



REPORT OF:	HEAD OF PROPERTY
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TO:	EXECUTIVE
DATE:	9 November 2017
EXECUTIVE MEMBER:	COUNCILLOR NATALIE BRAMHALL

KEY DECISION REQUIRED:	YES
WARD (S) AFFECTED:	REDHILL WEST

SUBJECT:	APPROPRIATION OF LAND AT CROMWELL ROAD, REDHILL TO ENABLE DEVELOPMENT AND REGENERATION
RECOMMENDATION:	
<p>That the Executive resolves with immediate effect to appropriate land at the site known as 16-46 Cromwell Road, Redhill (which is assumed to have originally been purchased for housing purposes, although this is not formally recorded) for Planning Purposes (mixed use retail and residential development), under Section 122 of the Local Government Act 1972, in connection with the proposed development and regeneration of Redhill. The land is shown for identification purposes only edged red on the plan attached (Annex 1) to this report.</p>	
REASONS FOR RECOMMENDATIONS:	
<p>Redhill is one of the principal regeneration areas in the Borough. The delivery of the Cromwell Road site is a catalyst for regeneration. The site currently comprises mixed use buildings with residential and retail accommodation that are predominantly vacant and not fit for purpose.</p> <p>The site that is the subject of this report is in the freehold ownership of Reigate & Banstead Council. The site is currently characterised by tertiary / third sector occupiers together with a high proportion of empty units. The need for redevelopment of this site has become more apparent, following the successful redevelopment of the neighbouring building, located on the corner of Cromwell Road and High Street. Redevelopment would help to meet identified growth needs and contribute positively to the regeneration of the town.</p> <p>Appropriation under S122 of the LGA 1972 has the added benefit of engaging the provisions of S203 of the Housing and Planning Act 2016, which overrides third party interests in land and converts them to a compensatable sum. This is only engaged if the development carried out is in accordance with the planning permission for which the appropriation or acquisition for planning purposes specifically relates. If land is sold for development purposes, the buyer may also take advantage of S203 so long as the land is developed and used in accordance with a specific planning permission.</p>	

EXECUTIVE SUMMARY:

Redhill town centre is the borough's main town centre and one of the principal regeneration areas identified in the Council's Core Strategy.

This Cromwell Road site, which is located within the regeneration area, is not considered to be fit for purpose in its current configuration and is predominantly vacant. The site is currently characterised by tertiary / third sector occupiers together with a high proportion of empty units. The visual appearance of the Council owned asset is unattractive to potential occupiers. The need for redevelopment of this site has become more apparent, following the successful redevelopment of the neighbouring building, located on the corner of Cromwell Road and High Street. Redevelopment will complete the regeneration of this part of the town and contributes towards the identified need for new retail provision within the town and housing targets set out in the Core Strategy.

The land currently forms part of the Council's property portfolio and should be appropriated for planning purposes (mixed use retail and residential development) before it can be sold or developed as a regeneration site.

It is considered that the requirements to justify appropriation have been met and it is recommended the Executive confirms that the land in question is no longer required for the purposes for which it is being held at present and resolves to appropriate the land for planning purposes as set out in S122 of the Local Government Act 1972 relating directly to the proposed regeneration scheme of Redhill and any planning permission related to this specific development scheme.

The Executive has authority to make the above recommendation.

STATUTORY POWERS

1. Section 122 of the Local Government Act 1972 confers powers on local authorities that have acquired land for any statutory purpose and are holding that land for the purposes for which it was acquired, and for which it is no longer required, to appropriate that land for planning purposes. The requirements are that :
 - (a) The land belongs to the Council;
 - (b) The land is no longer required for the purpose for which it is currently used; and
 - (c) The purpose for which the Council is appropriating the land is authorised by statute.
2. It is considered that all of these requirements are met.
3. Appropriation of land is an Executive function under Section 9D of the Local Government Act 2000.

POLICY FRAMEWORK

4. Redhill town centre is the borough's main town centre and one of the principal regeneration areas identified in the Council's Core Strategy.
5. To support Redhill's regeneration and enhance its position as a shopping and leisure destination, the Core Strategy seeks to focus large scale retail and leisure development in the town centre. The introduction of additional residential

accommodation within the town will help develop the town's evening economy and contribute towards the success of other regeneration schemes i.e. the proposed Marketfield Way mixed use retail and Leisure development.

6. Redevelopment of the site to provide additional retail space, which will contribute directly to growth and regeneration objectives in the Core Strategy. Provision of a significant housing element on the site reflects the Council's policy of promoting the use of previously under developed land and will make a positive contribution to meeting housing needs.

LEGAL IMPLICATIONS & POWERS OF APPROPRIATION

7. The Council acquired the land on 12th February 1960, the land is not formally noted as being held for any statutory purpose, but is assumed to have originally been acquired for housing purposes and currently forms part of the Council's property portfolio.
8. 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 purpose. Appropriation is a statutory process which allows the Council to reallocate property within its ownership from one purpose to another.
9. 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 first determine that the land is no longer needed for the purpose for which it is held immediately prior to the appropriation and then appropriate it for another purpose, in this case planning purposes (mixed use retail and residential development).
10. It is entirely within the Council's discretion, providing that it is acting reasonable and has taken into account all relevant consideration, to decide that a certain parcel of land or a certain property that has been acquired or held for one purpose should now be used or appropriated for another purpose. The Council is the sole judge of whether or not the land is still required for the purpose for which it is held and its decision cannot be challenged, other than by way of judicial review if the decision is made outside of the Council's powers or the relevant procedural requirements have not been complied with.
11. Appropriation of the land under S122 of the LGA 1972 requires the Council to consider the following factors:
 - (i) that the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land or is required for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated;
 - (ii) such development will contribute to the promotion of the economic, social and/or environmental well-being of the area;
 - (iii) 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;
 - (iv) that the land is no longer required for the purpose for which it is held immediately prior to the proposed appropriation.

12. These conditions are all considered to have been met. Factors (i) to (iii) are justified by the objectives and policies of the Core Strategy, the previous identification of the site in the draft Redhill Area Action Plan and, more generally, the contribution which the proposed development on the site will make to the regeneration of the town centre. Factor (iv) is met by the need for provision of high quality mixed use development on the site. These improvements in the area are considered to be of greater value to the local residents than the desirability of retaining the land for the purposes for which it is currently held. It should be noted by the Executive that the statutory purposes for which the land is held and the physical use to which the land is put are not one and the same. It matters not that the physical use of the land may be the same prior to and after appropriation.

OPTIONS

13. There are two options:
- (a) Not to appropriate the land under S122 of the LGA 1972. If the Executive considers that the land is not required for the statutory purpose(s) of regeneration the statutory test in section 122 of the Local Government Act 1972 would not be met. This option is not recommended as appropriation for planning purposes will enable the delivery of the regeneration of the land in accordance with the planning application due to come forward and will have the added benefit of engaging S203 of the 1990 Act.
 - (b) To decide that the land in question should be redeveloped for regeneration purposes and confirm the appropriation of the land for development planning purposes. It is considered that this will facilitate development of the site and further the regeneration of Redhill town centre, which is a key corporate and planning policy objective. This is the recommended option.

FINANCIAL IMPLICATIONS

14. There are no financial implications directly arising as a result of these proposals, though it is of note to consider that the engagement of S203 of the 1990 Act will translate third party interests to compensation. The benefit of S203 can also be engaged by the purchaser of Council-owned land which has been lawfully appropriated, though it should be noted that if the developer was to fail to pay the compensation due to those parties whose rights have been overridden, the Council can be pursued for these monies. This does not, however, preclude the ability of the Council to seek an indemnity in respect of these costs from a future developer.
15. Disposal of the site would result in a capital or revenue receipt and if a decision was taken to dispose of the site, Members would receive a further report on that issue at the appropriate time. It is important to note that S203 of the 1990 Act can only be engaged where the planning purpose for which the land is held directly relates to a planning permission and only for the life of that permission (i.e., whilst the land is used in compliance with that specific planning permission).

EQUALITIES IMPLICATIONS

16. There are no equalities implications arising as a result of these proposals.

OTHER IMPLICATIONS

17. None

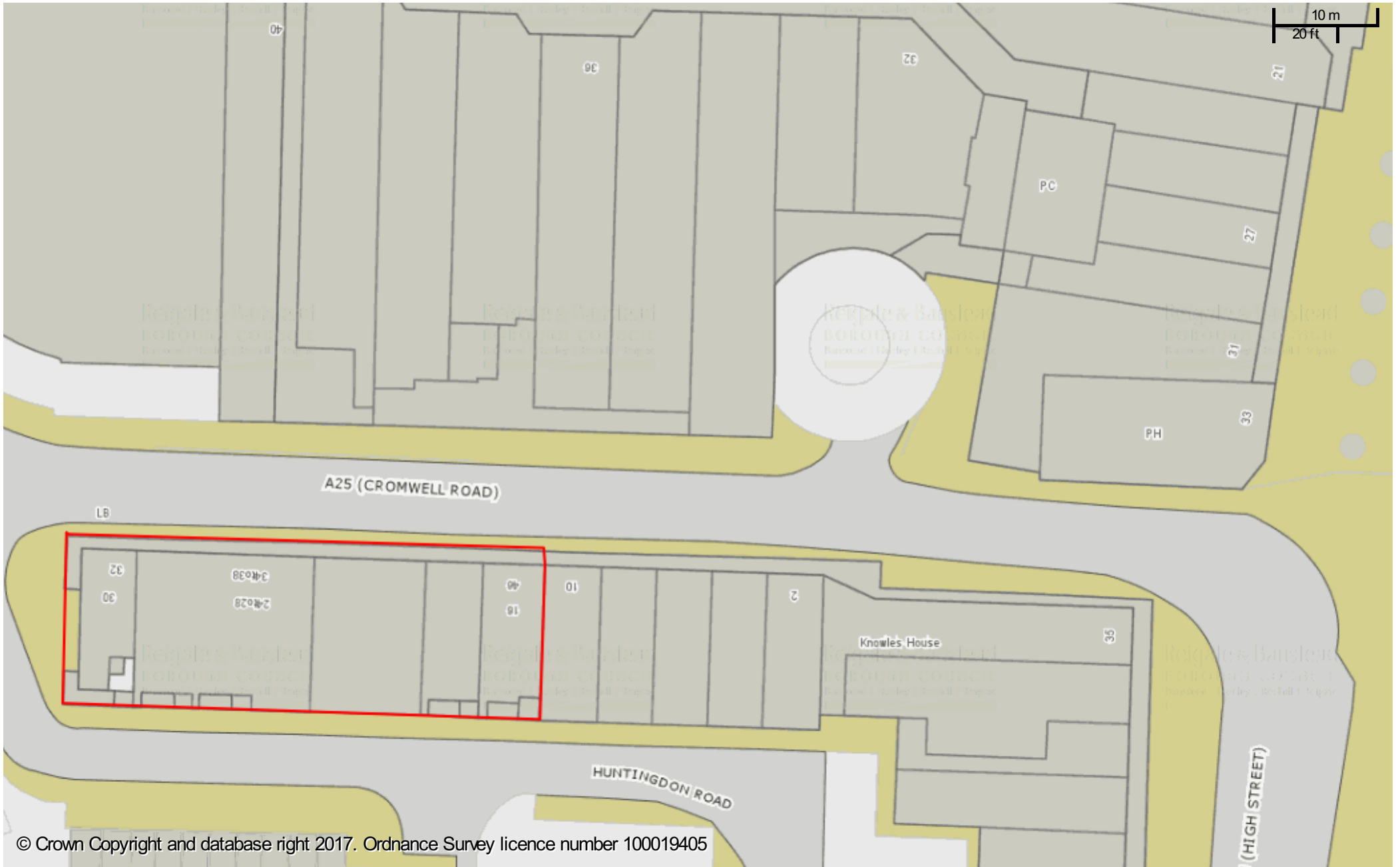
CONSULTATION

18. Case Law confirmed that the decision as to whether land is no longer required for a particular purpose is one for the local authority to make and cannot be challenged as long as it is made in good faith. However, the local authority is required to consider objections to its view on whether land is required for its present purpose as well as objections to its view that it should be appropriated for a new purpose.
19. Ward members (Redhill West) have been consulted on the proposals and have no comments on the proposals.

Objections

20. No objections had been received as at the date of circulation of this report. An addendum will be circulated prior to the Executive meeting if any objections are subsequently received.
21. The Leader, Deputy Leader and Executive Members for Property Acquisitions, Planning Policy and Finance and officers in Policy & Regeneration have received verbal or written briefings about this matter.

Background Papers: None



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16-46 Cromwell Road, Redhill

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