

COUNCIL OWNED SITES: LAND AVAILABILITY ENQUIRY FOR THE LOCAL PLAN

Head of Service:	Mark Shephard, Head of Property and Regeneration
Wards affected:	(All Wards);
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Appendices (attached):	Appendix 1: Scotts Farm Road Appendix 2: Richard's Field Car Park Appendix 3: Cox Lane Community Centre Appendix 4: Longmead Industrial Estate Appendix 5: Kiln Lane Industrial Estate

Summary

This report considers the land availability of specific Council owned sites which are under further investigation by the Local Planning Authority (LPA).

Recommendation (s)

The Committee is asked to:

- (1) Authorise the Head of Property & Regeneration to submit the following Council owned sites to the LPA for consideration as part of the Local Plan process:**
 - a) Scotts Farm Road**
 - b) Richard's Field Car Park**

1 Reason for Recommendation

- 1.1 To enable the Council (as landowner) to respond to the LPA's recent land availability enquiry.

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2 Background

2.1 Acting in its capacity as the Local Planning Authority (LPA), the Council is developing a new Local Plan to cover the period to 2040. The Local Plan is informed by a structured process of consultation and full details of the process can be found at:

<https://www.epsom-ewell.gov.uk/local-plan>

2.2 To assist the LPA identify the future supply of developable land for use as housing or other economic development purposes, landowners are encouraged to come forward with potential sites.

2.3 At its meeting on 16 November 2021, Committee approved a list of Council owned sites to be considered as part of this process, known as the “Call for Sites”.

2.4 In submitting sites, the Council (as landowner) was treated no differently to any other responding landowner, that is, it was for the LPA to undertake a technical assessment to determine if landowner submitted sites were included or not within the Local Plan Regulation 18 consultation.

2.5 Following the closing of the Regulation 18 consultation on 19 March 2023, the Council (as landowner) has recently received correspondence from the LPA enquiring if there is land availability at the following sites:

- Scotts Farm Road
- Richards Field Car Park
- Cox Lane Community Centre
- Longmead and Kiln Lane (Nonsuch) Industrial Estates

2.6 The Council’s Kiln Lane (Nonsuch) Industrial Estate freehold sites were included in the previous Call for Sites (pursuant to the 16 November 2021 Committee report).

2.7 Scotts Farm Road was not previously included as the Council (in its capacity as landowner) was formerly advised by the LPA that the site offered too few potential units to be considered.

2.8 Richards Field Car Park was not previously included as the relatively small car park is used by local residents and users of local shops.

2.9 Cox Lane Community Centre and Longmead Industrial Estate were not included in the previous Call for Sites for the same reasons as outlined in paragraphs 6 and 7 of this report.

2.10 If land is identified as available, the LPA has requested the completion of the corresponding Call for Sites form to enable it to be considered as part of the Local Plan process.

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3 Land availability

- 3.1 The LPA has confirmed that for a site to be considered available for submission through the Call for Sites process, it must be capable of development within the proposed Local Plan timescale i.e. up to 2040.
- 3.2 For example, if a Council owned site is subject to a commercial lease of 5 or 10 years, then the Council (as landowner) can submit the site for consideration to cover the period post lease expiry. This is because it is within the control of the Council as freeholder to determine if it will grant a new lease (or not) of the site in 5 years' time.
- 3.3 However, if the same Council owned site was subject to a commercial lease that expired beyond 2040 (and assuming there were no provisions within the lease for the Council to terminate it early i.e. inclusion of a break clause), then it is not within the control of the Council (as landowner) to offer up the site as available to the LPA.
- 3.4 The correct identification of land availability is an important part of the Local Plan process. The LPA has confirmed that when the Local Plan is eventually submitted to the Planning Inspectorate for examination, it will need to demonstrate that the Local Plan, including the site allocations contained within it, are deliverable i.e. available and suitable for development.
- 3.5 This report will now consider each site's availability and whether it is within the control of the Council (as landowner) to facilitate redevelopment.

4 Scotts Farm Road

- 4.1 This is a small 0.08 ha site (a former Scout's Hut) and was originally advised by the LPA as too small to be included in the previous Call for Sites.
- 4.2 A location plan is attached at Appendix 1.
- 4.3 It is recommended a Call for Sites form is submitted and this will also support the ongoing discussions that the Council (as landowner) is conducting for potential housing options.

5 Richard's Field Car Park

- 5.1 A Council owned car park accessed off Chessington Road offering approximately 35 parking spaces of which c14 are reserved as resident permit spaces. The unallocated parking spaces are free of charge for public use.
- 5.2 The site is adjacent to existing residential properties and a location plan is attached at Appendix 2.

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- 5.3 Richards Field Car Park was not previously included as the relatively small car park is used by local residents and users of local shops.
- 5.4 Whilst there are no proposals to close the car park, the site is within the control of the Council. To allow the site to be separately assessed by the Local Plan consultation process, it is recommended a Call for Sites form is submitted to protect the Council's long term property interests.

6 Cox Lane Community Centre

- 6.1 Cox Lane Community Centre is located within the Watersedge Estate, West Ewell, at the end of Cox Lane, off Ruxley Lane. The single storey building is served by an adjacent car park.
- 6.2 A location plan is attached at Appendix 3.
- 6.3 The Cox Lane GP Surgery occupies one half of the building and is served by its own reception. The other half was formerly a children's soft play centre and has recently been let to a children's nursery.
- 6.4 Both the existing GP Surgery and the new children's nursery require operational certainty in the medium term to support ongoing capital investment. Consequently, the earliest lease expiry is 2038 which is at the end of the proposed draft Local Plan period.
- 6.5 It is recommended that the site is not put forward as land available for development.

7 Longmead Industrial Estate

- 7.1 The Council's freehold ownership is shown at Appendix 4 and comprises approximately 37% of the Longmead Industrial Estate. It includes:
 - **Land at Kings Church (also known as Gibraltar Crescent)**
Submitted to the LPA in the earlier Call for Sites and excludes the privately owned Kings Church.
 - **Stephen Woods Centre**
A constrained site backing onto Thames Water surface water overflow tanks. The property is leased (and expires during the Local Plan period) to a charity providing community services.
 - **Plots 21A, B, C, E & F - Unavailable**
Each plot is held by the same long leaseholder on 99 year leases which expire March 2073.
 - **Plot 21 D (5 Roy Richmond Way) - Unavailable**
99 year lease expiring October 2079 operating as the SGN Depot.
 - **2 Roy Richmond Way & 19A Blenheim Road**

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15 year lease expiring 2032.

- **Longmead Depot - unavailable**
EEBC operational depot – critical to delivering operational services and would require identity of similar size relocation site before availability could be considered.
- **1-3 Blenheim Road - unavailable**
Housing Association temporary accommodation operated on behalf of EEBC.
- **Epsom Trade Park (incorporating Plots 3A & 3B) - Unavailable**
150 year lease expiring August 2138.
- **9 Blenheim Road - Unavailable**
99 year lease expiring October 2060.
- **10 Blenheim Road – Unavailable**
99 year lease expiring August 2075.

8 Kiln Lane (Nonsuch) Industrial Estate

8.1 The Council's freehold ownership is shown at Appendix 5 and comprises approximately 35% of the Kiln Lane Industrial Estate. It includes:

- **Regent House, Plots 1 & 2 - Unavailable**
99 year leases expiring January 2079.
- **Plots 3-6 - Unavailable**
150 year lease expiring December 2139.
- **Plots 7a & 7b - Unavailable**
99 year lease expiring April 2083.
- **Plot 8 & land adjoining Kiln Lane Industrial Estate**
Plot 8 is held by the same long leaseholder as Regent House, Plots 1 & 2 and Plots 7a & 7b. It is held on a 10 year commercial lease conditional on the requirement to maintain a tree buffer between the industrial estate and adjacent residential.
The land adjoining Kiln Lane Industrial Estate is not subject to a commercial lease but provides a tree buffer to protect the adjacent residential from the Industrial Estate. It is understood this was an original planning condition for the Industrial Estate.

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9 Longmead and Kiln Lane (Nonsuch) Industrial Estates site value

- 9.1 The industrial estates are held within the Council's commercial property portfolio and contribute approximately £1.3m per annum to the Council's service budgets.
- 9.2 The rental income is generated from the leases described above and is forecast to increase over the next 5 years as current / future rent reviews take effect.
- 9.3 During October 2022, the Council's external asset valuers undertook a Market Valuation of the Council's combined freehold interests in the Longmead and Kiln Lane Industrial Estates. The combined market value was £26.57m. This represents the market value of the right to receive the future rental income generated by the various leases.
- 9.4 The external valuers were also commissioned to undertake a market valuation of the long leasehold interests. Whilst the long leaseholders have an obligation to pay the Council the rent reserved under their leases, they in turn can either self-occupy for their own business needs or alternatively, become landlords (sub-lease to occupying tenants) or sell their long leases on the market.
- 9.5 Commercial long leaseholds are valuable financial interests and are as freely traded in the property market as freeholds. This is because it is the long leaseholders who control / have access to the sites on a day-to-day basis and not the freeholder (in this case, the Council). The market value of the leasehold interests held independently by the Council's tenants is £47.5m.
- 9.6 For hypothetical development purposes, if it is assumed that the Council and each of its commercial tenants were willing and able to sell to a developer, the developer would need to buy out the Council's freehold interests at c£26.5m and the commercial tenants' long leasehold interests at c£47.5m.
- 9.7 The developer's site acquisition costs for the Council's leased industrial sites would therefore be approximately £75m. The Council's leased industrial sites occupy approximately 20 acres which equates to approximately £3.75m per acre.

10 Land acquisition using compulsory purchase powers

- 10.1 Developers of large scale redevelopment projects will frequently partner with the local authority to deliver schemes that are challenging to site assemble. For example, the regeneration of a rundown town centre shopping centre which cannot close for demolition due to a small proportion of shops remaining open.

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- 10.2 In determining whether we can assemble land to be used for the Local Plan available sites, we have considered the use of compulsory purchase orders. However, this process is far from straightforward.
- 10.3 In the example given above, there may be an agreement between the local authority and the developer for the local authority to exercise its compulsory purchase powers to acquire the remaining shop interests. The agreement would typically indemnify the local authority for the significant costs associated with a Compulsory Purchase Order (CPO).
- 10.4 The use of a CPO is one of last resort and there must be a compelling case in the public interest for the Council to use the powers.
- 10.5 In promoting a CPO, the Council should be in no doubt that the purposes for the CPO justify interfering with the human rights of those with an interest in the land affected. The Council must also take into account its public sector equality duty contained in the Equality Act 2010.
- 10.6 To exercise its compulsory purchase powers under section 226 of the Town and Country Planning Act 1990 (typically used to acquire land compulsorily for development and other planning purposes), the Council would need to consider (in the case of making the industrial estates available for the Local Plan) whether there is a public interest in acquiring the long leasehold interests. Under section 226(1A), the acquisition would need to satisfy the following:
- “(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—*
- *the promotion or improvement of the economic well-being of their area;*
 - *the promotion or improvement of the social well-being of their area;*
 - *the promotion or improvement of the environmental well-being of their area.”*
- 10.7 Crucially, Secretary of State approval (Department for Levelling Up, Housing and Communities) is required before any CPO can be exercised. It is very process driven and would almost certainly include a public inquiry. Specialist external legal and CPO property advice would be required by the Council.
- 10.8 DLUHC guidance is clear that the Secretary of State is unlikely to consider that a compelling case for compulsory acquisition exists unless the scheme underlying the CPO is going to be funded so as to make it deliverable.

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- 10.9 The CPO justification threshold is high as demonstrated by DLUHC's recent refusal (October 2022) to confirm a CPO made by the London Borough of Barking and Dagenham. The London Borough (together with its development partner) had proposed the compulsory acquisition of the Vicarage Field Shopping Centre to be redeveloped for a scheme including 855 new homes and a 150 bedroom hotel.
- 10.10 As the example shows, there is no guarantee that a CPO will be confirmed by DLUHC. If it is not confirmed, the reasonable costs of remaining objectors will need to be met by the Council.
- 10.11 It is the Secretary of State who will decide if the CPO should be authorised and not the local authority. Further information and government guidance is available at:

<https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-1-procedure>

11 Next steps

- 11.1 In view of the above, Committee is recommended to authorise officers to submit Call for Sites forms to the LPA for the following:
- Scotts Farm Road
 - Richard's Field Car Park

12 Risk Assessment

Legal or other duties

12.1 Equality Impact Assessment

12.1.1 Not applicable.

12.2 Crime & Disorder

12.2.1 Not applicable.

12.3 Safeguarding

12.3.1 Not applicable.

12.4 Dependencies

12.4.1 All submitted sites are subject to the Local Planning Authority's technical assessment, full public consultation, a Local Plan Examination in Public, formal adoption of the Local Plan by the Council and release of the sites formally by the Council.

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12.5 Other

12.5.1 The Asset Management Plan's key property strategies ensure the Council maximises its land and property assets.

13 Financial Implications

13.1 There are no direct financial implications arising from the contents of this report.

13.2 **Section 151 Officer's comments:** None arising from the contents of this report.

14 Legal Implications

14.1 **Legal Officer's comments:** None arising directly from the contents of this report, though naturally the development viability of any particular site, whether freehold or leasehold title, and its associated infrastructure requirements will need to be diligently examined.

15 Policies, Plans & Partnerships

15.1 **Council's Key Priorities:** The following Key Priorities are engaged: Opportunity and Prosperity, Effective Council.

15.2 **Service Plans:** The matter is included within the current Service Delivery Plan.

15.3 **Climate & Environmental Impact of recommendations:** In trying to meet the national requirements for development, the Council has a duty to make effective use of land. The submission of Council owned sites through the Local Plan process will enable the Council to determine how best it can balance the climate change objectives with accommodating sustainable growth to meet national development requirements.

15.4 **Sustainability Policy & Community Safety Implications:** The submission of sites through the Local Plan process will enable the Council to demonstrate that it has considered all available options for future development.

15.5 **Partnerships:** The submission of Council owned sites through the Local Plan process does not imply that these sites will be identified or released for development which will require approval under separate processes.

16 Background papers

16.1 The documents referred to in compiling this report are as follows:

Previous reports:

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- Council Owned Sites for Development as part of the Local Plan, Strategy & Resources Committee 16 November 2021

<https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=132&MId=1097>

Other papers:

- None