

DELEGATED

Appropriation of Land at Rose Mill, Chadderton

4th June 2014

Report of Director of Development and Infrastructure

Portfolio Holder: Cabinet Member of Housing, Planning and Transport

Officer Contact: Akeel Shafiq, Development Officer
Ext: 3617

Purpose of Report

The purpose of the report is to:

- Seek authority for the appropriation, for planning purposes, of land owned by the Council at Rose Mill, Drury Lane, Chadderton, Oldham as shown edged red on the attached plan at Appendix 1, under Section 122 of the Local Government Act 1972.

This is in order to facilitate the redevelopment of the land for other purposes and will also enable the powers within Section 237 of the Town and Country Planning Act 1990 (as amended) to be used to facilitate the proposed housing development at Rose Mill, Chadderton, Oldham

Recommendations

It is recommended that the Council:

- Authorises the proposed appropriation for planning purposes of the land owned by the Council at Rose Mill, Drury Lane, Chadderton, Oldham in accordance with the provisions of Section 122 of the Local Government Act 1972.

NOT FOR PUBLICATION by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 as it is not in the public interest to disclose the information because it relates to the financial or business affairs of the Council.

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APPROPRIATION OF LAND AT ROSE MILL, DRURY LANE, CHADDERTON, OLDHAM

1. **Background**

- 1.1 In December 2012 the Council accepted an offer from Gemstone Land and New Homes Ltd (Gemstone) to acquire the land at Rose Mill (outlined in red on the attached plan). Gemstone have completed the acquisition of a long leasehold interest in the Rose Mill site (outlined in blue on the attached plan) for residential redevelopment with the mill itself having been demolished and the site cleared.
- 1.2 Gemstone intend to acquire the Council owned land and incorporate it into the proposed redevelopment of the former Rose Mill site which will result in the delivery of a comprehensive redevelopment of the area and assist in bringing forward a more visually attractive scheme.
- 1.3 The Council land extends to circa 1.1 acres and is made up of a former garage site (which has become rough and overgrown) and a landscaped area fronting onto Drury Lane. The land has been confirmed as surplus to operational requirements and is suitable in principle for residential development, subject to planning approval.
- 1.4 Key points of note are:
 - 1.4.1 The land is allocated as a Phase 1 housing site in the LDF (H1.1.20).
 - 1.4.2 The land was advertised for disposal for Public Open Space purposes between February and March 2013 and no objections were received.
 - 1.4.3 The purchase price agreed for the Council land is £249,000 plus payment of OMBC Surveyors and Legal Fees at £5,000. The net developable area of the site is circa 0.9 acres in total.
 - 1.4.4 The disposal does not include the adjoining playing fields although a right of access has been reserved by the Council over the Rose Mill residential development site allowing access to and from the playing fields.

2. **Current Position**

- 2.1 Terms for the disposal have been approved and the Council has agreed a development agreement and subsequent long-lease with Gemstone to dispose of the land however due to a number of title issues the Council has been advised by its Legal Department that the land should be appropriated before the transaction is concluded.

- 2.2 The Council has the power to acquire and hold property for various statutory purposes to perform its functions. In order to use land for a purpose other than the one for which it was acquired the land must be "appropriated" for a different use. Appropriation is a statutory process, which allows the Council to transfer property within its ownership from one use to another.
- 2.3 To provide further comfort that there is no possibility of unknown or unforeseen private rights being claimed against the developer on commencement of the proposal development or any possibility of a third party seeking an injunction against the developer to prevent the scheme proceeding, Gemstone, on advice from OMBC's Legal Department, have requested that the Council appropriates the land shown edged red on the plan in Appendix 1 for planning purposes in accordance with Section 122 of the Local Government Act 1972.
- 2.4 Section 122 of the Local Government Act 1972 enables the Council to appropriate land for any statutory purpose for which it is authorised to acquire land. The Council must, therefore, determine that the land is no longer needed for the original purpose for which it was acquired and appropriate it for planning purposes.
- 2.5 Appropriation of the land for planning purposes requires the Council to consider the following factors:
- That the appropriation will facilitate the carrying out of development redevelopment 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;
 - It will contribute to the promotion of the economic, social and/or environmental well-being of the area;
 - 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;
 - That the land is no longer required for the original purpose for which it was acquired.
- 2.6 Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the Town and Country Planning Act 1990. The practical consequence (by virtue of Section 237 of the Town and Country Planning Act 1990, as amended by schedule 9 of the Planning Act 2008) is that the erection, construction or carrying out of any maintenance of any building or work on the land and subsequent use of the land and authorised under those planning powers, if the works are done in accordance with planning permission, even if they interfere with third party rights.
- 2.7 The purpose of section 237 of the Town and Country Planning Act 1990 (as amended) is to ensure that where land has been appropriated for planning

purposes, then existing rights, which could prevent the development of that land from proceeding in accordance with the planning permission, can be overridden. The rights are overridden whether the Local Authority or a person deriving title from it undertakes the development.

- 2.8 The power contained in Section 237 of the Town and Country Planning Act 1990 (as amended) does not remove the legitimate rights of owners or occupiers as to compensation which may arise from the interference with such rights, but it does remove the potential for excessive claims and it also removes the potential for such owners or occupiers to frustrate the development by obtaining an injunction to prevent interference with their rights.

3. **Options/Alternatives**

3.1 Option 1

Not to proceed with the appropriation. This option is **not** recommended as it will jeopardise existing relations with Gemstone and will inevitably lead to a further delay in delivering the proposed development at Coalshaw Green Road, Chadderton, Oldham.

3.2 Option 2

To satisfy the Developer in terms of de-risking the proposed development site as much as possible thereby enabling construction to commence as soon as possible, it is recommended that the Council appropriates the land shown edged red on the plan in Appendix 1 for planning purposes in accordance with Section 122 of the Local Government Act 1972.

4. **Consultation**

- 4.1 As part of the disposal senior officers and the Cabinet Member for Housing, Planning and Transport have been consulted.

5. **Financial Implications**

5.1 **Capital**

No capital implications are expected as a result of the proposals above. The Council is using its statutory powers to appropriate the land it owns for planning purposes.

5.2 **Revenue**

The appropriation of the land for planning purposes has no expected revenue implications for the Council

5.3 **Funding**

No expected revenue or funding implications therefore not applicable.

5.4 Risks

In line with discussions with the regeneration team there is no indication that claims will be brought forward; in addition the Council holds Title Indemnity insurance which would cover the Council in case of a claim. Furthermore, the Council will receive a 10% deposit from the developer prior to a planning application being submitted so in the very unlikely event that a cost is incurred by the Council this will be funded from the deposit.

(Natalie Coates – Senior Finance Manager)

6. Legal Services Comments

6.1 In order to facilitate the unrestricted use of the development site for housing the Council has agreed to appropriate for planning purposes the Council's land pursuant to Section 122 of the Local Government Act 1972.

6.2 The decision making process to appropriate land is referred to in the Council's Land and Property Protocols, which forms part of the Council's written constitution.

6.3 The Council's land and Property Protocols have been observed.

(Peter Oliver – Solicitor)

7. Cooperative Agenda

7.1 The appropriation has a neutral impact on the Council's co-operative agenda.

8. ICT Implications

8.1 None

9. Risk Management

9.1 There is a small risk of the appropriation generating claims for compensation.

10. Property Implications

10.1 Property implications have been addressed as part of the main body of the report.

11. Environmental and Health & Safety Implications

11.1 None

12. Equality, community cohesion and crime implications

12.1 None

13. Equality Impact Assessment Completed?

13.1 No

14. **Key Decision**

14.1 No

15. **Forward Plan Reference**

15.1 N/A

16. **Background Papers**

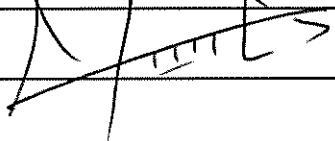
16.1 None.

17. **Author**

17.1 Officer Name: Akeel Shafiq, Development Officer, Economy Place and Skills Directorate - Ext: 3617.

18. **Appendices**

18.1 Appendix One – Appropriation Plan

Signature: 	Date: _____
Darren Jones Director of Development and Infrastructure	

Agreed with Cllr Hibbert at his briefing

12 / 6 / 2014 .

