

## APPENDIX 3

### THE IMPACT ON HUMAN RIGHTS AND PUBLIC INTEREST ASSESSMENT FOR APPROPRIATION AND USE OF S.203 HOUSING AND PLANNING ACT 2016 (HPA)

- 1 The Council has undertaken an evaluation of the basis for using s.203 HPA (**s.203**) for the Studio Theatre development.
- 2 The enactment of s.203 by Parliament was to enable local authorities develop their land in the public interest notwithstanding the interference of rights and on the basis that compensation would be payable in lieu of such rights. It is considered that the development of the Studio Theatre is in the public interest and therefore the purpose of Parliament enacting s.203 applies.
- 3 The Department for Levelling Up, Housing and Communities (**DLUHC**) has provided the “Guidance on Compulsory Purchase and The Criche Down Rules 2019” (the **Guidance**). On the basis that appropriation is similar to CPO, the Guidance has been taken into consideration for the Council’s use of s.203 and it is considered that the use is justified. The matters below have also been taken into consideration.

#### **Public Interest - A compelling case in the public interest.**

- 4 Paragraphs 3.2 of Part One of this report and the LUF Bid application include comprehensive evidence of the benefits to be delivered by the Studio Theatre. These demonstrate the significant social, economic and environmental benefits of the scheme. The key benefits of the scheme are below and show the clear public interest benefits which are also judged to be legitimate aims:
  - (a) Creating an improved sense of place, identity and pride amongst the existing community;
  - (b) Reviving and reconnecting an old and underused historical part of Reading to the wider town centre and improving public perceptions of the area around the Hexagon and Queens Walk with the resulting improved perceptions of the area as a place of business and for residents and visitors;
  - (c) Significantly contributing to satisfying the latent demand for entertainment including by providing a venue to host a wide variety of performances. In particular: music shows, concerts and stand-up comedy all of which are currently seen as inadequately provided for under Reading’s current education, arts and culture provision. This is being achieved by providing for circa 200(+) additional cultural events to be annually held at the new Studio Theatre; and, encouraging and providing for 12,500 additional people annually going to see these cultural events;
  - (d) Providing a new venue where people can relax, meet, socialise, eat, drink, and connect with each other whilst reinvigorating the town’s cultural infrastructure and offer leading to greater engagement with the arts;
  - (e) Providing essential accessible community spaces, including spaces for hire, which will aid inclusive community cohesion and ensure that there is

established infrastructure in place and a focal point for new communities as the Minster Quarter develops and after it is completed;

- (f) Supporting and improving learning and skills in the local community with new accessible spaces;
  - (g) Providing new income streams for the Council which in turn facilitates the Council's ability to provide services;
  - (h) Delivering an exemplar low-carbon public building in Reading;
  - (i) Servicing, encouraging and benefiting economic environment of the Borough through the anticipated circa 1 million annual visitors to the Minster Quarter with associated additional footfall to nearby shops including Broad Street Mall and other commercial enterprises, thereby boosting the economy and income of the Borough; and
  - (j) Contributing to improvement in the social well-being of residents through the effects of participating in education, culture, arts, learning and volunteering.
- 5 A direct effect of s.203 is to enable the development to proceed without being prevented by private rights and thereby safeguarding and ensuring the project programme and delivery timelines which, in turn, is required for the LUF grant fund to be available for the project. If the Council decides not to proceed with appropriating the Studio Land to planning purposes and using s.203, then there is the potential for any rights affecting or affected by the Studio Theatre to stop the scheme or significantly delay its delivery. The result would put the Council's the LUF grant funding of £13.7m at risk and should that happen, the Council would not be able to deliver within the timeframes conditioned by the grant.
- 6 The successful delivery of the scheme, in line with the LUF grant conditions, relies upon adhering to a complex programme which is also designed to mitigate any unnecessary disruption and financial impact to the adjoining Hexagon theatre events programme. There is significant risk that the Hexagon theatre programme cannot be met unless those with affected rights agree to infringements or the infringements are authorised by s.203.
- 7 If the proposed development were not to come forward due to the inability to implement within the project programme timelines, it is unlikely that a studio theatre of the nature, type and scale proposed in the Planning Permission would be able to come forward due to funding availability. This, in turn, jeopardises the positive social, economic and cultural outcomes envisaged in the public interest with a project of this nature.

**Human Rights - the purposes for which the CPO is made/whether use of s.203 justifies interfering with the human rights of those with an interest in the land affected.**

- 8 The use of s.203 will involve an interference with Human Rights under Article 1 of the First protocol under the Human Rights Act 1998 which provides that every natural or legal person is entitled to peaceful enjoyment of their property and possessions. The DLHUC Guidance also advises that:

*"... when making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land*

*affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues".*

9 However, the right to peaceful enjoyment of property under article 1 is a qualified right and not an absolute right as the wording permits the and infringement of such rights in the public interest and subject to such infringement being permitted by law. Article 1 permits interference which is "*deemed necessary to control the use of property in accordance with the general interest*".

10 Article 1 of the First Protocol provides that:

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".*

11 The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole*", i.e., compulsory purchase must be proportionate. Both public and private interests are to be taken into account in the exercise of the Council's powers. The principles have been applied in UK courts and are considered to still apply. It is therefore considered necessary for there to be a balancing between the public or "general" interest and the rights of those affected on the basis that such interference is necessary and proportionate and a "fair balance" is be struck between the rights of the individual or organisation and the rights of the public. It is for the Council to consider the issues raised in this report and strike that "fair" balance in coming to its decision.

12 The light impacts report (daylight and sunlight) that informed the design process and the planning application established that the possible impacts on light are within acceptable parameters and Planning Permission has been granted for the Studio Theatre. Weighed against these impacts must be the considerable benefits, noted in within this report, of implementing the Planning Permission and delivering the Studio Theatre.

13 There is a clear legal basis for such interference with ROL and other rights and easements affecting the land under s.226 TCPA and s.203 HPA as noted above; and, the interference is for the legitimate aim of providing the Studio theatre which is considered necessary to achieve the public and general interests identified in this report including the social, economic and environmental benefits of having the scheme implemented and delivered.

14 Whether the interference is necessary in a democratic society is a consideration that sits within the balancing of the rights of those affected against the public and general interests and it is considered that this has been addressed as above.

15 It is therefore considered to be clear that the public or "general" interests in this case outweigh any potential impact on private rights and that the use of s.203 is necessary and proportionate.

**Funding – all the necessary resources are likely to be available to achieve that end within a reasonable timescale**

- 16 The Council has funding in place. It is partly funding the project with an allocated budget from its financial resources. A significant proportion of the project budget is funded from the LUF grant. The project is scheduled to start on 1 July 2024 and to be delivered by February 2026. Any risk to the project programme will put the grant funding at risk as noted above.

**The Use of the Land - The Council must have a clear idea of how it intends to use the land which it is proposing to appropriate**

- 17 There is planning permission in place for the scheme under ref 240063/REG3 and the application and supporting documentation detail the proposed development and the intended use of the Studio Land. Additional details and information in relation to the Council's use of the Studio Land is in the LUF grant application.

**Other matters the Council has taken into consideration**

- 18 **The use of Statutory Powers is necessary and will facilitate carrying out the development.**

- (a) As noted above, the Studio Theatre development benefits from planning permission but there are ROL and potentially other rights and easements which are affected by or are affecting the development and they risks delaying or preventing the development. The Council is taking steps to ensure that it does not carry the risks of the scheme being delayed or stopped with any resulting costs (including construction costs and costs associated with dealing with private law rights). It is considered that the use of s.203 is necessary to enable the scheme progress without being prevented and in accordance with the delivery programme. As above (at paragraph 9 of Part One of this report), the beneficiaries of affected rights will be compensated for the impact of the development on their rights.
- (b) Other considerations in relation to funding and viability and the associated risks to the project programme have been covered above.

- 19 **The development is for the Council's proper planning of its area and will contribute to the promotion and improvement of the economic social or environmental wellbeing of the area.**

- (a) The above has been covered in paragraphs 3.2 of Part One of this report.

- 20 **The benefits of the development could not be achieved without giving rise to the infringement of the identified rights.**

- (a) The Planning Authority and the Planning Committee of Reading Borough Council have balanced the impact of the Studio Theatre and its benefits and found it to be a positive planning benefit and have granted Planning Permission for the scheme.
- (b) The scheme and its location are the only way to maximise the benefits of the required Studio Theatre. The original proposal had greater impacts and the Council with its architects and following consultation with affected with affected landowners has reduced the scheme size to mitigate against impacts as much as is feasible. However, the scheme continues to impact rights and therefore cannot be delivered without the resulting impacts.

- (c) The benefits of the scheme have been considered and covered in this report including the provision of the much needed studio theatre in the Town Centre and for the benefit of the Borough. These processes have established that the scheme, which has obtained planning permission, is the best way in which the benefits can be realised.

21 **Property rights and compensation**

- (a) The interference with property rights includes the removal of the “ransom” value – or the ability of the landowner to extract value for giving up his rights and not limited to what damage the development causes to his property.
- (b) The statutory compensation scheme delivers compensation for the damage to the value of the property but does not deliver compensation for loss of the “ransom” value.
- (c) Parliament has decided it is appropriate to replace the private law right (with associated ability to seek injunctions and similar to stop the development) with that limited right to compensation.
- (d) In deciding to appropriate the land, the Council is thus creating the legal basis for impacting on the landowners ability to secure ransom value.
- (e) That is considered appropriate because of all the benefits of the scheme, the fact that Parliament has set that as the appropriate approach to compensation, because of the urgency of having comfort that the build contracts can be entered into without risk.
- (f) The Council will negotiate compensation with the developer alongside this process so that he is fully compensated for the damage to his property.

**Conclusion**

22. Having considered the DLUHC guidance, the Human Rights implications and the Council’s other considerations, on balance, it is in the general public interest and for the benefit of the community to use and implement s.203 HPA. In coming to its decision the Council has had particular regard to the works done to mitigate the impact of the development, the grant of planning permission, the infringements of rights and the rights of those affected to compensation in accordance with the Land Compensation Act. On this basis, it is considered that the use of s.203 is necessary and proportionate in that it is the only option available to deliver the development and achieve the development objectives as the legitimate aim.