



Leicester  
City Council

**WARDS AFFECTED  
CASTLE / CITYWIDE**

**CABINET**

**26 NOVEMBER 2007**

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**DIGITAL MEDIA CENTRE  
APPROPRIATION OF THE MORLEDGE STREET SITE**

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**Report of the Corporate Director, Regeneration & Culture**

**1. Purpose of Report**

- 1.1 This report seeks Members' approval of appropriation of the Morledge Street site to planning purposes.

**2. Summary**

- 2.1 At its meeting on 29 October 2007 Cabinet authorised amongst other things the acquisition of the Morledge Street site as part of the Cultural Quarter project.
- 2.2 The site is currently unused land (site plan attached at appendix 1) having previously been occupied by a printing works. Planning permission for the mixed-use digital media centre was granted by the Council on 21 September 2007 (as explained in the Planning Application Report 2007 1262) which concluded that the scheme would be a welcome addition to the new cultural quarter and would bring many benefits to the St Georges area by adding activity and vitality and increasing the surveillance and feeling of safety in the streets. The amendments from the previously approved scheme were considered by the City Council as Local Planning Authority to not have a detrimental impact on amenity. The regeneration benefits of the Cultural Quarter project generally were summarised in the report to Cabinet of 12 March 2007.

**3. Recommendations**

Cabinet is recommended to:

- i) appropriate the Morledge Street site to planning purposes;
- ii) authorise the Corporate Director, Resources in consultation with the Cabinet Lead for Strategy, Finance, Property & Communications and the Corporate Director, Regeneration & Culture to agree the terms and payment of any claims for compensation arising.

## **4. Financial and legal Implications**

### **4.1 Financial Implications**

Appropriation itself does not carry any financial implications. However, the proposed development could potentially carry the risk of a claim for compensation as explained in Section 4.2 of this report. So far as is known no third party rights have been asserted and the risk of a claim for compensation being asserted is rated as low. The likelihood of any such claim resulting in an award of compensation is judged to be low - medium. In the absence of the assertion of any actual claim it is very difficult to assess the amount of any potential claim for compensation but officers believe that any such compensation payable by the Council would probably be modest judged against the scale of the proposed development and would probably be capable of being absorbed within the budget of the scheme as a whole.

*Martin Judson, Head of Finance, R.& C. (Ext.297390)*

### **4.2 Legal implications**

4.2.1 Sharpe Pritchard Solicitors have been appointed by the Council to advise on the legal aspects of the DMC project.

4.2.2 A local authority must own land pursuant to its statutory functions. The statutory purpose for which land is held can be changed by a process known as appropriation. If land is appropriated to a different purpose ownership still remains with the Council as before. Broadly speaking the Council may appropriate for any purpose for which it is authorised by any Act to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by the Council is subject to the rights of other persons in, over or in respect of the land concerned: section 122 Local Government Act 1972. There are certain restrictions on the appropriation of particular types of land, e.g. commons and open space however, these do not apply to the land in question.

4.2.3 The land has been acquired for leisure purposes but will no longer be required for those purposes as the proposed development is for a mixed-use digital media centre which will include some non-leisure uses. In order to facilitate the proposed development the land should be appropriated to planning purposes. The proposed development has planning permission and accords with Policy PS06 of the City of Leicester Local Plan and the St Georges Area Supplementary Planning Guidance. The regenerative benefits of the Cultural Quarter project generally, of which the digital media centre is a key component, has been set out in the reports referred to above.

4.2.4 Generally speaking, the erection, construction or carrying out, or maintenance of any building or work on land which has been acquired or appropriated by a local authority for planning purposes (whether done by the local authority or by a person deriving title under them) is authorised by virtue of Section 237 of the Town and Country Planning Act 1990 if it is done in accordance with planning permission, notwithstanding that it involves:-

- (a) interference with an interest or right to which that section applies; or
- (b) a breach of a restriction as to the use of land arising by virtue of a contract.

The interests and rights to which the Section applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

- 4.2.5 The effect of this provision is to remove a neighbouring owner's right to prevent the construction or works, etc, e.g. by way of injunction. However, if a person has such a right, any compensation is payable by the person carrying out the development (although the local authority retains a residual liability).
- 4.2.6 In the case of *R v Leeds City Council ex p Leeds Industrial Co-operative Society Limited [1996]* it was held that in a case where third parties are known to have rights, a local authority should not consider using its appropriation power unless it has good reason to believe that interference with such rights is necessary. The same degree of requirement or necessity should apply in the case of appropriation as in the case of compulsory purchase. Although no such third party rights are known to have been asserted it would nevertheless be prudent for the Council to act as if such third party rights were known.
- 4.2.7 Broadly speaking a local authority has power to acquire compulsorily any land in their area:-
- (a) if the authority think that the acquisition will facilitate the carrying out of development/re-development or improvement on or in relation to the land; or
  - (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- 4.2.8 However, a local authority must not exercise its powers under paragraph (a) above 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:-
- (a) the promotion or improvement of the economic well-being of their area;
  - (b) the promotion or improvement of the social well-being of their area;
  - (c) the promotion or improvement of the environmental well-being of their area.

In the view of the Corporate Director, Regeneration & Culture, for the reasons set out in this report and the reports referred to, Members can be satisfied that either sub-paragraph (a) and (b) of paragraph 4.2.7 above would be satisfied and Members can also be satisfied that sub-paragraphs (a), (b) and (c) of this paragraph would also be satisfied if Members are minded to justify their decision under paragraph 4.2.7(a).

- 4.2.9 Members are advised that, given that the decision to appropriate should be exercised subject to similar high standards of procedural propriety equivalent to decisions concerning compulsory purchase matters this report should be considered on the open agenda and the usual notice period should be given.

*John Harrison, Sharpe Pritchard, Solicitors.*

*Legal Officer to Contact Anthony Cross, Head of Litigation, Legal Services extn: 296362.*

**5. Other Implications**

OTHER IMPLICATIONS	YES/NO	Paragraph References Within the report
Equal Opportunities	No	
Policy	Yes	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	

**6. Risk Matrix Assessment**

Risk	Likelihood L/M/H	Severity L/M/H	Impact
Not appropriating the site for planning purposes in a proper and or timely manner	L	M	Right to Light surveyor has advised that the risk of injunction is low. Additional funds over and above the contingency held for this purpose may be needed.
Right to light issues result in significant compensation costs	L	L - M	Funds will need to be found to meet the Council's share of these costs if these exceed the provision within the project contingency.

L – Low  
M – Medium  
H – High

L – Low  
M – Medium  
H – High

**7. Background Papers – Local Government Act 1972**

Digital Media Centre, Cabinet 29 October 2007, Confidential Agenda  
Cultural Quarter Phase 2 – The new Digital Media Centre, Cabinet 12 March 2007 and Council 29 March 2007

**8. Consultations**

Anthony Cross	Assistant Head, Litigation & Advocacy
Greg Pollard	Principal Surveyor
Mike Richardson	Head of Development Control
Martin Judson	Head of Finance R&C
John Harrison	Sharpe Pritchard Solicitors

**9. Report Author/Officer to contact:**

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## DECISION STATUS

<b>Key Decision</b>	No
<b>Reason</b>	N/A
<b>Appeared in Forward Plan</b>	N/A
<b>Executive or Council Decision</b>	Executive (Cabinet)

