaning it might not be necessary to invoke section 203 of the Housing and Planning Act 2016.

20.0 Executive decision:

20.1 The Executive agreed the recommendations as outlined above namely:

1. To delegate authority to Director of Communications and Regeneration, to appropriate for planning purposes the Subject Land under section 122 of the Local Government Act 1972 hereby invoking section 203 and section 204 of the Housing and Planning Act 2016.
2. 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.
3. 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.

21.0 Date of Decision:

21.1 6 December 2021

22.0 Reason(s) for decision:

22.1 To facilitate the commencement of Talbot Gateway Phase 3 development by removing any rights over the Subject Land to allow the development of the Subject Land to commence with the building of the 7 storey King Street Office Development (“KSOD”)

The engagement of these powers is considered to be proportionate and justified, in order to facilitate the development of the Subject Land thereby achieving the

promotion and/or the improvement of the economic social and environmental well-being of the area.

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 and convert any rights into compensation.

23.0 Date Decision published:

23.1 7 December 2021

24.0 Alternative Options Considered and Rejected:

24.1 The Executive considered that failure to invoke Section 203 of the Housing and Planning Act 2016 and subsequently convert any existing rights into compensation could result in significant delays to delivery of the development, putting the whole project or elements of it in jeopardy.

25.0 Executive Members in attendance:

25.1 Councillor L Williams

Councillor Brookes, Farrell, Hobson, Smith and Taylor.

26.0 Call-in:

26.1

27.0 Notes:

27.1