



Havering
LONDON BOROUGH

Notice of Non-Key Executive Decision

Subject Heading:	Appropriation of Land for Planning Purposes Relating to Various Car Park Sites.
Decision Maker:	Mark Butler, Assistant Director of Regeneration & Place Shaping. Tel. 01708 432947 Email: mark.butler@havering.gov.uk
Cabinet Member:	Councillor Graham Williamson Cabinet Member for Development & Regeneration
SLT Lead:	Neil Stubbings, Strategic Director of Place. Tel. 01708 432970 Email: neil.stubbings@havering.gov.uk
Report Author and contact details:	Christopher Pasterfield, Strategic Asset Surveyor. Tel. 01708 434343. Email: christopher.pasterfield@havering.gov.uk
Policy context:	This report deals with a statutory process.
Financial summary:	No significant financial impact. The costs of appropriation processes are being met from existing budgets. It is understood that revenue for Angel Way multi-storey car park does not cover outgoings and therefore it is operating at a loss.
Relevant Overview & Scrutiny Sub Committee:	Overview & Scrutiny Board

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Is this decision exempt from being called-in?	<i>The decision will be exempt from call in as it is a Non key Decision</i>
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The subject matter of this report deals with the following Council Objectives

People - Things that matter for residents (X)

Place - A great place to live, work and enjoy (X)

Resources - A well run Council that delivers for People and Place. (X)

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. For the reasons set out in the report (following the close of consultation) and pursuant to the authority delegated by Cabinet on 9th August 2023 to the Assistant Director Housing, Property and Assets in consultation with the Deputy Director of Legal and Democratic Services it is recommended to agree:
 - a. to the appropriation of the following sites to planning purposes:
 - i) Como Street Car Park
 - ii) Dorrington Gardens Car Park
 - iii) Angel Way Car Park
 - iv) Keswick Avenue Car Park
(each site is shown on redline plan in Appendix 3)
 - b. to implement the appropriation of the Land for planning purposes from car parking under section 122(1) of the Local Government Act 1972; and
 - c. to acknowledge that the purpose of the appropriation is to enable the Council to engage the powers under section 203 of the Housing and Planning Act 2016 to override all rights in the Land that could act as a constraint to the development of the Land, subject to the conditions under section 203 being satisfied.

AUTHORITY UNDER WHICH DECISION IS MADE

The cabinet decision on 9th August 2023 :

Delegated authority to the Assistant Director Housing, Property and Assets in consultation with the Deputy Director of Legal and Democratic Services to consider any objections to the intended appropriation and/or disposal of the subject sites before a decision to appropriate or dispose is made.

STATEMENT OF THE REASONS FOR THE DECISION

Background

The car parks are currently held in the General Fund for public parking but are no longer required due to under use and the intention through residential development is to have better use of the land which will assist the Council to meet housing targets including the number of affordable units which alleviate the Council's waiting list back log.

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Public notices were placed in the Romford Recorder on Friday 17th November 2023 and Friday 24th November 2023.(Notices attached at Appendix B). The final date for any responses to the notices was 4th December 2023.

If representations are made to the Council in response to notices of this type it is necessary for the Council to consider these and to take them into account in deciding whether to proceed with the appropriation of the sites. It should be stressed that the issues under consideration in this report are whether the proposed appropriation of the car park sites for planning purposes should proceed and the representations need to be considered in that context.

It is now necessary for officers to formally consider the responses and to decide whether the proposed appropriation of the sites for planning purposes should proceed. The issue to be considered is whether, in light of the representations received and an assessment of the weight of these objections, against the benefits of the proposed appropriation of the sites, the decision to appropriate them should go ahead.

Analysis of Representations Received

A total number of 81 representations were received via the council's portal and via email.(Appendix A)

Representations were received specifically regarding each of the four car parks but also generally regarding the appropriation of all of the car parks. Some of the representations were regarding specific development related matters which will be considered in more detail when planning applications are made for each site and when the relevant planning policy will be taken into account.

General Representations:

All Car Parks

There were a number of positive representations mainly acknowledging that the car parks are underused and that redevelopment would have a regenerative effect.

Negative representations relating to all of the car parks included concerns regarding the loss of car parking facilities and the effect this could have on the town centres businesses and services.

Concerns also included that the increase in residential development would put pressure on existing roads, schools, doctors, police and other services.

Some concern over the recent rise in car parking charges was expressed as the reason for car parks being under used.

Concern was also expressed that the selling of assets was only a short term answer to funding problems and that future revenue would be lost.

There was a total of 43(53% of total) responses regarding All Car Parks. A total of 5(12%) responded positively. A total of 38(88%) responded negatively. The detailed individual responses and counter-responses by officers are set out at Appendix A.

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Any development of the car parks will require planning consent and most of the matters raised will be the subject of further consultation and consideration on planning grounds as part of any planning application.

Como Street Car Park

Positive representations acknowledged that the car park was under used and supported redevelopment for housing.

Negative representations had concerns which included the size and mass of the proposed development and the effect this might have on adjoining houses and a possible loss of light. Also security issues, lack of green space and local infrastructure unable to support further development.

There was a total of 26(32% of total) responses regarding Como Street Car Park. A total of 11(42%) responded positively. A total of 15(58%) responded negatively. The detailed individual responses and counter-responses are set out at Appendix A.

Any development of the car park will require planning consent and most of the objections raised will be the subject of further consultation and consideration on planning grounds as part of any planning application

Dorrington Gardens Car Park

There was one positive specific representation that supported the proposal and the benefit of developing underused car parks but was opposed to having access through to Bruce Avenue as this would make it busier and less secure where they lived. Other positive responses acknowledged that it was underused.

Negative responses included the need for parking in the area, infrastructure unable to support further housing, and the cost of parking preventing people from using the car parks more frequently. There was a specific response in connection with potential encroachment of a right of way, which will be investigated further.

There was a total of 25(31% of total) responses regarding Dorrington Gardens Car Park. A total of 7(28%) responded positively. A total 18(72%) responded negatively. The detailed individual responses and counter-responses are set out at Appendix A

Any development of the car park will require planning consent and most of the objections raised will be the subject of further consultation and consideration on planning grounds as part of any planning application.

A Transport Statement has been prepared for Mercury Land Holdings for Hornchurch town centre by Transport Planning Practice for six car parks including both Dorrington Gardens car park and Keswick Avenue car park. The surveys of all car parks show that if these two car parks

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were redeveloped there is sufficient capacity in the remaining four car parks to accommodate parking at all times even at the busiest times on Saturdays.

Angel Way Car Park

Positive representations supported the development as the car park is underused but questioned the provision of new infrastructure to support the additional housing. Other positive representations acknowledged the condition of the car park and the need for affordable housing.

Negative representations included high parking charges and the need for parking in the town centre. One comment specifically related to the adjoining church and land in front of the garage block and direct negotiations regarding this are being undertaken with the church by MLH.

There was a total of 22(27% of total) responses regarding Angel Way Car Park. A total of 5(23%) responded positively. A total of 17(77%) responded negatively. The detailed individual responses and counter-responses are set out at Appendix A.

Any development of the car park will require planning consent and most of the objections raised will be the subject of further consultation and consideration on planning grounds as part of any planning application

Keswick Avenue Car Park

Positive representations included people should be encouraged to walk and use public transport rather cars and sufficient parking in the area.

Negative representations included loss of use for local shops, offices and theatre. Adjoining offices objected to the loss of this car park as it was used by their clients.

There was a total of 22(27%) responses regarding Keswick Avenue Car Park. A total of 3(14%%) responded positively. A total of 19(86%) responded negatively. The detailed individual responses and counter-responses are set out at Appendix A.

Any development of the car park will require planning consent and most of the objections raised will be the subject of further consultation and consideration on planning grounds as part of any planning application.

A Transport Statement has been prepared for Mercury Land Holdings for Hornchurch town centre by Transport Planning Practice for six car parks including both Dorrington Gardens car park and Keswick Avenue car park. The surveys of all car parks show that if these two car parks were redeveloped there is sufficient capacity in the remaining four car parks to accommodate parking at all times even at the busiest times on Saturdays.

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OTHER OPTIONS CONSIDERED AND REJECTED

This decision is required as a result of the statutory process involved in dealing with the appropriation of the car parks for planning purposes.

Having placed the notices, it is necessary for the Council to formally consider the response received. As this report only concerns the consideration of these responses, no other option is available.

PRE-DECISION CONSULTATION

Public consultation was undertaken using notification by advertising in the local press, The Romford Recorder, for two consecutive weeks starting on Friday 17th November and Friday 24th November 2023. Notices were also posted at each car park and checked each week to ensure they were still in place. In addition the Notice and plans for each car park were displayed on the notice board at Romford Town Hall and the Council's website. An internet link was placed on the Council's web site for members of the public to inspect and to leave comments which could be general or specific to each of the four car parks.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Christopher Pasterfield

Designation: Principal Asset Surveyor

Signature: 

Date: 17th April 2024

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

This report seeks authority to appropriate land forming four car park sites for planning purposes.

On 9th August 2023 Cabinet delegated authority to the Assistant Director Housing, Property and Assets in consultation with the Deputy Director of Legal and Democratic Services to consider the appropriation of the subject land to planning purposes and to implement such appropriation as necessary to enable future development.

Appropriation for Planning Purposes

Section 122 of the Local Government Act 1972 (“the Local Government Act”) enables the Council to appropriate land which belongs to the Council for any statutory purpose for which it is authorised to acquire land and which is no longer required for the purpose for which it is held immediately before the appropriation.

The meaning of the words “no longer required for the purpose for which it was held immediately before the appropriation” was considered by the Courts in the context of the predecessor to section 122. In that instance “not required” was held to mean “not needed in the public interest of the locality”.

Appropriation of the land for “planning purposes” (in order to engage the provisions of sections 203 – 205 Housing and Planning Act 2016 (“the 2016 Act”)) requires the Council to consider the following factors whether;

- a. the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the Land or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the Land is situated;
- b. the proposed development, re-development or improvement will contribute to the promotion or improvement of the economic, social and/or environmental well-being of the area;
- c. it is in the public interest that the proposed development should be carried out, having regard to the provisions of the development plan, whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the Land;
- d. rights capable of being overridden by sections 203 - 205 of the 2016 Act exist and whether interference with such rights is necessary

“Planning purposes” is defined in section 246(1) of the Town and Country 1990 Act (“the 1990 Act”) and acquisition for such purposes includes acquisition under section 226 or 227 of the 1990 Act.

Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the 1990 Act. The consequence (by virtue of section 203 - 205 of the 2016 Act) is that the erection, construction or carrying out of any

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maintenance or any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are carried out in accordance with planning permission, even if they interfere with third party rights.

The purpose of section 203 - 205 of the 2016 Act is to ensure that where land has been appropriated for planning purposes, and provided that work is carried out in accordance with planning permission, then existing rights, which could prevent the development of that land from proceeding, can be overridden. The rights are overridden whether the Local Authority or a person deriving title from it undertakes the development. Persons who would otherwise benefit from those rights are entitled to claim compensation for the interference with them.

It is considered reasonable for the Council to use its powers in this case to appropriate the Land for planning purposes as the appropriation will facilitate the carrying out of development and improvement to the land and contribute to the promotion of the economic, environmental or social well-being of the Borough. The development programme for which the Land is required will deliver much needed new housing. Therefore, it can be stated that the new development is likely to contribute to the economic, the social or environmental well-being of the area.

The Human Rights Act 1998 ("the 1998 Act") prevents public authorities from acting in a way that is incompatible with rights protected by the 1998 Act. Of particular relevance to the acquisition of interests in land or overriding of interests/rights in land are Article 8 of the European Convention regarding respect for privacy and family life and Article 1 of the First Protocol which concerns the protection of property.

Such rights are qualified rights and may therefore be overridden where it is considered that the interference with these rights are proportionate and that the interference is necessary in the interests of, amongst other things, national economic wellbeing. However, compensation could be payable in relation to interference with property rights. The proposed appropriation of the Land has been advertised in accordance with the statutory requirements (section 122(2A)) to bring the proposals to the attention of local residents whose private rights may be infringed. The report deals with those representations received during the course of public consultation.

In considering this appropriation, the Council should carefully consider the balance to be struck between individual rights and the wider public interest. In making this decision consideration must be given to the significant public benefits to be derived from the proposed development of the Land and whether these are sufficient to justify the appropriation.

FINANCIAL IMPLICATIONS AND RISKS

There are no financial implications and risks in considering the responses received to a public notice dealing with the disposal and appropriation of land for planning purposes.

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**HUMAN RESOURCES IMPLICATIONS AND RISKS
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

There are no Human Resources implications and risks in considering the responses received to a public notice dealing with the disposal and appropriation of land for planning purposes.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

Section 149 of the Equalities Act 2010(EA) came in to force on 1st April 2011 and broadly consolidates and incorporates the “positive equalities duties” found in Section 71 of the Race Relations Act 1976(RRA), Section 49 of the Disability Discrimination Act 1995 (DDA) and section76(A)(1) of the Sexual Discrimination Act 1975(SDA) so that due regard must be had by the decision maker to specified equality issues. The old duties under the RRA, DDA and SDA remain in force.

The duties under Section 149 of the EA do not require a particular outcome and what the decision making body decides to do once it has had the required regard to the duty is for the decision making body subject to the ordinary constraints of public and discrimination law including the Human Rights Act 1998.

The equality impacts raised in the representations received relate to loss of car parking in the town centres and the effect on existing services by creating more residential units. These are matters that will be considered in detail when planning applications are submitted for each site and are not material considerations for appropriation of land for planning purposes.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

As part of the planning process once an application has been made environmental implications will be considered and also as part of the building regulations approval process.

BACKGROUND PAPERS

Report to Cabinet – 9th August 2023
Site Disposals under the Asset Disposal programme 2022-2028

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APPENDICES

Appendix A	Schedule of Public Responses
Appendix B	Public Notice in Romford Recorder.
Appendix C	Plans of each car park.

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed



Name: Mark Butler
Assistant Director – Regeneration & Place Shaping

Date: 17th April 2024

Lodging this notice

The signed decision notice must be delivered to Committee Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____