

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	POLICY COMMITTEE		
DATE:	20 JULY 2015	AGENDA ITEM:	15
TITLE:	STATION HILL DEVELOPMENT		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
SERVICE:	VALUATION	WARDS:	ABBEY
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Outline planning permission was granted by the Council on 9 January 2015 for the comprehensive redevelopment of the Station Hill site (the SH3 Scheme), to the south of Reading mainline train station. The extent of the development is shown on the attached plan. Sackville Developments (Reading) Limited (Sackville) is the owner of the Station Hill site and demolition works have commenced.
- 1.2 One of the Council's roles is helping to deliver development which meets its Local Planning Authority planning objectives. The Station Hill site is a strategic site and its redevelopment is one which the Council supports. The Station Hill South Planning and Urban Design Brief was adopted by Cabinet in 2006 (Minutes 218 and 105 of the Cabinet meetings on 18 April and 4 December 2006 refer).
- 1.3 This report recommends that consideration be given to requests from Sackville regarding acquisition arrangements and the use by the Council of its planning powers under Section 237 of the Town and Country Planning Act 1990 (as amended) (Section 237) in relation to the SH3 Scheme. This power under Section 237 provides for the payment of statutory compensation (in place of any other legal remedies such as damages or injunctions) to owners of property rights that are infringed by a development. It is recommended that authority to consider such requests - and to provide appropriate support for the delivery of the SH3 Scheme - where it is considered the applicable tests and criteria are satisfied and the Council is indemnified against all costs and liabilities, be delegated to the Chief Valuer. In this regard the Chief Valuer will not have the authority to determine whether any such acquisition and engagement of the Council's Section 237 powers should be utilised but in the event that he is satisfied that all tests and criteria have been satisfied a further report will be submitted to Policy Committee.
- 1.4 The criteria that the Chief Valuer will consider when evaluating individual requests are set out in **Appendix 1**.

2. RECOMMENDED ACTION

- 2.1 That the Council's policy support for redevelopment and improvement of the Reading central area surrounding the mainline train station (which includes the SH3 Scheme) be noted;

- 2.2 That in this regard the Council's support for ensuring the approved SH3 Scheme is delivered be noted;
- 2.3 That in light of recent press reports, the Council notes its concerns regarding the threat of an injunction or other proceedings which may hinder or prevent delivery of the approved SH3 Scheme;
- 2.4 That the Chief Valuer be delegated authority to (a) consider requests from Sackville regarding acquisition arrangements and the use of the Council's planning powers under Section 237 of the 1990 Town and Country Planning Act in relation to the SH3 Scheme, and (b) provide appropriate support for the delivery of the SH3 Scheme in this context, with reference to the applicable tests and criteria set out in Appendix 1; and where, the Chief Valuer, in consultation with the Lead Councillor for Strategic Environment, Planning and Transport, considers that the applicable criteria and tests are met, and the Council is indemnified against all costs and liabilities, a report be submitted to a future Policy Committee regarding invoking the Council's powers under Section 237 of the Town and Country Planning Act 1990.

3. POLICY CONTEXT

- 3 The redevelopment of the area around Reading train station is (and has been for several years) a key policy objective of Reading Borough Council. Support for appropriate redevelopment of the area is contained in several policy documents issued by the Council including the following:
 - Core Strategy, adopted January 2008 (altered January 2015);
 - Reading Central Area Action Plan (RCAAP) (January 2009)
 - Sites and Detailed Policies, adopted October 2012 (altered January 2015)
 - Station Hill South Planning and Urban Design Brief (March 2007)
 - Reading Station Area Framework (December 2010)

4. THE PROPOSAL

Current Position

- 4.1 Sackville owns the site to the south of Reading mainline train station known as 'Station Hill'. Pursuant to an application submitted by Sackville, Reading Borough Council granted outline planning permission (reference: 130436) on 9 January 2015 for the redevelopment of the Station Hill site comprising the demolition and alteration of existing buildings and erection of new buildings/structures to provide Offices (Use Class B1), a range of town centre uses including retail and related uses (Use Class A1-A5), leisure (Use Class D2) and residential units, associated infrastructure, public realm works and ancillary development (the "SH3 Scheme").
- 4.2 A planning obligations agreement under Section 106 of the Town and Country Planning Act 1990 was entered into on 9 January 2015 in relation to the SH3 Scheme between Sackville, the Council (as Local Planning Authority) and Barclays Bank plc (as mortgagee of part of the Station Hill site).
- 4.3 Sackville has commenced the demolition of the buildings on site with a view to initially create a pocket park prior to its comprehensive redevelopment.
- 4.4 In May 2015 it was reported in the Reading Chronicle and other local press that the owner of a property on Friar Street had sent an open letter to Sackville threatening to

seek an injunction preventing delivery of the SH3 Scheme on the basis that the scheme was likely to infringe rights of light enjoyed by the Friar Street property.

- 4.5 Rights of light are easements (akin to property rights) enjoyed by building owners over neighbouring land whereby a right to obtain light through openings in the building is acquired over adjoining land in different ownership.
- 4.6 Rights of light can potentially be protected by an injunction. Whilst case law on such matters is in a state of flux¹, for a number of years, as a result of these case law developments, the prevailing view of the development industry is that the risk of such injunctions preventing development cannot be sufficiently managed by private negotiations (and in some cases construction cannot commence until such risks have been removed). This is particularly relevant where bank funding is required to deliver the scheme and also to securing letting commitments from prospective tenants (pre-lets in particular), because quite often funding and/or letting commitments cannot be secured until the risks relating to rights to light have been resolved.

Section 237, Town & Country Planning Act 1990

- 4.7 In appropriate cases the planning powers of the Council may be used to assist delivery of developments which achieve public benefit by removing the risk of an injunction.
- 4.8 Such powers include powers of land acquisition² in order to engage the right of a Local Authority and its successors to develop land notwithstanding interference with rights of light³ ("the Section 237 power"). The exercise of Section 237 powers in relation to a development means that anyone whose property rights are affected by the development will not be entitled to any remedy (such as damages or an injunction); instead they are entitled to compensation under the statutory regime.
- 4.9 In determining planning applications, property rights and easements are not relevant (material) considerations. However, property rights are of relevance when considering Local Authority powers of land acquisition, site assembly, and reliance on Section 237 powers. Indeed, national and local policies recognise that these are important tools available to Local Authorities for assembling land needed to help deliver social and economic objectives.⁴
- 4.10 It is recognised however that the exercise of such powers may involve interference with human rights, namely the right to peaceful enjoyment of possessions⁵, and, in the case of residential property, the right to respect for private and family life and home⁶. This is the case notwithstanding that where such powers are exercised and compensation is payable.
- 4.11 Accordingly, Local Authorities must consider a number of criteria when determining whether or not to engage their Section 237 powers in relation to a development. Whether the relevant criteria are satisfied will, of course, depend upon the site specific circumstances. The criteria, which should be carefully considered and weighed in each case, are set out at [Appendix 1](#). They broadly require that the Local Authority be satisfied that the acquisition of land or interference with property rights is required in the public interest, and that the public interest to be achieved is proportionate to the interference with private rights which would result⁷.
- 4.12 In this regard it should be noted that the generally accepted practice in the use of Section 237 powers is that the threshold requirement before it is appropriate for a Local Authority to proceed with acquiring (or appropriating) land for planning purposes (thereby engaging its Section 237 powers) is equivalent to that for a CPO,

namely that there must be "compelling case in the public interest" for engaging Section 237.

- 4.13 The Local Authority will also need to consider whether private agreements can be reached for the release of those rights and on what terms and in what timescale. Typically this will involve the Local Authority being satisfied that the Owner/developer has made reasonable attempts to negotiate private settlements (on reasonable terms and within a reasonable timeframe) in relation to the relevant property rights (e.g. rights of light).

Proposal

- 4.14 In recognition of the Council's role as Local Planning Authority in helping to deliver development which meets its planning objectives, and in particular in light of the Council's planning policy support for appropriate redevelopment of the Station Hill site and the Council's Planning Applications Committee's approval of the SH3 Scheme, threats to the delivery of the approved SH3 Scheme are a concern for the Council as Local Planning Authority.
- 4.15 In this regard it is recommended that consideration be given to any requests from Sackville regarding the implementation of acquisition arrangements and which engage its Section 237 powers in relation to the SH3 Scheme. To this end this report recommends that the Chief Valuer be delegated authority to consider such requests, and to provide appropriate support for the delivery of the SH3 Scheme where it is considered the applicable tests and criteria are satisfied and the Council is indemnified against all costs and liabilities. In the event that all tests and criteria are satisfied, a report will be brought back to this Committee to invoke Section 237.

5. CONTRIBUTION TO STRATEGIC AIMS

The SH3 scheme meets priorities 4 and 5 of the Corporate plan as it helps contribute to keeping the town clean, safe, green and active and providing infrastructure to help the economy.

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 The SH3 planning application was fully consulted upon prior to its approval by the Planning Applications Committee.

7. EQUALITY IMPACT ASSESSMENT

- 7.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2 In this regard you **must** consider whether the decision will or could have a differential impact on: racial groups; gender; people with disabilities; people of a particular sexual orientation; people due to their age; people due to their religious belief.
- 7.3 This report concerns the establishment of a process and delegated authority to consider any requests which the developers (Sackville) may make to the Council to exercise the authority's powers under Section 237 of the Town and Country Planning Act 1990. An equality impact assessment is not considered necessary for the purposes

of this decision. In considering individual requests, the Chief Valuer will engage the criteria set out in Appendix 1. These include establishing whether there may be an infringement of private rights that could engage the Human Rights Act 1998, and making a proportionate balance between these and the wider public interest to be secured through the development of the SH3 Scheme. The Council's duties under the Equality Act 2010 would also be considered at that stage.

8. LEGAL IMPLICATIONS

8.1 Paragraph 4 above sets out the position as regards utilising powers under Section 237 of the Town and Country Planning Act 1990.

8.2 In all cases where Section 237 is used the Council must have an interest in the land. This would entail the Council entering into an agreement with Sackville whereby it took a reversionary interest in the SH3 site and undertook to surrender that interest on payment of consideration (typically £1). If the power is used in relation to the SH3 Scheme it would also result in any infringements by the SH3 Scheme of other easements (including private rights of way) and restrictive covenants being authorised but the beneficiaries of such property rights would be entitled to compensation for any such infringements of their rights.

9. FINANCIAL IMPLICATIONS

9.2 Section 237(4) and (5) provide that where rights are overridden compensation is payable in accordance with the compensation code (the term used to describe the legislation applicable to the assessment of compensation following compulsory acquisition), and that, if the current Owner/developer does not so compensate, the compensation claim may be enforced against the Local Authority. Section 237(7) recognises that owners may indemnify the Local Authority in respect of such claims and such indemnities or equivalent solicitors' undertakings should be secured prior to arrangements being implemented.

9.3 Similarly, any costs arising by virtue of land transfer arrangements would be fully met by the Owner/developer.

9.4 Given the nature and significance of the issues under consideration it is acknowledged that there is a risk that the Council's approach proposed in this report, or its decisions in considering individual cases, may be challenged, which would involve usual costs and damages risk associated with litigation. These costs would also be subject to an indemnity from the Owner/developer.

10. BACKGROUND PAPERS

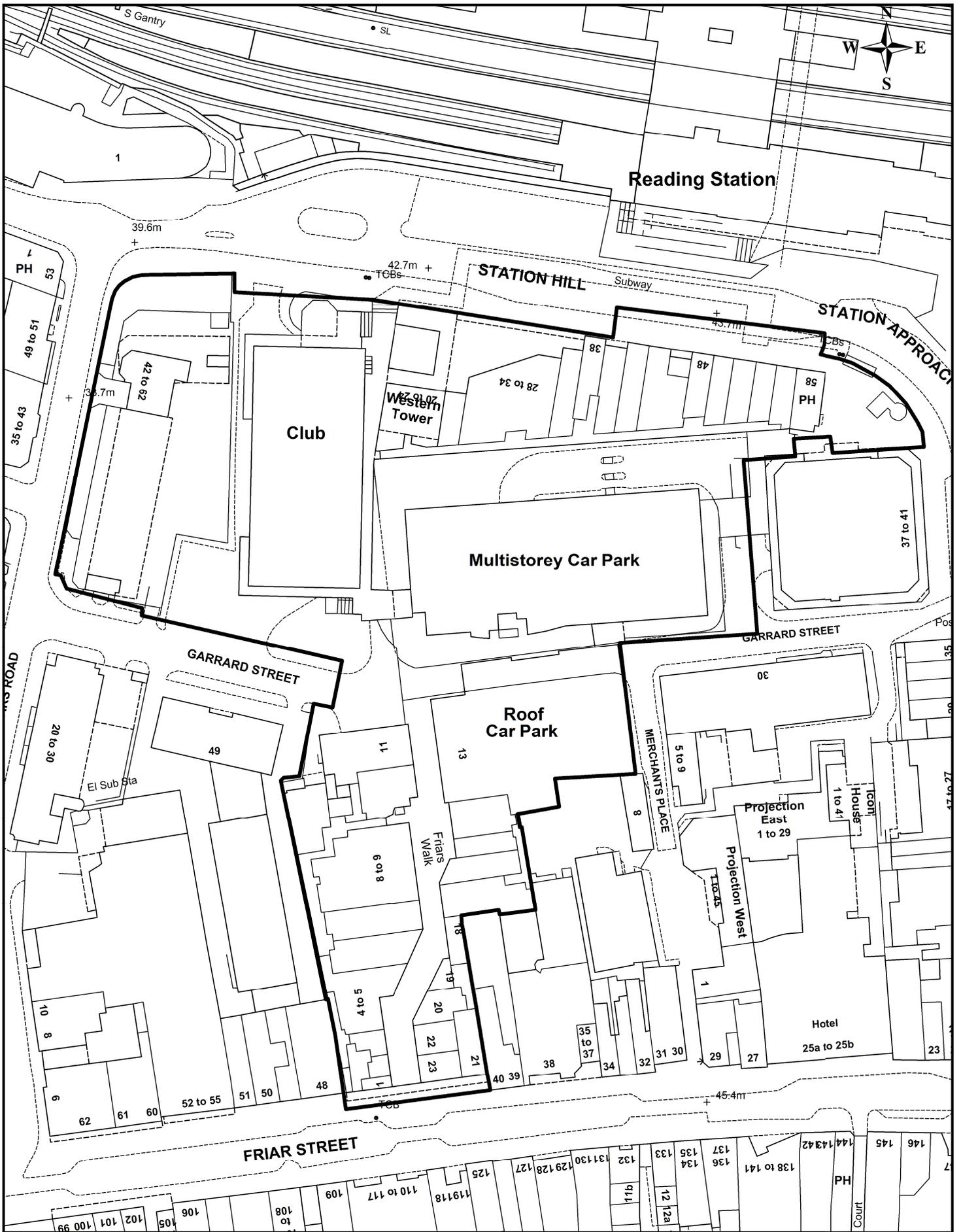
- The Town and Country Planning Act 1990 (as amended)
- Core Strategy, adopted January 2008 (altered January 2015);
- Reading Central Area Action Plan (RCAAP) (January 2009)
- Sites and Detailed Policies, adopted October 2012 (altered January 2015)
- Station Hill South Planning and Urban Design Brief (March 2007)
- Reading Station Area Framework (December 2010)
- <http://www.archive.readingchronicle.co.uk/news/reading/articles/2015/05/16/109734-landlord-challenges-station-hill-developers-over-right-to-light>
- <http://www.getreading.co.uk/news/local-news/station-hill-reading-landlord-threatening-9194527>
- HKRUK II (CHC) Limited v Heaney [2010] EWHC 2245 (Ch)
- Coventry v Lawrence [2014] UKSC 13
- Peter Scott and Frances Scott v Peter Aimiwu and Catherine Aimiwu [2015] unreported

¹ *HKRUK II (CHC) Limited v Heaney* [2010] EWHC 2245 (Ch); *Coventry v Lawrence* [2014] UKSC 13; *Peter Scott and Frances Scott v Peter Aimiwu and Catherine Aimiwu* [2015] unreported
² S.227 Town and Country Planning Act 1990
³ S.237 Town and Country Planning Act 1990
⁴ ODPM Circular 06/2004 "Compulsory Purchase" e.g. at para 1; paras 13.15 and 13.16 of the Reading Station Area Framework (December 2010) and para 9.5 of the RCAAP (2009)
⁵ Article 1 of the First Protocol of European Convention on Human Rights ("ECHR")
⁶ Article 8(2) ECHR
⁷ See also ODPM Circular 06/2004 at para 17

APPENDIX 1

Criteria

1. The use of the statutory powers is required in that:
 - (i) The infringements cannot reasonably be avoided
 - (ii) The easements to be interfered with cannot reasonably be released by agreement with affected owners
 - (iii) The development is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks
2. The authority thinks it will facilitate the carrying out of development, redevelopment or improvement on or in relation to land (S.226(1) Town and Country Planning Act 1990).
3. The authority thinks that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of the authority's area and therefore it is in the public interest that it be carried out. (S.226(1A) Town and Country Planning Act 1990), and whether those benefits could be achieved without giving rise to all or some of the infringements.
4. There is a "compelling case in the public interest" for engaging the S.237 powers in relation to the development
5. The public interest to be achieved is proportionate to the private rights being infringed (Human Rights Act 1998).



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