

Decision Maker: Executive

Date: 10th June 2015

Decision Type: Non-Urgent Executive Non-Key

Title: BROMLEY TOWN HALL AND SOUTH STREET CAR PARK

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Chief Officer: Mark Bowen, Director of Corporate Services

Ward: Bromley Town

1. Reason for report

The proposed developer has asked the Council (1) to add a small area of additional land fronting Widmore Road to the area of Bromley Town Hall which the Council has agreed to lease (subject to planning) and (2) to appropriate the site of the South Street Car Park for planning purposes

2. **RECOMMENDATIONS**

The Executive is recommended to:

1 approve the addition to the area already included within the Town Hall site in the agreement for lease of the area shown hatched on plan 1 attached to this report; and

2 appropriate the South Street Car Park site shown hatched on plan 2 attached to this report under section 122 of the Local Government Act 1972 to planning purposes in order to enable the powers in section 237 of the Town and Country Planning Act 1990 to be used to facilitate the redevelopment of the site.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Vibrant Thriving Town Centres.
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Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre:
 4. Total current budget for this head: £
 5. Source of funding:
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Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: No statutory requirement or Government guidance.
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments:

3. COMMENTARY

Bromley Town Hall

- 3.1 Members will recall that authority was given by the Executive at its meeting on 17 September 2013 to enter into a conditional agreement with Cathedral (Town Hall) Ltd. The Council entered into an Agreement for Lease with Cathedral which had appended to it the agreed form of lease to be granted once the conditions had been fulfilled. The lease includes a plan which shows the area to be demised.
- 3.2 Cathedral have developed their proposals to convert the Town Hall to a four star hotel. They submitted their application for planning permission and listed building consent in January. As part of their design they have proposed the provision of a terrace in front of the restaurants that they intend to develop along the Widmore Road frontage of the building. This terrace is proposed on land which is currently within the footway, and which is within the Council's title, but which was not included in the demise shown on the agreed lease plan. The additional area is shown on Plan 1 and also includes the steps to the Town Hall which were omitted from the original demise plan. Cathedral have requested that this additional area should be included in the lease. There is no objection to this proposal in terms of the Council's rôle as landowner. It will be necessary for a stopping up order to be obtained in order for the land to be taken out of the footway and used as a private terrace. Cathedral are in discussion with Highways about this and will be responsible for all the costs of obtaining the stopping up order.

South Street Car Park

- 3.3 Under section 122 of the Local Government Act 1972 the Council can appropriate land for any statutory purpose for which it is authorised to acquire land. Under section 226 of the Town and Country Planning Act 1990 the Council is authorised to acquire land either to facilitate the development, redevelopment or improvement of the land or if the land is needed for some other reason necessary to the proper planning of the area.
- 3.4 If land is appropriated to planning purposes under s122 then, by virtue of s237 of the Town and Country Planning Act the erection, construction or carrying out of any maintenance of any building or work on the land and the subsequent use of the land is authorised under those planning purposes if the work is done in accordance with planning permission, even if they interfere with third party rights. The purpose of this is to ensure that where land has been appropriated for planning purposes existing rights which could prevent the development of that land from proceeding in accordance with planning permission can be overridden, whether the development is carried out by the Council or by someone deriving title from the Council.
- 3.5 The power in section 237 does not remove the legitimate rights of parties to compensation as a result of the interference with their rights, but it does remove the potential both for excessive claims (by providing for compensation to be in accordance with the statutory compensation scheme for public works) and for such parties to frustrate a redevelopment by obtaining an injunction to protect their rights.
- 3.6 The Council has entered into an Agreement for Lease with Cathedral (Town Hall) Ltd for the redevelopment of the Town Hall and the South Street Car Park Site. When the terms of the agreement were being discussed Cathedral had concerns about the implications for the redevelopment of the South Street Car Park site of possible rights of light and other rights over the site. The Agreement for Lease therefore included a provision that, if they so requested, a report would be put to members asking them to appropriate the site for planning purposes to enable any such rights to be overridden so that the redevelopment of the site could proceed. The Agreement for Lease also provides for Cathedral to indemnify the Council against the cost

of any compensation arising as a result of any such appropriation on the carrying out of any redevelopment of the South Street Car Park Site.

- 3.7 Cathedral have now had a review of rights of light in the vicinity of the South Street Car Park Site carried out and this concluded that their proposed development may interfere with the rights to light of some of the neighbouring properties, in particular 38-48 East Street and the buildings at the rear of the Fire Station site. In the light of the advice they have received, they have formally requested the Council to appropriate the site to planning purposes to override any such rights. While it is possible that, if approached, the relevant owners might be prepared to negotiate terms to give up their rights, there is also the risk that one or more might refuse to negotiate, or might try to hold Cathedral to ransom or take other steps to delay the project while negotiations proceeded, or it was referred back to the Council to appropriate at that time.
- 3.8 In addition, there is a right of way registered over the northern corner of the site; it is clearly no longer used since that part of the site has been fenced off since 1991. Due to the construction of the A21 in the early 1990s and the compulsory acquisition of much of the land in that area it is possible that the land which has the benefit of the right of way may already have been acquired by the Council at some stage. However, due to the lack of information about the right on the Council's registered title it has been impossible to identify which land may have the benefit of such a right and it has therefore not been possible either to approach the owner or to take any other steps to remove the entry from the Council's registered title. Cathedral wish to be able to override that right as well, in case anyone ever came forward to try and claim that they had the benefit of the right.
- 3.8 Appropriation of the South Street site to overcome existing rights of light or rights of way would be an interference with the rights of the relevant landowners under Article 1 of Protocol 1 (the right to peaceful enjoyment of possessions) and, in the case of any residential occupiers, Article 8 (the right to respect for private and family life) of the European Convention on Human Rights. However, in both cases, the right is qualified. In the case of Article 1 of Protocol 1 the right does not impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest, and in the case of Article 8 interference is permitted where it is in accordance with the law and is necessary in a democratic society in the interests of (amongst other things) the economic well-being of the country or for the protection of the rights and freedoms of others.
- 3.9 The properties concerned are largely commercial; it is understood that at present only one is occupied in part for residential purposes. The redevelopment of the Town Hall and the South Street Car Park Site is one of the key objectives of the Bromley Town Centre Area Action Plan. Cathedral's proposals are in accordance with the AAP and the provision of housing on the site will help to meet the requirements for the provision of additional housing in the town centre and help to meet the requirements of the Council for the proper planning of the area generally. It could therefore potentially be very damaging to the implementation of the AAP, the redevelopment of the site and the proper planning of the area if a neighbouring land owner were able to prevent the development from proceeding by demanding a ransom payment or seeking an injunction to stop any redevelopment.
- 3.10 Given the requirements of the AAP in respect of the South Street site and the need for additional housing in the area, and since any owner will still have a right to claim compensation for any interference with their rights, it is considered that any interference with Article 1 of Protocol 1 or Article 8 rights is justified in this case in the public interest.
- 3.10 Any decision of the Council can be judicially reviewed; an application seeking judicial review must be lodged as soon as possible and in any event within three months after the date of the decision. Although the Agreement for Lease has been exchanged, more than three months will elapse before Cathedral are in a position to complete the lease of the site and make a start on site since they have yet to obtain planning permission for the proposed development.

4. POLICY IMPLICATIONS

The council aims to encourage vibrant and thriving town centres serving both retail and general business needs and the redevelopment of these sites is one of the key provisions of the AAP..

5. FINANCIAL IMPLICATIONS

It is not considered that any additional premium should be sought for the inclusion of the small area of land in Widmore Road within the demise. This area is already partly occupied by the ramp and steps to the property and is required to attract restaurants to the scheme. Cathedral have advised that, without the area the viability of their proposals for the Town Hall would be compromised.

There are no financial implications for the Council as Cathedral will indemnify the Council against the cost of any compensation that may become payable as a result of the appropriation and the subsequent redevelopment of the South Street site.

6. LEGAL IMPLICATIONS

These are contained in the body of the report

Non-Applicable Sections:	Personnel implications
Background Documents: (Access via Contact Officer)	