

<b>Item No.</b> 14.	<b>Classification:</b> Open	<b>Date:</b> 18 October 2011	<b>Meeting:</b> Cabinet
<b>Report title:</b>		Appropriation of Land for Planning Purposes of part of Silwood 4B site Rotherhithe SE16	
<b>Ward:</b>		Livesey	
<b>Cabinet Member:</b>		Councillor Fiona Colley, Regeneration and Corporate Strategy	

## **FOREWORD – COUNCILLOR FIONA COLLEY, CABINET MEMBER FOR REGENERATION AND CORPORATE STRATEGY**

Silwood site 4B includes a former housing depot and flats on Debnams Rd and Gillam House. It is the final part of the long standing Silwood Estate Regeneration Programme. Following a number of set backs this scheme has now obtained planning permission and the disposal of the site was agreed by Cabinet in April.

In order to prevent any further delays to this scheme I am now recommending that Cabinet appropriate this land to planning purposes. The effect of this will be to make any third party interests that might exist, subject to compensation only and prevent any injunction being sought that could prevent or further delay the regeneration from proceeding.

## **RECOMMENDATIONS**

That Cabinet agrees:

1. The appropriation of the land, shown shaded blue on the plan in appendix 1 to this report ("the Plan"), from use for commercial purposes to planning purposes in accordance with section 122 of the Local Government Act 1972.
2. To note the land is no longer required for the purpose for which it is currently held.

## **BACKGROUND INFORMATION**

3. The Site which is outlined in red on the Plan is the final part of Southwark Council's Silwood Estate Regeneration programme with Lewisham Council. Disposal of the Site has suffered a number of set backs over several years from changes in planning policy by the GLA and from the Environment Agency. These have now been resolved and planning permission was granted by the London Borough of Southwark for a scheme of 127 units in April 2011.
4. A disposal report to Cabinet in April 2011 was approved giving the Head of Property the delegated powers to agree a sale on the terms set out in the report for the redevelopment of the Site to Higgins Homes, the developer.
5. A contract for sale in the form of a development agreement has been exchanged between the council and the developer Higgins Homes; completion of which is

subject to the council agreeing and obtaining Cabinet approval to appropriate the land shown shaded blue on the Plan (“the blue land”).

6. Appropriation for planning purposes will facilitate the carrying out of development that is likely to contribute to the economic, social and environmental wellbeing of the area.
7. If a third party is able to establish an easement then this could prevent development and ultimately regeneration taking place as a result of any potential rights claimed over the land shaded blue (the part of the Site between Debnams Road and Corbetts Passage) by resulting in the need to negotiate to acquire the interest claimed or perhaps a submission of a new planning application for a scheme reduced in size with fewer housing units which will have a negative impact regeneration proposals of the council for this area.

### **KEY ISSUES FOR CONSIDERATION**

8. The Site comprises the former Debnams Road Housing Depot, two derelict housing blocks and the shaded land which links the two sites that are held within Housing. The land to be appropriated is held for commercial purposes and consists of a pavement area and an electricity sub station enclosed by bollards. The housing blocks are empty and their continued presence is a blight upon the area.
9. Higgins Homes applied for planning permission prior to exchange of the development agreement. However a third party has now made a claim for an easement in the form of a vehicular right of way to gain access to their premises on Corbetts Passage. This claim has not been substantiated or accepted however it is likely to considerably delay progress of this scheme. The third party can obtain access to their premises via Corbetts Lane.
10. It is believed to be in the interests of proper planning in the area that appropriation of the blue shaded land from its existing commercial purpose to planning purposes is achieved.
11. The present delay and uncertainty over re-development can be resolved relatively swiftly and satisfactorily if the shaded land (that is claimed to be the subject of the easement) is appropriated by the council from use as commercial purposes to planning purposes using its powers under S122 of the Local government Act 1972, in particular those purposes set out under S237 of the Town and Country Planning Act 1990.
12. The reason appropriation is required is to facilitate the re-development and improvement of the Silwood Estate, which is likely to contribute to the economic, social or environmental well being of the area. The effect of appropriation is to make any third party interests in the blue shaded land that might exist subject to compensation only and the third party cannot seek an injunction preventing the development proceeding. Therefore the development can proceed and the planning permission be implemented thus contributing to the economic, social and environmental wellbeing of the area.
13. The developer Higgins Homes will indemnify the council against the cost of any claims for loss of rights that can be substantiated.

14. The council does not accept that any third party has acquired any rights over the shaded land and maintains that any use of this land has been with the council's permission. Appropriation of the shaded land will ensure that the scheme for which planning permission has been granted will not be prevented from proceeding.
15. Without the appropriation of the shaded land there could be a significant impact upon the regeneration proposals for a derelict Site, with a further delay in providing 127 much needed new homes including 40 affordable homes.

### **Appropriation of the Site for purposes set out in s237 of the Town and Country Planning Act 1990**

#### **Background to appropriation**

16. The appropriation of land and buildings refer to the process whereby a council alters its purposes for holding land and buildings. The general power to appropriate is contained within section 122 of the Local Government Act 1972.
17. Section 237 of the Town & Country Planning Act 1990 ["s237"] provides that where a council acquires land or appropriates land for planning purposes the development of the land may override third party rights enjoyed over the land. The beneficiaries of such rights may however claim compensation (equal to the loss in value of their property caused by losing the right) but cannot seek an injunction to delay or terminate the development.
18. If having appropriated or acquired land for planning purposes a council transfers that land to another party (perhaps a house builder), that other party will benefit from being able to override third party rights during construction work. This is important to those building or having construction work carried out because it gives them certainty that the work will not be stopped as a result of a third party obtaining an injunction from the court. Such an injunction could severely delay the construction project and give rise to considerable additional financial costs.
19. Prior to developing land it is practical to make prudent enquiries of what rights might exist over the land. This will involve inspecting the land to see if there are any obvious rights and checking land ownership information. However, some rights may not be apparent from inspection and historic ones may not always be recorded at the Land Registry or Land Charges Registry. The application of s237 therefore mitigates the risk of unknown interests existing.
20. The right to claim compensation for the depreciation in value caused by the loss of right is enforced against the owner of the land but if that owner does not meet this obligation then the compensation claim can be enforced against the local authority.

#### **Policy implications**

21. The Site is identified in the Southwark Plan as a Regeneration site and is the final part of the Southwark owned Silwood Regeneration scheme with Lewisham Council. Cabinet, in April 2011 made the decision to sell the Site for re-development to Higgins Homes.

## **Community impact statement**

22. The redevelopment of the Site will deliver 127 new homes and regenerate a derelict council owned site in Rotherhithe. Considerable public consultation was undertaken in the early years of the Silwood Regeneration scheme with Lewisham Council and further consultation has taken place in the recent planning application process with public exhibitions by Higgins Homes.

## **Financial implications**

23. It is vital that the council's processes in appropriating the shaded land for planning purposes are without error or flawed to avoid the risk of judicial review.
24. If a third party were to prove an interest in the land and compensation were not paid to them by the developer, then the council would be liable to meet those costs. However, the developer will indemnify the council against the cost of any claims that are substantiated.
25. Whilst land appropriated from use for housing to a non-housing use may result in a transfer of debt charges from the housing revenue account to the general fund, land transferred from one non-housing use to another non-housing use, as is the case with this appropriation, does not cause any such issues.

## **Resource implications**

26. The cost of effecting the recommendation can be accommodated within the existing budget for the disposal of the Site.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

27. Cabinet is advised that Section 122 of the Local Government Act 1972 provides that a council may appropriate land from one purpose to another if immediately before the appropriation the land is no longer required for the purpose for which it is held. The land is held under the Commercial Property Holding Account for commercial purposes but is now required for development for planning purposes.
28. Once appropriation has taken place, Section 233 of the Town and Country Planning Act 1990 ("the 1990 Act") enables the council to dispose of the land appropriated for planning purposes to such person in such manner and subject to such conditions as appear to the council to be expedient in order to secure the best use of the land or to secure the erection, construction or carrying out on it of any buildings or works appearing to be needed with the proper planning of the council's area. The consent of the Secretary of State is needed where the disposal is for less than the best consideration that can reasonably be obtained, except in the case of short leasehold interests. Before disposing of any land consisting of or forming part of an open space, the council will need to publish a notice of their intention to do so for at least two consecutive weeks in a newspaper circulating in the area and consider any objections.
29. The council's power to appropriate land for planning purposes is contained in s226 of the Town and Country Planning Act (TCPA) 1990. What a planning purpose is, is not expressly defined but under section 246 of the TCPA 1990 any

reference to appropriation of land for planning purposes is a reference to the appropriation of it for purposes for which land can be acquired under this section.

30. According to section 226 TCPA 1990 acquisition or appropriation for planning purposes means one that will facilitate the carrying out of development, re-development or improvement which is likely to contribute to the economic, social or environmental well being of the area, or which is required in the interests of proper planning in the area in which the land is situated.
31. Provided that the land is validly appropriated for planning purposes, then under section 237 of the TCPA 1990 (power to override easements and other rights) the erection, construction or carrying out or maintenance of any building or work on the land (by the council or any person deriving title from the council) is authorised if it is done in accordance with planning permission, despite the fact that it may interfere with certain private rights such as restrictive covenants and easements.
32. Appropriations of land are an executive function under the Local Government Act 2000 and so any decision to appropriate land would need to be taken by the Cabinet.

#### **Finance Director**

33. This report seeks approval to appropriate the shaded land shown on the plan in appendix 1 from use for commercial purposes to planning purposes. Paragraph 25 confirms that this appropriation will not result in a transfer of debt charges to the general fund.
34. Paragraph 26 confirms that the cost of undertaking this appropriation can be met from the existing budget for the disposal of the site.
35. The financial risks relating to this appropriation are set out in paragraph 24 and relates to potential compensation claims if a third party is found to have a right over the land. Paragraph 24 also confirms that the developer will take out an indemnity to protect the council against liability for any compensation claims.

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Correspondence file	Property Services 160 Tooley Street SE1 2QH	Marcus Mayne 0207 525 5651

#### **APPENDICES**

<b>No.</b>	<b>Title</b>
Appendix 1	Site plan

## AUDIT TRAIL

Cabinet Member	Councillor Fiona Colley, Regeneration and Corporate Strategy		
Lead Officer	Eleanor Kelly, Deputy Chief Executive		
Report Author	Marcus Mayne, Property Services		
Version	Final		
Dated	7 October 2011		
Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS/DIRECTORATES/CABINET MEMBER			
Officer Title	Comments Sought	Comments included	
Strategic Director of Communities, Law & Governance	Yes	Yes	
Finance Director	Yes	Yes	
Cabinet Member	Yes	Yes	
Date final report sent to Constitutional Team		7 October 2011	