

<b>Item No.</b> 17.	<b>Classification:</b> Open	<b>Date:</b> 30 April 2019	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Former Joseph Lancaster School and Land at the Lawson Estate SE1	
<b>Ward:</b>		Chaucer	
<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.

We will soon begin construction of forty new council homes on this the former school and part of the Lawson Estate, 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 hatched land parcels from education and housing to planning and then to housing, an administrative process that will enable construction of the approved scheme to proceed with confidence.

## **RECOMMENDATIONS**

That cabinet:

1. Notes for the reason set out in paragraph 5 of this report that the new housing will be delivered directly by the council rather than by Leathermarket Community Benefit Society Limited as approved by cabinet on 13 March 2018.
2. Confirms that the land shown hatched red on the plan at Appendix A that is currently held for education 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.

3. Confirms that the land shown hatched green 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.
4. Confirms that following completion of the appropriations at recommendations 1 and 2 the land shown hatched red and green 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**

5. On 13 March 2018, cabinet approved a proposal to facilitate the delivery of new homes on the former Joseph Lancaster School. Broadly, the mechanics of this would be the site to be transferred by way of a long lease to Leathermarket Community Benefits Society (CBS) the trading arm of Leathermarket Joint Management Board ("JMB"). The council would provide a grant to fund the construction of the housing and the completed homes would be managed by the JMB and let on secure tenancies at council rent levels. This model has worked for the parties on a similar scheme at Marklake Court (former garages on the Kipling Estate). A significant part of the grant would be funded by the Homes for Londoners scheme. However it is a condition of that scheme that the completed dwellings are Council homes and that is at variance with last year's decision that was on the premise the new homes would be held by the CBS. As a consequence it is now considered appropriate for the council to directly build the homes and for the JMB to manage them.
6. On 10 January 2019 planning consent was granted in respect of the land shown edged green on the plan at Appendix A for new housing and enhancements to the Lawson Estate. This consented land includes a pre-fabricated building that was known as the Joseph Lancaster School that was latterly used as a nursery, an area of grassed communal garden, a children's play area and two areas of car parking (including a block of nine lock up garages). The site also includes the undercroft beneath Nashe House and two parcels of land to the north of this block.
7. On 28 November 2018 council assembly approved the current Council Plan. This sets a number of commitments to our community including *A Place to Belong*; one of the undertakings to meet this commitment is to *Build at least 1,000 more council homes.....by 2022*. The recommended appropriations in this report are to further this commitment.
8. Whilst all the land contained within the area edged green is owned by the council as freeholder it is held for two different purposes; the majority is held for housing purposes in the housing revenue account but the former school hatched red on the plan at Appendix A is held for education purposes by the general fund.
9. The Lawson Estate whilst owned by the council is managed on its behalf by the Leathermarket JMB. Following completion of the consented scheme this will remain the case and the new homes will be managed by Leathermarket JMB.

10. Leathermarket JMB and many of the Estate's residents actively and positively participated in preparing the scheme that was given planning consent earlier this year and understandably there is the expectation that it commences imminently. The present estimate is for work to start next month but before it can, the sites need to be appropriated to eliminate the risk of anyone seeking to enforce a third party right such as a right of access or light and obtaining an injunction to stop the scheme.
11. In January 2019 planning consent was granted for the redevelopment of the site to provide the following:
  - ❖ 7 one bedroom flats
  - ❖ 24 two bedroom flats
  - ❖ 3 three bedroom flats
  - ❖ 6 three bedroom houses
  - ❖ New parking bays
  - ❖ A play area
  - ❖ Community garden
  - ❖ Enhanced landscaping
  - ❖ Fourteen cycle lockers to the undercroft of Nashe House.
12. All forty of the new housing units will be let at council rent levels.

#### **KEY ISSUES FOR CONSIDERATION**

13. The consented scheme provides for a stepped block of flats starting at four stories by Middleton House moving north-west, then six stories and then to eight stories on the land hatched red on the plan. The houses will be in a three storey terrace situated on the land shown hatched green on the plan. As part of the planning process a lighting report was obtained from a specialist surveyor. This is considered in the planning report and for daylighting and sunlighting concludes *"analysis indicates that all properties around the development site are compliant with the Building Research Establishment Guidelines for daylight and sunlight with the proposal in place or come close to the recommendations within the BRE Guidelines. There are some isolated reductions in daylight beyond the recommendations in the Guidelines in Nashe House and Beeston House but these windows retain good levels of daylight in terms .... in many cases better than other fully compliant windows in Beeston House. Given the flexibility permitted in the application of the BRE Guidelines in urban locations such as this, these results are considered in keeping with the BRE Guidelines' recommendations"*.
14. The surveyor's daylighting/sunlighting report whilst generally positive does recognise there will an adverse impact to some properties in Nashe House and Beeston House. These adverse impacts were not of a degree to cause refusal of the scheme from a planning perspective but their 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.
15. The determined planning application has taken into account daylighting and sunlighting issues. As part of the planning process around six hundred occupiers in the locality were directly consulted and only one objection was lodged (there were three representations supporting the scheme). This objection did not refer to lighting but concerned itself with density of development, impact on street

parking, noise and disruption from the development and a preference for the former nursery site to be a communal garden.

## Appropriations

16. 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.
17. 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).
18. In this case it is recommended that the land hatched red (former nursery) on the plan be appropriated from education purposes to planning purposes and the land hatched green (surfaced access and parking area) on the plan be appropriated from housing purposes to planning purposes. Once these appropriations are completed then both hatched sites be appropriated to housing purposes as to hold the land for planning purposes will not be consistent with the ultimate use of the land.
19. 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.
20. The appropriation stages is summarised overleaf:

Land currently held for education and housing purposes

Appropriate from education and 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

21. Cabinet has received similar reports to enable new housing schemes to proceed to address the shortage of affordable housing within the Borough.

## 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. To delivery a current Council Plan commitment.

### **Community impact statement**

23. The new Council Plan was the subject of extensive community consultation. The recommendations herein further the delivery of the *A Place to Belong* commitment set out in the Plan.
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 considering the recommendations herein the cabinet must have due regard to the possible effects them on any groups sharing a protected characteristic in order to discharge its public sector equality duty. This is an ongoing obligation.
27. If the recommendations set out are approved, the council will be able to proceed with the construction of forty new homes and to make enhancements to the Lawson Estate. These new homes may ultimately house some people with protected characteristics. There are no known dis-benefits to persons with protected characteristics arising from the proposed scheme.

## **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.
29. When land and property is appropriated between the HRA and the general fund, adjustments are required to reflect the change in the respective debt liabilities, as measured by the Capital Financing Requirement (CFR). Ownership of the land does not change; the council itself owns all assets regardless of the power under which they are held.
30. The adjustment in respect of the appropriation of the education land (hatched red on the plan) will result in an increase in the HRA CFR of £3m and a corresponding decrease in the general fund CFR. The revenue implication of the appropriation will increase the interest charged to the HRA by circa £135,000 per annum; the charge to the General Fund will reduce by £135,000 together with a saving on Minimum Revenue Provision (the amount set aside for debt repayment).
31. The land hatched green is currently held by the housing revenue account; it will transfer briefly to the general fund and then back to the housing revenue account. It will be held in the general fund for less than a day so the net effect of the respective transfers between accounts is de minimis.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

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

32. The report recommends the appropriation of council-owned land currently held for education and housing purposes to planning purposes, and thereafter, the appropriation of that land for housing purposes.
33. 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.
34. The land must already belong to the council. Paragraph 8 of the report confirms that the land to be appropriated is in the council's freehold ownership.
35. 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 lands are no longer required for education and housing purposes.
36. 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.

37. 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 and is capable of falling within all three categories.
38. 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).”

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. 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.

40. 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.
41. 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 and Governance [FC18/046]**

42. This report is requesting cabinet to approve the appropriation of the lands as reflected in paragraphs 1-3 to facilitate the regeneration and the building of new homes at the Lawson Estate. Full details are provided within the main body of the report.
43. The strategic director of finance and governance notes that the respective lands are no longer required for education and housing purposes and can therefore facilitate the housing redevelopment proposals as reflected in the report.
44. The financial impact of the appropriation is detailed in the financial implication section and the strategic director of finance and governance notes that it is proposed to occur in such a way that it will have a neutral financial impact for the council.
45. Staffing and any other costs relating to this report to be contained within existing departmental revenue budgets.

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

46. This report ensures that the proposed development of the former Joseph Lancaster School scheme can progress with the avoidance of legal challenge. The rights of light issues from the scheme are not considered significant but nevertheless exist. 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

Background Documents	Held At	Contact
Council Plan 2018/9 – 2021/22	Chief Executives Office 160 Tooley Street London SE4 2QH	Matt Little 020 7525 0388
<b>Link (please copy and paste into your browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf">http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf</a>		
January 2019 planning determination and associated documents	160 Tooley Street London SE4 2QH	Tim Bostridge 020 7525 1222
<b>Link:</b> <a href="http://planbuild.southwark.gov.uk/documents/?casereference=17/AP/4661&amp;system=DC">http://planbuild.southwark.gov.uk/documents/?casereference=17/AP/4661&amp;system=DC</a>		
Proposed lease and funding for former Joseph Lancaster nursery	Constitutional Team 160 Tooley Street London SE4 2QH	Paula Thornton 020 7525 4395
<b>Link (please copy and paste into your browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s74553/Report%20Joseph%20Lancaster%20Estate%20Deverell%20Street%20SE1%20-%20Grant%20of%20Long%20Lease%20and%20Housing%20Funding%20Agre.pdf">http://moderngov.southwark.gov.uk/documents/s74553/Report%20Joseph%20Lancaster%20Estate%20Deverell%20Street%20SE1%20-%20Grant%20of%20Long%20Lease%20and%20Housing%20Funding%20Agre.pdf</a>		

## APPENDICES

Appendix	Title
Appendix A	Former Joseph Lancaster School and Land at the Lawson Estate SE1
Appendix B	Rationale for appropriations of the land

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Leo Pollak, Social Regeneration, Great Estates and New Council Homes	
<b>Lead Officer</b>	Kevin Fenton, Strategic Director Place and Wellbeing	
<b>Report Author</b>	Patrick McGreal, Regeneration North	
<b>Version</b>	Final	
<b>Dated</b>	11 April 2019	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Strategic Director of Housing and Modernisation	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	12 April 2019	