

Item No. 12.	Classification: Open	Date: 4 February 2020	Meeting Name: Cabinet
Report title:		66 Linden Grove SE15 3LL	
Ward:		Peckham Rye	
Cabinet Member:		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 start of this decade, more than 11,000 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.

This year, we will begin construction on twenty-seven new council homes at Linden Grove, 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

That cabinet:

1. 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 section 122(1) of the Local Government Act 1972.
2. confirms that following completion of the appropriation at paragraph 1 the land shown edged red 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 comprises a two storey building used as temporary accommodation unit arranged in a 'L' shape shown edged red on the plan at Appendix A to this report. The north western wing of the property is shown as 1 and 2 Limes Walk on the plan. The building dates from the 1970s. The council holds the freehold interest in the land. It adjoins an area of housing amenity land.
4. On 28 October 2019 planning consent was granted to demolish the building and to construct new housing in its place together with neighbourly improvements.
5. 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.
6. In pursuit of this commitment, a number of sites throughout the borough have been identified as providing capacity for additional new homes. Once identified, the development of those sites is consulted upon with the local community, a planning application is made and if appropriate planning consent is granted for the proposed new homes. Thereafter, if there are any third party rights that present a risk to the development cabinet has been asked on a number of occasions to appropriate the site to mitigate such risk. This report is another to enable the de-risking of a development that will provide new additional housing for social rent.
7. The consented scheme referred to above will provide for:
 - 10 x One bedroom homes
 - 11 x Two bedroom homes
 - 6x Three bedroom homes
 - The retention of existing internal street to create an internal courtyard
 - Refurbishment of 3 Limes Walk – a council house abutting the current building
 - Landscaping, formalising of car parking spaces and erection of a communal garden store.
8. Twenty of the new homes will be in a four storey block of flats and the other seven will be in a two/three storey terrace of houses. Three of the dwellings (one, one bedroom and two, two bedroom) will be wheelchair accessible. All of the consented twenty seven homes will provide housing to be let at council rent levels. The additional works reflects the council's great estates approach to providing new housing within its estates.

9. The contract for the construction will shortly be procured and it is intended for construction to commence in the spring.

KEY ISSUES FOR CONSIDERATION

10. The height of most of the surrounding housing is two storey so it can be expected that new building, part of which is three and four storey in height, may impact on some neighbouring properties. 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 and identifies some interference with the lighting enjoyed by some neighbouring properties. The report identifies borderline impacts on two properties but concludes:

“The impact to most properties will be small and fully compliant with the default Building Research Establishment (BRE) numerical criteria. There will be some noticeable proportional reductions to the rear windows of 3 and 4 Limes Walk, which fall short of full compliance with the BRE guidelines. However, the principal habitable rooms are located on the opposite side of the property and are not impacted by the proposed scheme. Therefore, despite isolated impacts to some rear bedrooms, the property will retain good levels of daylight and should be considered acceptable. There will be borderline Vertical Sky Component and No Skyline reductions to the ground floor windows and rooms in 35 Linden Grove. However, since the impact is partially due to the protruding entrance bay and retained levels of daylight on an unfettered façade will remain very good for an urban location, this should be regarded as acceptable.”

11. The daylighting/sunlighting report whilst generally positive does recognise there will be some impact to neighbouring properties. 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.
12. The determined planning application has taken into account daylighting and sunlighting issues. As part of the planning process 1,228 nearby properties were consulted and four (37%) responses were received. Two were supportive of the scheme, one neutral and one was an objection. The objections from a planning perspective concerned:
 - Design
 - Scale
 - Impact on conservation area.

Appropriations

13. 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.

14. 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).
15. In this case it is recommended that the land edged red on the plan be appropriated from housing purposes to planning purposes. This will mitigate the risk of legal action designed to frustrate the development being instigated. Thereafter it is recommended the land appropriated to housing purposes as to hold the land for planning purposes will not be consistent with the ultimate use of the land.
16. 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.
17. The appropriation stages is summarised below:

Land currently held for education and housing purposes

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

18. 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

19.
 - 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

20. 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.
21. 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.
22. 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.
23. 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.
24. If the recommendations set out are approved, the council will be able to proceed with the construction of Twenty-seven new homes providing fifty bedrooms. It will also result in the demolition of a building that is at the end its economic life. Persons currently using the existing unit may have protected characteristics as may the ultimate tenants of the new housing that will be provided. The council's policy to build additional housing for rent is designed to mitigate homeless in the Borough and this is allocated having regard to policies that have been designed to address the Equality Act 2010. Therefore the recommendations in this report will not be detrimental to persons with protected characteristics.

Financial implications

25. The demolition of the existing building and construction of the new homes and neighbouring improvements 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 9 has been completed.
26. 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. As both appropriations will take place on the same day there will be

no net transfer of debt, and there are, therefore, no financial implications arising directly from the recommendations made in this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

27. The report recommends the appropriation of council-owned land for planning purposes, and thereafter, the appropriation of that land for housing purposes.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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).”

34. 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.

35. 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.

36. 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 [H&M19/135]

37. 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 Linden Grove. 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 with the housing investment programme.

Strategic Director of Housing and Modernisation

38. This report ensures that the proposed development of 66 Linden Grove 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 tenants in housing need

leads the way in which social housing can be developed in inner cities. The scheme contributes to the council's target to build 2,500 new homes by 2022 and its pledge to build 11,000 new homes by 2043.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Council Plan 2018-9 – 2021-22	160 Tooley Street London SE1 2QH	Paula Thornton 020 7525 4395
Link: http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf		
Planning documentation	160 Tooley Street London SE1 2QH	Paula Thornton 020 7525 4395
Link (please copy and paste into your browser): https://planning.southwark.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=ZZZV0JKBWR685		

APPENDICES

Appendix	Title
Appendix A	66 Linden Grove SE15 3LL
Appendix B	Rationale for appropriations of the land

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	
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Dated	22 January 2020	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / 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	22 January 2020	