



# REGULATORY SERVICES COMMITTEE

# REPORT

19 June 2014

**Subject Heading:**

Section 137 Town and Country  
Planning Act 1990 - Purchase Notice in  
relation to Land adjacent to 151 Avon  
Road, Upminster RM14 1RQ  
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**Report Author and contact details:**

**Policy context:**

Local Development Framework  
London Plan, Planning Policy  
Statements/Guidance Notes

**Financial summary:**

Were a Purchase Notice to be upheld at  
appeal in respect of the above land the  
Council would be required to purchase  
the land.

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

## SUMMARY

This report concerns the service of a Purchase Notice on the Council dated 24<sup>th</sup> March 2014 by the owners of land adjacent to 151 Avon Road, Upminster RM14 1RQ, shown hatched on the attached plan, following the refusal of planning permissions to develop the site. The owners claim that the land has become incapable of beneficial use in its existing state and cannot be rendered capable of a reasonably beneficial use and therefore, in accordance with Section 137 of the Town and Country Planning Act, the Council should purchase the land. The Council contested the Notice and the Secretary of State will issue a preliminary decision on the Purchase Notice should the Secretary of state in their preliminary decision reject the Purchase Notice, if the claimant so chooses, the claimant can request that their claim be heard by way of public inquiry.

The land in question has been subject of a number of planning applications. The most recent planning application on the land adjacent to 151 Avon Road, was made under planning reference P1160.12 and proposed a ground floor retail use within Use Classes A1 and A2 with a 2 bedroom maisonette at first and second floor levels. The application was refused under the Head of Regulatory Services delegated powers and was subsequently subject to appeal to the Secretary of State. The Secretary of State dismissed the appeal (Reference: APP/B5480/A/13/2199255) primarily because the proposal would be harmful to the character and appearance of the site and the surrounding area contrary to Policy DC61 of the Council's Core Strategy and Development Control Policies Development Plan document (DPD) 2008. There were three previous applications on the site which were refused; P0175.11 proposed a ground floor retail use within Use Classes A1 and A2 with a 3 bedroom maisonette; P1537.09 proposed a ground floor retail use within Use Classes A1 and A2 with a 3 bedroom maisonette, side dormer, external staircase and amenity space and P1278.09 proposed a ground floor retail use within Use Classes A1 and A2 with a 3 bedroom maisonette, external staircase and amenity space. P0175.11 was dismissed at appeal in November 2011 and P1537.09 was dismissed on appeal in July 2010.

It is considered that the land or part of the land is capable of beneficial use in its existing state either for parking of vehicles, use for the stationing of structures/kiosk pursuant to uses class A1, stationing of tables and chairs ancillary to the use of the ground floor of 151 Avon Road as a takeaway (use class A5) or general amenity land. It is further considered that the site could be rendered capable of a reasonably beneficial use for the time being for a number of uses, including parking of vehicles, stationing of a structure/kiosk within use class A1 stationing of tables and chairs ancillary to the use of the ground floor of 151 Avon Road as a takeaway (use class A5) or general amenity land. As part of any future Purchase Notice Inquiry staff consider following legal advice that an undertaking should be given that planning permission would be granted for these uses, subject to conditions. It is therefore recommended that the Council contest the Purchase Notice and undertake to grant planning permission for the uses outlined in this report.

## RECOMMENDATIONS

That members resolve that:

- (1) The Purchase Notice be contested at any forthcoming public inquiry;
- (2) The site, in its existing state is capable of a beneficial use as general open amenity land;
- (3) As part of any Purchase Notice Inquiry, an undertaking to grant planning permission be given to use part of the site within Classes A1 for the stationing of a kiosk or other similar structure:
  - No buildings other than a kiosk or kiosk like structure to be erected
  - Site not to be used and no deliveries to the site shall take place outside the hours of 0800 to 2200 Monday to Friday and 0800 to 2200 Saturdays
  - Maximum height of any structure stationed on the site not to exceed 2.5 metres above ground level
  - No Structure to be stationed within 2 metres of the existing rear-access external flight of steps serving as access to the adjacent residential block or blocking access to the use of the external flight of steps serving as access to the adjacent residential block
  - Use not to commence until details of parking layout submitted and approved by Local Planning Authority
  - Use not to commence until details of layout of open storage areas to be submitted and approved by Local Planning Authority
  - Use not to commence until details of method of waste storage and disposal submitted to and approved in writing by the Local Planning Authority
  - Space to be laid out within the site and any structures stationed on the site, in accordance with details submitted and approved in writing by the Local Planning Authority, to enable vehicles to enter from Front Lane and exit onto Front Lane in forward gear and to ensure that the use of the rear-access flight of steps serving the residence at first floor of the adjacent block is not obstructed.
  - Use not to commence until details of external lighting submitted to and approved in writing by the Local Planning Authority
  - Use not to commence until details of boundary treatment submitted to and approved in writing by the Local Planning Authority
  - Noise levels, expressed as the equivalent continuous sound level LAeq (1 hour), calculated at the boundary with the nearest noise sensitive premises shall not exceed LA90 -5dB.
- (4) As part of any Purchase Notice Inquiry, an undertaking to grant planning permission be given to use the site for the parking of vehicles subject to the following conditions:

- Maximum of 2 vehicles no greater in size than a transit van to be kept on the site at any time
  - No buildings to be erected on the site including temporary buildings and demountable buildings.
  - Space to be laid out within the site, in accordance with details submitted to and approved in writing by the Local Planning Authority, to enable vehicles to enter from Front Lane and exit onto Front Lane in forward gear and ensure that the use of the rear-access flight of steps serving the residence at first floor of the adjacent block is not obstructed.
  - Use not to commence until details of external lighting submitted to and approved in writing by the Local Planning Authority
  - Use not to commence until details of boundary treatment submitted to and approved in writing by the Local Planning Authority
- (5) As part of any Purchase Notice Inquiry, an undertaking to grant planning permission be given to use part of the site within Classes A5 for the stationing of tables and chairs ancillary to the use of the ground floor of 151 Avon Road as a takeaway (use class A5):
- No buildings including temporary or demountable buildings to be erected
  - Site not to be used and no deliveries to the site shall take place outside the hours of 0800 to 2200 Monday to Friday and 0800 to 2200 Saturdays
  - No tables and chairs to be stationed within 2 metres of the existing rear-access external flight of steps serving as access to the adjacent residential block or blocking access to the use of the external flight of steps serving as access to the adjacent residential block
  - Use not to commence until details of parking layout submitted and approved by Local Planning Authority
  - Use not to commence until details of layout of the area/s for tables and chairs to be submitted and approved by Local Planning Authority
  - Use not to commence until details of method of waste storage and disposal submitted to and approved in writing by the Local Planning Authority
  - Parking space to be laid out within the site and tables and chairs to be stationed on site, in accordance with details submitted and approved in writing by the Local Planning Authority, to enable vehicles to enter from Front Lane and exit onto Front Lane in forward gear and to ensure that the use of the rear-access flight of steps serving the residence at first floor of the adjacent block is not obstructed.
  - Use not to commence until details of external lighting submitted to and approved in writing by the Local Planning Authority
  - Use not to commence until details of boundary treatment submitted to and approved in writing by the Local Planning Authority
  - Noise levels, expressed as the equivalent continuous sound level LAeq (1 hour), calculated at the boundary with the nearest noise sensitive premises shall not exceed LA90 -5dB.

## REPORT DETAIL

### 1. Site Description

- 1.1 The subject site of this report is an area of land about 0.008 hectares (80 square metres) in size adjacent to 151 Avon Road, Upminster RM14 1QR at the corner of Front Lane and Avon Road. There are 2 small trees located on the site. There is no physical boundary between the adopted footway and the site which is hard-surfaced and includes the approach to and the external flight of steps that serves as pedestrian access to the first floor maisonettes above the commercial units in the adjacent block of which 151 Avon Road forms the part. The adjacent block fronts onto Avon Road and to the rear of the land adjacent to 151 Avon Road (subject of the Purchase Notice) there is a service road. Currently part of the land is used for the parking of vehicles.
- 1.2 The site is immediately adjacent to a Major Local Centre designated in the LDF. Policy DC15 encourages the increase in retail floor space. Other uses within Classes A2, A5, A4, A5 would in principle be acceptable within this Major Local Centre at ground floor level.
- 1.3 The site has been subject to four planning applications all of which were refused with the three most recent refusals being appeal and all three appeals being dismissed by the Secretary of State. The details are set out in the summary to this report.
- 1.4 On 24<sup>th</sup> March 2014, agents acting for the owner of the site served upon the Council a Purchase Notice under Section 137 of the Town and Country Planning Act 1990, on the basis that (i) the land had become incapable of reasonable beneficial use in its existing state; and (ii) the land could not be rendered capable of reasonable beneficial use by the carrying out of any other development for which permission had been granted, or is deemed to be granted, or for which the Local Planning Authority or the Secretary of State had undertaken to grant planning permission.
- 1.5 The consequence of accepting the Purchase Notice or it being confirmed by the Secretary of State would be that the Council would have to purchase the land.

### 2. Description of Proposal

- 2.1 Following legal advice, the Council informed the Planning Inspectorate (who adjudicate in Purchase Notice matters) that it was not willing to accept the Purchase Notice for the following reasons:

1. Although planning permission has been refused for the whole of the land for Class A1/A2 at ground floor and residential development above, the land nevertheless has a reasonable beneficial use in whole or in part. Where an owner of land claims that his land has become incapable of reasonably beneficial use, he is regarded as making the claim in respect of the whole land in question. Therefore, if part of the land is found to be capable of reasonable beneficial use, it follows that the owner of the land has not substantiated his claim;

2. In particular, the site adjacent to 151 Avon Road, is capable of accommodating the parking of vehicles. Consequently, the Secretary of State cannot be satisfied that the condition specified in s.137 of the Act has been fulfilled in respect of the whole land;

3. (It should be noted that the land was subject to a planning application under planning reference P1071.08 for use of the premises at 151 Avon Road, Upminster for hot food takeaway and included within the red-line application site plan the land subject to the Purchase Notice. That application appears to have been implemented and 151 Avon Road is currently being used as a takeaway. Therefore either the land subject to the Purchase Notice has the benefit of an implemented planning permission or the Council has granted planning permission that would if implemented benefit the land subject of the Purchase Notice.) Part of the land would also be capable of stationing of tables and chairs ancillary to the use of the ground floor of 151 Avon Road as a takeaway (use class A5 subject to layout and appropriate planning conditions to safeguard residents amenity;

4 Part of the land would be capable of containing a kiosk or a kiosk like structure/s pursuant to Class A1 (shop) subject to layout and appropriate planning conditions to safeguard residents amenity;

5. There has been no evidence put forward by the owner that there is no reasonable prospect of selling or letting the land for any purpose, were its availability to be made known locally. There should be some evidence to show attempts have been made to dispose of the owner's interest in the land before being satisfied that the land has become incapable of reasonably beneficial use.

6. The local authority would further say that they have not found any other local authority or statutory undertaker who would agree to comply with the Notice in the place of the Council.

2.2 The Council has served a counter notice in response to the Purchase Notice and the Secretary of State will consider the counter-notice and make a preliminary assessment. Notwithstanding the preliminary assessment under Section 140(3) of the Act the owner is entitled to require the Secretary of State afford him an opportunity of being heard before any final determination was made.

### **3. Beneficial Use of the Site in its Existing State**

- 3.1 Save for Planning Permission Reference P1071.08, referred to above, the site does not have the benefit of any planning permission and so currently could only be put to uses that are either not defined as development, fall within planning permission P1071.08 or are permitted development.
- 3.2 In this regard it is considered that the site could be used as private informal open space (private amenity space), without the need to obtain planning permission.
- 3.3 Staff therefore recommend that the Purchase Notice be resisted on the ground that the land could have an existing beneficial use for the time being as private informal open space or a use ancillary to the takeaway use under planning permission reference P1071.08.

### **4. Can the Land be Rendered Capable of Beneficial Use**

- 4.1 Notwithstanding Staff's view that the land is capable of beneficial use in its existing state, it is considered that further weight to resisting the Notice would be given by considering what uses of the land may be granted planning permission, should an application be forthcoming.
- 4.2 The procedures in Purchase Notices are a little unusual in that in suggesting uses that may be acceptable the Council is actually undertaking to grant planning permission, should an application be made. The Council could not refuse permission - it is therefore with caution that any uses are put forward, on the basis that neighbour notification and other usual processes have not been undertaken. A full consideration of the planning merits of the uses suggested is provided. Members should be aware that accepting any of the uses suggested below amounts to the granting of planning permission.
- 4.3 The site in question is vacant and located at the junction of Front Lane and Avon Road. A parade of shops immediately adjacent to the site fall within a Major Local Centre. Were Policies DC15 and DC16 of the Core strategy and Development Control Policies Development Plan Document applied by extension to this site, in principle A1 (shop) or A2 (financial and professional services) would be acceptable, subject to meeting the detailed criteria in policies DC15 and DC16. An A1 use would meet the detailed criteria of policy DC16 and potentially increase the percentage of retail uses in an extended parade of shops within the Major Local Centre. In this case an A2 use would be acceptable if the grouping of non-retail A2-A5 which resulted did not exceed a grouping of 3 or more non-retail uses and the percentage of non-retail uses did not exceed 33% of the frontage. Even with these constraints, it is considered that a beneficial use of the land could be made (and planning permission granted) for each of these uses subject to the appropriate planning conditions.

## 5. **Use for the Parking of Vehicles**

- 5.1 Principle – There are no site specific policies that affect the site that would preclude the parking of vehicles, subject to appropriate planning conditions.
- 5.2 Visual Impact - subject to appropriate conditions requiring details of layout and restricting the numbers and types of vehicles with appropriate boundary treatment, etc., parking would not be detrimental to visual amenity, in accordance with Policy DC61 of the LDF.
- 5.3 Residential Amenity – Condition would restrict the layout of any parking arrangements so that the access to the maisonettes at the first floor level in the adjacent block was not impeded. Use for parking of vehicles may result in some increased noise and disturbance from vehicle movements. However, in this case, the site is already subject to some noise due to the proximity of the adjacent highway as it is situated at the corner of Avon Road and Front Lane which are both busy thoroughfares. Use for vehicle parking is considered to be in accordance with Policies DC55 of the LDF.
- 5.4 Highways and Access – There is a Service Road to the rear of the site and the adjacent block which is currently being used to access the site and park vehicles. Subject to a condition that vehicles enter from and exit onto Front Lane in forward gear and the conditions referred to in the recommendation it is considered that the use for parking vehicles would not result in any highway concerns, in accordance with Policy DC32 of the LDF.
- 5.5 It is therefore recommended that, in relation to the resisting of Purchase Notice, an undertaking be given to grant planning permission for use of the land for parking of vehicles, subject to conditions.

## 6. **Independent Use of part of the land for the stationing of a kiosk falling within use class A1**

- 6.1 Principle - The site immediately adjoins the parade of shops which fall within a Major Local Centre where Policies DC15 and DC16 of the Core strategy and Development Control Policies Development Plan Document apply. If those policies are applied by extension to this site, in principle A1 (shop) would be acceptable, subject to meeting the detailed criteria in policies DC15 and DC16. An A1 use would meet the detailed criteria of policy DC16 and potentially increase the percentage of retail uses of an extended Major Local Centre. In this case an A1 use would be acceptable subject to the appropriate planning conditions protecting residential amenity.
- 6.2 Visual Impact - There are no concerns over the visual impact of using the site for limited A1 subject to the appropriate planning conditions this would be in accordance with Policy DC61 of the LDF
- 6.3 Residential Amenity – Subject to the necessary planning condition there are no issues with regard to impact on residential amenity.



- 6.4 Highways and Access - No new vehicular access would be required.
- 6.5 It is therefore recommended that, in relation to the resisting of Purchase Notice, an undertaking be given to grant planning permission for use of the land (or part thereof) subject to the appropriate planning condition referred to in the report and the Recommendation for A1 use.

**7. Use of part of the land for the stationing of tables and chairs ancillary to the ground floor use of 151 Avon Road as a takeaway (Class A5)**

- 7.1 Principle - The site immediately adjoins the parade of shops which fall within a Major Local Centre where Policies DC15 and DC16 of the Core strategy and Development Control Policies Development Plan Document apply. If those policies are applied by extension to this site, in principle a use ancillary to the neighbouring use of the ground floor of 151 Avon Road as A5 (takeaway) would be acceptable as it would extend rather than increase the number of A5 uses, subject to meeting the detailed criteria in policies DC15 and DC16. An ancillary A5 use would in the circumstances meet the detailed criteria of policy DC16 in an extended Major Local Centre. In this case an A5 use would be acceptable subject to the appropriate planning conditions protecting residential amenity.
- 7.2 Visual Impact - There are no concerns over the visual impact of using the site for limited A5 subject to the appropriate planning conditions this would be in accordance with Policy DC61 of the LDF
- 7.3 Residential Amenity – Subject to the necessary planning condition there are no issues with regard to impact on residential amenity.
- 7.4 Highways and Access - No new vehicular access would be required.
- 7.5 It is therefore recommended that, in relation to the resisting of Purchase Notice, an undertaking be given to grant planning permission for use of the land (or part thereof) subject to the appropriate planning condition referred to in the report and the Recommendation for ancillary A5 use.

**11. Conclusion**

Having regard to all relevant factors and material planning considerations Staff are of the view that these proposals would be acceptable. Staff are of the view that due to the siting, scale and location the proposals subject to the imposition of appropriate planning conditions would not be disproportionate or have a harmful impact on the character of the street scene or result in a loss of amenity to neighbouring occupiers. The proposals are considered to be acceptable in all other respects and it is therefore recommended that members undertake to grant planning permission as detailed in the report and Recommendation subject to conditions.

## IMPLICATIONS AND RISKS

### **Financial implications and risks:**

None.

### **Legal implications and risks:**

Further legal resources will be required should the matter proceed to inquiry and in any event in dealing with the response to the Purchase Notice.

### **Human Resources implications and risks:**

None.

### **Equalities implications and risks:**

#### **(a) Equalities Implications and risks:**

Section 149 of the Equalities Act 2010(EA) consists of a general equality duty, for the public sector and specifies duties which came into law on 10 September 2011, in England and 6 April, in Wales and consolidates and incorporates “positive equalities duties” found in Section 71 of the Race Relations Act 1976. (RRA) The general duty of Section 149(EA) came into force on 5 April 2011.

Section 49 of the Disability Discrimination Act 1995 (DDA) and Section 76(A) of the Sexual Discrimination Act 1975(SDA) so that due regard must be had by the decision maker to specified equalities 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. Article 8 – Right to respect for private and family life is not an absolute but a qualified right. Having considered the above Equalities Act duty there are no direct equality issues raised. The individual on whose behalf the Purchase Notice has been served is professionally represented in this matter.

## BACKGROUND PAPERS

None