

<b>Item No.</b> 13.	<b>Classification:</b> Open	<b>Date:</b> 18 September 2018	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Land and Garages Opposite 58 - 72 Daniel's Road and 130 - 140 Tappesfield Road Nunhead	
<b>Ward:</b>		Nunhead and Queens Road	
<b>Cabinet Member:</b>		Councillor Leo Pollak, Social Regeneration, Great Estates and New Council Homes	

## **FOREWORD – COUNCILLOR LEO POLLAK, CABINET MEMBER FOR SOCIAL REGENERATION, GREAT ESTATES AND NEW COUNCIL HOMES**

At the end of May this year, more than 11,800 families (comprising over 25,000 people) were recorded on Southwark's housing register in need of rehousing – behind these figures are stories of families living in overcrowded homes, delaying key life decisions due to extortionate housing costs, health problems linked to housing, children's educational attainment and younger people's ability to invest in themselves and their futures thwarted. In this context Southwark is resolved to maximise the overall social rented stock in our borough, including through pursuing an ambitious programme for building new council homes.

Later this Autumn, we will begin construction on nineteen new council homes on Daniel's Road scheme, as part of our long-term commitment to build 11,000 new council homes by 2043. Unlike in previous periods of council house building where large sites lent themselves to comprehensive estate development and (relatively) simpler approaches to land assembly, today most of our development sites involve the repurposing of existing housing land with a greater risk of historic property rights emerging that may frustrate the process. We owe it to residents on our waiting list and to neighbouring residents who have contributed positively to the design and associated landscaping of these new homes to mitigate any risk to the development, even where the risk is remote. Cabinet is therefore recommended to approve the appropriation of the highlighted land from housing to planning and back to housing, an administrative process that will enable construction of the approved scheme to proceed with confidence.

## **RECOMMENDATIONS**

1. That cabinet confirms that the land shown edged red 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 sections 122(1) and 122(2A) of the Local Government Act 1972.
2. That cabinet confirms that following completion of the appropriation at paragraph 1 the land shown edged 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 sections 122(1) and 122(2A) of the Local Government Act 1972.

## BACKGROUND INFORMATION

3. The land in question is shown edged red on the plan at Appendix A. It is owned freehold by the council. It comprises a twenty-eight lock up garages, a play area, vehicle parking area and open amenity land. This is a residential area with a mixture of housing styles. The council is the predominant property owner. The locality is rated 2 by Public Transport Access Level ratings (0 is the worst and 6 is the best).
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 restated previous policy to directly provide additional housing to meet the need for affordable housing within the Borough. At the last meeting of the cabinet, a report of the 'Southwark Conversation' was received. This noted 28% of respondents mentioned housing and a lack of social/Council tenure was a clear worry. The cabinet resolved the 'Southwark Conversation' is to shape an updated Council Plan and a Social Regeneration Framework.
5. In pursuit of the February 2016 approval 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 11,000 new homes by 2043.
6. On 27 April 2018 planning consent was granted for the redevelopment of the site to provide the following:
  - ❖ 5 x one bedroom flats
  - ❖ 6 x two bedroom flats
  - ❖ 3 x three bedroom flats
  - ❖ 5 x three bedroom houses
  - ❖ 5 space carpark
  - ❖ Amenity area
  - ❖ Reprovision of play area
7. All nineteen of the new housing units will be let at council rent levels.
8. The contract for the regeneration is currently being procured and it is intended for construction to commence later this year.

## KEY ISSUES FOR CONSIDERATION

9. The redevelopment will result in the demolition of the existing lock up garages. It will also see houses built on the amenity land at the junction of Daniel's Road and Tappesfield Road but replacement amenity space will be provided to the Daniel's Road frontage. In addition, the play equipment will be removed, an improved play area provided and the car parking area will be developed but five new spaces will be reprovided. Overall, this will result in reduced off street parking capacity at this location. As part of the planning application a parking survey was commissioned that concluded the existing low levels of demand for on-street parking mean that any increase in vehicles in association with a

development of 19 units could be accommodated on the streets within the vicinity of the site.

10. The approved redevelopment is arranged in two sections; a terrace of five three storey houses at the south western end of the site where Daniel's Road meets Tappesfield Road and a three storey block of flats at the north east end (where the lock up garages now stand). In between the two is an electricity transformer station (not part of this report) an amenity area, new play area and parking spaces.
11. The approved scheme being three stories in height is higher than what is presently on site and as part of the planning process a report considering the daylighting and sunlighting implications to nearby dwellings was commissioned. This concluded: *the scheme demonstrates good levels of compliance with BRE guidelines with regard to daylight amenity and full compliance with the BRE guide in relation to sunlight amenity.*
12. The report notes there will be good (daylighting) and full (sunlighting) compliance with BRE guidelines. Notwithstanding this, it does record there will be some minor infringement of daylighting enjoyed by some neighbours. This will not be of a degree to have caused refusal of the scheme from a planning perspective but any infringement of daylighting no matter how minor 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 tendering for the construction contract or cause bids to be substantially inflated to reflect the risk of there being an application for an injunction. An application for an injunction will cause delay and uncertainty (even if unsuccessful) and may (if successful) frustrate the development scheme.
13. The determined planning application has taken into account daylighting and sunlighting issues. As part of the planning process around three hundred and fifty properties in the locality were directly consulted and ten (2.8%) objections were lodged. These objections covered a variety of issues including increased local parking problems, highway congestion, obstruction of views, loss of privacy, interference with existing amenity area, detriment to local property values and four respondents' objections mentioned reduced daylighting from the proposed development.
14. The existing site may also be used by some residents in the locality as a pedestrian cut through between Barset Road and Daniels Road. The risk therefore exists that one or more prescriptive rights of way may exist over the site. In general terms, a prescriptive right is one whereby someone other than the property owner gains use or ownership rights over the land by way of a period of use. Such rights are not required to be registered at the Land Registry so may only emerge when interfered with. This presents a potential risk to the proposed development as the holder of such a right may seek to enforce it by applying to the court for an injunction to halt the development that is interfering with the right.

## **Appropriations**

15. 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 including rights of light and prescriptive rights of way 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 or prescriptive right of way) 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 (highly unlikely in this case) or result in perhaps significant unquantifiable costs.

16. 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).
17. 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).
18. 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.
19. The appropriation stages is summarised below:

#### 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

20. Cabinet has received a number of similar reports to enable direct delivery of housing schemes to proceed where the same strategy was recommended and approved.
21. Two parts of the site (the amenity area and the play area) shown shaded on the plan at Appendix A are (non-statutory) open space and before the Council can appropriate such land its intention to do so must be advertised by way of a public notice for two consecutive weeks in a local newspaper and it must consider any objections made as a result of the appropriation intention. Public notices advising of the intention to appropriate the shaded land appeared in the 16 and 23 August 2018 editions of the Southwark News and any objections received will be advised in a further Appendix C to this report.

## **Rationale for recommendations**

22.

- 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**

23. The existing Council Plan was the subject of extensive community consultation as is the emerging one (see paragraph 4) that gave rise to the Fairer Future promise of *quality affordable homes*. The recommendations herein will enable the construction of nineteen new homes to proceed. New homes will improve the quality of life for their residents. Four persons consulted as part of the planning process did however express concern about adverse daylighting impacts from the approved development scheme.

24. 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.

25. 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.

26. 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.
27. 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**

28. 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 procurement process mentioned at paragraph 8 has been completed.
29. 29. 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 and Democracy**

30. The report recommends the appropriation of council-owned land for planning purposes, and thereafter, the appropriation of that land for housing purposes.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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 all are council homes for rent, is capable of falling within all three categories.

36. 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).”

37. 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.

38. 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.

39. 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.

40. Section 122(2A) of the 1972 Act provides that where land to be appropriated pursuant to section 122(1) forms part of an open space, a council must advertise their intention to appropriate the land in a local newspaper for two weeks and consider any objections to the proposed appropriation. The report confirms that notices were published in Southwark News on 16 and 23 August.

### **Strategic Director of Finance and Governance**

41. The Strategic Director of Finance and Governance notes the recommendation to appropriate land as described in order to facilitate regeneration and the building of new homes as reflected in the report. This land appropriation is proposed to occur in such a way that it will have a neutral financial impact. This scheme forms part of the council's new homes direct delivery programme and any associated costs will be contained within the Housing Investment Programme.

### **Strategic Director of Housing and Modernisation**

42. This report ensures that the proposed development of the Daniels Road 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 build 11,000 new homes by 2043.

## **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Council Assembly report of 25 February 2015 adopting Council Plan	Southwark website	
<b>Link (please copy and paste into your browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s52059/Report%20Council%20Plan%202014-18.pdf">http://moderngov.southwark.gov.uk/documents/s52059/Report%20Council%20Plan%202014-18.pdf</a>		
Cabinet report of 22 October 2013 Phase 2 direct delivery of new homes	Southwark website	
<b>Link (please copy and paste into your browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s41478/Report%20Direct%20Housing%20Delivery%20Phase%202.pdf">http://moderngov.southwark.gov.uk/documents/s41478/Report%20Direct%20Housing%20Delivery%20Phase%202.pdf</a>		
27 April 2018 planning determination and associated documents	Southwark website	
<b>Link (please copy and paste into your browser):</b> <a href="http://planbuild.southwark.gov.uk/documents/?casereference=16/AP/4003&amp;system=DC">http://planbuild.southwark.gov.uk/documents/?casereference=16/AP/4003&amp;system=DC</a>		
24 July 2018 Cabinet agenda and minutes (item 14)	Southwark website	
<b>Link (please copy and paste into your browser):</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=6125&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=6125&amp;Ver=4</a>		



## APPENDICES

Appendix	Title
Appendix A	Plan of land and garages at Daniel's Road Nunhead
Appendix B	Rationale for appropriations of the land
Appendix C	Any objections to notice of intention to appropriate

## AUDIT TRAIL

Cabinet Member	Councillor Leo Pollak, Social Regeneration, Great Estates and New Council Homes		
Lead Officer	Kevin Fenton, Strategic Director Place and Wellbeing		
Report Author	Patrick McGreal, Regeneration-North		
Version	Final		
Dated	30 August 2018		
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	
Strategic Director of Housing and Modernisation	Yes	Yes	
Cabinet Member	Yes	Yes	
Date final report sent to Constitutional Team		6 September 2018	