

Committee: CABINET

Date of meeting: 13 September 2017

Subject:	Stompond Lane – Appropriation and Disposal
Lead Officers:	Head of Legal Services, Head of Asset Management and Property Services
Portfolio Holder:	Resources – Cllr C Sadler
Link to Council Priorities:	All
Exempt information:	None
Delegated status:	For recommendation to Council on 27 September 2017
Key Decision:	N/A

EXECUTIVE SUMMARY:

The soon to be completed Sports Hub at Waterside Drive, and the establishment of the principle of preferred future development for the Stompond Lane site, allows the Council to formally determine if land at Stompond Lane is no longer needed for the purposes for which it was originally acquired. This report examines the history of the site, the use to which it has been put and the steps taken to secure community uses elsewhere. It is concluded that the land is no longer needed for the statutory purpose under which it is currently held and that it should be appropriated to a planning purpose that will facilitate its future development.

RECOMMENDED: THAT THE COUNCIL

- (A) APPROPRIATES THE FREEHOLD LAND ON THE SOUTH SIDE OF STOMPOND LANE, WALTON-ON-THAMES, FOR PLANNING PURPOSES, AS DELINEATED (EDGED RED) ON THE PLAN ATTACHED TO THE REPORT, PURSUANT TO SECTION 122 LOCAL GOVERNMENT ACT 1972;**
- (B) NOTES THE APPLICATION OF SECTION 203 HOUSING AND PLANNING ACT 2016 TO ALL OR ANY ENCUMBRANCES AS MAY AFFECT THE DEVELOPMENT OF THE LAND IN ACCORDANCE WITH PLANNING PERMISSIONS GRANTED IN RESPECT THEREOF; AND**
- (C) AUTHORISES DISPOSAL OF THE LAND PURSUANT TO SECTION 233 TOWN AND COUNTRY PLANNING ACT 1990 AND FOR THE STATUTORY PURPOSES SET OUT THEREIN.**

REPORT:

1 Stompond Lane Development Background

- 1.1 The future of the Stompond Lane Sports Ground has for several years been inextricably linked to the development of state-of-the-art sports facilities at Waterside Drive. The creation of new sports facilities next to the Xcel Leisure Centre at Waterside Drive had been considered by the Cabinet in October 2011 and the Council in December 2011. In this connection, the Cabinet established a cross-party Task Group to consider options for the future of the Stompond Lane site. The Task Group, reflecting the overall political composition of the Council, had as its Terms of Reference: “To consider the

various options open to the Council in the event of the Stompond Lane site being vacated following a move by Walton and Hersham Football Club and the Athletics Club to Waterside Drive, with the findings and recommendations being reported to Cabinet in due course.”

- 1.2 After nearly a year of careful consideration, the Task Group reported its findings to the Cabinet on 13 February 2013. The report set out its vision of securing the future of four local sports clubs through a sensitive development of the sports ground at Stompond Lane by providing modern replacement facilities for three of the clubs at Waterside Drive. The proposals involved the creation of a brand-new football ground to be shared between Walton Casuals Football Club (and their Juniors) and Walton and Hersham Football Club at Waterside Drive. The same site would also accommodate Walton Athletics Club in newly built facilities. Development at Stompond Lane would be sensitive and reflect the character of the surrounding area, providing new housing and securing the future of Walton Tennis Club in that same location. The core problem identified by the Task Group was that three of the sports clubs (Walton and Hersham Football Club, Walton Casuals and Walton Athletics Club) were all using inadequate and deteriorating facilities and none of them generated enough income to invest for the future. Councillors wanted to avoid burdening Council Taxpayers with a bill for £millions which would be needed to prop up the ailing facilities. Instead they recommended a plan to develop the Stompond Lane site to generate funds to move the two clubs to new and enhanced facilities at Waterside Drive, to be shared with Walton Casuals.
- 1.3 The Cabinet and the Council considered all the evidence presented by the Member Task Group and accepted its recommendations in full. The Council then embarked on an extensive public consultation on its proposals for Stompond Lane. Changes were made to the indicative layout to accommodate requests from the public and to address concerns by Walton Tennis Club. The basis for the submission of an outline planning application was agreed, together with the convening of a Member Reference Group to assist in further work. A Special Meeting of the Overview and Scrutiny Committee on 1 August 2013 examined the proposals in detail and allowed them to proceed.
- 1.4 On 3 December 2014 the Council approved recommendations from a Cabinet meeting held on 19 November 2014. A procurement process was agreed that would assist the Council in ensuring a viable development on the Stompond Lane site. Authorities were granted to appoint property and legal advisers and to agree a development that met the Council’s objectives. Accordingly, a marketing exercise for the sale of Stompond Lane was conducted in 2015. The Property Appraisal Group reviewed the bids and considered that the proposal from London Square would deliver the best and most appropriate outcome for the Council. The Cabinet considered the proposal on 8 July 2015 and recommended to the Council that the offer from London Square be accepted and the Contract of Sale agreed. The Council approved the recommendations from Cabinet on 22 July 2015. London Square were duly appointed as preferred purchasers/developers.

1.5 Officers worked with London Square on the preparation of a full planning application for development.

2 Site History

2.1 The Council is the freehold owner of around 10 acres of land on the south side of Stompond Lane and the west side of Hershams Road. It has been the home to the Walton and Hershams Football Club, as well as Walton Athletics Club and the Walton Lawn Tennis Club. Overall the predominant use of the site has been as a sports ground with these organisations occupying the land pursuant to various agreements.

2.2 The land was originally owned by Joseph Sassoon Sassoon, together with other land, all of which was known as the Ashley Estate. By a conveyance dated 3 June 1909 the land was conveyed to George Drabble. George Drabble died on 31 January 1930 and his will bequeathed the land to his widow, Agnes Eva Drabble. The land was assented to Agnes Drabble. Agnes Drabble conveyed the land to Ernest Hopkins on 9 January 1933. The Council's predecessor, the Urban District Council of Walton and Weybridge, acquired the land from Mr Hopkins on 29 March 1933 under its Public Health Act powers. The land is still held on that basis.

3 Encumbrances

3.1 The conveyances of 1909 and 1933 contain a number of stipulations which were commonplace when large estates were sub-divided. Restrictive covenants will normally seek to restrict the use to which the sold land is put in order to protect the amenity of the retained land. It is impossible to be certain as to whether any of the covenants imposed in 1909, and again in 1933, benefit and are enforceable by any person today – but a prudent purchaser will assess the risk and take appropriate measures.

3.2 One covenant in particular would, on its face, prohibit the construction of more than one dwelling per half-acre and pose a potential difficulty in the event of a future residential development.

3.3 One statutory effect of appropriating the land for a planning purpose is to override any private rights (such as restrictive covenants) when development is carried out pursuant to a planning permission (section 203 Housing and Planning Act 2016). Any person able to establish a private right would see that right converted to a claim for compensation. This is the law seeking to strike a public interest balance between the lawful development of land and the rights of individuals. Importantly, the statutory provision benefits not only development by the local planning authority but by “a person” using the land by carrying out building or maintenance work. The statutory provision will apply to works etc. which could involve interfering with a relevant right or interest or breaching a restriction as to the user of land arising by virtue of a contract.

3.4 Section 203 does not extinguish the rights in question but merely overrides them to allow a specific development to proceed in accordance with a grant of planning permission. Third parties are protected by the entitlement to compensation. Nevertheless, the Council should take into account its potential interference with property rights and consider the public interest justification for this course of action. This is the balancing act struck by statute, recognising the public interest in giving local authorities freedom to develop land for planning purposes whilst taking account of the need to protect the interests of third parties affected by that development.

4 Principle of Residential/Mixed Development

4.1 On 15 January 2014 outline planning permission was granted for 30 detached and semi-detached houses, a two-storey office building, a residential care home and a detached doctor's surgery/nursery with rooms in the roofspace. The planning assessment noted that the area surrounding the application site is predominantly residential, particularly in Stompond Lane and Ashley Drive, with a greater mix of uses along Hersham Road. Policy CS1 of the Core Strategy seeks to direct new development to previously developed land within existing built-up areas taking account of access to services and infrastructure. The principle of a mixed-use development in this sustainable location was considered to be in keeping with the core principles of both national policy set out in paragraph 17 of the NPPF and local level policies.

4.2 Sport England raised no objection to the proposal, subject to adequate replacement facilities being provided elsewhere within an appropriate time-frame. The fact that appropriate replacement sports facilities were to be provided at Waterside Drive meant that any policy objection was overcome.

4.3 Outline permission 2013/3492 established the principle of a redevelopment that was considered acceptable applying the statutory test in Section 38(6) Planning and Compulsory Purchase Act 2004 and being a determination made in accordance with the development plan except to the extent that material considerations indicated otherwise. Development of the site would not have a significantly detrimental impact on the free flow of traffic in the surrounding area, the character and appearance of the area or the amenities of nearby residents.

5 Detailed Planning Permission

5.1 Planning Application 2017/0080 submitted by London Square Developments Limited proposed: -

- Demolition of existing buildings and structures
- Provision of 49 dwelling-houses and 5 residential apartments
- A two-storey building to accommodate nursery use
- Car parking provision comprising 105 spaces in total
- Cycle parking provision comprising 106 spaces in total
- Provision of car park comprising 36 spaces for Walton-on-Thames Tennis Club;

- Provision of a practice wall for the tennis club; and
- Associated landscaping

5.2 The proposals were developed in the context of the previous outline consent and with the benefit of extensive pre-application consultation with local residents and local councillors. The proposals are considered to be in accordance with relevant national and local planning policy. So far as the Council's planning function is concerned, residential-led development is considered to be the most appropriate re-use of the site. The proposals will significantly boost the Council's housing supply at a time of acute need nationally and locally. Planning policy at all levels afford a priority to the delivery of new housing.

5.3 The loss of recreational facilities on this site is considered acceptable in principle because the replacement facilities at Waterside Drive will provide an enhanced sports and recreation ground which could serve the needs of the existing users at Stompond Lane in addition to a range of other sports clubs. Within this planning context, the existing buildings at Stompond Lane associated with the football and athletics club are of poor quality and the existing grandstands are in a dilapidated condition. The financial implications of continuing to maintain the existing facilities are not favourable. New and updated facilities will bring long term benefits in terms of usability and reduced ongoing maintenance costs.

5.4 Application 2017/0080 was considered by North Area Planning Sub-Committee on 24 July 2017. The Sub-Committee resolved to recommend to the Planning Committee the grant of planning permission for development.

On 5 September 2017 the Planning Committee resolved that permission be granted with the conditions and informative as outlined in the agenda, subject to the completion of a satisfactory legal agreement within 30 days to secure affordable housing provision, SAMM contributions and Stompond Gardens improvements; and subject to the following amended conditions:

Amend Condition:

16. LOCAL HIGHWAY IMPROVEMENTS

The development hereby approved shall not be first occupied unless and until the following improvements:

- The provision of bend warning signs and lines within Stompond Lane;
- Reconstruction of the footway segments abutting the site's boundaries on Stompond Lane alongside the creation of a new vehicular access to Stompond Lane,

have been constructed in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

Amend Condition:

21. NOISE/ACOUSTIC ASSESSMENT

Prior to the commencement of the development of phase 2 the following

documents must be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England and consideration by the North Area Planning Sub Committee:

i. A detailed noise/acoustic assessment of the impact from Walton Lawn Tennis Club's activities, including use of the proposed relocated practice court and wall, on the new adjacent residential properties and any necessary mitigation measures to achieve acceptable noise levels in line with national planning policy both within internal living; sleeping areas and gardens of these residential properties; and

ii. Following the results of the assessment to be carried out pursuant to (i) above a detailed scheme identifying the implementation and maintenance of suitable noise mitigation measures. The scheme shall not seek to place unreasonable restrictions on the tennis club's operations nor identify Walton Tennis Club as responsible for the maintenance of any proposed mitigation measures.

The development of these dwellings shall thereafter be carried out in accordance with approved scheme and any mitigation measures maintained as appropriate.

5.5 Whilst the views expressed above about the inadequacy of existing recreational facilities (and the significant upgraded provision being made available elsewhere) have been reached in a planning context, they are capable of applying equally to the decision to appropriate the land for a planning purpose. That said, a decision on appropriation does not automatically follow a planning decision. A decision on appropriation must be made on its own merits, albeit that the planning decision is material and can be taken into account.

6 Land Management

6.1 The problems that faced sports grounds and clubs in Elmbridge, and an essential driver of the Sports Hub project, can be summarised thus: -

- Stompond Lane, the home of Walton and Hersham Football Club, has been in need of repair and upgrading to modern standards for many years
- Walton Athletics Club, also located at Stompond Lane, required improvement to its facilities
- Walton Casuals Football Club, based at Waterside Stadium, were occupying land which needed to be remediated

6.2 The improvement of Stompond Lane was not an economically viable course and the Sports Hub proposal arose as the best means of resolving all the above difficulties with a development that would create a beacon of sport in Elmbridge to benefit residents of all ages.

6.3 The football and athletics clubs did enter into a Memorandum of

Understanding with the Council expressing their interest in relocating or re-establishing their existing facilities and occupying the new football and athletics stadium being constructed at Waterside Drive. All the parties agreed to work together in good faith for the development and delivery of the Waterside Drive project with a view to creating a sustainable sporting legacy for the Borough of Elmbridge and securing the future of the clubs.

6.4 New state of the art facilities to meet all modern Sport England standards are currently under construction at the Sports Hub and are on target to open in September 2017. Facilities to replace those at Stompond Lane will include a new 8 lane athletics track, a FIFA Quality 3G synthetic football pitch, a FIFA Quality reserve 3G synthetic football pitch, and grass junior pitches. The facility has been designed in conjunction with Sport England, UK Athletics, the Football Association, Ryman League and Combined Counties Football league to meet all of the current and future needs of all of the resident clubs. Walton and Hersham FC have completed the 2016/17 season at Stompond Land, playing in the Combined Counties League (Step 5 in the Football league pyramid). At the same time to ensure suitable facilities continued to be available to the club through the construction, improvements have also been made to Cobham FC's ground at the Leg of Mutton field to raise the ground grading required to be suitable for both Combined Counties League (WHFCs current league) and also the Ryman South league (should WHFC have been promoted). This Ground Grading was approved by the Football Association in advance of the 2016/17 season.

6.5 Bringing a number of sports clubs together meets the DCMS's 2017 Sports Strategy:

Multi-Sport Facilities

As well as including other services alongside sporting infrastructure, it is also important to ensure that as many sports as possible can be played on those facilities. The impact of fantastic new sports facilities that can only be used for a single sport is likely to be less than one that can cater to a wider range of people who want to play different sports. New sporting infrastructure needs to accommodate the maximum possible number of sports so that people have the broadest choice of how to be active. Similarly, when planning major capital investment for one sport, it is vital to consider whether other sports have similar plans to make sure economies of scale are exploited.

Source- Sporting Future: A New Strategy for an Active Nation

6.6 Walton Athletics Club have now vacated the site at Stompond Lane in advance of moving in to the new Sports Hub in September. Temporary arrangements have been agreed with the club with alternate facilities being provided at the Council's expense at St Georges College and Walton Cricket Club.

6.7 Asset Management and Leisure Services are working closely with Walton Tennis Club (who will remain at Stompond Lane but outside the land

considered for appropriation) in respect of their ongoing occupation. London Square have also been in contact with the tennis club and will continue to work with them to ensure continuity of their facilities during the build.

6.8 Members will be aware that, despite making an in-principle commitment to relocation to Waterside Drive, Walton and Hersham Football Club have more recently been resistant to the Council's plans. There have been legal proceedings between the Football Club and the Council under which the Council opposed any renewal of the Football Club's lease in reliance on paragraph (f) of section 30(1) of the Landlord and Tenant Act 1954 Part II. The Council obtained summary judgement against the Club on 11 November 2016 and the Club appealed to the High Court. By Order dated 27 April 2017 Mr Justice Snowden decided that an application for permission to appeal could proceed with a rolled-up hearing on the appeal issues if permission was granted. However, in the event no hearing was necessary as the Football Club agreed to a consent order. The court order of 27 July 2017 sees the appeal dismissed and the Football Club required to deliver up possession of the Stompond Lane Sports Ground on or before 29 September 2017. This court outcome is a significant step in the Council's plans for appropriation and disposal.

7 Reason for Appropriation

7.1 The reason for the appropriation is to facilitate the development of land in the public interest and as authorised by an appropriate planning permission. Planning permission has been, and will only be, granted strictly in accordance with the Development Plan except where material circumstances indicate otherwise (section 38(6) Planning and Compulsory Purchase Act 2004).

7.2 The purpose of the restrictive covenants in the conveyances is understood: they were imposed to protect the amenity of the seller's retained land. At the same time the Council is aware of the type and nature of harm that objectors to the previous and current planning application consider is likely to arise from development of the land. Those factors have to be taken into account and balanced against the benefits of the proposed re-use of the land. Objections to development which are based on the existence of covenants nearly all tend to raise issues which are proper planning issues (highway safety, congestion, parking, the character of the area and general amenity) which are considered in the round in the application of planning policies to any particular form of planning application.

7.3 Appropriation is also a feature of the Sale Agreement with London Square. The developer has sought reasonable assurance that the site can come forward for development as proposed. Other development partners would have likely taken a similar approach. The Council has agreed following the grant of a satisfactory planning permission to take such steps as are necessary to consider its rights of appropriation in relation to the property and the car park land. The appendix to this report defines the land to be the subject of this appropriation. It comprises the "residential land", "non-residential land" and "car parking land" as defined in the sale contract and

edged red in the plan attached to this report.

8 Conclusions

8.1 The Council has for several years sought to secure the long-term provision of sports facilities within the Borough. Many public reports have come forward, examining all available options and working up proposals. The Cabinet and the Council on 13 and 27 February 2013 accepted the detailed findings of the cross-party Member Task Group as to the future of the Stompond Lane Sports Ground. The Council approved a process that would ultimately provide modern and greatly enhanced facilities for the displaced community users, meeting all stakeholders' reasonable requirements and, at the same time, resolving all the Council's legal obligations with respect to contamination at Waterside Drive. The Sports Hub project is nearing completion and with it the realisation of a long-term Council objective.

8.2 With the crystallisation of ambitions to reprovide sports facilities at Waterside Drive, the Council must consider whether Stompond Lane is any longer needed for its current statutory purpose of a recreation/sports ground. Despite Walton and Hersham Football Club's past opposition to relocation, the Council has no intelligible or sound case before it that could see a continuation of the existing facilities at Stompond Lane. Conversely, there are new and enhanced facilities available elsewhere. In addition, the sale and disposal of Stompond Lane will help achieve measurable benefits in the public interest, such as the provision of much-needed housing.

8.3 Officers consider that, following a careful evaluation of evidence and after balancing competing needs, Stompond Lane is no longer required for the purpose for which it is currently held – and that appropriation to a planning function is the proper course. Key to this conclusion are the following material factors and judgements: -

- Provision is being made for the relocation of users elsewhere with all reasonable assistance in transition
- Walton Athletics Club have vacated Stompond Lane in readiness for occupation at Waterside Drive and temporary arrangements have been provided at the Council's expense
- Permanent and modern facilities remain available for occupation by Walton and Hersham Football Club at Waterside Drive with all necessary interim provision being found and offered (as detailed in the report)
- Walton and Hersham Football Club are subject to a court order to vacate the site
- The proposed re-use of the site will achieve community benefits, such as a significant number of residential units and some affordable housing
- As a relevant but not determining factor, the principle of an alternative use/development on the site has been established by planning permission and an evaluation of all material considerations has been carried out to accord with the statutory test
- Objections to redevelopment at Stompond Lane, taken as a whole, are not seen as carrying sufficient weight to discount appropriation, when set

against the progress made in developing Waterside Drive and the benefits of the scheme for Stompond Lane

- Viewed overall, taking account of new provision and the benefits flowing from development of land, appropriation will be in the wider public interest

Financial implications: There are none directly arising from the exercise of the appropriation power. London Square will take on liability for any future compensation that could arise from the overriding of any private rights. Accepting such an indemnity from the developer is expressly authorised by section 204(3) Housing and Planning Act 2016.

Environmental/Sustainability Implications: None arising directly, although all planning applications relating to the site will always take account of environmental and sustainability concerns in a policy context.

Legal implications: The Council must be satisfied that the land is no longer required for the purpose for which it is currently held (a matter it has been held is for the local authority to decide in good faith and not for the court). A conclusion can be reached by balancing comparative and competing local community needs. It is not necessary to find that the land could no longer productively be put to its current use at all. So far as future development and use of the land is concerned, and as may be authorised by planning permission, there is no requirement that the work or use should be undertaken first by the local planning authority, or that it should be pursuant to the first planning permission granted in respect of the land since the appropriation.

Equality Implications: None arising.

Risk Implications: Failure to appropriate the land for a planning purpose, and consequently not engaging the statutory provisions in the Housing and Planning Act 2016, could jeopardise the land deal for Stompond Lane and the receipt of a capital receipt necessary to facilitating development at Waterside Drive. That should not, however, distract the Council from the principal test of assessing on the available evidence whether the land is still required for its existing purpose.

Community Safety Implications: None arising.

Principal Consultees: Leader, Portfolio Holder for Leisure, CMB, Head of Leisure and Cultural Services.

Background papers: None other than published papers.

Enclosures/Appendices: Appropriation Plan showing land edged red (comprising land defined as residential, non-residential and car parking in proposed sale agreement).

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