

Policy Committee

28 May 2024



Reading
Borough Council
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Title	Hexagon Studio Theatre
Purpose of the report	To make a decision
Report status	Partly open to the public and part exempt - see reasons below
Report author	Emma Gee, Acting Executive Director Economic Growth and Neighbourhood Services
Lead Councillor	Leader of the Council
Corporate priority	Thriving Communities
Recommendations	<p>That Policy Committee notes:</p> <ol style="list-style-type: none">1. The powers which the land that the Hexagon Studio Theatre will be built on are understood to be held.2. The need for certainty that the development can go ahead without the risk of being impeded by private law rights.3. The impact of the Hexagon Studio Theatre development on the Rights of Light.4. The Rights of Light report at Exempt Appendix 4 <p>That Policy Committee agrees:</p> <ol style="list-style-type: none">5. That if and in so far as the land on which the Hexagon Studio Theatre will be built is not currently held for planning purposes, to appropriate the Studio Land for planning purposes in accordance with section 122 of the Local Government Act 1972, thereby enabling the Council to carry out the works to build the Hexagon Studio Theatre notwithstanding that doing so interferes with private law rights including rights to light (under sections 203 to 206 of the Housing and Planning Act 2016).6. The delegation of authority to the Executive Director for Economic Growth and Neighbourhood Services (DEGNS), in consultation with the Assistant Director of Culture, Director of Finance, and the Assistant Director of Legal and Democratic Services to agree settlements with affected landowners in respect of rights of light including associated fees.7. To delegate authority to the Assistant Director for Legal and Democratic Services to enter into any agreement or publish any notice to give effect to the Council's decision to appropriate.

This report contains exempt information within the meaning of the following paragraph of Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985 and by the Local Government (Access to information) (Variation) Order 2006:

3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

And in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing it because:

to reveal confidential financial and legal advice provided to the Council would adversely affect the Council's negotiating position and thus would adversely impact upon the Council's ability to manage its affairs efficiently and effectively for the benefit of all Council Tax payers.

1. Executive Summary

- 1.1. The Council is intending to build a new Studio Theatre on the Land shown edged red on the attached plan at Appendix 1 and which currently forms the backstage area of the Hexagon Theatre, ancillary areas and parking (the **Studio Land**).
- 1.2. Planning Permission for the development of the Studio Theatre was granted on 27th March 2024 under ref: 240063 (**Planning Permission**).
- 1.3. Based on extensive research in the Borough archives, it is known that the majority if not all of the Studio Theatre land is already held for planning purposes. However, if, and in so far as it is not held for planning purposes, it is necessary and proportionate that it should be appropriated for planning purposes in conjunction with the proposed development.
- 1.4. It is considered that there is a strong public need for, and public interest in, the delivery of the new Studio Theatre in accordance with the planning permission and that it is only appropriate to enter into build contracts if and when the Council has confidence that it can build out in the agreed time frame without the risk of the development being hindered by private law rights.
- 1.5. The public interest in delivery, the timing of delivery and/or the ability to enter build contracts with confidence, significantly outweighs the limited impact on private law rights because:
 - (a) through the planning process it has been decided that the impact on daylight and sunlight to the relevant rooms of the adjoining premises is acceptable; and
 - (b) the loss to amenity caused by the development is compensable under the statutory scheme set by Parliament, which strikes the appropriate balance between the need to override such rights in the public interest and compensating landowners for the loss of those rights.
 - (c) In relation to rights of light (**ROL**), the Council, through its rights of light **ROL** Consultants, Point2, have investigated the effect of the proposed development and have established that there are impacts on adjoining landowners. The Point2 report is at Exempt Appendix 4.
- 1.6. This report sets out the legal basis upon which the development of the new Studio Theatre is proposed to proceed and requests that Policy Committee note the proposed approach and resolves in so far as necessary to appropriate the Studio Land to enable the development of the new Studio Theatre to go ahead.

- 1.7. The Council carried out the comprehensive redevelopment of what is now the southwest of its town centre in the 1970s. To deliver the development, the Council acquired properties in the 1950s and 1960s. Some of the properties were acquired on a voluntary basis and some with the use of Compulsory Purchase Powers (**CPO**) under the Town and Country Planning Act 1962 and the Housing Act 1957.
- 1.8. Properties acquired voluntarily and compulsorily under the Housing Act are judged from extensive research to have been appropriated for planning purposes. However, as noted in this report, there is a possibility, due to an ambiguity in some of the records, that a small number of properties were not appropriated. Consequently, this report recommends that the Council appropriates the Studio Land if and in so far as necessary, to enable the development of the new Studio Theatre to proceed without being impeded by private law rights.
- 1.9. This report sets out the public interest benefits and justification for appropriation in relation to the new Studio Theatre.

2. Background and Policy Context

- 2.1. At Policy Committee on 11 July 2022, the Council approved its vision for the “Culture and Community at Minster Quarter” and resolved to submit a bid to Round 2 of the Levelling Up Fund (LUF). The vision was: to regenerate the Minster Quarter area into ‘a high quality, sustainable and inclusive location that has Reading people, businesses and arts, culture, and community at its heart. The regeneration will offer new opportunities for urban living and create a new urban quarter which offers a mix of tenures alongside a commercial, arts and cultural offer that will re-invigorate the public realm and breathe new life into this historic quarter of the town.’
- 2.2. The LUF bid “*Culture and Community at Minster Quarter*” focused on the cultural regeneration of the Minster Quarter and Bridge Street area through: provision of discovery and learning in an accessible and central location in Reading; investment in the enhancement of the cultural offer at the Hexagon Theatre through the provision of a new studio theatre (the subject of this report), and provision of a new library which will be located in the current Civic Offices site in Bridge Street.
- 2.3. The LUF bid was submitted in July 2022 and confirmation of the award of funding was received in January 2023. Full details of the LUF bid including consultations in relation to proposals for the new Studio Theatre were submitted with the delivery plan, which is available on the Council’s website. Attracting financial support for the delivery of the Studio Theatre is in the economic interests of the Borough and demonstrates the responsiveness of the Council to its Best Value duties to be efficient, effective and economical.
- 2.4. In February 2023, Policy Committee approved the LUF budget for the Hexagon Studio Theatre project.
- 2.5. The vision set out above is also reflected in the Council’s Key Development Principles for its flagship regeneration site known as Minster Quarter Central, which requires a long-term arts and culture offer in support of the Hexagon Theatre and the Council’s aspiration to improve the arts and cultural offer across Reading. The Minster Quarter Central project seeks to bring forward a public realm focussed on the arts and cultural offering. The new Studio Theatre will be an annex to the existing Hexagon Theatre and, as part of the Minster Quarter area, will make a significant contribution towards fulfilling the Council’s aspirations and key objectives.

3. The New Studio Theatre

- 3.1. Located within the Minster Quarter development area, the Hexagon Theatre’s context is due to significantly change over the next 10 years. The proposed residential and mixed-use regeneration scheme in this area - bringing forward in excess of 1,000 new homes and associated commercial and retail space - will transform the wider area.

- 3.2. The new Hexagon Studio Theatre is a key infrastructure investment for the Council to act as an important catalyst to transform the area in Minster Quarter into a thriving new community with arts, culture and learning at its heart. It has the potential to deliver a wide range of benefits for Reading, including:
- (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 Theatre 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, in particular by providing a venue to host a wide variety of music shows, concerts and stand-up comedy, all of which are currently seen as inadequately provided for. This will be achieved by providing c.200(+) additional cultural events annually at the new Studio Theatre; providing c. 12,500 additional people annually with the opportunity to engage in these cultural events;
 - (d) Providing a new and enhanced 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 economically from the anticipated circa 1 million visitors to the Minster Quarter with associated additional footfall to nearby shops including the outdoor market, 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.
- 3.3. For these reasons, the new Studio Theatre project is considered to be of significant importance to the redevelopment and regeneration of this area, and to the development of the arts, cultural and learning offer both within the Borough but also the greater Reading area which is consistent with Council priorities.
- 3.4. It is further of significant importance that the project is delivered expeditiously and without delay so as to:
- (a) deliver the above benefits and fit with the wider timeline for the other developments in the Minster Quarter;
 - (b) utilise a pre-planned closure of the Hexagon theatre to allow preparatory works for the Studio Theatre to be carried out;
 - (c) ensure that the LUF grant funding is secured and to do so it is anticipated that contracts are exchanged shortly with works commencing shortly thereafter.

- 3.5. For all these reasons the Studio Theatre project promotes the economic, social and environmental well-being of the Borough.

Rights of Light and Private Rights

- 3.6. ROL are private legal rights of the property owner which are independent of the examination of light impacts in the planning process and must be considered by a developer even if planning permission has been granted. In the planning context, the local planning authority reviews the loss of light as part of the planning balance, i.e. whether the scheme overall meets the objectives of Planning Policy and the Local Plan, and whether any impact on the daylight and sunlight levels enjoyed by neighbouring occupiers is acceptable in that framework. Whereas the private interest of a landowner is to continue to enjoy ROL or to be compensated for its loss.
- 3.7. In the ordinary course of events, a developer proposing development which interferes with private law rights including ROL will have to deal bilaterally with the landowner to come to a mutual agreement to be compensated for the loss. ROL is then just one issue that developers have to overcome to deliver a scheme once planning permission has been given consent, others might include matters such as access for vehicles, support of structures, party walls, easements for services, etc.
- 3.8. If a developer does not get an agreement for interference with private rights from adjoining landowners, then the affected adjoining landowner could object and seek to prevent building works and development from proceeding. This is a normal development risk which developers seek to resolve before commencing works.
- 3.9. The law recognises that delivery of publicly desirable and or necessary schemes can be held up with the rights of adjoining landowners and therefore has established a mechanism for local authorities to carry out development notwithstanding the existence of those rights. In short, subject to various conditions, the Council is empowered to carry out building works even if they impede private law rights if the land is held for planning purposes. The right of landowners to prevent the infringement of their rights is replaced with a right to compensation.
- 3.10. S.203 of the Housing and Planning Act 2016 has the effect of allowing the Council to proceed with the development even if it involves interfering with private law rights subject to various conditions. The key criterion for present purposes is that the land must be held for planning purposes.

Is the Land held for Planning Purposes?

- 3.11. Prior to the 1960s, the Studio Land comprised largely substandard housing in a block broadly comprising what was then 11 – 27 Soho Street; 13 – 19 and 8 – 18 Lavender Street.
- 3.12. The precise chronology as to how those areas were cleared and redeveloped is not available, but the following are the essential facts:
- (a) In the early 1960s, the former housing in this area was included in a clearance area for housing unfit for human habitation under the Housing Act 1957;
 - (b) At about the same time the Council adopted proposals for the comprehensive development of the civic quarter including the theatre;
 - (c) The Council acquired by agreement a number of the houses referred to above. It also acquired some houses compulsorily under the Housing Act for clearance and others under the Town and Country Planning Act 1947 (“the TCPA 1947”) for planning purposes;
 - (d) Having acquired all of the houses in the area, the Council appears to have resolved to appropriate all those which were not then held for planning purposes to planning purposes to allow the comprehensive development of the civic quarter to go ahead (“the Appropriation”). However, the documents are not complete and the relevant report to Committee has not been found and a

- coloured plan which would show the extent of the appropriation is not available in colour so that officers cannot be certain as to the extent of the appropriation;
- (e) The consent of the Minister for Housing and Local Government was required for the appropriation of that part of the total land which was acquired compulsorily under the Housing Act and such consent was obtained;
 - (f) It follows that all houses bought under the TCPA 1947 or appropriated with the consent of the Minister were then held for planning purposes;
 - (g) It is considered that the evidence as a whole strongly indicates that any houses acquired voluntarily were either acquired for planning purposes or were included in the Appropriation. It is not currently possible to conclusively prove that this was the case but it is judged to be the correct way to understand the history and the totality of the material;
 - (h) Despite extensive research there is no evidence of any subsequent appropriation away from planning purposes to other purposes;
 - (i) However, there is a residual risk that some houses were bought by agreement (not compulsorily) under the Housing Acts and were not then appropriated to planning purposes before the development of the civic quarter.
- 3.13. A more detailed breakdown of the land issues is shown at Appendix 2. This illustrates that in relation to a small number of properties on the Studio Land, it is highly likely, but not conclusive, that they were appropriated for planning purposes.
- 3.14. To protect against that risk, and in an abundance of caution, it is judged necessary and proportionate at this stage to appropriate the Studio Land for planning purposes in so far as any part of it is possibly not already held for planning purposes. This is to establish conclusively that all of the Studio Land is held for planning purposes.
- 3.15. It is therefore proposed that the Council should appropriate the Studio Land to planning purposes. That will then allow the development to go ahead even though private law rights will be infringed. It is judged appropriate to do so because, if the land is held (by virtue of the history) for house clearance purposes it is clearly no longer needed for such purposes and there is a strong public interest in the Council being able to carry out the development without the risk of the development being impeded by those private law rights for the economic, environmental and social well-being benefits outlined in paragraph 3.2.
- 3.16. Without appropriation, there is material risk to the Studio Theatre project delivery programme and viability.
- 3.17. The use of section 203 will mean the landowners' rights to rights to compensation will be based on the statutory levels of compensation as set out in paragraph 9 (Legal Implications).
- 3.18. Officers have engaged with the affected owners and provided information on the Council's proposals inviting them to comment. Officers will progress further discussions with the affected landowners and will be immediately instructing the ROL surveyors to initiate negotiations with the affected landowners.
- 3.19. Given the project programme as set out below, the time involved in waiting for negotiations to conclude and reaching agreement prior to appropriation could render the scheme unviable. It could mean the loss of the required circa £13.7m of secured LUF grant funding which requires the project to be delivered by the agreed timeframe set out below.
- 3.20. To meet the programme deadlines as part of the Council's LUF funding agreement with DLUHC, the Council is intending to enter into a construction contract in July 2024, with a commitment to enabling works in June 2024.

Project Programme

27 March 2024	Planning committee approved the scheme
July 2024	Main works start on site
February 2026	Practical completion of Studio theatre.

4. Contribution to Strategic Aims

- 4.1. The Council's new Corporate Plan has established three themes for the years 2022/25. These themes are: Healthy Environment, Thriving Communities and Inclusive Economy.
- 4.2. These themes are underpinned by "Our Foundations" explaining the ways we work at the Council:
- People first
 - Digital transformation
 - Building self-reliance
 - Getting the best value
 - Collaborating with others
- 4.3. Full details of the Council's Corporate Plan and the projects which will deliver these priorities are published on the Council's website - [Corporate plan - Reading Borough Council](#). These priorities and the Corporate Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical.
- 4.4. An explanation of how the proposals contained within this report align with them are described below:
- **Healthy Environment:** The new Studio Theatre scheme aims to achieve high sustainable design standards including benefitting from the decarbonisation of the Hexagon Campus (the Hexagon Theatre and adjacent Studio Theatre), enabling improved physical accessibility to both theatres and deliver a net gain in biodiversity.
 - **Thriving Communities:** The proposals seek to create a new community and cultural venue with 30% of programming time allocated for the benefit of the community and grass roots arts and culture organisations and a mix of uses which reinforce the future sustainability of the existing theatre, such that residents can meet their needs with reduced need to travel for cultural and social benefits.
 - **Inclusive Economy:** The scheme aids the regeneration of the town centre, providing direct and indirect employment opportunities, and delivering significant social value in the process.

5. Environmental and Climate Implications

- 5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).
- 5.2. The decision above does not in and of itself have any climate impact, so a climate impact assessment has not been completed for this report, but the new Studio theatre has been designed to Bree am Excellent standards, incorporating a decarbonisation initiative to deliver heat pumps, in place of gas boilers with solar panels on the roof of the new Studio Theatre to reduce carbon emissions and operating costs. If the project does not proceed, then this decarbonisation project is at risk, and this is a factor which is relevant in assessing the overall public interest.

6. Community Engagement

- 6.1. The original LUF bid included engagement with the community as detailed in previous reports to Policy Committee (11th July 2022 minutes and 13 refs). Letters of support have been received from local stakeholders (including Culture Mix Arts, Connect Reading, University of Reading, Imagine Theatre, Reading Rep Theatre, and REDA), national organisations (including Theatres Trust, Music Venues Trust) and show performers / agents (Royal Philharmonic Orchestra, Off the Kerb Productions and SJM Concerts).
- 6.2. In addition, as part of the pre-application process, the Council engaged in consultations on the design proposals which included its adjoining landowners, as well as the Theatres Trust and Arts Council. In December 2023, a public planning exhibition was held at the Hexagon Theatre and design proposals were put on display at the Council's Civic Offices and are still available for viewing at the Civic Offices. A specific webpage is set up on both the Hexagon and Council websites to provide online design information for the public to view. A link is provided here:
<https://whatsonreading.com/hexagon-studio>

7. Other Relevant Considerations

- 7.1. **Human Rights Act 1998** – where the Council seeks to interfere with private rights it is bound to consider the rights of the property owners and their rights under the Human Rights Act. Article 1 to the First Protocol states 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.*
- 7.2. These have been addressed in Appendix 3 to the report. It is considered necessary and proportionate for the Council to exercise its rights in the way outlined in this report.

8. Equality Implications

- 8.1. The LUF bid was subject to consultation. Copies of the documentation can be seen here: <https://www.reading.gov.uk/leisure/revitalising-the-hexagon-and-central-library/>
- 8.2. Previous reports to Policy Committee on the Minster Quarter development of which the new Studio Theatre is an integral part, have indicated that there would be no significant adverse impacts on specific groups due to race, gender, disability, sexual orientation, age or religious beliefs.
- 8.3. Officers will continue to monitor the impacts throughout the project.

9. Legal Implications

- 9.1. To ensure that the Studio Theatre project can go ahead without being prevented by private rights over the Studio Land, and as a precautionary measure, it is necessary and proportionate for the Council to appropriate the Studio Land as a precaution against the possibility that any part of the Studio Land is not already held for planning purposes.
- 9.2. In deciding to appropriate the Studio Land, it is judged that the Studio Land would either still be held for slum clearance, housing or investment purposes. It is considered that there is no other purpose for which the Council could have acquired the Studio Land at the time.
- 9.3. Under section 122 of the Local Government Act 1972 (**LGA**) the Council can appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement where that land is no longer required for the purpose for which it is held immediately before the appropriation. The Studio Land is no longer required for the purposes so stated and is now required for planning purposes to deliver the Studio Theatre.

- 9.4. Planning Purposes is defined under s246 Town and Country Planning Act 1990 (TCPA) by reference to sections 226(1)(a) and (1A) of TCPA. For 226(1)(a) and (1A) the Council is authorised to appropriate land for planning purposes if the Council thinks that the appropriation of the land will facilitate the development, redevelopment or improvement of the land; or the land is required for a purpose which is necessary to achieve in the interests of the proper planning of the area in which the land is situate; and where it is likely to contribute to the economic, social or environmental wellbeing of the area. The report sets out how the requirements of s226 (1)(a) and (1A) have been satisfied and the development of the new Studio Theatre will contribute to or is necessary under the requirements of the stated legislation (see paragraph 3.2 of this report).
- 9.5. The appropriation will be subject to the rights of any third parties in respect of the Studio Land. However, following appropriation, the Council is able to rely on s.203 of the Housing and Planning Act 2016 (HPA) which has the effect of allowing the Council to carry out the development even though it interferes with private rights.
- 9.6. There are four requirements to be satisfied for the use of s.203:
- (a) the site must be acquired or appropriated by a local authority for planning purposes (the Studio Land will be appropriated prior to using s.203);
 - this will be the case upon the decision of the Policy Committee to do so.
 - (b) there is planning consent for the building or maintenance work or use;
 - Planning Permission was granted on 27th March 2024
 - (c) a local authority could (if not already the owner) acquire the site compulsorily for the purposes of carrying out the works (including construction and maintenance works), or for the use of the land (Studio Land) permitted by the relevant planning consent
 - The purpose of the development satisfies the requirements of s.226 TCPA 1990 (as above)
 - (d) the work or use in question relates to the purposes for which the land was appropriated.
 - As above, the appropriation is to facilitate the development of the new Studio Theatre for which Planning Permission has been granted.
- 9.7. The further effect of s.203 is that it converts such affected rights and interests to rights of compensation. Section 204(2) of the HPA provides that compensation should be calculated on the same basis as compensation payable under s.7 and s.10 of the Compulsory Purchase Act 1965; and, the amount of compensation payable is the diminution in the value of the affected interest which may be less than the landowner could achieve if the Council had to secure his agreement to allow the development to go ahead – sometimes referred to as ransom value or the negotiated basis of compensation.
- 9.8. The Human Rights Act 1998 and Government Guidance places obligations on local authorities using sections 122 LGA and sections 203 HPA to demonstrate that the use of such powers is in the public interest are necessary and proportionate.
- 9.9. The Studio Land is to be developed to bring forward the new Studio Theatre in line with the Council's corporate objectives in the public interest for enhancing education, arts and culture in the Borough. The development will assist in achieving proposals for the regeneration of the Minster Quarter and will contribute to the promotion or improvement

of the economic social and environmental wellbeing of the area. The public interest benefits are set out in paragraph 3.2 of this report. In this instance, officers are of the view that there is a compelling case in the public interest and legitimate aims to be achieved in overriding rights and easements which have the potential to detrimentally impact on, delay or increase the costs of delivery and therefore affect the viability of the new Studio Theatre development.

9.10. Officers consider that the requirements and justifications for the use of s.203 in relation to the Studio Theatre are met as set out at Appendix 3.

9.11. Additional Legal Implications are set out in Exempt Appendix 5 of this report.

10. Financial Implications

10.1. The approved Levelling Up Fund budget in the General Fund Capital Programme includes a provision for cost implications of addressing ROL issues. Confidential financial and risk implications are set out in the Exempt Appendix 5 of this report.

11. Timetable for Implementation

11.1. Not applicable.

12. Background Papers

12.1. There are none.

Appendices

Open to the public

1. Appendix 1 - Studio Land Plan
2. Appendix 2 - Planning Purposes
3. Appendix 3 - Impact assessment for the use of rights

Exempt from publication

4. Appendix 4 - Point 2 Rights of Light Survey
5. Appendix 5 - Legal, Financial and Risk Annex