

CABINET

17 November 2020

Title: Appropriation of Land at Dagenham Film Studios	
Report of the Cabinet Members for Finance, Performance and Core Services and for Regeneration and Social Housing	
Open Report	For Decision
Wards Affected: Eastbrook	Key Decision: Yes
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Accountable Director: Ed Skeates, Development Director, Be First	
Accountable Strategic Leadership Director: Graeme Cooke, Director of Inclusive Growth	
Summary	
<p>In October 2020, Cabinet agreed that a long leasehold sale of land was the best means of delivering the Film Studios at Dagenham East following positive bids from the private sector. Cabinet agreed to delegate approval to conclude land sales with the highest scoring bidder. Since then agreements have exchanged with Hackman Capital/MBS (known as Eastbrook Studios Limited) with a public announcement made on the 3 November.</p>	
<p>The long leasehold sale of land was conditional on a number of things including the Council resolving to appropriate (pursuant to section 122 Local Government Act 1972) the Film Studio land for planning purposes (as defined in section 246(1) of the Town and Country Planning Act 1990) in order to override various existing restrictions on the title and to rely on its powers under section 227 Town and Country Planning Act 1990 to complete the assembly of the site by way of the acquisition of land from Dagenham BV and LEUK. The appropriation is needed to address the risk of an injunction preventing the project proceeding and is justified to enable the delivery of London's largest film studios for 25 years, the regeneration of this part of the borough and transformation of the local economy through the creation of employment, community and social benefits alongside generation of a capital receipt and business rates income. The Council (as local planning authority) has resolved to grant planning consent for the scheme and the s106 agreement has been completed.</p>	
<p>Appropriation can only take place once land is actually in the ownership of the Council and therefore, in respect of the Plot 3 Phase (shown in appendix 2), and the PRB Phase (shown in appendix 3) and two slithers of land (shown in appendix 4) which are not yet in the Council's ownership, Cabinet can resolve to acquire these in reliance on section 227 Town and Country Planning Act 1990, approve the appropriation and delegate the final decision to the Chief Operating Officer to implement once that land is transferred in future.</p>	

Cabinet are therefore asked to approve the acquisition (as appropriate) and appropriation of land for planning purposes of the different plots of land that have been assembled for the Film Studios and the overriding of the covenants otherwise affecting that land pursuant to section 203 Housing and Planning Act 2016 (HPA).

Recommendation(s)

The Cabinet is recommended to:

- (i) Agree to appropriate the land shown edged red in Appendix 1 to the report for planning purposes (namely the construction of Film Studios), in accordance with section 122 of the Local Government Act 1972;
- (ii) Delegate authority to the Chief Operating Officer to acquire the land shown edged red in Appendices 2, 3 and 4 to the report for planning purposes (namely the construction of Film Studios) once ownership transferred to the Council, in accordance with section 227 of the Town and Country Planning Act 1990;
- (iii) Approve the subsequent use of the Council's powers under sections 203 – 206 of the Housing and Planning Act 2016 in respect of the land to override third party interests that may be infringed by the development of the Film Studios;
- (iv) Delegate authority to the Chief Operating Officer to waive the condition linked to the expiry of the judicial review period in respect of decisions contemplated within the report and to take out judicial review insurance if appropriate; and
- (v) Delegate authority to the Chief Operating Officer, in consultation with the Director of Law and Governance, to enter into confirmatory deeds as set out in the Section 106 agreement once the Council acquired the land shown in Appendices 3 and 4 to the report.

Reasons

- Delivery of London's largest film studios for 25 years
- Regeneration and development of the borough through a very high profile project
- Transformation of local economy and image of the borough
- Extensive range of employment, community and social benefits delivering Borough Manifesto objectives.
- Generate a capital receipt and future significant business rates income.

1. Introduction and Background

1.1 Following minute 35 of 20 October Cabinet and an associated Delegated Authority, a whole series of legal agreements were entered into with the highest scoring bidder, Hackman Capital/MBS under the name Eastbrook Studios Limited on the 28 October 2020. A public announcement was made on the 3 November.

1.2 Completion of the various leases is conditional upon the following:

- the section 106 agreement in respect of the existing planning permission being completed and the judicial review period (of six weeks) expiring without challenge;

- completion of the acquisition of two small strips of land from AXA pursuant to the original 2018 sale contract; and
- the Council resolving to appropriate the land for planning purposes and to acquire the PRB Phase and plot 3 Phase and two small strips of land from AXA for planning purposes in order to override various existing restrictions on the title.

1.3 Bullets 1 and 2 are in train and simply awaiting the processes to conclude. Recommendation (v) seeks Cabinet approval to delegate to the COO to enter into confirmatory deeds as required in the S106 agreement tying in the land as it is acquired by the Council. Bullet 3 is within the Council's control and is the subject to this report. The October report was due to seek approval for appropriation however appropriation needs to be supported by a planning approval and the section 106 agreement has recently been completed.

2. Proposal and Issues

- 2.1 The appropriation of the existing land in the Council's ownership is justified when that land is no longer required for its present purposes (vacant industrial land) and can justifiably be held for the better planning of the borough for the reasons given above. Appropriation and the overriding of affected interests can only take place once land is actually in the ownership of the Council. Plot 3 (LEUK) land (shown in appendix 2) will transfer to the Council in April 2021, before a 250 year lease is enacted with Eastbrook Studios Limited. Approval is sought to delegate approval to the Chief Operating Officer (COO) to appropriate once in Council ownership. Similarly land shown in Appendix 3 (the PRB Phase) will transfer to the Council once May & Baker have sign off for their remediation works hence delegated approval is sought for appropriation when it has transferred. May & Baker have completed the works but are still within the monitoring period – this is expected to be completed by mid 2021. This will not hinder progression of the film studios. The two strips of land from AXA will transfer across shortly pursuant to the original sale contract. Again approval is sought to delegate approval to COO to appropriate once in Council ownership.
- 2.2 The advantage of appropriation and acquisition for planning purposes is that it removes the risk of injunction and converts the value of any damages claim to the reduction in value of the third party's land interest.
- 2.3 In the event that the appropriation of the appendix 1 land is not successful, the Council may choose to terminate the agreement or to continue, but provide an appropriate indemnity to Eastbrook Studios Limited. If Eastbrook Studios Limited were to potentially secure a further planning consent for the scheme this, in itself, may mean that it is reasonable for them to request the Council to make a further resolution to appropriate "on the back of" that new planning consent. The Council (as a statutory body) cannot be bound to do so but has committed to put the matter to Cabinet if requested, but at the Buyer's cost.
- 2.4 By utilising the Council's statutory powers, once the land is validly appropriated / acquired (as appropriate) for planning purposes, the Council and the buyer will be entitled to rely upon the HPA 2016 to override existing relevant rights, interests and restrictions that might otherwise hinder development albeit that this may result in a claim for damages. Section 203 of the HPA ensures that building or maintenance

work may be carried out and/or land used notwithstanding that it interferes with a relevant right or interest or breaches a restriction as to user, with those whose rights etc have been overridden being able to claim compensation (section 204). The Council has agreed to meet all claims for compensation arising although this is expected to be minimal given that the scheme is not expected to adversely affect the value of the third party's land interest.

- 2.5 Notwithstanding the conditionality of the sale contract, the Council may waive the judicial review period in respect of the decisions contemplated by this report and also consider taking out a judicial review insurance policy in respect of potential claims (provided it indemnifies the buyer for any resultant loss).

3. Options Appraisal

- 3.1 This section assesses the different options the Council in respect of appropriation of the land.

Do nothing: The Council resolving to use its appropriation power is a condition of the sale agreements. Alternatives would be indemnities or insurance however appropriation is the best means to remove risk of an injunction preventing development.

Acquire and appropriate for planning purposes: by exercising appropriation and acquisition powers so as to engage section 203 of the HPA 2016, it would serve to mitigate the risks of bringing forward the development by removing the threat of injunction proceedings for the infringement of rights etc over the land. Affected parties will be entitled to compensation but they will not be able to bring injunction proceedings to delay or stop the development.

4. Consultation

- 4.1 Proposals for film studios at Dagenham East have formed part of a number of public consultation activities in recent years. The specific pre-planning public consultation event saw over 60 visitors attendees with almost unanimous public support for the proposal. There were no objections to the planning application.
- 4.2 The Dagenham East Regeneration Steering Group has been kept informed of progress.
- 4.3 In the context of overriding of third party rights, an assessment of the potential infringement of third party rights by the development will be undertaken. Prior to steps being taken to give effect to the resolution recommended, officers will consider the scope of consultation that may be appropriate..

5. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 5.1 The Financial Implications of the Film studio land sale were set out in the October report. One of the conditions of the sale required by the buyer was that the Council would be asked to use its appropriation powers to override various existing restrictions on the title. This report addresses that condition. The costs of

appropriate are officer time and legal fees (covered within the project costs). Whilst appropriation would prevent a third party serving an injunction and stopping development, it converts the value of any damages claim to the reduction in value of the third party's land interest. The lawyers' view is that it is hard to see how a third party's land interest could be reduced in value provided the Council (as Local Planning Authority) does not seek to enforce the terms of a 2011 planning consent which has now in respect of the land that is the subject of this appropriation been superceded by other approvals.

6. Legal Implications

Implications completed by: Dr Paul Feild, Senior Governance Lawyer

6.1 Appropriation and Acquisition for Planning Purposes

6.1.1 Land can be appropriated for planning purposes under section 122 Local Government Act 1972 when it is no longer required for the purpose for which it is presently held and in this case, the land can (for the reasons given) be appropriated for planning purposes as defined in section 246(1) of the Town and Country Planning Act 1990 (TCPA).

6.1.2 Once land has been acquired/appropriated for planning purposes, the relevant disposal power arises under section 233 TCPA. Section 233(1) of the TCPA provides that:

- (1) Where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may dispose of the land to such person, in such manner and subject to such conditions as appear to them to be expedient in order—
 - (a) to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by themselves or by any other person), or
 - (b) to secure the erection, construction or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of the area of the authority.

6.1.3 By utilising the Council's statutory powers, once the land is validly appropriated/ acquired (as appropriate) for planning purposes, the Council will be entitled to rely upon the Housing and Planning Act 2016 (HPA) to override existing relevant rights, interests and restrictions. Section 203 of the HPA ensures that building or maintenance work may be carried out and/or land used notwithstanding that it interferes with a relevant right or interest or breaches a restriction as to user, with those whose rights etc have been overridden being able to claim compensation (section 204).

6.2 Power to interfere with Third Party Rights

6.2.1 As can be seen from the above, reliance in due course on section 203 of the HPA 2016 in order to override the rights and encumbrances etc of third parties in respect

of the Land is possible where the requirements of section 226 of the TCPA are met. Therefore, the requirement to be satisfied, that is, that there is a compelling case in the public interest so as to engage powers under section 203 of the HPA 2016 having regard to the European Convention on Human Rights, must apply before construction of the development commences.

- 6.2.2 The enabling provisions in s203 (1) and (4) of the HPA are required for the construction, maintenance and use of the development, to the extent that this will interfere with private rights of persons with an interest. The operative provisions in section 203-205 are necessary in order to override these rights etc, including any unknown rights that may impede the construction or use of the development.
- 6.2.3 If the Council were not to exercise its powers under section 203 of the HPA 2016 and the works are commenced, the development would potentially be infringing those affected third party owners of rights etc over the land. Various remedies up to and including injunction would be available to the injured parties depending on the rights infringed on. The consequences of an injunction for the Council would be a delay in the delivery of the development or the development (and the benefits that it would bring to the local community) not coming forward at all.

6.3 **Equalities Impact Assessment**

- 6.3.1 In deciding to proceed with the exercise of appropriation and acquisition so as to engage section 203 of the HPA 2016, the Council must pay due regard to its Public Sector Equality Duty (PSED), as set out in Section 149 of the Equalities Act 2010 (the 2010 Act). The PSED provides that a public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.3.2 Consideration must also be given to whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on a protected group, or to take steps to promote equality of opportunity by, for example, treating an affected group more favourably.
- 6.3.3 Officers are mindful of this duty in making the recommendations in this report. Generally, it is considered that the impacts of the development are positive.
- 6.3.4 Within the process of engaging and negotiating with affected third parties, allowances will be made to account for vulnerable parties in accordance with the PSED.

6.4 **Human Rights**

- 6.4.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (the ECHR).

- 6.4.2 In this case a decision to override easements and other rights represents an interference with rights protected under Article 1 of the Protocol to the ECHR (the right to peaceful enjoyment of possessions) and Article 8 of the ECHR (right to respect for private and family life, home and correspondence). Any decision to interfere with such rights must strike a fair balance between the public interest associated with the development and the interference with private rights. In light of the clear public benefit associated with the development and a compelling case in the public interest for the use of the powers to override rights and given that any person who can show that they held an interest in any of the land will be entitled to compensation in accordance with the relevant statutory provisions, it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate.
- 6.4.3 The Officers are of the view, therefore, that the exercise of its powers in accordance with this report is compatible with the ECHR.

7. Other Implications

- 7.1 **Risk Management** - This is one of the Borough's highest profile projects and therefore has substantial reputational risk. Securing planning permission has substantially reduced delivery risk alongside entering into land sale agreements. Appropriating land is a further element of de-risking the delivery of the film studios.
- 7.2 **Contractual Issues** – Long leasehold sales of land will require a range of documents to be completed.
- 7.3 **Staffing Issues** – To date work has been carried out by Be First as part of their remit. Be First would conclude the transaction whilst Film LBB and the Inclusive Growth team will be more heavily involved long term particularly on maximising socio-economic outcomes.
- 7.4 **Safeguarding Adults and Children** – The operation of the studios would require the operators to have policies and procedures in place to address any potential risks.
- 7.5 **Health Issues** – There are no specific health issues however the scheme will deliver a range of socio-economic benefits for the area and raise aspirations which are acknowledged as important determinants of health.
- 7.6 **Crime and Disorder Issues** – These issues were considered as part of the planning application for the site and one of the planning conditions is that the scheme will follow the SABRE security rating scheme including liaison with the Met Police.
- 7.7 **Property / Asset Issues** – The appropriation of land relates to property which the Council will retain freehold ownership of but with a 250 year lease to Eastbrook Studios Limited.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix 1: Land for appropriation

Appendix 2: Plot 3 land

Appendix 3: PRB Phase plan

Appendix 4: Axa Slithers of land