

10. MARTLETS SHOPPING CENTRE, BURGESS HILL — USE OF COMPULSORY PURCHASE POWERS TO FACILITATE THE DELIVERY OF AN IMPROVED SHOPPING OFFER AND NIGHT TIME ECONOMY IN BURGESS HILL COMENSURATE WITH THE GROWTH OF THE TOWN

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Wards Affected: Burgess Hill
Key Decision: N/A
Report to: Council
Date of meeting 27 September 2017

PURPOSE OF REPORT

1. The purpose of this report is ask Council to endorse the use of Compulsory Purchase powers. This is to facilitate the redevelopment of the Martletts Shopping Centre, Burgess Hill ("**the Centre**") by overriding third party parking rights, subject to alternative parking rights being offered or compensation being provided, to facilitate the implementation of planning permission DM/15/3858 ("**the 2016 Planning Permission**") or similar permission with an indemnity being provided by New River Retail (GP3) Limited ("**NRR**") for all costs payable.

SUMMARY

2. On 8 September 2015 the Council's Cabinet received a report on proposals from NRR to redevelop the Centre. The Council resolved to accept the offer and authorised officers to agree terms for the surrender of the existing lease and the grant of a new lease to NRR. On 14 March 2016, NRR obtained the 2016 Planning Permission for the redevelopment of the Centre, which approves a redevelopment scheme to provide additional retail and other town centre uses (including a new cinema, hotel, 142 residential apartments and a new library) as well as public realm improvements.
3. Implementing the 2016 Planning Permission involves the demolition of buildings including the multi-storey car park, Martlets Heights, Martlets Hall and existing commercial units. NRR have identified potential impediments to implementing the 2016 Planning Permission, specifically, a range of parking and access rights over the Centre ("**the Rights**") that benefit neighbouring properties in Church Walk ("**the Rights Holders**"), which the Council granted by deed in 1982.
4. It is important that, once the development work begins, there are no matters remaining that could delay the timely delivery of the work. Therefore, Cabinet have appropriated the land for planning purposes for implementing the 2016 Planning Permission or similar permission and have asked Council to endorse their willingness to use compulsory purchase powers to enable any parking rights

remaining on the development site to be overridden under Section 203 of Housing and Planning Act 2016.

5. One of the requirements to be satisfied before the power to override rights under Section 203 can be used, is whether the Council could, *in principle*, acquire the land identified in the Site Plan compulsorily for the purposes of allowing the building work under the 2016 Planning Permission.
6. The tests for compulsory acquisition of land for development and other planning purposes are detailed in Section 226 of the Town and Country Planning Act 1990. The tests for compulsory purchase would be met in this case, both with regard to Section 226 and the accompanying policy guidance issued by the Department for Communities and Local Government. The Council could acquire the land by compulsion if so required. The Council is now being asked to resolve that it would, in principle, exercise compulsory purchase powers to permit the construction of the scheme approved under the 2016 Planning Permission subject to a full indemnity for all compensation and other costs.
7. The Council has had the benefit of legal advice provided by leading planning counsel in respect of the exercise of the statutory powers noted above.

RECOMMENDATION

18. *The Council is recommended to:*

endorse the exercise by the Cabinet, in principle, of the Council's powers of compulsory purchase over the land comprising the Martlets Shopping Centre, Burgess Hill, West Sussex, shown edged in red on the Site Plan annexed hereto at Appendix A, under the powers contained in Section 226(1)(a) of the Town and Country Planning Act 1990, having regard to the Secretary of State's policy in "Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion: Guidance" issued by the Department for Communities and Local Government dated October 2015.

This is to enable the Council to exercise the Council's powers to override the existing third party rights identified in this report under the powers contained Section 203 of the Housing and Planning Act 2016, if required in order to facilitate the implementation of the development scheme approved by the local planning authority on 14 March 2016 under planning permission DM/15/3858.

BACKGROUND

19. In the 1950's Central Government encouraged urban district councils to develop and adopt town plans for their areas with a view to stimulating a post-war economic revival. In the late 1950's, the Council's predecessor, the Burgess Hill Urban District Council, adopted the Burgess Hill and District Town Plan, which plan included a

central development area for the comprehensive development of the town centre, known as the Burgess Hill CDA.

20. On the 28 January 1961, the Burgess Hill UDC's Town Planning and Building Byelaw Committee approved a comprehensive development scheme for the Burgess Hill CDA.
21. Between 1959 and 1968 the Burgess Hill UDC used their planning powers to acquire various properties located within the area of the Burgess Hill CDA by agreement for planning purposes, but eventually had to resort to compulsory purchase powers and on 20 November 1968 the Minister of Housing and Local Government confirmed the Burgess Hill (Central Area) No.1 Compulsory Purchase Order 1965 under which the majority of the land now comprising the Martlets Shopping Centre was acquired.
22. On 29 April 1970, the Burgess Hill UDC granted planning permission D70.BH1 for the development of a shopping centre. The scheme comprised a substantial shopping element, an open market, car parking for some 700 cars, an office block, new Civic Hall and Library, with some maisonettes. The scheme approved by the 1970 planning permission was implemented via a Building Agreement with Land and House Corporation Limited who constructed the original shopping centre in Burgess Hill known as Phase I, which was subsequently leased to them under a Head Lease dated 28 March 1974, which was granted for a term of 125 years from 25 March 1971.
23. On 1 April 1974 the Burgess Hill UDC was abolished and replaced by Mid Sussex District Council as part of a comprehensive re-organisation of local government. The land comprising the Burgess Hill CDA became vested in Mid Sussex District Council on 1 April 1974.
24. Land and House Corporation Limited transferred their leasehold interest to the Friends Provident Life Office in 1980 and subsequently the lease was assigned to PosTel Properties Limited.
25. A development brief for Burgess Hill Town Centre was prepared in 1986 for additional shopping of some 70,000 square feet plus car parking with the intention that there be at least a major space user as an anchor store, re-housing of the existing market and further residential units over the shops. At the time the development brief was published the Council were freeholders of 85% of the site.
26. At the meeting of the Council's Land and Property Resources Sub-Committee held on 4 May 1988 the Council resolved to grant a new lease to PosTel of Phase I, subject to an obligation to refurbish Phase I at their own expense and simultaneously with the development of Phase II — the Market Place Shopping Centre - and PosTel conveying the land required for Phase II free of charge, but in consideration of the grant of the new lease of Phase I.
27. On 2 May 1989 PosTel assigned the Head Lease to Sibec Developments Limited and negotiations then continued with them. However, as PosTel had been dragging

their feet, which was delaying negotiations for the development of Phase II with another developer, the Council had, by that time, already resolved to compulsorily purchase PosTel's interests in the Town Centre and a number of compulsory purchase orders were made by the Council being the Mid Sussex District Council (Burgess Hill) Compulsory Purchase Orders 1988 numbers 1, 2, and 3, which were confirmed by the Minister for Environment and Transport in 1989.

28. The Martlets Phase I Shopping Centre Burgess Hill was refurbished by Sibec Developments Limited pursuant to a Deed of Covenant made on 23 February 1990 made in consideration of the Council granting them a new Head Lease on the same date for a term of 150 from 29 September 1989. The parties to the Head Lease were the Council, Sibec (Burgess Hill) Limited and Sibec Developments Limited, by which time the Council became freeholders of 100% of the site. There have been numerous assignments of the Head Lease since 1990, with New River Retail Limited ("**NRR**"), having taken an assignment in 2010, being the present head leaseholder of the Martlets Shopping Centre Phase I ("**the Centre**"). The Council is also the local planning authority.
29. At a meeting of the Council's Cabinet held on 8 September 2015, the Council received a report from the Assistant Chief Executive on proposals for the re-development of Burgess Hill Town Centre, which outlined an offer from NRR for the redevelopment of the Martlets Shopping Centre and resolved to accept the offer and authorised the Solicitor to the Council (now the Solicitor and Head of Regulatory Services) and the Assistant Chief Executive to agree detailed Heads of Terms of Agreement and the new lease of the Martlets Shopping Centre, minute 16 refers.
30. On 14 March 2016, the Council, in its capacity as the local planning authority, granted planning permission DM/15/3858 ("**the 2016 Planning Permission**") for the redevelopment of the Centre including, the demolition of the multi-storey car park.
31. Potential impediments to the redevelopment of the Centre have been identified by NRR. These relate to rights under a deed dated 8 February 1982 ("**the 1982 Deed**") under which the Council granted the neighbouring property, now known as 93 — 107 Church Walk, Burgess Hill ("**the Rights Holders**"), the rights ("**the Rights**") set out below:
 - (a) the right to park vehicles by the multi-storey car park in the positions coloured in red on the plan annexed to the 1982 Deed, a copy of which is annexed hereto at Appendix B;
 - (b) the right to pass over and across so much of the multi-storey car park as is necessary to reach those positions from and to Civic Way; and
 - (c) the right to pass on foot only across so much of the car park and private pathways to reach the part of Church Road which was, at the date of the 1982 Deed, restricted to pedestrians.

32. There is some uncertainty regarding the existence of the Rights and precisely how they are held. The division of the property into a number freehold titles and further subdivision of those freehold titles into a number of leasehold titles seems to have extended the benefit of the Rights to a number of interests not originally identified in the 1982 Deed. In particular, in relation to the parking rights, it appears that when the freehold title was subdivided, the rights which attached the whole of 93-107 Church Walk were not separately allocated to portions of the original interest. This creates uncertainty as to precisely how the Rights are held.
33. Implementation of the 2016 Planning Permission necessitates the demolition of buildings including the multi storey car park, Martlets Heights, Martlets Hall and existing commercial units and the construction of new buildings at the locations where the Rights may be exercised. Undertaking the redevelopment of the Centre would therefore, irrespective of the precise nature and extent of the Rights (and any other rights which may be affected), prevent the Rights being exercised, but as the Rights are legally enforceable rights that can potentially be enforced against both the Council and NRR, if they are still used, the risk of enforcement is such that it would prevent NRR undertaking the redevelopment of that part of the scheme approved under the 2016 Planning Permission.
34. The Council, in its capacity as freeholder, supports the redevelopment of the Centre, given the benefits such redevelopment brings to the Town as set out below and in the report to Cabinet held on 8 September 2015, and given those benefits, the Council has been approached by NRR regarding the exercise of the Council's statutory powers aimed at appropriating the land identified in the Site Plan for the purposes of delivering the redevelopment scheme approved under the 2016 Planning Permission, and of overriding the Rights. Overriding the Rights would provide the certainty required by NRR to allow the redevelopment scheme to fully proceed.
35. The redevelopment scheme is considered to constitute a sustainable form of development. The apartments, the hotel, cinema and retail units are considered in planning terms to provide a vibrant mix of uses which have the potential to regenerate the town centre. In particular the redevelopment will deliver a significant and substantial improvement to the offering currently available within the town centre. It will also represent an enhancement to the town centre's physical and visual environment.
36. The regeneration benefits to be gained from the redevelopment scheme are considered to be of greater value to the local residents than the retention of the land as identified in the Site Plan for the existing Centre. To put it another way, the benefits provided by the redevelopment proposals are considered to outweigh the desirability of retaining the land for the purpose for which it is currently held and used.
37. The Council is satisfied that statutory powers contained within Section 203 of the Housing and Planning Act 2016 could be used to override the Rights. However, the Council has previously made clear to NRR that the emphasis should always be on

securing agreements with the affected parties on a voluntary basis if at all possible. Relying on statutory powers is a last resort to be used only where it is either not possible or is impractical for NRR to agree voluntary settlements.

38. As a precursor to exercising its statutory powers, the Council required that NRR undertake detailed title investigations not only to seek to identify all of the Rights Holders, but to seek to agree a settlement with all of the Rights Holders. Letters were sent to the registered owners and occupiers of the Properties at 93 — 107 Church Walk, Burgess Hill explaining the proposals for the redevelopment of the Centre; how this affects their rights and the desire of the Council and NRR to find a solution that, so far as possible, works for everyone. The letters contained an offer of alternative parking rights on the Council's Cyprus Road Car Park as an alternative to a compensation payment and an offer of a financial contribution towards legal advice and fees to enable recipients to obtain appropriate advice on the terms proposed. The letters also explained the Council's statutory powers and stressed the importance of the redevelopment to the inhabitants of Burgess Hill. Negotiations continue between NRR and those claiming parking rights.
39. The Council is satisfied that NRR have taken and are continuing to take reasonable steps to engage with affected parties and to seek to enter into voluntary agreements. The Council accepts that it is impractical to attempt to rely solely upon voluntary agreements. Failure to reach an agreement with all the Rights Holders would impact on the implementation of the redevelopment scheme due to the legal and business risks involved.
40. The Council is also conscious that NRR has a challenging programme for the delivery of the redevelopment scheme. Therefore, without the Council resorting to the use of its statutory powers, there is a risk that the benefits of the redevelopment scheme would not be realised.
41. At the meeting of the Council's Cabinet held on 10th July 2017, Cabinet resolved: "Subject to New River (GP3) Limited indemnify the Council from and against all legal, surveyors' and other costs, claims and liability and consideration (including costs and compensation payments arising from the exercise of statutory powers) to:
 - (a) appropriate the land comprising the Martlets Shopping Centre, Burgess Hill, West Sussex shown edged in red on the Site Plan annexed hereto at Appendix A, and currently held for planning purposes to planning purposes of implementing the redevelopment scheme approved by the local planning authority on 14 March 2016 planning permission DM/15/3858 or any subsequent planning permission for a similar development scheme in respect of the Martlets Shopping Centre pursuant to the Council's powers under Section 122 of the Local Government Act 1972 with immediate effect;
 - (b) if required, in order to facilitate the implementation of the development scheme mentioned in (a) above, be minded to recommend to Council the exercise of the Council's powers of compulsory purchase over the land comprising the

Martlets Shopping Centre, Burgess Hill, West Sussex shown edged in red on the Site Plan annexed hereto at Appendix A, under the powers contained in Section 226 of the Town and Country Planning Act 1990, having regard to the Secretary of State's policy in "Compulsory purchase process and the Criche Down Rules for the disposal of surplus land acquire by, or under threat of, compulsion: Guidance" issued by the Department for Communities and Local Government dated October 2015 as outlined in paragraphs 62 to 65 of the Cabinet report;

- (c) if required, in order to facilitate the implementation of the development scheme mentioned in (a) above, be minded to exercise the Council's powers to override the existing third party rights identified in this report under the powers contained in Section 203 of the Housing and Planning Act 2016 through the appropriation of the land comprising the Martlets Shopping Centre, Burgess Hill, West Sussex; and
 - (d) authorise the Solicitor to the Council and Head of Regulatory Services and the Head of Corporate Resources to complete all necessary legal documentation to facilitate the implementation of the development scheme mentioned in (a) above and the grant of necessary rights over part of the Council's Cyprus Road Car Park, Burgess Hill, hatched in blue on the attached plan at Appendix D on terms acceptable to the Solicitor to the Council and Head of Regulatory Services and the Head of Corporate Resources.
42. On 19 July 2017 the Council entered into an Agreement for Lease with New River Retail (GP3) Limited and New River Retail (Nominee No.3) Limited which provides for the comprehensive redevelopment of the land comprising the Martlets Shopping Centre, Burgess Hill, West Sussex shown edged in red on the Site Plan annexed hereto at Appendix A, in accordance with the scheme approved by the local planning authority on 14 March 2016 planning permission DM/15/3858 and approved by Cabinet on 8 September 2015. The agreement is conditional upon the satisfaction of a number of conditions, which for reasons of commercial sensitivity are not detailed in this report, including a condition that the Rights identified in this report that prevent the implementation of the 2016 Planning Permission are removed or overridden.

PRESENT STATUS AND STATUTORY PURPOSE

- 43. When land is acquired by a local authority for a statutory purpose or function, it continues to be held by the local authority for that purpose of function until formally appropriated to another purpose or function.
- 44. Where land is acquired by a local authority for a particular statutory purpose or function and the status under which the land was acquired restricts its use to that particular statutory purpose then the land can only be used by the local authority for that statutory purpose, notwithstanding its designation in the local plan or the existence of any planning permission granted in respect of the land.

45. The land comprising the Martlets Shopping Centre, Burgess Hill was originally acquired for the purpose of the Burgess Hill & District Town Map — Central Development Area and as such was acquired for planning purposes of redeveloping the town centre, but that planning purpose cannot be relied upon now.
46. On 10 July 2017, Cabinet resolved to appropriate the land comprising the Martlets Shopping Centre, Burgess Hill, to planning purposes of implementing the redevelopment scheme approved by the local planning authority on 14 March 2016 under planning permission DM/15/3858 or any subsequent planning permission for a similar development scheme in respect of the Martlets Shopping Centre pursuant to the Council's powers under Section 122 of the Local Government Act 1972 with immediate effect and this being the case, the land is now held for the purposes of the 2016 Planning Permission.
47. Paragraphs 43-45 and 50-66 of the Cabinet Report set out in detail the powers to appropriate land and a detailed legal analysis of the application of those powers to land identified in the Site Plan.

POWER TO OVERRIDE EASEMENTS AND OTHER RIGHTS

48. If land is held or appropriated for planning purposes by the Council, then Section 203 of the Housing and Planning Act 2016 provides that a local authority or a person deriving title from a local authority may carry out building or maintenance work on the land even if it involves interfering with a relevant right or interest, or breaching a restriction as to the user of the land by virtue of a contract, provided that there is planning permission for such work or user of the land, the local authority could acquire the land compulsorily for the relevant work or user of the land, and the relevant work or user of the land is related to a purpose for which the land was appropriated.

POWER OF COMPULSORY ACQUISITION OF LAND FOR DEVELOPMENT

49. One of the requirements to be satisfied before the power to override rights under Section 203 can be used, is whether the Council could, *in principle*, acquire the land identified in the Site Plan compulsorily for the purposes of allowing the building work under the 2016 Planning Permission.
50. Section 226(1)(a) of the Town and Country Planning Act 1990 empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council must not use this power unless it also thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:
 - (a) the promotion or improvement of the economic well-being of the Council's area;
 - (b) the promotion or improvement of the social well-being of the Council's area;

- (c) the promotion or improvement of the environmental well-being of the Council's area.
51. Compulsory acquisition of land for development and other planning purposes is an Executive Function under Section 9D of the Local Government Act 2000. However, in the interests of open government and wider engagement, where the exercise of an Executive Function involves matters of major policy and/or non-budgeted expenditure or financial implications and matters of public policy the Council should be consulted.
52. On 10 July 2017, Cabinet resolved to recommend to Council the exercise of the Council's powers of compulsory purchase over the land comprising the Martlets Shopping Centre, Burgess Hill, West Sussex, shown edged in red on the Site Plan annexed hereto at Appendix A, under the powers contained in Section 226(1)(a) of the Town and Country Planning Act 1990, and having regard to the Secretary of State's policy in "*Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquire by, or under threat of, compulsion: Guidance*" issued by the Department for Communities and Local Government in October 2015 as outlined in paragraphs 62 to 65 of the Cabinet report.
53. For the purposes of Section 203 of the Housing and Planning Act 2016, sub-section 203(7) of the Act provides that land currently owned by the qualifying authority is to be treated as if it is not currently owned by the authority and this being the case, it is possible for Council to agree, *in principle*, to Cabinet exercising the Council's powers of compulsory purchase over the land comprising the Martlets Shopping Centre, Burgess Hill, West Sussex, shown edged in red on the Site Plan annexed hereto at Appendix A, under the powers contained in Section 226(1)(a) of the Town and Country Planning Act 1990, notwithstanding that the Council already owns the freehold of the Martlets Shopping Centre.
54. The tests for compulsory acquisition are detailed in Section 226(1)(a) of the Town and Country Planning Act 1990, which are set out in paragraph 50 of this report. The tests for compulsory purchase would be met in this case, both with regard to Section 226(1)(a) and the Secretary of State's policy in "*Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquire by, or under threat of, compulsion: Guidance*" issued by the Department for Communities and Local Government in October 2015, which are set out in paragraphs 62 to 65 of the Cabinet Report. Therefore, although the Council could acquire the land by compulsion if it decided to, in this case, the Council is already the freeholder of the land shown in the Site Plan. As such the Council would not be acquiring the land by compulsion, but engaging the exercise of the Council's Section 203 powers by satisfying the condition that the Council could acquire the land for the purpose of carrying out the development scheme authorised by the 2016 Planning Permission.
55. As above, the conclusions accord with external legal advice provided by leading planning counsel.

CONCLUSIONS

56. The Council as the freeholder of the land on which the Centre is constructed as identified in the Site Plan, supports the redevelopment of the Centre by its tenant, New River (GP3) Limited in accordance with the 2016 Planning Permission.
57. A potential impediment to the delivery of the redevelopment scheme has been identified by New River (GP3) Limited namely, the Rights that potentially benefit the Rights Holders. Were the redevelopment scheme to be carried out as per the 2016 Planning Permission, it would prevent the Rights being exercised and the redevelopment cannot coexist with the Rights. Efforts have been and continue to be made to agree voluntary terms with the Rights Holders, but not all of the Rights Holders are presently minded to treat and the risk of enforcement of the Rights remains.
58. By virtue of the resolution made on 10 July 2017, when Cabinet resolved to appropriate the land identified in the Site Plan to planning purposes of implementing the redevelopment scheme approved by the local planning authority on 14 March 2016 under planning permission DM/15/3858, the land comprising the Centre is currently held by the Council for the planning purposes of the redevelopment scheme approved under the 2016 Planning Permission.
59. The appropriation of the land comprising the Centre to planning purposes of the 2016 Planning Permission engages the Council's powers to override easements and other rights contained in Section 203 of the Housing and Planning Act 2016, subject to satisfying the other conditions set out in that section.
60. The regeneration benefits to be gained from the redevelopment scheme are considered to be of greater value to the local residents than the retention of the Centre in its existing form. To put it another way, the benefits provided by the redevelopment proposals are considered to outweigh the desirability of retaining the Centre in its current form.
61. By virtue of the resolution made on 10 July 2017, when Cabinet resolved, subject to New River (GP3) Limited indemnifying the Council from and against all legal, surveyors' and other costs, claims and liability and consideration (including costs and compensation payments arising from the exercise of statutory powers), to exercise its powers under Section 203 of the Housing and Planning Act 2016 to override the Rights and any rights as yet unknown, which may have been created by prescription, if required, in order to facilitate the implementation of the development scheme approved under the 2016 Planning Permission.
62. One of the requirements to be satisfied before the power to override rights under section 203 can be used, is whether the Council could, *in principle*, acquire the land identified in the Site Plan compulsorily for the purposes of allowing the building work under the 2016 Permission. We are satisfied that it could.

63. As a precursor to exercising its statutory powers, the Council required that NRR undertake detailed title investigations not only to seek to identify all of the Rights Holders, but to seek to agree a settlement with all of the Rights Holders. To illustrate, efforts have been made to communicate and agree terms with Rights Holders affected by the loss of the right to park a car. To encourage a settlement, an alternative car parking space in the vicinity has been offered in return for the surrender of the Rights. Letters issued to Rights Holders have explained the desire of the Council and NRR (as developer of the redevelopment scheme) to find a solution that, so far as possible, works for everyone. The Council's statutory powers to enable the redevelopment scheme to proceed have also been explained. A financial contribution towards legal advice and fees has also been made as part of the settlement terms. Some Rights Holders have accepted the offers made to settle, others have refused and some have not responded. Efforts to reach settlements are continuing.
64. It is considered that an expressed determination by the Council to see the development scheme approved by the 2016 Planning Permission implemented, using all necessary statutory powers, is likely to persuade those impeding the scheme to be more pragmatic and more likely to reach terms with NRR.

REASONS FOR THE RECOMMENDATION

65. The Martlets Shopping Centre ("**the Centre**"), which is the subject of this report, is in the freehold ownership of Mid Sussex District Council ("**the Council**"). New River Retail Limited ("**NRR**") has a long leasehold interest in the Centre and the Council wishes to see the Centre redeveloped by NRR in accordance with planning permission DM/15/3858 or similar to provide a shopping centre commensurate with a growing town in the 21st Century, as evidenced by the previous decisions of the Council mentioned in this report.

POLICY CONTEXT

66. Regeneration of Burgess Hill town centre is a corporate priority. The corporate aim of achieving a better environment through distinctive and sustainable towns is supported by proposals such as the redevelopment of the Centre by NRR.
67. Town centre improvements also contribute to the aims of the Sustainable Communities Strategy 2008-2018 as follows:

Theme 2: Ensuring cohesive and safe communities (with a strong sense of identity and civic pride);

Theme 3: Promoting economic vitality by delivering vibrant town centres that meet economic, social and cultural aspirations of the community.

68. Policy DP2 of the consultation draft of Mid Sussex District Plan states that the Council's strategic aims in relation to retail development are 'to create and maintain town and village centres that are vibrant, attractive and successful and that meet the needs of the community'. The proposed redevelopment of the Centre contributes substantially to achieving this objective.
69. In planning terms, the redevelopment scheme enjoys planning permission under the 2016 Planning Permission. It is therefore acceptable in land use planning terms. The committee report contains a very comprehensive analysis of planning application reference DM/15/3858 and is a background paper to this report. However for ease of reference, the following should be noted:
70. The primary purpose of the redevelopment scheme is to provide enhanced town centre facilities. It provides for a significant and substantial improvement to the offer of the town centre, as well as its physical and visual environment. The enlarged retail offer, the hotel and cinema are matters that will attract additional visitors to the town centre and increase the vitality and viability of the town centre's daytime and night time economies.
71. The redevelopment scheme includes 142 new residential units which are an important component. The new residential units will make a significant contribution towards housing supply and provide additional economic benefits associated with the new homes bonus and the increased business rates revenue and a town centre population to add to its evening vibrancy. The redevelopment scheme will result in the creation of significant number of permanent jobs, and temporary jobs during the construction phase.
72. The principle of the proposed redevelopment and the uses proposed are supported by the development plan, which includes the newly made Burgess Hill Neighbourhood Plan. These are matters that attracted significant weight in support of scheme.

OPTIONS CONSIDERED

73. There are two options open to the Council:

Option 1

- (a) To decide that the Centre as identified in the Site Plan is no longer fit for purpose and should be replaced by the development scheme approved by the 2016 Planning Permission; to confirm Council's agreement, in principle, that the Cabinet should exercise the Council's powers of compulsory purchase over the land comprising the Centre using the Council's powers under Section 226(1)(a) of the Town and Country Planning Act 1990 so far as is necessary to engage the powers contained in Section 203(2) of the Housing and Planning Act 2016 in respect of the rights and any other rights.

Utilising the powers available to the Council in terms of Section 226 and Section 203 would facilitate the delivery of the redevelopment scheme as described above.

Option 1 is the recommended option.

Option 2

- (b) To decide that the Centre as identified on the Site Plan is fit for purpose and need not be replaced by the development scheme approved by the 2016 Planning Permission; to confirm that the Council does not agree, in principle, that Cabinet should the Council's powers of compulsory purchase over the land comprising the Centre using the Council's powers under Section 226(1)(a) of the Town and Country Planning Act 1990 (and by extension not to seek to override the Rights using the powers contained within Section 203(2) of the Housing and Planning Act 2016).

If the Council considers that the statutory test in Section 226 of the Town and Country Planning Act 1990 and the Secretary of State's policy guidance would not be met. In those circumstances, Section 203 would not therefore be engaged.

Option 2 is not recommended.

FINANCIAL IMPLICATIONS

74. There are no financial implications directly arising as a result of these proposals. However it should be noted that engagement of Section 203 (overriding the Rights) would be subject to the payment of compensation.
75. It should be noted that if NRR was to fail to pay the compensation due to those parties whose rights have been overridden, the Council could be pursued for these sums. The Council would only seek to exercise the powers within Section 203 subject to the provision of an indemnity from NRR in respect of these sums.

RISK MANAGEMENT IMPLICATIONS

76. As indicated above, the Council could be pursued for the sums payable in compensation as a result of the overriding of the Rights. However, the Council would only seek to exercise the powers within Section 203 once an indemnity from NRR had been provided in respect of these sums. The provision of an indemnity in acceptable terms would satisfactorily mitigate the risk to the Council.

HUMAN RIGHTS IMPLICATIONS

77. The overriding of the Rights amounts to an interference with the property rights of Rights Holders and therefore engages Article 1 of the First Protocol to the European Convention on Human Rights. However, the interference is necessary for and proportionate to the need to deliver the development scheme with the public benefits

that it will bring. The Rights Holders will be compensated for the loss of the Rights. Accordingly, the proposals are in accordance with Article 1 of the First Protocol and the ECHR generally.

EQUALITY AND CUSTOMER SERVICE IMPLICATIONS

78. There are no equalities or customer service implications arising as a result of these proposals.

OTHER MATERIAL IMPLICATIONS

79. None.

BACKGROUND PAPERS

1. Cabinet Report dated 10 July 2017 –The Martlets, Burgess Hill – Appropriation etc.
2. Committee Report to the District Wide Committee in respect of planning application DM/15/3858 dated 10 March 2016
3. Cabinet Report dated 8 September 2015
4. Template Letters to those claiming parking rights
5. Cyprus Road Plan