

APPENDIX 7

Land Appropriation – Atlantic Wharf

1. The Council is authorised by Section 122 of the Local Government Act 1972 (“Section 122”), to appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement. The Council is authorised to acquire land for planning purposes pursuant to sections 227 of the Town and Country Planning Act 1990. Before the land can be appropriated pursuant to Section 122, the land must no longer be required for the purpose for which it was held immediately prior to appropriation. The land owned by the Council for the purposes of the regeneration of the Atlantic Wharf masterplan area is no longer required for its current purposes and is required to be held for a planning purpose and redeveloped for the purposes of a mixed use scheme to complement the indoor arena in accordance with planning permission.
2. It is proposed that the land edged red in Plan 1 and 2 identified as “Appropriation” is appropriated to planning purposes. Further parcels are to be appropriated in the future as this land cannot be appropriated now as the land is i) occupied by virtue of either a tenancy agreement or currently for operational purposes or ii) comprises public open space.
3. There are additional requirements in relation to the appropriation and/or disposal of open space. Section 122 (2A) of the Local Government Act 1972 requires a notice to be placed in a local newspaper for two consecutive weeks advertising the proposed appropriation of the land to planning purposes. Any objections that are received have to be properly considered before the appropriation and disposal takes place.
4. The proposed appropriation of the land in Plan 3 (Mast) is currently used as part of the informal open space and has been advertised and any representations received in relation to the proposed appropriation will be considered as part of a report to the Director for Economic Development authority should delegated authority be given to appropriate the land to planning purposes.
5. Where land has been appropriated for planning purposes (pursuant to section 122 Local Government Act 1972 and section 227 Town and Country Planning Act 1990), the consequence (under Section 203 of the Housing and Planning Act 2016) is that the erection, construction or carrying out of any building or other works on such land is authorised, notwithstanding that it may involve interference with third party rights where: (a) there is planning consent for the building or maintenance work; (b) the land has been acquired by the Council or appropriated by it to planning purposes; (c) the land could be acquired compulsorily for the purposes of the building or maintenance work; and (d) the building or maintenance work is for purposes related to the purposes for which the land was vested, acquired or appropriated as under (b). Where such rights are overridden compensation is payable.
6. Authority is sought to appropriate the land edged red and identified as “Plan 4 and Plan 5 that is within the Council’s ownership to planning purposes and delegated authority is sought for the Director for Economic Development to appropriate the following land to planning purposes

- a. The part of the site in Plan 3 edged in red following the completion of the advertisement of all relevant public open space notices;
 - b. The part of the site edged red on Plan 4 that is currently leased to the Red Dragon tenants once the lease have all been surrendered and is within the entire control of the Council.
 - c. The part of the site edged red in Plan 5 that is currently occupied by County Hall once occupation has ceased and any new proposals are sanctioned.
7. It is necessary in making a decision as to whether to support the recommendation to appropriate the land to planning purposes to give consideration to all relevant matters:

a) Whether the appropriation of the Council's land and the acquisition of the Developer's land will facilitate the carrying out of the redevelopment of the land;

By engaging Section 203 in respect of the Section 203 Land, the Council will have sufficient certainty that an injunction cannot defeat the proposed development. If an action is brought against the Council, the remedy will be compensation.

b) Whether the development of the land will contribute to the promotion or improvement of the economic, social or environmental well-being of the area;

The development would facilitate the delivery of a new indoor arena and will deliver the benefits described at section [36] of the report.

Overall the development will make a significant contribution to the economic, social and environmental well-being of the area. Its delivery is key to the regeneration of Atlantic Wharf.

c) Whether the use of Section 203 is proportionate with any interference with the human rights of those persons affected.

Human Rights issues arise in respect of the proposed arrangements. The Government guidance "Compulsory purchase process in Wales and the Crichel Down Rules (Wales Version 2020)" advises that compulsory acquisition (and therefore, by analogy, appropriation for planning purposes under s.122(1) Local Government Act 1972 or Section 122 (2A) Local Government Act 1972, which have the effect, by virtue of Section 203, of infringing Convention Rights) should consider (Part 1 Paragraph 20):

"...When making a CPO, acquiring authorities should be sure the purposes for which the CPO is made sufficiently justifies interfering with the human rights of those with an interest in the land affected.... Depriving an individual or business of their rights is a serious step which an acquiring authority should consider carefully"

Furthermore, under the Human Rights Act 1998 the Council is required to act in accordance with the European Convention on Human Rights ("ECHR") in deciding whether to implement the arrangements. Article 1 of the First Protocol of the ECHR provides that every natural or legal person be entitled to peaceful enjoyment of his or her possessions. Engagement of Section 203, to allow interference with private rights, involves interference with a person's rights under this Article. However, the right to peaceful enjoyment of possessions under Article 1 is a qualified rather than absolute right, as the wording permits the deprivation of an individual's possessions where it is in the public interest and is subject to the conditions provided for by law, and (in relation to 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 a 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 Council to consider the issues raised in this report and to strike that “fair balance” in coming to its decision as to whether the land held within the Council’s ownership that is required for the construction of the Indoor Arena should be appropriated to planning purposes.

It is considered that the public interest in appropriating the land to facilitate the development of the Arena outweighs the rights of the individuals to peaceful enjoyment of their possessions, and that the proposed use of Section 203 powers amounts to a proportionate interference in all the circumstances. In this regard, the availability of compensation to those who are deprived of their third party rights is of relevance to the issue of proportionality.

e) The acquisition and appropriation of the land required for the Development must be acquired or appropriated for ‘planning purposes’;

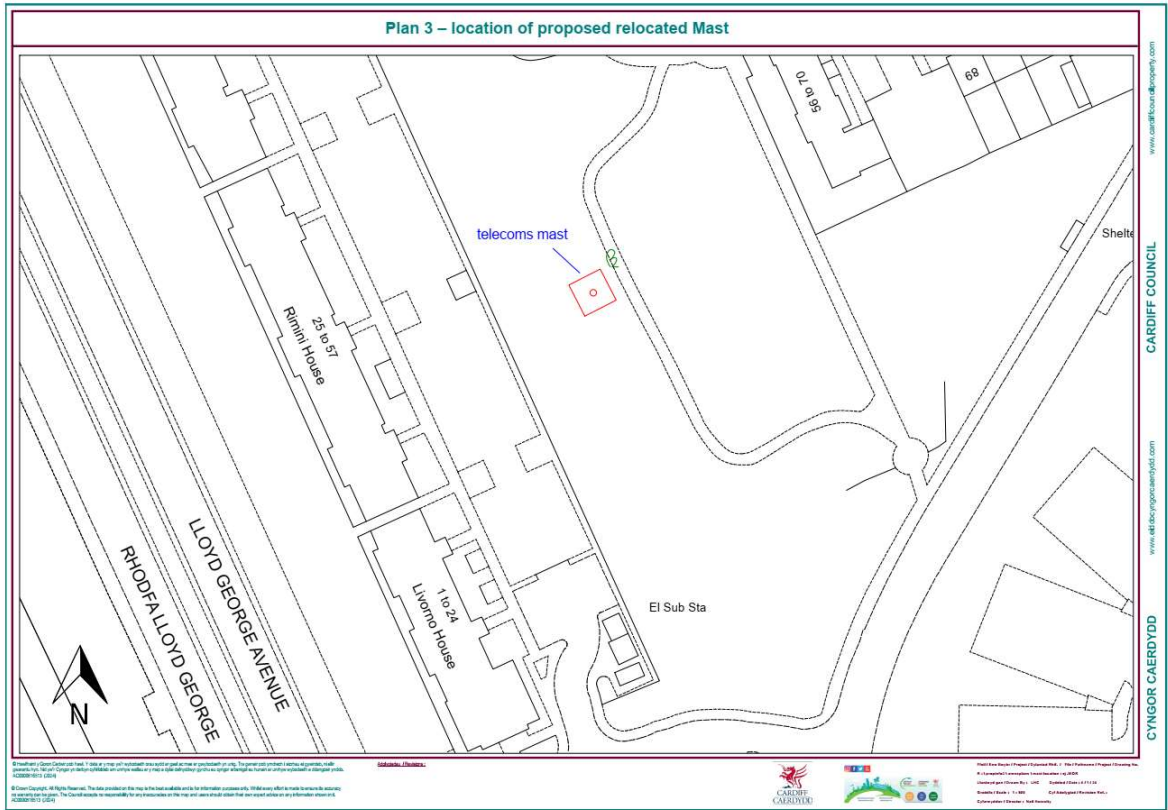
The Council’s land is being appropriated to allow the comprehensive redevelopment of the land as will be provided for by the planning consent. The redevelopment of the land will deliver the planning objectives noted in the report. The appropriation of the Council’s land is necessary in order to facilitate the development of the Indoor Arena.

f) The Third Party Rights affected by the Development and the likely extent of interference with those rights caused and whether such interference is reasonable;

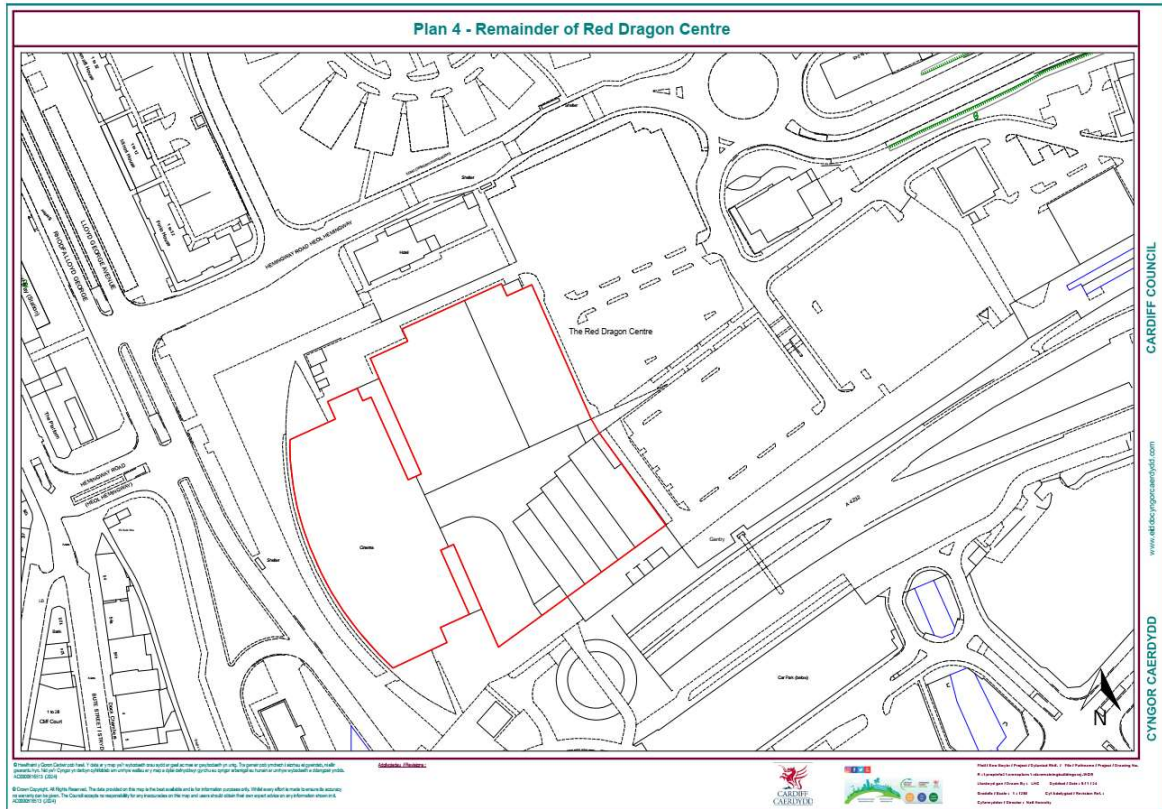
Parts of the Site are affected by the restrictive covenant that prevent any uses apart from uses as municipal offices (“the Covenant”). A release from the Covenant is being obtained in respect of a large part of the site, but other parcels are burdened by the Covenant and the Site is likely to be affected by other private rights and covenants including rights to light

Due regard will need to be had to the Council’s Public Sector Equality Duty (PSED, in particular with respect to general duties arising under the Equality Act 2010, section 149.

Plan 3 - Location of proposed relocated Mast to be Appropriated



Plan 4 – Red Dragon Centre



Plan 5 – Land at County Hall

