

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	4041
Author:	Peter Taylor
Department:	Development and Growth
Contact:	Peter Taylor (Job Title: Senior Surveyor, Email: peter.taylor2@nottinghamcity.gov.uk, Phone: 8763017)
Subject:	Land and Buildings at the Guildhall site, Nottingham-Appropriation for hotel , student accommodation, office , retail and associated development
Key Decision (decision valued at more than £1million):	Yes
Total Value:	see Appendix 3 (Exempt) (Type: Capital)
Decision Being Taken:	(a) To confirm that the original decision dated 25 June 2018 to appropriate the Guildhall complex for planning and development purposes (which was carried out pursuant to s122 Local Government Act 1972 and ss 226 and 246(1) Town and Country Planning Act 1990), on the basis that the purposes for which the Guildhall complex was held immediately before the appropriation was carried out is no longer required; (b) To approve that the planning and development purposes now be confirmed to be a mixed use development comprising: a hotel, offices, non-residential institution, leisure, residential, student accommodation, ancillary uses including retail, financial & professional services, food & drink delivered as an integral part of a mixed use scheme; and (c) To confirm that it is considered appropriate and proportionate for s203 Housing and Planning Act 2016 to be capable of being engaged in respect of the proposed development of the Guildhall complex.

1.1 The redevelopment of the Guildhall complex is an important element of the plans for the regeneration of the Royal Quarter of the city centre. It is recognised that future engagement of s203 means that any adjoining rights holders with valid claims whose interests may be infringed will be entitled to compensation for any such infringement. Future engagement of s203 is also subject to planning permission for a mixed use development and any associated development being determined by the council in the usual manner . See further details in this report.

2 Background

2.1 The Guildhall complex is identified within the Local Plan Land and Policies Document which was adopted in January 2020 in Policy SA1 - Site Allocations as Site Ref 53 Royal Quarter - Burton Street, Guildhall, Police Station and Fire Station and shown edged red on page 244 of that Plan (the "Guildhall complex"). The proposed use is identified as: "Hotel , offices, non-residential institution , leisure 2), residential (except in respect of the Guildhall building itself for which residential use is not to be permitted for at least 10 years), student accommodation (except in respect of the Guildhall building itself for which student accommodation use is not to be permitted for at least 10 years). Ancillary uses retail, financial & professional services , food & drink delivered as integral part of a mixed use scheme. Indicative images showing the form and height of the proposed development are appended to this report at Appendix 1.

2.2 On 25 June 2018 the Council decided that the Guildhall complex should be appropriated and this report expands upon and recommends confirmation of the basis for and implications of both the re-purposing of use of the Guildhall complex and the impact of appropriation upon any parties with adjoining rights which may be affected by the development allocated and proposed for the site.

2.3 The Guildhall complex was previously used as Magistrates Courts (such use believed to have ceased in 1996), City Council offices (such use having ceased when the City Council moved to Loxley House in 2010), for the central fire and police stations (both of which uses have been relocated to London Road and Byron House, Maid Marian Way respectively). Accordingly there is no ongoing need for the Guildhall complex for those former uses. On 22nd March 2016 the Council resolved to dispose of the Guildhall complex to Miller Birch.

2.4 It is intended that reliance will be placed upon the provisions of s203 of the Housing and Planning Act 2016 ("HPA 2016") in order to facilitate this beneficial development to be undertaken and to ensure that anyone whose rights may be infringed by the development with valid claims will be entitled to appropriate compensation (but will not be able to prevent the development through the use of an injunction). The City Council must be satisfied that there is a compelling case in the public interest that s203 may be engaged in order that the proposed building work or use proposed can be carried out and in particular:

- (i) There is a reasonable prospect (without fettering the City Council's discretion in this regard) that planning consent for the proposed development will be granted;
- (ii) Appropriation and consequent engagement of S203 will facilitate the carrying out of development, redevelopment or improvement on or in relation to land, and in particular the proposed development for which planning consent is to be sought, or similar development;
- (iii) There will be infringements of one or more relevant rights or interests as defined in section 205(1) of the HPA2016 or breach of a restriction as to user of land which cannot reasonably be avoided;

- (iv) The development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the authority's area and those benefits could not be achieved without giving rise to the infringements - therefore it is in the public interest that the land be appropriated by it for planning purposes, so as to facilitate the development proposed or similar development;
- (v) The easements to be interfered with cannot reasonably be released by agreement with affected owners within a reasonable time;
- (vi) The ability to carry out the development is prejudiced due to the risk of injunction;
- (vii) A decision to acquire or appropriate in order to engage s203 would be broadly consistent with advice given in the MHCLG Guidance on Compulsory Purchase 2019 (the MHCLG Guidance) so far as relevant;
- (viii) The use of the powers is proportionate in that the public benefits to be achieved outweigh the infringement of human rights. Each of these considerations is dealt with using the same enumeration below. Whilst the Guildhall complex has been assembled by the City Council and is in its sole ownership, that and any financial benefit resulting from the City Council disposing of any interest in the site remain, as in its decision in 25 June 2018, expressly discounted when confirming the appropriation and considering whether reliance should be placed upon section 203 of the HPA 2016.

3 Detailed Reasons

(i) Planning

As has been indicated in this report, the site is allocated for redevelopment within the Local Plan. As yet, a formal planning application remains to be submitted and we are informed that work in preparation for such an application is under way. There is no reason, in principle, to consider that a suitable planning permission will not be granted in due course (though any such application will be subject to relevant scrutiny and assessment in the usual manner and the City Council does not fetter its discretion in this regard).

(ii) Facilitation of the Development by use of s203

From the City Council's perspective, it regards the proposed development of the Guildhall complex as having an important regenerative effect upon the Royal Quarter. In light of the City Council being informed that parties with adjoining rights have a potential ability to prevent the development coming forward at all by way of an injunction, which the City Council has no grounds to doubt and which it takes the view would not be in the public interest, it is clear that the engagement of s203 HPA 2016 will assist in enabling the development to come forward whilst providing for suitably compensating any affected third party with a valid claim for infringement of rights.

(iii) Infringement of rights by the Development cannot be reasonably avoided

In order for the development potential of the Guildhall complex to be realised, and to meet the aspirations for it in the Local Plan allocation the development is proposed to be higher on those parts of the site beyond the Guildhall building itself than the buildings which are to be replaced, as shown on the indicative impressions of the proposed scheme at Appendix 1--. Rights held by owners of adjoining properties are thus necessarily being impacted to realise the public regeneration benefits of this development.

(iv) Development in the public interest due to promotion of the economic, social or environmental wellbeing of the Council

The Guildhall complex is an important part of the Royal Quarter of the city centre. The Guildhall itself is a grade II listed building. As has been recognised in the Local Plan allocation for the redevelopment of the Guildhall complex, it is suitable for a mixed use development comprising a hotel, student accommodation, offices, retail, residential, leisure, non-residential institution and other associated uses. Such development will be required to be designed to incorporate public realm and environmental improvements and to preserve and enhance not only the Guildhall itself but also other nearby listed buildings and the adjacent Arboretum Conservation Area. This form of development has been proposed through the Local Plan site selection and allocation process and thereby publicised and subjected to public consultation. The future use of the Guildhall complex for those uses proposed will undoubtedly lead to the promotion and improvement of the economic well-being, social well-being or environmental well-being of the City Council's area. The regeneration of this currently under-used complex is much-needed; it will deliver social benefits through the hotel and the proposed student housing in the city centre and in such close proximity to Nottingham Trent University, environmental benefits through the design and use of the public realm, economic benefits by returning the site to more intensive and value-adding uses, and bring a Grade II listed building (the Guildhall itself) back into beneficial use and so ensure that an important part of the city's heritage is protected.

(v) Rights of light cannot reasonably be released by agreement

Given the urban setting and scale of the development, the City Council is informed, and has no reason to doubt, that there are a significant number of adjoining properties whose rights of light will be infringed. There is no reasonable prospect of securing agreements with all the relevant owners to release those rights, within a reasonable timescale.

(vi) Development prejudiced due to risk of injunction

For the reasons set out above at sections (ii) and (iii), the Development stands to be prejudiced by the risk of injunction and its delivery within a reasonable timeframe requires that such a risk is removed.

(vii) Decision to engage s203 would be consistent with MHCLG Guidance

Whilst the Council owns the Guildhall Complex, it is the case that if it did not, the Council has the power under section 226(1) of the TCPA to make an order to acquire the Land compulsorily. The advice given in the MHCLG Guidance should be taken into account in deciding whether to acquire land in order to engage the provisions of s203. The MHCLG Guidance states that a compulsory purchase order should only be made where there is a compelling case in the public interest. A similar approach should be taken when deciding whether to acquire land for planning purposes in order to engage s203. It is in the public interest that the Development should proceed. From the Council's perspective, it regards the proposed development as having an important regenerative effect upon the Royal Quarter in line with the Local Plan re-development allocation.

For the reasons set out at (i) to (iv) above, there is a compelling case in the public interest for the Land having been appropriated for planning purposes in order to engage the provisions of s203.

The MHCLG Guidance requires an acquiring authority promoting compulsory purchase to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the order by agreement. In this case, as set out in (v) above, given the significant number of adjoining properties whose rights of light the City Council understands will be infringed, and that there is no reasonable prospect of securing agreements with all the relevant owners to release those rights within a reasonable timescale, the City Council does not consider it reasonable to require the developer to seek to enter into such agreements. The Council notes that in the event that a resolution is made in accordance with this Recommendation, that after any such resolution, there is statutory provision requiring the payment of compensation for interference with relevant rights authorised by s203. There is no reason to doubt that the developer will take reasonable steps to settle compensation with affected owners, disputes being referable to the Upper Tribunal.

The MHCLG Guidance also says that when making and confirming an order, acquiring authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. These issues are considered below in part (viii).

(viii) Public benefits associated with engagement of S203 outweigh infringement of human rights

Human Rights issues arise in respect of the proposed arrangements. An acquiring authority should be sure that the purposes for which rights are to be overridden sufficiently justify interfering with the human rights of those with interests in the land affected. Furthermore, following the introduction of the Human Rights Act 1998 the Council is required to act in accordance with the European Convention on Human Rights (the ECHR) in deciding whether or not to implement the arrangements. Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. Appropriation of the Guildhall complex for the development purposes, which engages s203 to allow interference with rights of light, involves interference with a person's rights under this Article. As these rights are enjoyed by corporate bodies as well as individuals all of those whose rights will be affected can claim an infringement.

However, the right to peaceful enjoyment of possessions in this Article is a qualified rather than absolute right, as the wording of Article 1 of Protocol 1 permits the deprivation of an individual's possessions where it is in the public interest and subject to the conditions provided for by law and by the general principles of international law. In cases such as this, where rights to light may be enjoyed by residential properties Article 8 is engaged (the right to respect for private and family life and a person's home). Article 8(2) allows for interference which is "in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health and morals, or for the protection of the rights and freedoms of others".

There must therefore be a balancing exercise between the public interest and the individual's rights whereby any interference in the individual's rights must be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim. A "fair balance" must be struck between the rights of the individual and the rights of the public. It is for the decision-taker to consider the issues raised in this report and to strike that "fair balance" in coming to its decision.

In the present case it is considered that the public interest in facilitating the redevelopment outweighs the rights of the individuals to peaceful enjoyment of their possessions and (where applicable) their right for private and family life and home and that the proposed use of S203 powers amounts to a proportionate interference in all the circumstances. Central to the issue of proportionality is the availability of compensation to those whose Rights to Light will be interfered with.

The key public benefits arising from the Development are set out at section (iv) above.

Briefing notes documents: 2020-09-15 Guildhall Place Views (002).docx, Guildhall site Planning Appropriation Plan.pdf

Other Options Considered: The City Council had discretion in deciding to appropriate the Guildhall complex in 2018 which could engage s203, as does the City Council in deciding whether to follow the Recommendations in this report to confirm that decision. Clearly therefore, the Council could elect not to confirm the 2018 appropriation. However as explained the facilitation of this development and its public regeneration benefit is considered to outweigh the risk of the Guildhall complex not being redeveloped as proposed.

Background Papers: None

Published Works: Nottingham Local Plan Land and Policies Document - adopted January 2020
MHCLG Guidance on Compulsory Purchase 2019 - <https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>
Delegated decision 3193 Appropriation of rights at Guildhall Nottingham June 2018

Affected Wards: St Ann's

Colleague / Councillor Interests: None

Any Information Exempt from publication: Yes

Exempt Information:

Description of what is exempt: The financial implications of this decision.

An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972

3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

The following comments are exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972 because they contain information relating to the financial affairs of the authority and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it relates to commercially sensitive information; discloser could prejudice the Council's negotiating and future discussions and property transactions, which may be entered into

Documents exempt from publication:

Exempt appendix Guildhall development site.docx, 201030 - Guildhall Finance Comments.docx

Consultations:

The future use of the Guildhall complex has been proposed through the Local Plan site selection and allocation process and thereby publicised and subjected to public consultation.

Crime and Disorder Implications:

Bringing back a vacant building which is subject to anti social behaviour back in to full economic use.

Equality:

EIA not required. Reasons: Following consideration by the City Council, there is no known adverse differential impact on any specific person or persons with a protected characteristic as a result of the Recommendation

Relates to Council Property Assets:

Yes

Decision Type:

Leader's Key Decision

Subject to Call In:

Yes

Call In Expiry date:

12/11/2020

Advice Sought:

Legal, Finance

Legal Advice:

The Director of Legal and Governance and officers in Legal Services have been consulted upon and have provided input into the drafting of this report. The report identifies the relevant factors to be considered.

It is believed this decision has no direct procurement impact. As is recognised in the report, the Council has a discretion to confirm the appropriation of the Guildhall complex. The recommendation made is to confirm the appropriation of the Guildhall complex and it is considered that there is a lawful basis for the Council to do so.

The Council's Legal Services team has provided legal advice and support on the proposed disposal throughout the period of negotiation and contract.

Advice provided by Mick Suggett (Team leader: Conveyancing) on 19/10/2020.

Finance Advice:

This advice is exempt from publication and is contained within an exempt appendix.

Advice provided by Tom Straw (Senior Accountant - Capital Programmes) on 30/10/2020.

Property Advice:

This is a Property report therefore no further Property advice is required Advice provided by Rodney Alan Martin (Development Manager) on 13/10/2020.

Signatures:

David Mellen (Leader/ PH Regeneration, Schools, Communications)
SIGNED and Dated: 05/11/2020
Chris Henning (Corporate Director for Development and Growth)
SIGNED and Dated: 02/11/2020