

Item No. 16.	Classification: Open	Date: 18 July 2017	Meeting Name: Cabinet
Report title:		Appropriation of former Manor Place Depot for Planning Purposes	
Ward:		Newington	
Cabinet Member:		Councillor Mark Williams, Regeneration and New Homes	

FOREWORD – COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION AND NEW HOMES

The former depot is now moving towards becoming a linked up part of Walworth neighbourhood with new housing, commercial and community facilities. The former use of the property has been superseded and the recommendation in this report will result in it being held for the better planning of the area, a more accurate reflection of the reason for the council holding the property. Changing the purpose for which the council holds an asset is known as appropriation. Appropriating the property to planning purposes removes the risk of anyone benefitting from a third party right over the land seeking an injunction to stop the development; they will however have the right to financial compensation for any loss in value to their property arising from any infringement of that right. This will de-risk the delivery of the approved scheme for the former depot which includes forty-four units of new housing that will be let at social rent levels.

RECOMMENDATIONS

That cabinet:

1. confirms that the land shown hatched on the plan at Appendix A that is currently held for environmental services purposes is no longer required for those purposes, and approves the appropriation of the land to planning purposes in accordance with section 122(1) of the Local Government Act 1972 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.

BACKGROUND INFORMATION

2. The property in question is shown hatched on the plan at Appendix A. It was formerly a waste transfer station and before that a public bathhouse and municipal depot. Following a period of vacancy the cabinet resolved on 16 April 2013 to transfer the freehold interest in the property to Notting Hill Housing Trust for it to bring forward a residential led redevelopment of the site. This has been structured by way of the grant of a building lease with the freehold interest being transferred when the redevelopment is fully completed. Therefore at the present time the council remains the freeholder of the property and it is held for environmental services purposes.
3. On 24 September 2015 planning committee resolved to consent to the regeneration of the former depot to provide:

- 270 residential properties
 - Commercial floorspace
 - Refurbished railway arches
 - Refurbished Grade II listed buildings (former pool and wash houses).
4. The tenure of the new housing set out in the approved application is:
- | | | |
|----------------|-----|------|
| • Market sale | 166 | 62% |
| • Intermediate | 60 | 22% |
| • Rental | 44 | 16%. |
5. The planning committee was advised the rental housing would be 34 at affordable and 10 at social (council house) levels. Notting Hill has subsequently agreed all 44 units will be at social (council house) levels.
6. Buildings on the site that are not being retained have been demolished and Notting Hill has commenced work on providing foundations for the new buildings.
7. As can be seen from the plan at Appendix A, the former depot is surrounded by buildings predominantly two and three storey in nature with residential and religious worship use to the west part of the site and mainly commercial to the eastern part. The planning consent referred to in the previous paragraph provides for the new development to extend to up to seven stories in height. This therefore gives rise to potential infringement of lighting to existing properties. This was considered in the report to the planning committee and the conclusion was: *“Overall, the impact on the level of daylight received by neighbouring residential properties is relatively minor and achieving such high levels of compliance is commendable in an urban location on the periphery of the Central Activities Zone.”*
8. Figureband Limited is the owner of the freehold interest in 7-10 Occupation Road, the leasehold interest in the property is held by Occupation Studio Artists. Representatives for the freeholder and leaseholder made submissions as part of the planning process concerning alleged detriment that will be caused to that property in event the proposed regeneration proceeds. The ground for the objection was the *“good levels of daylight currently available”* to the property will be infringed upon and these are critical to ability of the property to provide studios for many artists. Photographs of 7-10 Occupation Road are reproduced at Appendix B.
9. The law protects owners’ right to light and where this is interfered, the beneficiary may apply to court to seek an injunction to stop the infringement. The court may not agree to this but may award damages instead.
10. Notting Hill Housing Trust has been advised by an agent acting for the freeholder and leaseholder of 7-10 Occupation Road *“...my clients will consider all necessary options to protect their position and existing Right to Light”*. Notting Hill has understandably concluded that if it proceeds with the consented development in the vicinity of 7-10 Occupation Road there is a risk of work starting and then being halted in the event of an injunction being applied for and granted; this is an unacceptable development risk to Notting Hill. The properties to be built on this part of the site are new homes designated for affordable and intermediate purposes.
11. The lawyer acting for the artists has recently asked the council that the appropriation does not proceed because his clients *“...do not propose to seek an injunction to restrain the proposed building”*. In response to this he was asked to give this

assurance to Notting Hill and to advise how the dispute would be resolved in the absence of agreement with Notting Hill. His response repeated the earlier proposal and non appropriation request but did not answer address the assurance and dispute resolution questions. The lawyer acting for Notting Hill has written to the artist's lawyer advising the statement given to the council in their client's opinion is no guarantee the artists intention may not change and is not enforceable by either the Notting Hill or the council. A specific undertaking not to seek an injunction against Notting Hill was requested. At the time of writing this letter has not been replied to.

KEY ISSUES FOR CONSIDERATION

12. It is desirable for this development to proceed to bring brownfield land into use and to provide much needed housing including a significant affordable amount.
13. There have been ongoing discussions between Notting Hill and the agent and representatives of the studios. These have not produced agreement. The parties dispute which has been responsible for delays but since the intention of making this report appeared on the forward plan significant progress has been made but differences remain. Notting Hill recognise the development will cause a light infringement (the extent is contested between the parties) and has offered a significant financial sum as compensation. This has not been accepted by the studios that want Notting Hill instead to reduce the height of the building that will front Occupation Road. This will cause a consequential loss of housing units that are reserved for affordable purposes.
14. In order that the regeneration can proceed, Notting Hill has requested that the council appropriates the site from environmental services purposes to planning purposes. The effect of this will be to override the studio owners' right of light. The owners will however have a right to compensation based on the value of the property with the right versus the value of the property without the right. If agreement between the parties is not possible it will be determined by the Upper Tribunal (Lands Chamber).
15. Cabinet will appreciate that in considering this appropriation it is effectively being asked to intervene in a development dispute between two property owners Notting Hill and the studios' owners. The eventuality of consented schemes not being able to proceed because of such a dispute with the council being requested to intervene was foreseen and in June of last year cabinet adopted a policy for considering such interventions. Paragraph 11 sets out details of representations made concerning the risk around the artists seeking an injunction to halt the consented development. Cabinet should be satisfied that the development is indeed at risk of not proceeding.
16. The adopted policy requires the following issues to be considered:
 - Does the proposal have planning consent
 - Is there an alternative
 - Last resort
 - Indemnity
 - No breach of statutory duty
 - Public sector equality duty
 - Proportionality

These issues are addressed at Appendix C.

17. As can be seen from Appendix C, the decision to appropriate the site rests on whether it is reasonable in the circumstances to infringe on the daylighting available to 7-10 Occupation Road in order that seventeen units of affordable/intermediate housing can be constructed on the site. The need for additional social housing in the Borough is well documented and is a council policy. In considering the application to develop the site, the planning committee did not consider the light infringement to be of such a degree not to grant consent to the development. Cabinet may note from Appendix B that a number of openings to 7-10 Occupation Road are boarded up but in the submission to the Planning Committee the studios representative advised of an aspiration to refurbish the building that will remove the boarding to those openings. Furthermore there is a central courtyard behind the façade that provides daylight for studios which isn't apparent from Appendix B. The studio owners are particularly concerned the light to this will be adversely affected by the consented development; whilst there will be an impact from the consented development to this lighting it is considered that on balance, the need for additional low cost housing outweighs this.
18. Appendix D sets out a detailed rationale for the recommended appropriation.

Community impact statement/public sector equalities duty

19. The Equality Act 2010 imposes a general equality duty on public authorities (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 those who do not share it.
20. For the purpose 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.
21. As referred to in Appendix C this proposal will have an impact on users of 7-10 Occupation Road but it is considered that these are outweighed by the wider benefits to the community resulting from the adoption of the recommendation at paragraph 1 of the report.
22. In carrying out appropriation the council must have due regard to the possible effects of such appropriation on any groups sharing a protected characteristic in order to discharge its public sector equality duty.

23. As has been described, implementation of the consented planning scheme following appropriation potentially impacts on the lighting available to parts of 7 – 10 Occupation Road a building used by artists. Being an artist in itself is not a protected characteristic but an artist may nevertheless have one or more protected characteristics. It has now been raised that one studio is currently used by a disabled artist; this unit will have its lighting impaired by the development. However, other studios will be unaffected by the development and it would not seem unreasonable for that artist to relocate if necessary to such a studio, although it is appreciated such a change may be unsettling to the person concerned. Cabinet will appreciate that over time studio occupation will change and any point in time there may be none, one or more artists with a protected characteristic. The light infringement from the scheme directly affects the property rather than one or more group with a protected characteristic although at times and depending on how the studios' use is allocated there may at points in time be an impact on individuals with protected characteristics.. Having reviewed the consented development and the potential lighting impact the view of officers is that it is not considered that the impact will impact disproportionately on any particular protected characteristic but this is a decision for cabinet taking into account all the relevant information.

Resource implications

24. Environmental services and planning purposes are both within the general fund so appropriation between the two will not give rise to any debt transfer. As confirmed in Appendix C all costs arising as a consequence from the recommended appropriation will be fully met by Notting Hill Housing Trust.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

25. The report recommends the appropriation of council-owned land currently held for environmental services purposes to planning purposes.
26. A council holds property for a variety of statutory purposes in order to perform its functions. A council is authorised, by virtue of section 122(1) 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 it is no longer required for the purpose for which it is held immediately before the appropriation.
27. The land to be appropriated must be owned by the council. Paragraph 2 of this report confirms that the land to be appropriated is in the council's freehold ownership.
28. The land must no longer be required for the purpose for which it is currently held. The report confirms at paragraph 2 that the land has been held for environmental purposes, and that it is no longer required for those purposes.
29. The purpose for which the council seeks to appropriate the land must be authorised by statute. It is proposed that the land is held for planning purposes as defined by s246(1) of the Town and Country Planning Act 1990 ("TCPA 1990"). "Planning Purposes" is defined as purposes for which land can be acquired pursuant to ss226 and 227 TCPA 1990, and is a purpose which is authorised by statute. Section 227 of TCPA 1990 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.

30. 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, redevelopment or improvement on or in relation to the land”. The report sets out at paragraph 3 how the proposal will facilitate the development, redevelopment or improvement on or in relation to the land. However, subsequent to the writing of this report, the council has now received a categorical assurance from the solicitors acting for the artists studios contained in an open letter dated 28 June that their clients “...will not be bringing a claim for an injunction.” In the light of this, Members may consider that the risk of the development not proceeding is significantly diminished with the result that the statutory justification for the appropriation is accordingly diminished.
31. Where land has been appropriated for planning purposes then under s203 Housing and Planning Act 2016 (power to override easements and other rights) provides that building or maintenance work may be carried out on land even if it involves interfering with a relevant right or interest. This applies to building or maintenance work where there is planning consent for the work, where the work is on land vested in or acquired by or appropriated by a local authority for planning purposes, where the authority could acquire the land compulsorily for the purposes of the building or maintenance work and where the work is for purposes related to the purposes for which the land was vested, acquired or appropriated. Paragraph 3 of this report confirms that planning permission has been granted for the works proposed to be done on the site and indeed that planning permission has been implemented.
32. The effect of triggering s203 is that private rights are effectively overridden and converted into a claim for compensation. Compensation is assessed on the basis of the loss in value of the claimant’s land as a consequence of the interference (the principle set out in ss7 and 10 of the Compulsory Purchase Act 1965).
33. The liability to pay compensation is enforceable against the authority pursuant to s204 Housing and Planning Act 2016. Accordingly, an indemnity must be obtained from the developer in respect of this.
34. Members should only agree the recommendation in this report if they are satisfied that all the tests set out in Appendix D of this report have been met and the issues at paragraph 16 have been fully considered. One concern which has been raised by the solicitors for the artists studios is whether in view of the continuing negotiations, agreement might be reached within the relatively near future for the release of the rights to light. Furthermore, Members should consider whether the lack of such agreement is putting at risk progress with the development now that an assurance has been given that no injunction proceedings will be commenced.

Strategic Director of Finance and Governance [FC17/052]

35. The strategic director of finance and governance notes the recommendation for the land at the former Manor Place Depot to be appropriated from environmental services purposes to planning purposes. The financial implications are set out in paragraph 23 of the report. This appropriation has no financial implications for the council arising as a result of this proposal because this transfer is within the general fund. It is noted that rights to light compensation arising from the development will be met by the developer (Notting Hill Housing Trust).

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet approval to dispose of Manor Place depot	Southwark Council Finance and Governance 160 Tooley Street London SE1 2QH	Patrick McGreal 020 7525 5626
Link: http://moderngov.southwark.gov.uk/ieIssueDetails.aspx?IId=50001073&PlanId=0&Opt=3#AI26969		
Planning consent documentation	Southwark Council Finance and Governance 160 Tooley Street London SE1 2QH	Patrick McGreal 020 7525 5626
Link: http://planbuild.southwark.gov.uk/documents/?casereference=15/AP/1062&system=DC		
June 2016 Cabinet report and policy for the Council using powers under the Town & Country Planning Act 1990	Southwark Council Finance and Governance 160 Tooley Street London SE1 2QH	Patrick McGreal 020 7525 5626
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=5147		

APPENDICES

Appendix	Title
Appendix A	Plan showing former Manor Place depot
Appendix B	Photographs of 7 – 10 Occupation Road
Appendix C	Application of policy to the appropriation
Appendix D	Detailed rationale for the appropriation

AUDIT TRAIL

Cabinet Member	Councillor Mark Williams, Regeneration Planning and Transport	
Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Patrick McGreal, Regeneration - North	
Version	Final	
Dated	7 July 2017	
Key Decision?	No	
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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