

<b>Item No.</b> 17.	<b>Classification:</b> Open	<b>Date:</b> 21 March 2017	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Southwark Regeneration in Partnership Programme Lot B Sites Appropriation	
<b>Ward(s) or groups affected:</b>		All Wards	
<b>Cabinet Member:</b>		Councillor Mark Williams, Regeneration and New Homes	

## **FOREWORD - COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION AND NEW HOMES**

Last year we set out how we would deliver 605 new homes on land currently held by the council as part of the Southwark Regeneration in Partnership Programme for 'Lot B' which are in the centre and south of the borough. This will deliver 283 new council homes, 94 intermediate homes and a range of other spaces including new workspace, space for a GP practice, improvements to a school, a new community centre and improve public realm.

To enable these new homes and other facilities to be delivered this report appropriates the land detailed in this report for planning purposes from their current purposes. This removes any injunctable rights over the sites and replaces them with compensatable rights.

## **RECOMMENDATIONS**

That Cabinet:

1. confirms that the area of council-owned land edged black on the plan at Appendix 1, Car Park Site Copeland Road SE15, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.
2. confirms that the area of council-owned land edged black on the plan at Appendix 2, Peckham Library Square SE15, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972, subject, in the case of two sites, to compliance by officers with the advertisement requirements of section 122(2A) of the Local Government Act 1972.
3. confirms that the area of council-owned land edged black on the plan at Appendix 3, Petrol Station, 233-247 Old Kent Rd SE1, and listed in this report is no longer required for the purposes for which it is currently held and

approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.

4. confirms that the area of council-owned land edged black on the plan at Appendix 4, Flaxyard Site Sumner Road SE15, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972, subject, in the case of two sites, to compliance by officers with the advertisement requirements of section 122(2A) of the Local Government Act 1972.
5. confirms that the area of council-owned land edged black on the plan at Appendix 5, 21/23 Parkhouse Street SE5, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.
6. confirms that the area of council-owned land edged black on the plan at Appendix 6, Angel Oak Academy, Longhope Close SE15, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.
7. confirms that the area of council-owned land edged black on the plan at Appendix 7, Land at Wyndam Road and Redcar Street SE5, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.
8. confirms that the area of council-owned land edged black on the plan at Appendix 8, Sumner House, Sumner Road SE15, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.
9. confirms that the area of council-owned land edged black on the plan at Appendix 9, Fred Francis Centre, 269 Lordship Lane SE22, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.

10. confirms that the area of council-owned land edged black on the plan at Appendix 10, Wickway Community Centre, St. Georges Way SE15, and listed in this report is no longer required for the purposes for which it is currently held and approves the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.

## **BACKGROUND INFORMATION**

11. In July 2014, the council renewed its pledge to deliver a fairer future for all in Southwark in a set of 10 new fairer future promises as well as specific commitments, some of which include:
  1. Deliver value for money across all services
  2. Build more quality affordable homes of every kind across the borough
  3. Become an age friendly borough
  4. Improve standards across schools
  5. Provide enough places to offer young people and families, including those who are vulnerable, the right support
  6. Revitalise neighbourhoods
  7. Support local people into work
12. These promises are recognition of the need for new housing supply whilst improving existing housing, educational and health provision across the borough. The Southwark Regeneration in Partnership Programme (SRPP) has the potential to make a significant contribution to that objective.
13. A report to Cabinet on 27 January 2015 set out the aims and objectives for the SRPP to identify a number of council owned sites of varying size and development potential, which would be packaged to create viable opportunities for development and regeneration. These sites could be developed for a range of mixed use schemes, including housing that would maximise the utility and value of these assets by leveraging in the investment and expertise of established developers through a joint partnership.
14. A further report to Cabinet on 20 October 2015 approved the use of the Greater London Authority (GLA) London Development Panel (LDP) framework for the procurement of a development partner.
15. On 23 February 2016, a report to the Cabinet Member for Regeneration and New Homes approved the recommendation by the Director of Regeneration for the final blend of sites and tenure variations as detailed in Table 1. An asterisk next to a site name indicates a 'quick win' site, where the council submitted the planning application to expedite delivery.
16. On 20 September 2016, cabinet approved the contract award to the successful bidder as the development partner to deliver the SRPP Lot B sites.

**Table 1: Lot B Sites**

Site		Ward	Held By
1	Car Park Site Copeland Road SE15*	The Lane	Commercial Portfolio
2	Peckham Library Square Peckham High Street SE15*	Peckham	Commercial Portfolio
3	Petrol Station, 233-247 Old Kent Rd SE1*	Grange	Commercial Portfolio
4	Flaxyard Site Sumner Road SE15*	Peckham	Commercial Portfolio
5	21/23 Parkhouse Street SE5*	Faraday	Commercial Portfolio
6	Angel Oak Academy, Longhope Close SE15	Peckham	Education
7	Land at Wyndam Road and Redcar Street SE5	Camberwell Green	Commercial Portfolio (Finley Court – Housing)
8	Sumner House, Sumner Road SE15	Peckham	Commercial Portfolio
9	Fred Francis Centre, 269 Lordship Lane SE22	East Dulwich	Adult Social Care
10	Wickway Community Centre, St. Georges Way SE15	Peckham	Housing

\*Quick win site

## KEY ISSUES FOR CONSIDERATION

### Development Partner Agreement

17. The proposed Development Agreement which will be entered into following further due diligence sets out the conditions to be met by the parties and the terms for the 250 year leases that will be granted to achieve the transfer. There is, however, one condition that cannot at this time be met by the council and that is providing vacant possession of Sumner House, Sumner Road, SE15. This can only be met when alternative office accommodation has been provided. This will be subject to a further report to cabinet. The extent of land to be transferred to the successful bidder at this time is set out at Appendix 8. Sumner House is shown hatched thereon and cabinet is recommended to agree to its temporary exclusion until alternative accommodation is provided when it will be subsequently transferred to the successful bidder.

### Appropriations

18. The Development Agreement has provisions whereby the successful bidder can request that the council appropriates the sites to planning purposes; such a request has been made in respect of the land shown at Appendices 1-10. For the reasons set out below, the use of appropriation powers is considered to be justified in the circumstances.
19. The appropriation of land and buildings refers to the process whereby a council alters the purpose for which it holds land and/or buildings. Where land has been appropriated for planning purposes third party rights enjoyed over the land can

be overridden. 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. This gives developers of land certainty that having commenced construction works a person with the benefit of an unregistered (with the Land Registry) right over land cannot apply to the court to have the development stopped. This is a very important tool in enabling development to proceed on brownfield sites. As mentioned, the beneficiary of any such right is entitled to financial compensation for the loss of the right. Developers can either insure against such compensation claims or quantify them whereas the grant or even risk of an injunction may be fatal to development or result in perhaps significant unquantifiable costs.

20. The rationale for appropriating the land shown at Appendices 1-10 is set out in paragraphs 18-19 above, and cabinet is recommended to approve the appropriation.

### **Policy implications**

21. The appropriation of the SRPP Lot B sites will facilitate the construction of the new development of 605 new homes, of which 283 will be council homes. This will help achieve the council's commitment to build 11,000 new council homes and to meet the policy objectives of the Peckham and Nunhead Area Action Plan and the emerging Old Kent Road Area Action Plan.
22. This also is in line with the other council objectives of a fairer future for all.

### **Community impact statement**

23. The appropriation of the land known as the Fred Francis Day Centre will not impact its current use and service provision as vacant possession will not be sought until the new Centre of Excellence is completed and occupied.
24. Appropriation of land involves overriding the rights of third parties. However their rights are not extinguished, they are converted into a right to receive compensation for the loss of that right, rather than a right to seek an injunction to stop the interference with that right. Case law suggests that the overriding of a right that would otherwise be actionable at law may be an interference with human rights. In considering whether or not to appropriate land such that rights may be overridden it is necessary to consider the human rights of the person(s) whose rights are being overridden, and the proportionality of this. In the case of these sites, it is considered that the public interest in building new homes, a large proportion of which will be affordable and 283 of which will be council homes at social rents, outweighs the interference with private rights. More detail of the rights is set out in the appendices for each property.
25. The Equality Act 2010 imposes a general equality duty on public authorities (the Public Sector Equality Duty – PSED) in the exercise of their functions, to have due regard to the need to :
  - Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
  - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it;
  - Foster good relations between people who share a relevant protected

characteristic and people who do not share it.

26. For the purposes of the PSED the following are “protected characteristic” considerations:

- Age
- Civil partnership
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex and sexual orientation

27. As the development of the sites proceeds, the council will routinely conduct equalities impact assessments and where necessary appropriate mitigation measures will be considered.

### **Resource implications**

28. The resource implications of effecting the recommendation can be accommodated within the existing resource allocation for the wider project and delivery of the scheme.

### **Legal implications**

29. See concurrent from director of law and democracy.

### **Financial implications**

30. The cost to implement the proposed developments is being met by the council's development partner and the schemes will be delivered in accordance with the development agreement referred to in paragraph 17. Some subsidy is required by the council in order to deliver the prescribed numbers of affordable homes. This is limited to £11.5m as agreed by cabinet on 20 September 2016.
31. The temporary exclusion of Sumner House from the land being transferred reduces the risk of any penalties that the council may have incurred for delayed transfer of land under the original development agreement. It also prevents delays in land receipts paid to the council.
32. The legislation provides that compensation for interference with rights is payable by the council. The agreement that the council has with the successful bidder provides that the council will retain the responsibility for payment of any compensation and accordingly it has not obtained an indemnity from the successful bidder.
33. Compensation for affected properties is assessed on the basis of the value of the property with the benefit of the right compared with the value of the property without the benefit of the right. An assessment of the likely levels of compensation has been undertaken and budgeted for as part of the wider budget for this project. The onus of proof to show any damage is on the party claiming to have suffered a loss.

34. As noted in Table 1, two of the sites (Wickway Community Centre and Land at Wyndham Road) are currently held in the Housing Revenue Account (HRA). When land is appropriated from the HRA a payment is required to offset debt financing costs which can no longer be charged under Housing subsidy rules.
35. Given that the proposed development on the HRA sites referred to above will deliver a net gain of affordable housing for the council there will, in fact, be a beneficial financial impact to the HRA following practical completion of the new units when the units will be handed back to the council.
36. The detailed budgetary position together with any requirement for a compensatory payment to the HRA is set out in the Strategic Director of Finance and Governance concurrent below.

### **Consultation**

37. The SRPP Lot B quick win sites have been the subject of extensive community and stakeholder consultation. Three public consultation events took place for four of the quick win sites; the first presented initial proposals, the second presented revised proposals based on comments received and the third presented the final scheme for planning submission. The Peckham Library Square site had seven consultation events and used a CoDesign approach to developing the design. The five non quick win sites each had one public consultation event, with further consultation to be carried out by the successful bidder, the council's development partner.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Law and Democracy**

38. The report recommends the appropriation of council-owned land for planning purposes.
39. A council holds land and property for a variety of statutory purposes in order to perform its functions. A council is authorised by virtue of section 122 of the Local Government Act 1972 ("the 1972 Act") to appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement, where is no longer required for the purpose for which it is held immediately before the appropriation.
40. The land must already belong to the council. Paragraphs 1 – 10 of the report confirm that the land to be appropriated is in the council's freehold ownership.
41. The land must be no longer required for the purpose for which it is currently held. The report confirms in Table 1 which properties are held for which purposes. The agreement with the successful bidder provides that the properties are to be transferred with vacant possession. The properties will, when they are appropriated, no longer be required for the purposes for which they were previously held.
42. The purpose for which the council is appropriating the land must be authorised by statute. It is proposed that the land is held for planning purposes. This is a purpose which is authorised by statute. Section 246 of the Town and Country Planning Act 1990 ("TCPA 1990") defines such purposes as, inter alia, those for which can be acquired under ss226 or 227 of that Act. Section 227 provides that

a council may acquire land by agreement for any purposes for which it is authorised to acquire land compulsorily by s226 TCPA 1990.

43. The purposes for which a council can acquire land pursuant to s226 TCPA 1990 include purposes “which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.” S226 also authorises the acquisition of land “... if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land.” In the case of either s226 or s227 the acquiring authority must be satisfied that whatever development proposals it has for the land in question these are likely to “contribute to the achievement of any one or more of the following objects – (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; (c) the promotion or improvement of the environmental well-being of their area.” The council’s plans to build new homes, of which many are affordable, is capable of falling within all three categories.
44. Section 203 of the Housing and Planning Act 2016 came into force on 13 July 2016. This section contains a power to override easements and other rights, and it replaces s237 TCPA.
45. S203 says :
  - “(1) A person may carry out building or maintenance work to which this subsection applies even if it involves
    - (a) interfering with a relevant right or interest...
  - (2) Subsection (1) applies to building or maintenance work where –
    - (a) there is planning consent for the building or maintenance work,
    - (b) the work is carried out on land that has at any time on or after the day on which this section comes into force
      - (i) become vested in or acquired by a specified authority or
      - (ii) been appropriated by a local authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990 [*i.e. for purposes for which an authority can acquire land under ss226 and 227*]
    - (c) the authority could acquire the land compulsorily for the purposes of the building or maintenance work, and
    - (d) the building or maintenance work is for purposes related to the purposes for which the land was vested, acquired or appropriated as mentioned in paragraph (b).”
46. What this means is that where land has been appropriated for planning purposes building work may be carried out on land even if this interferes with rights or interests if there is planning consent for the building work, and the work must be for purposes related to the purposes for which the land was appropriated, in this case planning purposes. By s204 those third party rights are converted into an entitlement to compensation to be calculated in accordance with ss7 and 10 of the Compulsory Purchase Act 1965.
47. This report confirms that the works being done on the sites will be done in accordance with planning permissions, some of which have already been applied for.
48. Section 122 of the 1972 Act provides that where land consists or forms part of an open space then the council may not appropriate the land unless before doing so they cause notice of their intention to do so to be advertised for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and



consider any objections to the proposed appropriation which may be made to them.

49. The sites at Flaxyard and Peckham Library Square form part of open spaces. Accordingly, before appropriating these sites, the council will advertise their intention to do so and will consider any objections which may be made.

#### **Strategic Director of Finance and Governance FC16/044**

50. This report seeks approval to appropriate the shaded land shown on the plans in Appendices 1-10 to planning purposes.
51. Sites 7 and 10 include land currently held for housing purposes, and therefore a debt transfer will need to take place. This debt transfer represents the transfer of the land asset (at market value) from the Housing Revenue Account (HRA) to the General Fund (GF).
52. The HRA land valuation indicates a modest reduction in debt charges to the HRA and compensatory increase to the GF costs. At a future date, should this land be re-appropriated back to housing a reversing debt transfer would take place which would reflect the market value of the land at the time of transfer.
53. The financial implications of the appropriation includes potential risk of compensation claims if a third party is found to have a right over the land (paragraphs 18/19 refer). The budget set out within the closed report GW2 Contract Award Approval: Southwark Regeneration in Partnership Programme Development Partner (20 September 2016 Cabinet) included a provision for such compensation payments.

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Gateway 1 – Southwark Regeneration in Partnership Programme Procurement Approval (Cabinet - 20 October 2015)	Council Offices, 160 Tooley Street, SE1 2QH	Diana Hall 020 7525 7724
<b>Link:</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5140&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5140&amp;Ver=4</a> (Item 17)		
Gateway 2 – Contract Award Approval Southwark Regeneration in Partnership Programme Development Partners (Cabinet – 20 September 2016)	Council Offices, 160 Tooley Street, SE1 2QH	Diana Hall 020 7525 7724
<b>Link:</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5373&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5373&amp;Ver=4</a> (Item 17)		

## APPENDICES

No.	Title
Appendix 1	Copeland Road Car Park site plan
Appendix 2	Peckham Library Square site plan
Appendix 3	Petrol Station, Old Kent Road site plan
Appendix 4	Flaxyard site plan
Appendix 5	Parkhouse Street site plan
Appendix 6	Angel Oak Academy site plan
Appendix 7	Wyndham Road and Redcar Street site plan
Appendix 8	Sumner House site plan
Appendix 9	Fred Francis Centre site plan
Appendix 10	Wickway Community Centre site plan

## AUDIT TRAIL

Cabinet Member	Councillor Mark Williams, Cabinet Member for Regeneration and New Homes		
Lead Officer	Eleanor Kelly, Chief Executive		
Report Author	Diana Hall, Housing Regeneration Manager		
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CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments Sought	Comments Included
Director of Law and Democracy		Yes	Yes
Strategic Director of Finance and Governance		Yes	Yes
Cabinet Member		Yes	Yes
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