

Item No. 21.	Classification: Open	Date: 11 December 2018	Meeting Name: Cabinet
Report title:		Southwark Regeneration in Partnership Programme Lot A Sites Appropriation	
Ward(s) or groups affected:		Newington Ward	
Cabinet Members:		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 time of writing more than 10,200 households (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.

We will soon begin construction on two housing developments on sites at Manor Terrace and Braganza St including nineteen new council homes, 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 land in already built up areas 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, an administrative process that will enable construction of the approved scheme to proceed with confidence.

RECOMMENDATIONS

That cabinet:

1. Confirms that the area of council-owned land edged red on the plans at Appendix 1 and Appendix 2, and known as 169-179 Manor Place, the former Council Office, Stopford Road, SE17 and Kennington Workshops 42 Braganza Street SE17 are no longer required for the purposes for which they are currently held and approves the appropriation of the land for planning purposes to facilitate 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 once the land is appropriated for planning purposes under the

statutory provisions detailed above, that the completed housing stock should be appropriated to Housing Revenue Account.

BACKGROUND INFORMATION

3. In July 2013 the council pledged to build a total of 11,000 new council homes over a 30-year period.
4. 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, which include:
 - Deliver value for money across all services
 - Build more quality affordable homes of every kind across the borough
 - Become an age friendly borough
 - Revitalise neighbourhoods
 - Support local people into work.
5. These promises are recognition of the need for new housing supply whilst improving existing housing, educational and health provision across the borough. In line with this the council also made a pledge in July 2014 to deliver 1,500 of the 11,000 new council homes by 2018.
6. A move towards more efficient and higher quality provision must be considered against the financial constraints faced by the council as it prepares for further reduction in funding from central government. Despite being one of the most deprived areas of the country, the council has faced some of the largest reductions in government funding for local authorities, and will need to make further savings. As such, the council is exploring ways it can continue to deliver value for money for residents and businesses by making even better use of its resources.
7. The council holds significant assets and sites and is exploring opportunities to work with developers to achieve the best possible outcome for our residents and to enhance their long term value. It is in this vein that officers have identified a number of council owned sites of varying size and development potential across the borough which could be developed for a range of mixed use housing-led schemes.
8. The subject sites are part of the Southwark Regeneration in Partnership Programme (SRPP), which aims to leverage the investment and expertise of established developers through a joint partnership arrangement thereby maximising the utility, value and quality of the development and consequently the council's assets and services.

Manor Place

9. The site is shown edged red on the plan attached in Appendix 1. The freehold interest is owned by the council and is held in the corporate property holding account. The site is located on the southern side of Manor Place near to the junction with Braganza Street, between Stopford Road to the north-east and Danson Road to the south-west. The site comprises three different elements: A three-storey Victorian terrace, a single storey office building at the rear and part of the adjoining public highway along Manor Place and Stopford

10. Planning consent was granted on 30 January 2018 (Ref 17/AP/0907) for the demolition of single storey office building and a derelict three-storey row of shops and flats above (with the retention of the original three-storey Victorian facade) and the construction of a six storey building (behind retained façade) comprising 56 flats (20 x social rented, 8 x intermediate and 28 x private) above a health centre/office space (745sqm)(Use Class D1/B1), pharmacy/shop (85sqm)(Use Class A1) and cafe (285sqm)(Use Class A3), with associated landscaping and public realm works. The Manor Place redevelopment is 120 metres from the Braganza Street development described in Paragraph 10 and is linked in terms of wheelchair housing and affordable housing provision.

Braganza Street

11. The site is shown edged red on the plan attached in Appendix 1. The freehold interest is owned by the council and is held in the corporate property holding Account. The site accommodates three buildings set around a central courtyard located behind the street frontage and provides office and workshop space (Class B1), and a conference hall. Planning consent was granted on 30 January 2018 (Ref 17/AP/0964) to redevelop the site to provide 33 residential units in a mixture of flats, maisonettes and houses contained in five blocks of between three- and five storeys (5 x intermediate and 28 x private). A sixth block will provide Class B1 floor space over three-storeys. Four of the five blocks on the main part of the site will be set around a central garden courtyard that will include paving, planting, trees, seating and play equipment, with the vehicle access retained onto Braganza Street, and a new pedestrian entrance proposed onto Doddington Grove. The Braganza Street redevelopment is 120 metres from the Manor Place development described in Paragraph 9 and is linked in terms wheelchair housing and affordable housing provision. It is noted when both habitable room calculations are combined (a total of 40.4% affordable and 59.6% private tenure) both schemes become policy compliant by exceeding the 35% affordable housing provision in terms of number of units and habitable room. In addition the site includes land adjacent to 26 Braganza Street currently used for private parking.
12. Following practical completion the social rent units will be retained by the Council and let at Council rent levels. In addition the commercial units will also be retained by the Council creating a revenue stream to fund corporate objectives. A start on site is scheduled for January 2019 with practical completion by June 2020.

KEY ISSUES FOR CONSIDERATION

13. The approved developments both result in denser development and buildings of greater height than those existing. Daylighting and sunlighting effects on the buildings immediately adjoining the subject sites were considered as part of the planning process in accordance with the methodology and criteria provided by the Building Research Establishments guidance. It showed that where they are currently enjoyed, good levels of daylight, sunlight and sun on ground will remain as a result of the proposed development. Where the general BRE guideline criteria is not met, good levels of daylight and sunlight will generally remain and are considered acceptable and commensurate with the urban location of the proposed development site.
14. Whilst there is a minor infringement to daylight and sunlight identified by the BRE report this was not sufficient to cause a refusal of planning consent.

Notwithstanding this there is still a risk to the project that an adjoining owner could apply to court for an injunction on the basis an infringement to their common law right of light (which is a more stringent test than the daylighting and sun lighting test for planning considerations). In the worst case this could prevent the scheme being delivered, contractual penalties could be incurred and completion could be delayed indefinitely. In the best case a significant delay is likely whilst the courts determine the validity of the claim or claims.

15. All adjoining residents were consulted as part of the planning process, in total 5 responses were received. Of the 5 responses received two were objections that focussed in particularly on the loss of light. For example objection 1 related to the overlooking to nos. 60-62 Braganza Street. In response the side window to block E would be conditioned to be obscured, and it was noted that windows to block D were of sufficient distance to prevent material loss of light. Objection 2 conveyed block A would cause a loss of light and privacy. The planning response was there would not be a noticeable loss of daylight or sunlight to neighbouring properties from this block. As such the existing terrace housing has mutual overlooking from the first floor window arrangement of the proposed block. Screening to the roof terrace would be required by condition.
16. Whilst it is considered that there are no other third party risks e.g. from unregistered rights of way, there is a risk, given the unregistered nature of prescriptive rights for example, that an 'injured' party will only come forward once the scheme is being delivered. They could be entitled to apply to court for an injunction and depending on the legitimacy of their claim could result in significant delays, redesign and contractual penalties.

Appropriations

17. 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 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 equal to the loss to the value of their property. Further justification for the appropriation of these sites is given in Appendix 3.

Policy implications

18. The appropriation of the subject sites will facilitate the construction of the new development consisting of 19 social rent units, 14 Intermediate, 56 private and a commercial space. This will help achieve the Council's commitment to build 11,000 new council homes and to meet the policy objectives to deliver a fairer future for all in Southwark.

Community impact statement

19. The appropriation of the land known as Manor Place, former Council Offices will not unduly negatively impact the community, as its current use and service provision as an office is now closed and it is vacant. The current row of shops is predominately in a state of disrepair. Therefore the impact of the development will positively benefit the wider community by providing much needed new landscaping and commercial space activating the street. In addition 56 new homes will be provided of which 19 will be social rented, 9 intermediate and 28 private will contribute to a mixed and balance community.
20. The appropriation of land known as Braganza Street Workshops will benefit the community providing 33 new homes (5 intermediate and 28 private), public realm and workspace. The existing large warehouse has a number of tenants both long term (with options to return) and short term. Additionally the office accommodation is no longer efficient and is under utilised. As such a new high quality purpose built space with greater occupancy and modern facilities will be favourable to local people wanting to rent work space and will be advantageous to the wider community and revitalise the area.
21. 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, about 40% of which will be affordable would outweigh any interference with private rights.
22. 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.
23. 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.

24. Through the consultation process we engaged with persons and groups that identified as having protected characteristics to mitigate the impact of both the termination of the workspace tenancies and the consented scheme. For example it is noted there have been some negative impact on, small social enterprises that serve a wider ethnic community. To mitigate any negative impacts the council has given consideration to the organisations affected by the development proposal. A financial relocation package has been agreed and interim accommodation package provided with the option to return post development.
25. Throughout the lifespan of the development the council working with the development partner will collate and monitor the impact of the development on protected groups. The anticipated next steps will involve households and businesses in the locality of the sites being asked to complete a questionnaire, incorporating equality monitoring data at the initial and key stages, repeated periodically this will enable a thorough analysis of the impact post completion and will inform future equality impact assessments and mitigation considerations

Resource implications

26. See financial implications.

Legal implications

27. See concurrent from director of law and democracy

Financial implications

28. The cost of construction is being met by the council's development partner. Subject to approval of this report's recommendations and subject to any claimant being able to prove a diminution in the value of their property as a result of the proposed scheme, any damages payment will need to be paid by the Council. It is confirmed that this can be accommodated within existing resource allocation for the wider project and delivery of the scheme.
29. There are no financial implications arising from the initial appropriation of land for planning purposes. However, on completion of the development, the intention is to appropriate land with the newly built social housing units to the Housing Revenue Account. Where land is appropriated between the General Fund and the Housing Revenue Account, as will be the case here, there is a requirement to transfer debt equivalent to the certified market value of the land being appropriated. As a consequence, the Housing Revenue Account will become responsible for paying the interest due on the amount of debt transferred, and the amount due will be determined on completion of the development.

Consultation

30. The SRPP Lot A sites have been the subject of extensive community and stakeholder consultation especially on the sites where planning permission has been obtained (as with the subject sites), and further consultations will be undertaken when development partners are appointed on the sites which will have to be submitted for planning.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

31. The report recommends the appropriation of council-owned land for planning purposes.
32. 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.
33. The land must already belong to the council. Paragraphs 9 and 11 of the report confirm that the land to be appropriated is in the council’s freehold ownership.
34. The land must be no longer required for the purpose for which it is currently held. The report confirms in paragraphs 9,11,19 and 20 the purposes for which the properties are held. 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 and support developers to override third party rights.
35. 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 227 of the Town and Country Planning Act 1990 (“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.
36. 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.”
37. 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.
38. 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).”

39. 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.
40. This report confirms that the works being done on the sites will be done in accordance with planning permissions already obtained on Manor Place and Braganza Street as stated in paragraphs 10 and 11 in this report.
41. The Council will continue to have due regard to its obligations under the Equality Act 2010 with regard to the Public Sector Equality Duty

Strategic Director of Finance and Governance (H&M 18/070)

42. 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 at the former council offices at 169-179 Manor Place and the former Kennington Workshops at 42 Braganza Street in SE17. Upon completion of the development, debt equivalent to the value of land being appropriated together with associated interest payable will be transferred from the General Fund to the Housing Revenue Account. This scheme forms part of the council’s Southwark Regeneration in Partnership Programme and any associated costs will be contained with the Housing Investment Programme.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Gateway 1 – Southwark Regeneration in Partnership Programme Procurement Approval	Council Offices, 160 Tooley Street, SE1 2QH	Prince Kamanda 020 7525 7480
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=5379&Ver=4 (item 16)		

APPENDICES

No.	Title
Appendix 1	Map – Manor Place, former council office
Appendix 2	Map – Braganza, Kennington workshops, SE17
Appendix 3	Background to appropriation
Appendix 4	Image – Manor Place shops (former offices)
Appendix 5	Image – Braganza Street workshops

AUDIT TRAIL

Cabinet Member	Councillor Leo Pollak, Social Regeneration Great Estates and New Homes	
Lead Officer	Michael Scorer, Strategic Director of Housing & Modernisation	
Report Author	Prince Kamanda, Housing Regeneration Manager	
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CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
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Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
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