

Item No. 22.	Classification: Open	Date: 12 December 2017	Meeting Name: Cabinet
Report title:		Land at Ivy Church Lane, Walworth	
Ward:		East Walworth	
Cabinet Member:		Councillor Mark Williams, Regeneration and New Homes	

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

Our commitment to build 11,000 new council homes by 2043 is both bold and challenging. Achieving this will make an enormous positive difference to the local community through the provision of genuinely affordable new homes for our residents. Southwark is predominantly a densely developed inner-city area and to provide these new homes we must make better use of our land. The recommendations in this report will help to de-risk the site in question. This in turn will give assurance to prospective builders and result in a lower tender cost for the proposed new development. Resources are scarce so it is vital we control cost to maximise the number of new homes we can provide.

The land in question comprises unused lock up garages and parking spaces. We now have the opportunity to build 21 new homes, all of which will be for council rent together with a new tenant's hall and a commercial unit on the Old Kent Road. The recommended appropriations will enable the construction of the homes to proceed without the risk of an injunction from a nearby landowner. However if a landowner is adversely affected as a result of the recommendations they will have the ability to claim compensation for the loss in value to their property as a result.

The report will therefore pave the way for much needed affordable housing and will bring unutilized land back into a very beneficial use for local people.

RECOMMENDATIONS

That cabinet:

1. Confirms that the land shown hatched on the plan at Appendix A that is currently held for housing purposes is no longer required for those purposes 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 following completion of the appropriation at paragraph 1 the land shown hatched on the plan at Appendix A will no longer be required for planning purposes and approves the appropriation of the land to housing purposes in accordance with section 9 of the Housing Act 1985 and section 122(1) of the Local Government Act 1972.

BACKGROUND INFORMATION

3. The land in question is shown hatched on the plan at Appendix A. It is owned freehold by the council. It comprises forty-eight unused lock up garages provided on two stories and four open parking spaces.
4. On 25 February 2015 council assembly approved the current Council Plan. This sets out Fairer Future promises one of which is: *quality affordable homes*. Within this commitment is the policy to improve housing standards and build more homes of every kind. This promise was in fact reinforcing previous policy to directly provide additional housing to meet the need for affordable housing within the Borough.
5. In pursuit of this cabinet has received a number of reports both before and after the Council Plan adoption to deliver new housing sites and the subject site was included in the Phase 2 report approved by cabinet on 22 October 2013. This report contained proposals for around 277 new council homes and followed an earlier report to directly deliver 290 new homes. These initiatives form part of the council's aspiration to provide 1,500 new homes by 2018.
6. On 19 July 2017 planning consent was granted for the regeneration of the site to provide the following:
 - ❖ 17 flats
 - ❖ 4 houses
 - ❖ a commercial unit to Old Kent Road
 - ❖ a tenant's meeting room
7. All twenty-one of the new housing units will be let at Council rent levels
8. The contract for the regeneration will procured by way of an OJEU process and the aim is to commence construction early next summer.

KEY ISSUES FOR CONSIDERATION

9. The approved regeneration is arranged in two blocks; a four six and seven storey building on the corner of Old Kent Road and Mina Road and a terrace of houses fronting Ivy Church Lane. As part of the planning process a lighting report was obtained from a specialist surveyor and the conclusion in this is:

Full technical analysis indicates that the surrounding residential windows/rooms are subject to uncommonly high levels of existing daylight for an urban location. The scheme has been designed well to minimise any overall reduction, and indeed the proposed daylight values are commensurate, if not better, than a typical urban-located property. Where a derogation from guidance occurs it appears to be to secondary living space, rather than a living room/kitchen.

Full technical analysis indicates that only two rooms out of the whole surrounding context experience alterations in APSH which appear to derogate from BRE guidance. These rooms do again, however, appear to be bedrooms which possess a lesser expectation of sunlight. The retained levels of sunlight amenity after construction of the proposed scheme is considered commensurate with accommodation located within the urban grain.

The scheme demonstrates good levels of compliance in relation to daylight and sunlight amenity.

10. Whilst the report is positive on daylighting/sunlighting it does recognise there will be an adverse (minor) impact to some nearby properties. This adverse impact was not of a degree to cause refusal of the scheme from a planning perspective but its existence poses a risk in being able to build the scheme because affected persons may apply to the court for an injunction to stop it proceeding. This may stop prospective builders from bidding for the construction contract or cause bids to be substantially inflated to reflect the risk of there being an application for an injunction and the delay and uncertainty that may cause including frustrating the development scheme.
11. This area of Walworth is fairly densely developed so there is potential for nearby properties to have a minor lighting impact from the proposed development. The determined planning application has taken into account daylighting and sunlighting issues. As part of the planning process properties (49) in the locality were directly consulted and one public response (2%) was received. This response objected on the grounds of adversely affecting daylighting in Ivy Church Lane.

Appropriations

12. The appropriation of land refers to the process whereby a council alters the purpose for which it holds land. 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 will give the Council the certainty that having commenced construction works a person with the benefit of an unregistered (with the Land Registry) right over land (such as a right to light) cannot apply to the court to have the development stopped. This is a very important tool in enabling development to proceed on urban sites. As mentioned, the beneficiary of any such right is entitled to financial compensation for the loss of the right. The council could either insure against such compensation claims but this will be costly or accept the risk of an injunction that may be fatal to development or result in perhaps significant unquantifiable costs.
13. The compensation persons affected by the loss of light may be entitled to is based on the value of their properties before the right has been infringed versus the value of the property with the infringed right. This compensation is based on the diminution in value of the affected property. If agreement between the parties is not possible it will be determined by the Upper Tribunal (Lands Chamber).
14. In this case it is recommended that the land be appropriated from housing purposes to planning purposes and thereafter back to housing purposes as to hold the land for planning purposes may cause adverse financial implications (see below).
15. The rationale for the appropriations of the land shown at Appendix A is set out at Appendix B and cabinet is recommended to approve the appropriations.
16. The appropriation stages is summarised overleaf:

Land currently held for housing

Appropriate from housing to planning	⇓	Third party rights infringed by development cannot be enforced by injunction
Appropriate from planning to housing	⇓	Construction of new housing can proceed

17. Cabinet received a similar report on 9 May 2017 regarding a similar regeneration at Commercial Way where the same strategy was recommended and approved.

Rationale for recommendations

18.

- a. To mitigate against the construction of new social housing being frustrated or delayed by injunctions
- b. To de-risk the construction project so as to encourage the maximum number of bidders and achieve a lower construction cost.
- c. Appropriation back to housing from planning purposes avoids any potential adverse accounting implications.
- d. Taking forward Fairer Future promise of *quality affordable homes*

Community impact statement

19. The Council Plan was the subject of extensive community consultation that gave rise to the Fairer Future promise of *quality affordable homes*. The recommendations herein will enable the construction of twenty-one new homes a community hall and a commercial unit to proceed. New homes will improve the quality of life for their residents. The hall will enhance community cohesion and improve the sense of wellbeing of local residents and the commercial unit will provide goods or services. Implementation of the recommendations may however have a minor adverse lighting impact on some nearby occupiers and cause some disturbance whilst construction works take place.
20. The Equality Act 2010 requires the council in the exercise of its functions to have due regard to the need to:
- a) eliminate discrimination;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
21. Relevant protected characteristics for the purposes of the Equality Act are:
- Age

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

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. Based on the information available the council does not believe that there are any particular groups sharing a protected characteristic that will be adversely impacted by the proposals.

Financial Implications

24. The construction of the new homes will have a significant cost and an approved budget exists for this. The budget will need to make provision for any compensation claims for diminution in value that may arise as a consequence of the construction of the new homes. The budget will be reviewed when the OJEU process mentioned at paragraph 8 has been completed.
25. Where land is appropriated from the housing revenue account to the general fund there is a transfer of debt between the accounts. When land is appropriated from general fund to the housing revenue account this debt transfer is reversed.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law & Democracy

26. The report recommends the appropriation of council-owned land for planning purposes, and thereafter, the appropriation of that land for housing purposes.
27. 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.
28. The land must already belong to the council. Paragraph 3 of the report confirms that the land to be appropriated is in the council's freehold ownership.

29. The land must be no longer required for the purpose for which it is currently held. The report confirms at paragraph 8 of Appendix B that the land is no longer required for housing purposes.
30. 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.
31. 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 plan to build new homes on the land, of which, the majority are council homes for rent and the remainder are intermediate, is capable of falling within all three categories.
32. 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.

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).”

33. 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.
34. This report confirms that the work being done on the land will be done in accordance with planning permission. Once the land has been appropriated and s203 triggered, that work will be authorised even where it interferes with third party rights.
35. Following the appropriation of the land for planning purposes it is recommended that the land is appropriated for housing purposes, as the land is to be used for the provision of new housing. At that point the land will no longer be required for planning purposes and will be appropriated for housing purposes.

Strategic Director of Finance & Governance

36. The recommendation is to appropriate land as described in order to facilitate regeneration and the building of new homes at Ivy Church Lane. This land appropriation is proposed to occur in such a way that it will have a neutral financial impact. However, a budget for the compensation and new homes proposed will need to be considered as part of the future capital programme budget setting process.

Strategic Director of Housing & Modernisation

37. This report ensures that the development of the Commercial Way scheme can progress with the avoidance of legal challenge. The light issues from the scheme are minimal and the scheme meets planning policy approval. Extensive consultation with local residents, together with a commitment to make 50% of the new social rented homes available to local residents in housing need leads the way in which social housing can be developed in inner cities. The scheme is a contribution to the council's pledge to have a commitment to build 1,500 new homes by 2018.

BACKGROUND DOCUMENTS

Background Papers	Web links (please copy and paste into browser)
Council Assembly report of 25 February 2015 adopting Council Plan	http://moderngov.southwark.gov.uk/documents/s52059/Report%20Council%20Plan%202014-18.pdf
Cabinet report of 22 October 2013 Phase 2 direct delivery of new homes	http://moderngov.southwark.gov.uk/documents/s41478/Report%20Direct%20Housing%20Delivery%20Phase%202.pdf
19 July 2017 planning determination and associated documents	http://planbuild.southwark.gov.uk/documents/?casereference=16/AP/4589&system=DC

APPENDICES

Appendix	Title
Appendix A	Plan of land at Ivy Church Lane
Appendix B	Rationale for appropriations of the land

AUDIT TRAIL

Cabinet Member	Councillor Mark Williams, Regeneration and New Homes		
Lead Officer	Eleanor Kelly, Chief Executive		
Report Author	Patrick McGreal, Property Services		
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Dated	30 November 2017		
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CONSULTATION WITH OTHER OFFICERS /DIRECTORATES/ CABINET MEMBER			
Officer Title	Comments Sought	Comments included	
Director of Law & Democracy	Yes	Yes	
Strategic Director of Finance & Governance	Yes	Yes	
Strategic Director of Housing & Modernisation	Yes	Yes	
Cabinet Member	Yes	Yes	
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