

CABINET

9 FEBRUARY 2016

CHATHAM WATERFRONT

- Portfolio Holders: Councillor Alan Jarrett; Leader
Councillor Rodney Chambers OBE; Inward Investment, Strategic Regeneration and Partnerships
Councillor Jane Chitty; Planning, Economic Growth and Regulation
- Report from: Richard Hicks: Director of Regeneration, Community and Culture.
- Author: Sunny Ee: Chatham Regeneration Manager.
Noel Filmer: Valuation and Asset Management Manager.

Summary

This report:

- Informs and updates Members on progress towards the regeneration of the Chatham Waterfront site as shown edged black, hatched black and cross hatched black on the attached plan.
- Seeks approval to continue negotiations with third party landowners to acquire interests in the site and to agree/pay compensation.
- Seeks approval for the Council to actively market the site, with a view to selecting a developer to dispose of the site, so that it can be redeveloped.
- Proposes the exercise of powers of appropriation in respect of part of the car park at Holborn Wharf; the King's Arms public house at Medway Street; the Gun Wharf, Dock Road; and land lying to the west of Globe Lane, all in Chatham, for planning purposes pursuant to Section 122 of the Local Government Act 1972. This will facilitate the proposed regeneration development.
- Informs Members that, although good progress is being made on negotiations with the principal third party landowners, it is now prudent to pursue, in parallel with negotiations, the obtaining of statutory powers of compulsory purchase to acquire the land and appropriation of the Council's own land to ensure that all necessary land interests are acquired and to enable regeneration to take place.

1. Budget and Policy Framework

- 1.1 The making of Compulsory Purchase Orders is a matter for Cabinet.
- 1.2 The cost of compensation per landowner is likely to be under £100,000 per owner and will therefore fall within the Assistant Director of Legal and Corporate Service's delegated authority. Also Cabinet delegated authority on 12 February 2013 to amongst other things acquire land.
- 1.3 The appropriation of land is a matter for Cabinet.
- 1.4 The value of the site for disposal will be over £100,000 so this is a matter for Cabinet.

2. Background

- 2.1 This report concerns the proposed redevelopment of the Chatham Waterfront development site as shown edged black, hatched black and cross hatched black on the attached plan (area is 0.86 hectares (2.13 acres)).
- 2.2 Cabinet on 12 February 2013 agreed to delegate authority to the Assistant Director of Legal & Corporate Services, in consultation with the Portfolio Holder for Finance, to acquire third party land in the Chatham Waterfront area.
- 2.3 Cabinet on 5 August 2014, agreed that officers be authorised to:

- (i) Continue negotiations with landowners to acquire the land;*
- (ii) Prepare a design brief for the site;*
- (iii) Instruct experts to assess developer interest in the site;*
- (iv) Instruct experts to advise on the regeneration of the site and also the compulsory acquisition process (including the preparation of a draft compulsory purchase order) should negotiations not prove successful;*
- (v) Issue landowners with requisitions for information to enable the Council to fully understand the nature of their interests and also to assist in the preparation of a CPO.*

The Cabinet noted that if negotiations with landowners cannot be concluded at a reasonable cost and in a reasonable timeframe (in consultation with the Leader), it will be necessary to use the Council's statutory powers of compulsory purchase to acquire the land, and that if this is the case, a further report will be submitted to Cabinet recommending the making of the formal compulsory purchase order.

- 2.4 The site is an area located at a key gateway to Chatham town centre, facing onto the River Medway, Medway Street, the bus station and the Pentagon Shopping Centre. The acquisition and development of the site is a major regeneration focus enabled by funding from the Growing Places Fund.
- 2.5 The main current use of the site is for public parking, managed by the Council. Additional ancillary uses include part of the Chatham river walk, soft landscaping and public amenity land.

2.6 The site faces onto the river, the main retail offer of the Pentagon Shopping Centre, the bus station and significant public amenity land in the form of the Paddock and land at Chatham Waterfront. It provides the potential for a high profile mixed use development site.

2.7 *Council's aspirations for the site*

2.7.1 The Council has regeneration aspirations for the wider area as a civic space and gateway to Chatham and the wider Medway area. As part of creating this gateway and destination, the Council has installed the 'Big Screen' on the Chatham Waterfront Pumping Station, a 9m by 6m digital outdoor screen, which shows relevant local news and services, interacting with the local community and town centre users/visitors.

2.7.2 The site can contribute significantly to the regeneration of the area, particularly if the ground floor of the development includes a leisure or restaurant use providing active frontage to the river walk and also facing out to the Big Screen, the bus station and the Pentagon Shopping Centre. This will complement and support emerging plans for the civic space.

2.7.3 In addition, there are potential development sites on Medway Street and further up the river towards Rochester that could be available in the fullness of time. A successful development of this site could be the catalyst for viable developments elsewhere in the area in conjunction with the phased development of Rochester Riverside.

2.7.4 It is proposed that the site be redeveloped for a residential led mixed-use development, including public realm and open space use. To this end a planning brief was launched by the Council for consultation in November 2014 – the Chatham Waterfront design brief. This summarised the local plan support for the redevelopment of the site and suggested (at section 5):

"A mixed use scheme is proposed for the site, which could accommodate:

- 90 apartments, typically 5-6 storeys in height*
- 2,500m² of commercial space*
- an 80 bed hotel*

The provision of publicly accessible buildings at ground floor level with a mixture of food and drink outlets and other retail uses will create an attractive riverside destination and year round activity. Daytime and evening events will help to maximise activity levels and create a continuously lively environment.

It is anticipated that the apartments and hotel will be provided at first floor and above."

2.7.5 This is currently being redrafted following feedback to accommodate the increasing demand for housing. The hotel use will be removed and replaced with residential units but the aspiration for an active frontage on the ground floor for commercial use will remain.

2.8 *Planning policy support*

- 2.8.1 Chatham Centre and Waterfront is one of several major regeneration projects in the wider Medway area, which will enhance the character and the economic fortune of the sub-region and contribute to the wider regeneration of the Thames Gateway.
- 2.8.2 The Chatham Centre and Waterfront Development Framework 2004 and the Chatham Centre and Waterfront Development Brief 2008 Supplementary Planning Guidance promote unlocking potential at the site and encourage development to boost Medway's economy and deliver opportunities for further investment.
- 2.8.3 Retained policy C5 of the Medway Local Plan 2003 identifies the site as part of the area for development of a major multi use 'city' centre for Medway
- 2.8.4 The site is identified for a residential led mixed-use development.
- 2.8.5 The Council is in the process of preparing a new Local Plan, a draft of which is expected to be published in late 2017, be subject to examination in early 2018 and then be adopted by late 2018. The new Local Plan is expected to be supportive of the Chatham Waterfront development.
- 2.8.6 The National Planning Policy Framework (NPPF) promotes sustainable development, including ensuring that there is sufficient land available in the right places and at the right times to support growth and innovation.
- 2.8.7 The Council has also been awarded Growing Places Funding to assist towards the redevelopment of the site.
- 2.8.8 Two planning applications were submitted by the Council and a former land owner in 2011. These applications proposed a mixed-use development on the site. Whilst the Council as local planning authority resolved to grant permission for the applications, this was subject to the completion of section 106 agreements. These agreements were never completed.
- 2.8.9 Amongst other things, delivery of the scheme has been frustrated by fragmented ownership. In addition to this, the Council has been advised that the scheme proposed in the applications is not currently viable.

2.9 *Proposals for redevelopment*

As a result of the age of the statutory development plan documents, it is now appropriate for the Council in fulfilling its function as a local planning authority to review again its policies and proposals for the site. The Council has now set out its aspirations for the site in a non-statutory design brief that is currently being refined to assist potential development partners and provide a framework to support its aspirations for the site to accommodate a residential-led mixed use development of around 138 apartments and circa 1,500 sqm of commercial space. If the proposed recommendations in this report are agreed officers will work up outline planning proposals for the site and submit for consideration. This will demonstrate that the planning impediments for the proposed regeneration of the site are limited.

2.9.1 It is also appropriate for the Council to work with its advisors to confirm developer appetite for the redevelopment of the site.

2.9.2 In addition, officers are seeking authority from the Cabinet to actively market the site so that developer support for the Council's ambition can be clearly demonstrated. This will then provide additional confidence that the regeneration will occur and within a reasonable timeframe.

2.10 *Land ownership*

2.10.1 Third parties, currently have interests in the land hatched black and cross hatched black on the attached plan. The Council owns the freehold of the areas edged black and has long leasehold interests (of over 100 years) in the land cross-hatched black. This complex pattern of ownership means that, without a process of land assembly, the site is unlikely to come forward for regeneration. Officers have had significant success in negotiating with the remaining landowners and terms have now been agreed with them, however these acquisitions have not yet reached legal completion. Officers believe that the regeneration of the site is unlikely to be achieved without the use of compulsory powers as there are, two small areas of land in unknown ownership and it would be desirable for the Council to take ownership of these meaning that the Council will need to exercise its powers of Compulsory Purchase as it is unable to trace the owners (and officers have undertaken extensive enquiries in this regard).

2.10.2 Whilst the Council will continue to seek to acquire the land by negotiation, if negotiations are not successful, the Council is likely to need to promote a compulsory purchase order in parallel with further negotiations to allow redevelopment to take place within a reasonable timeframe to meet the Council's aspirations for the site.

2.10.3 The complex nature of the land ownership at the site means that it would be more likely that the redevelopment aspirations of the Council for the site (in the interests of the proper planning of Chatham) would be realised with intervention by the Council, together with an approach demonstrating strategic leadership for the site.

2.10.4 The Council has powers under Section 226 (1)(a) of the Town and Country Planning Act 1990 (Act) to acquire land compulsorily if it considers that the acquisition will facilitate the carrying out of development, redevelopment or improvement of the site. Under section 226(1A) of the Town and Country Planning Act 1990, such powers may only be exercised by the Council if the Council considers that such development, re-development or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area.

3. Appropriation of land held by the Council to its planning purposes

- 3.1 As well as having powers of compulsory purchase, the Council can utilise its power of appropriation to "cleanse" the title of land in its ownership, if for example rights of way or restrictive covenants exist that might thwart development.
- 3.2 As part of the legal process for making the site ready for regeneration, officers now propose that the Council uses its powers to appropriate the land to its planning purposes. This will then enable development to be carried out without the beneficiaries of rights being able to obtain an injunction against the Council or its successors in title. Instead former beneficiaries will have a right to claim compensation and there is a statutory underwriting of compensation, meaning the Council is ultimately responsible for such compensation if the developer fails to pay.
- 3.3 The process of appropriation is explained further below in section 9.

4. Advice and analysis

- 4.1 Members have for a long time expressed a clear ambition for the site to be taken forward for regeneration.
- 4.2 Officers have previously advised that a clear planning framework would assist as would positive steps to demonstrate the Council's commitment to land assembly to provide a single cleansed title for redevelopment to take place.
- 4.3 The design brief and the success with some acquisitions from landowners demonstrates the progress the Council has made to date. However there remains:
- a. land in third party ownership;
 - b. land that the Council owns but is encumbered by rights that could stop development taking place;
 - c. land in unknown ownership.
- 4.4 It is clear that, without the Council using its land assembly powers, in conjunction with continuing negotiations, the site is unlikely to come forward for redevelopment.

- 4.5 It will not be possible for private developers to bring the site forward in a comprehensive way without positive planning powers being sought by the Council in the form of compulsory purchase and appropriation powers.
- 4.6 Whilst the design brief assists considerably in explaining the planning position and the Council's ambition, it is felt that planning clarity could be improved by an application for outline planning permission (based on the parameters in the design brief), being taken forward now. This will demonstrate the Council's clear intentions for the site.
- 4.7 Officers also believe that once planning consent is obtained the time will be right for active marketing of the site to begin. This will demonstrate market demand for the site. The Council's commitment to taking the site forward will have been demonstrated to the market and, if a compulsory purchase order is then promoted, the strength of market support for the scheme will be capable of being demonstrated.

5. Risk management

- 5.1 This information is set out in the exempt appendix.

6. Consultation

- 6.1 Consultation has taken place with developers to confirm their interest in redeveloping the site. There has been initial developer interest and discussions will continue.
- 6.2 Consultation has also taken place with those remaining landowners, with whom agreement has not yet been reached, and who were invited to comment on the design brief when it was taken forward.
- 6.3 Any application for planning permission will be consulted upon as part of the planning application process.

7. Financial implications

- 7.1 The Council will need to bear the cost of:
- 7.1.1 Preparing an application for planning permission for the site;
 - 7.1.2 Instructing agents to market the site to potential developers;
 - 7.1.3 Preparing a compulsory purchase order and then submitting it to the Secretary of State for confirmation;
 - 7.1.4 Taking steps to secure the confirmation of the compulsory purchase order, which could include the costs of preparing for and attending a public inquiry.
- 7.2 If agreement can be reached with the remaining landowners, the Council will need to cover compensation costs for acquisition of the land together with the landowners' legal and surveyor's costs and stamp duty land tax.

- 7.3 If agreement cannot be reached and the Council decides to use a compulsory purchase order to acquire the land, then the Council will need to pay for the costs of obtaining the compulsory purchase order and for any land compensation and professional fees etc.
- 7.4 The Council will need to also bear in mind there is a risk that the costs of objectors to the compulsory purchase order will have to be borne by the Council if the order is not confirmed.
- 7.5 The Council was awarded funding by the South East Local Enterprise Partnership (SELEP) Growing Places Fund (GPF). This funding was granted for the acquisition and marketing of the Chatham Waterfront Development Site and will therefore be used to cover the outlined cost implications. There is provision within the GPF funding to cover the above costs. The GPF will also be used to improve the wider area including the river walk, central civic space, surrounding public realm and key feature points in the town centre such as the Brook Theatre.
- 7.6 When the site is disposed of for development the Council will lose approximately 145 parking spaces from the current public car park (current full capacity is 174 spaces) equating to around £131,000pa (proportional net figure for 2014/15) although some of this may be displaced to other car parks as overall there is enough parking provision in other car parks across Chatham Town Centre.
- 7.7 The Council will be required to pay back the GPF from capital receipts from disposal of the site.

8. Legal implications

Guidance on Compulsory Purchase Orders

- 8.1 In promoting a compulsory purchase order, acquiring authorities should have regard to government guidance, and the relevant government guidance is now the guidance which was issued in October 2015 from DCLG.
- 8.2 Matters which must be addressed are:
- (i) There must be a compelling case in the public interest – as to which see paragraph 8.3 below;
 - (ii) Authorities should have taken reasonable steps to acquire the interests by negotiation, where practicable. A compulsory purchase order is intended as a last resort in the event that attempts to acquire by agreement fail. Negotiations with third parties have taken place and largely been successful. Officers are satisfied that they have carried out sufficient steps to meet this criterion;
 - (iii) There must be a clear idea of how the Council intends to use the land and that the necessary resources are likely to be available to achieve that end within a reasonable timescale. The Council's intentions are set out in its Design Brief. Funding to support the acquisition process is available using the GPF as outlined earlier. Developer interest in an assembled site has been

demonstrated in consultant's discussions with potential developers. This will continue as active marketing of the site commences.

(iv) Full details for the source of, and timing for, the funding of the scheme are required –the Council already has funding for land assembly compensation in place. The financial wherewithal of developers interested in the site will be tested by officers, with external consultants assisting as required, to provide confirmation that regeneration is likely to take place if the Council enters into an agreement with a developer for the regeneration of the site.

(v) The scheme must be unlikely to be blocked by impediments to implementation. This again is demonstrated by the Design Brief. Officers propose to augment this by submitting an application for planning permission based on the Design Brief.

(vi) A compulsory purchase order can only be made if there is a compelling case in the public interest and that the purposes for the making of the order should sufficiently justify interfering with the human rights of those with an interest in the order land. This is dealt with below.

- 8.3 On the basis of the assessment carried out by the Council it must consider that a compelling case exists before a decision is made. Officers have carried out this assessment and as a result of the unlocking of the redevelopment of a key brown-field site in the centre of Chatham, which will bring employment opportunities, housing development and regeneration, (subject to relevant planning permissions being obtained), in addition to the strategic value of improving the use of the land in the town centre of Chatham. Officers are of the view that there is a compelling case in the public interest for making a compulsory purchase order (and interfering with the human rights of those affected by the Scheme).
- 8.4 The purpose for which the land is to be compulsorily acquired is likely to improve the economic well-being of the area by unlocking the site for development and regeneration as well as major improvement to the public realm at Chatham Waterfront.
- 8.5 Planning permission has not been granted, but an application in accordance with the design brief would be unlikely to face planning impediments. Further subject to confirmation of compulsory purchase powers, or acquisition of land by agreement there are no remaining impediments to the Scheme proceeding.
- 8.6 The Council considers that there is no alternative other than to use its powers of compulsory acquisition powers to deliver the regeneration of the site, albeit if continuing negotiations are successful there will be no need to use the powers other than in respect of the small areas of land in unknown ownership.

Human Rights

- 8.7 The Human Rights Act 1998 (HRA) came into force on 2 October 2000. Provisions of the HRA which are relevant in relation to compulsory purchase are:

(i) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe. Whilst the United Kingdom was instrumental in drafting the Convention it was never incorporated into United Kingdom law;

(ii) The HRA still does not incorporate the Convention into United Kingdom law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects;

(iii) The main articles of the Convention which are of importance in circumstances where the Council is considering making a compulsory purchase order is Article 1 of Protocol 1 – the protection of property;

(iv) In making a CPO an acquiring authority must show that the acquisition is justified in the public interest.

(v) Article 1 of Protocol 1 provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions;

No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law;

However, the above rules shall not prevent a State enforcing such laws as it deems necessary to control the use of property in accordance with the general interest;

- 8.8 The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is an important factor in considering the balance between the two, both in relation to the compulsory acquisition and proposed appropriation of the Council's own land.

Recommendations Relating to the Human Rights Act:

- 8.9 It is considered that the interference with the individual's property is justified by the advantages accruing to the public, particularly taking into account the fact that there is a legal right to compensation for the property taken and rights extinguished by compulsory purchase and where rights are overridden through the proposed appropriation (see further below).

Equalities Act

- 8.10 It is not anticipated that any minority group would be adversely or disproportionately affected or directly or indirectly discriminated against by these proposals.
- 8.11 Any development of the site will need to comply with the provisions of the Equalities Act.

9. Appropriation

- 9.1 All of the interests which are not in third party ownership are owned by the Council. These plots are currently registered at the Land Registry under title numbers K271812, K84027, K531311 and K72386. The land under title number K271812 (forming part of the carpark) appears to have been acquired for planning purposes while the land under title numbers K84027 (part of which is also included in the car park) and K531311 appear to be held under the Local Government Act Powers. There is no indication as to the statutory powers under which the land under title number K72386 is held.
- 9.2 The Council can appropriate land for any purpose for which it is authorised to acquire land by agreement. The appropriation process is set out in the Local Government Act 1972. Section 122(1) provides:
- 'Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council is authorised by this or any other enactment 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 a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned'.
- 9.3 The Council is a principal Council and so must follow the process set out in Section 122. The Council should only resolve and authorise the Council to appropriate land for planning purposes if it is satisfied that the land is no longer required for the purpose for which it is held, currently a public car park. There will be a loss of 99 spaces should the site become developed, however this can be displaced to a number of surrounding car parks in Chatham Town Centre that have spare capacity including the Brook, Queen Street, Whiffens Avenue and Slicketts Hill. The land in question is clearly required for regeneration as set out in this report. It should therefore be appropriated for planning purposes.
- 9.4 There are a number of private rights of way and other easements which the land is subject to.
- 9.5 Where land is appropriated for planning purposes, the Council may rely upon the provisions of Section 237 of The Town & Country Planning Act 1990. The Council has this statutory power to override easements, rights of way and restrictive covenants affecting land. Section 237 authorises the overriding of any private rights (such as restrictive covenants and easements) affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person deriving title from it. That being so, statutory undertakers are exempt from the provisions of Section 237 such that their rights cannot be overridden.
- 9.6 The ability to interfere with these rights is important in the context of enabling regeneration to proceed. Whilst the power exists to override such rights, it does not prevent such rights being compensated. Section 237(4) of the Town & Country Planning Act 1990 provides that compensation will be payable to those parties whose interests have been affected by the appropriation.

10. Funding

- 10.1 The Council will be liable to meet statutory compensation claims from either compulsory purchase or appropriation and has the necessary funding in place to cover these costs through the GPF as outlined earlier.

11. Recommendations

- 11.1 The Cabinet is asked to delegate authority to the Director of Regeneration Community & Culture, in consultation with the Chief Legal Officer, the Leader of the Council, the Portfolio Holder for Inward Investment, Strategic Regeneration and Partnerships and the Portfolio Holder for Planning, Economic Growth and Regulation to;
- (a) Continue negotiations with landowners to acquire outstanding interests in the land hatched and cross hatched black on the attached plan ("the Plan").
 - (b) Continue to pursue developer interest in the land to secure its regeneration.
 - (c) Seek advice on the active marketing of the site for regeneration and advice on the prospects of such development proceeding in a reasonable time frame.
 - (d) Prepare a compulsory purchase order for any or all of the remaining interests in the site within the area shown on the Plan pursuant to the Council's powers under S226 of the Town and Country Planning Act 1990.
 - (e) Make the CPO to secure any or all interests required for the regeneration of the site shown on the Plan.
 - (f) Submit the CPO to the Secretary of State requesting the confirmation of the CPO.
 - (g) Respond to objections and continue negotiations with landowners following making of the CPO.
 - (h) Give undertakings and assurances if advised to and to acquire by agreement any outstanding interests.
 - (i) Confirm the CPO as an unopposed Order if the CPO is returned to the Council for confirmation.
 - (j) Instruct experts (including counsel) to represent the Council at an inquiry into the confirmation of the CPO or in any written representation process or process including a hearing.
 - (k) Attend any inquiry into the CPO and to pay the costs of the planning inspectorate for the inquiry.
 - (l) Advertise the confirmation of the CPO if it is confirmed by either the Council as an unopposed order or by the Secretary of State.
 - (m) Serve notices to treat and enter, make vesting declarations and/or deed polls to secure all remaining interests in the site.

(n) Seek to resolve issues of compensation by agreement or in default of agreement by reference to the Lands Chamber of the Upper Tribunal and/or by mediation.

(o) Declare those areas of land within the area shown on the Plan as surplus to the purposes for which it is currently held.

(p) Exercise the Council's powers of appropriation of the land within the area shown on the Plan already held by the Council to its planning purposes.

(q) Negotiate any compensation due to beneficiaries of rights held over any land appropriated by the Council within the area shown on the Plan.

11.2 The Cabinet is asked to note the human rights implications of proceeding with the powers of compulsory purchase and appropriation.

12 Suggested reasons for decision(s)

12.1 This will allow the Council's aspirations for the site to be realised within a reasonable timeframe as set out in the report.

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Appendices

Appendix 1 - Map showing lands over which powers are proposed to be secured

Background papers

Report to Cabinet 12 February 2013

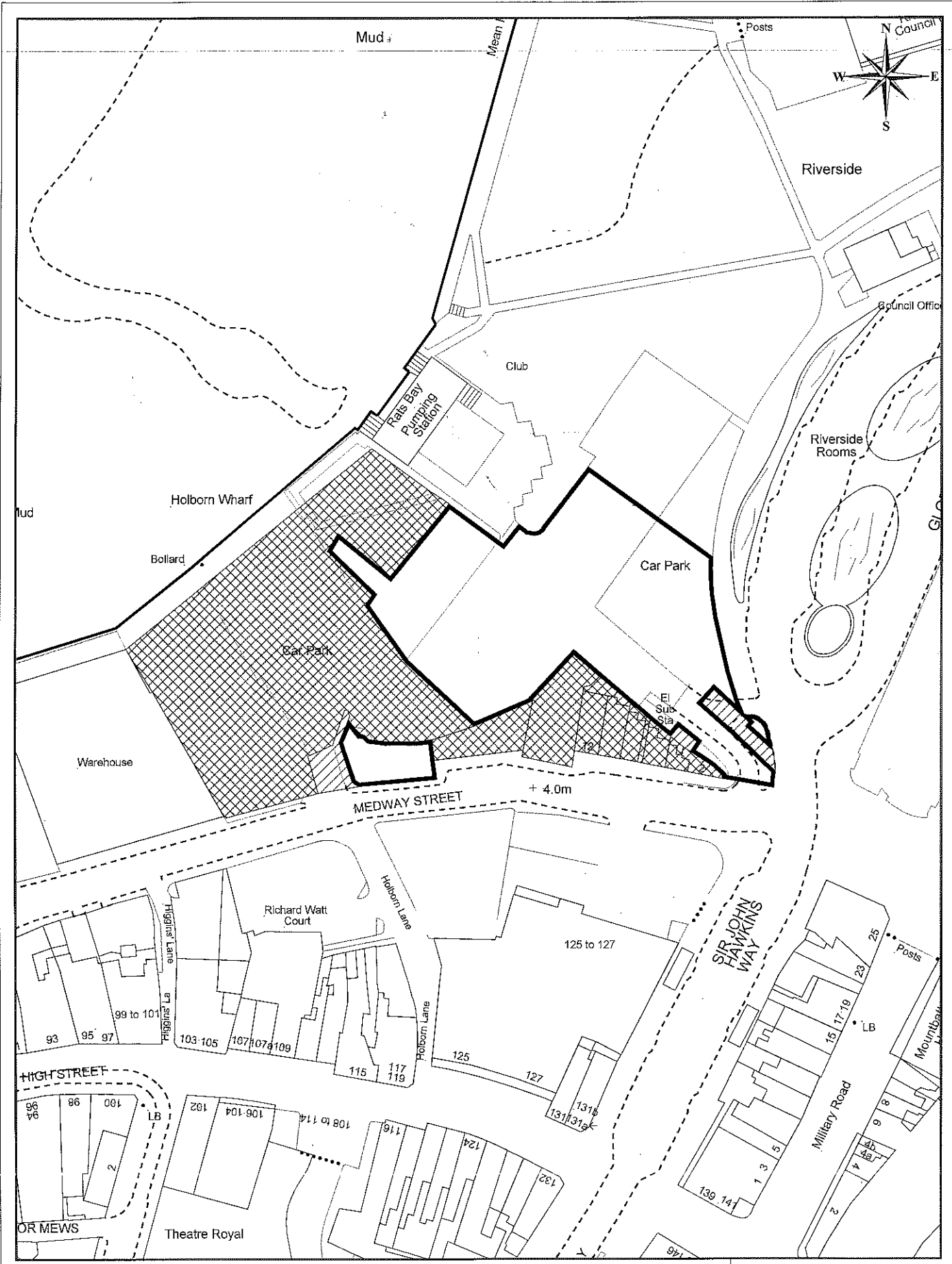
<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=10291>

Report to Cabinet 5 August 2014

<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=13181>

Chatham Waterfront Design Brief, November 2014

<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=16187&PlanId=242>



Land at Chatham Waterfront

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