

Item No. 25.	Classification: Open	Date: 8 December 2020	Meeting Name: Cabinet
Report title:		Appropriation of land: 345 Southwark Park Road, Bermondsey SE16 2JN	
Ward:		North Bermondsey	
Cabinet Member:		Councillor Leo Pollak, Housing	

FOREWORD – COUNCILLOR LEO POLLAK, CABINET MEMBER HOUSING

At the time of writing, more than 14,000 households were recorded on Southwark’s housing register in need of rehousing, having risen sharply as a consequence of the pandemic – 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.

Next year, our partner Lovell will begin construction of twenty-two new council homes at 345 Southwark Park Road, 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 social care 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 single storey building that was used as a day centre for elderly persons with health issues. The care formerly provided is now delivered elsewhere and for some time the property has been surplus to social care purposes. It is owned freehold by the Council and currently occupied by guardians to protect against unauthorised occupation. It is situated at the junction of Layard and Southwark Park Roads. It is shown edged red on the attached plan and comprises an area of 1,600m² or thereabouts.
4. On 17 November 2020 Planning Sub-Committee B resolved to grant consent for the demolition of the former day centre and the provision of new housing on the site.
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. It also approves the land being transferred from the general fund (social care use) to the housing revenue account (housing use).
7. The scheme approved by the Planning Sub-Committee will provide for:
 - ◆ 46 New Homes
 - ◆ Office and community ground floor space
 - ◆ Landscaping and enhanced public realm
 - ◆ Cycle parking bays and wheelchair vehicle access parking
8. The Planning Sub-Committee's resolution is for mixed tenure housing with twenty-two (48%) of the homes being for Council rent. The other twenty-four are for market sale to support financially the scheme.

9. This scheme forms part of the Southwark Regeneration in Partnership programme and the Council's selected is Lovells. The recommendations in this report will enable construction to commence early in the next year.

KEY ISSUES FOR CONSIDERATION

10. The approved scheme will see a block of flats of six and seven stories in height constructed with the offices/community accommodation on the ground floor. It will be brick faced and have a flat roof. The report to the Planning Sub-Committee commented "The detailed design is considered to be of a high quality". 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 concludes if the scheme is built the day lighting sunlighting impact in the locality will see:

"a minority of buildings which are below the values recommended by the BRE (Building Research Establishment)"

11. The daylighting/sunlighting report whilst generally positive does recognise there will be some impact to neighbouring properties. The most significant impact will be to the Bede Housing Association Office immediately to the east of the subject site. That is a workspace rather than a residence. They will be adverse day lighting impact to some homes in Fenner Close immediately to the north of the site twelve windows to these homes may see slightly reduced daylighting at times from the new building. 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 around four hundred nearby properties were consulted and a number of responses were received. The material objections from a planning perspective concerned:
- ❖ Ground floor office/community use
 - ❖ Existing parking shortage in area will be exaggerated
 - ❖ Height and density of scheme
 - ❖ Adverse daylight and sunlight
 - ❖ Air quality
 - ❖ Removal of two mature trees.

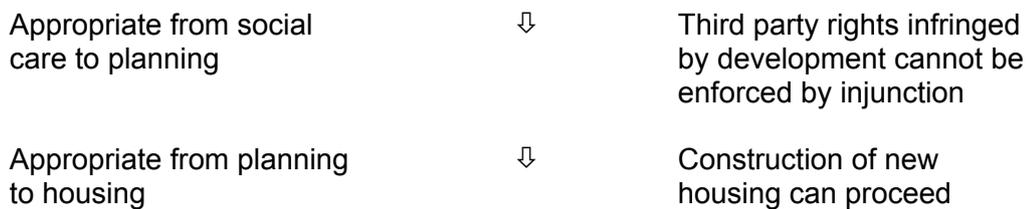
Appropriations

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's partner 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 social care 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 social care purposes



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 deliver a current Council Plan commitment.

Community impact statement

20. The 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's partner will be able to proceed with the construction of forty-six new houses. It will also result in the demolition of a surplus day centre. Based on the information available it is not considered there are any particular groups sharing a protected characteristic that will be adversely impacted by the proposals. Indeed the new housing especially the homes for Council lettings should be beneficial across the range of protected characteristics.

Financial Implications

25. 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.
26. The adjustment in respect of the appropriation of the social care land will result in an increase in the HRA CFR of £2.83m and a corresponding decrease in the general fund CFR. As a consequence, there will be an increase in the interest charged to the HRA and a corresponding reduction for the General Fund together with a saving on Minimum Revenue Provision (the amount set aside for debt repayment). Based on the average weighted cost of borrowing (3.6% at March 2020), the interest charge will be in the region of £102k per annum.
27. Under the provisions of s204 of the Housing and Planning Act 2016 if there is a claim for compensation arising as a consequence of the proposed appropriation the person causing the infringement e.g. reduction in lighting is liable for any compensation that is payable. In this case it will be the Council's development partner Lovells. However, if the person causing the infringement does not pay then liability will transfer to the Council who may then seek recovery from its partner.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

28. The report recommends the appropriation of council-owned land currently held for social care purposes to planning purposes, and thereafter, the appropriation of that land for housing purposes.
29. 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.

30. 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.
31. 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 social care purposes.
32. 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.
33. 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.
34. 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).”

- 35. 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.
- 36. 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.
- 37. 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.
- 38. Because of the potential liability for compensation which attaches to the Council pursuant to s204 of the Housing and Planning Act 2016 the Council should seek an indemnity from the developer in respect of any compensation payments which may arise as a result of the development.

Strategic Director of Finance and Governance (FC20/16)

- 39. This report is requesting cabinet to note that the land edged red on the plan at Appendix A currently held for social care purposes is no longer required for such purposes and therefore approve the appropriation of the land for planning purposes to facilitate the development proposals for the area.

40. Following the above appropriation, cabinet is also requested to approve appropriation of the land for housing purposes in line with the Council Plan.
41. The Strategic Director of Finance and Governance notes that the site has been declared as surplus for social care purposes. Full details and background are provided within the main body of the report.
42. Details of the financial implications are contained within the report and the Strategic Director of Finance and Governance notes that the proposed land appropriation between the general fund and housing revenue account is proposed to occur in such a way that it will have a neutral financial impact on the overall council finances.
43. Staffing and any other costs relating to this report to be contained within existing departmental revenue budgets.

Strategic Director of Housing and Modernisation

44. This report ensures that the proposed development of 345 Southwark Park Road 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 a minimum of 50% of the new homes for Council lettings 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	Weblink
Council Plan 2018/9 – 2021/22	http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf
Planning documentation	https://planning.southwark.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QAKH5AKBFUM00
17 November 2020 report to Planning Sub Committee B	http://moderngov.southwark.gov.uk/documents/s91178/Item%207.1%20Report.pdf

APPENDICES

Appendix	Title
Appendix A	345 Southwark Park Road
Appendix B	Rationale for appropriations of the land

AUDIT TRAIL

Cabinet Member	Councillor Leo Pollak, Housing	
Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Patrick McGreal, Regeneration North	
Version	Final	
Dated	26 November 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	26 November 2020	