

Item No. 15.	Classification: Open	Date: 8 March 2022	Meeting Name: Cabinet
Report title:		Lomond Grove, Elmington Estate – appropriation for planning purposes	
Ward:		Camberwell Green	
Cabinet Member:		Councillor Stephanie Cryan, Council Homes and Homelessness	

FOREWORD – COUNCILLOR STEPHANIE CRYAN, CABINET MEMBER FOR COUNCIL HOMES AND HOMELESSNESS

At the time of writing, more than 16,500 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.

This year, we will begin construction on 22 new council homes at Lomond Grove on the Elmington 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. 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 outlined 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 outlined 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. This report recommends the council appropriates for planning purposes certain freehold land in its ownership. This will engage powers under section 203 of the Housing and Planning Act 2016, overriding third party rights in the land, which are then converting to a claim for compensation.
4. This course of action is recommended on the basis it will facilitate delivery of a development scheme of significant public benefit; in the form of 22 new council homes and various environmental improvements.
5. The report further recommends the land be appropriated back to housing, on the basis that this ultimately will be its use.
6. The Council has used this mechanism to facilitate several of its housing development projects.
7. In this case, the property in question comprises amenity land associated with the Council housing on Lomond Grove, part of the Elmington Estate, shown outlined on the plan at Appendix A. It is a predominantly residential area. The Council holds the freehold interest in the land within its Housing Revenue Account.
8. On 4 November 2021, planning consent was granted for the redevelopment of the site to create 22 council homes in a part 4, part 5 storey building, demolition of existing boundary wall, new vehicle cross-over, new landscaping and play space improvements, including new access through to Caspian Street.
9. The planning report noted the development would not result in any significant impacts on the amenity of the surrounding residents by way of noise, overlooking, outlook or daylight and sunlight. Overall, planners commended the development as being of a very high quality that will provide a distinctive new piece of architecture.
10. 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.
11. In pursuit of this, 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.

12. The consented scheme referred to at paragraph 8 will provide:

9	x	One bedroom two person flats
1	x	Two bedroom three person flats
5	x	Two bedroom four person flats
7	x	Three bedroom five person flats

13. All 22 new homes will provide housing to be let at Council rent levels. This exceeds policy targets, that residential development on publicly owned, or land formally in public ownership, should deliver at least 50% affordable housing. The development will also deliver seven larger family sized three or more bed homes: 31.8% delivered against a target of 20%.

14. It is intended that site clearance work will begin in February, with the main construction work to commence in late spring 2022.

KEY ISSUES FOR CONSIDERATION

15. If the recommendations in this report are accepted, the key impact will be that the owners of third party rights that are interfered with by the development, will no longer be able to apply to court for an injunction to stop the development. They will instead have the right to claim compensation.

16. Appendix B sets out further details of the rationale behind the recommendations in this report. Cabinet should be satisfied that:

- a. The Council owns the site – which it does as part of freehold title SGL236956.
- b. The development of the site has planning consent – which it does under application number 21/AP/1981.
- c. That the development behind the intention to appropriate for planning purposes is likely to improve the economic, social or environmental well-being of the area – and there is clear evidence that the consented scheme will do this.
- d. That the appropriation back to housing is correct – which it is, on the grounds the land will be used to provide accommodation by erecting housing on the site.

17. Cabinet will want also to consider that the course of action recommended is necessary and proportionate.

18. As part of the planning process, a daylight sunlight and overshadowing report, was produced by a specialist surveyor. This identified potential interference from the scheme to the lighting of some rooms in neighbouring properties. However, the overall conclusion from the

planning report was that the development is not considered to result in an unacceptable significant impact on the amenity of the surrounding residents in terms of daylight or sunlight with all properties retaining good access to daylight.

19. The daylighting sunlight 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, 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.
20. Even if such an application ultimately fails, it still has the potential to delay delivery of much needed new homes. It is not unreasonable therefore to look at mitigation of this risk.

Appropriations

21. 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 can be overridden. The beneficiaries of such rights can still claim compensation but cannot seek an injunction to delay or terminate the development.
22. This gives the Council the certainty that having commenced construction works a person with the benefit of an unregistered right over land (there is no comprehensive register of third party rights) cannot apply to the court to have the development stopped. This is a very important tool in enabling development to proceed on urban sites.
23. Another approach for the Council would be to either, not appropriate the site and accept the risk of delay from injunction. Or, not appropriate and take out insurance against the cost of claims. Neither approach addresses the central issue of the risk of delay whilst an application to injunct is considered by a court – nor the risk an injunction might be successful and the development stopped.
24. Appropriation is considered to give a greater degree of certainty and is considered proportionate. The chief impact of this approach is that the owners of third party rights lose their ability to stop the development by injunction, but they retain the right to compensation.
25. The compensation a person affected by interference of a right may be entitled to, is based on the value of their properties before the right has been interfered with versus the value of the property with the interfered right; 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). The onus is upon the claimant to prove a loss in value, and compensation only becomes payable once there is an actual interference with a right.

26. In this case it is recommended that the land outlined on the plan at Appendix A be appropriated from housing purposes to planning purposes. This will mitigate the risk of legal action to frustrate the scheme being delayed or completed. Thereafter it is recommended the land is appropriated to housing purposes as this is the most appropriate basis on which to hold the site.

Rationale for recommendations

19. a. To mitigate against the construction of new Council housing being frustrated or delayed by legal injunction.
- b. 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 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 22 new homes. 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. The new housing should be beneficial across the range of protected characteristics.

Health impact statement

25. It is widely recognised poor quality housing has an adverse impact on the health of residents. Such effects may manifest in mental and/or physical health terms.
26. Whilst it is not yet known who will be accommodated in the new homes, they will ultimately allow 22 applicants on the housing waiting list to become secure council tenants and to move into good accommodation that should be beneficial to their health, with a corresponding reduction in health service demands.

Climate change implications

27. In designing the scheme, careful consideration has been given to minimising the climate impacts of the development. These matters are an important part of the planning application process and were reviewed prior to consent being granted.
28. The new development will achieve an overall carbon saving of 57% above building regulations, a significant margin above the target of 35% for on-site savings. However, as the development cannot be delivered as fully carbon neutral, a carbon off-set payment has been secured through the s106 agreement.
29. The orientation and massing of the building has been optimised and the design includes measures that will enable a saving on energy use of 13% over building regulations (against a London Plan target of 10%). The development will also incorporate air source heat pumps.
30. For planning purposes, the principle of development was accepted subject to the mitigation of the loss of trees and biodiversity, which is to be achieved through significant levels of replanting within the estate and providing new habitats. Overall there will be a net increase in canopy cover from the development and it will also achieve biodiversity net gain.

Financial Implications

31. The construction of the new homes and their associated works 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 interference with any rights.
32. 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 Governance

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 it 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 xx 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.

Strategic Director of Finance and Governance (H&M 21/158)

40. The Strategic Director of Finance and Governance notes the recommendation to appropriate land as described in order to facilitate the development of new council homes and environmental improvements at Lomond Grove on the Elmington Estate. 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

41. This report paves the way for the future development of new housing and as such is supported by the strategic director of housing and modernisation.

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://moderngov.southwark.gov.uk/documents/s101590/Report.pdf

APPENDICES

Appendix	Title
Appendix A	Land at Lomond Estate
Appendix B	Appropriation rationale

AUDIT TRAIL

Cabinet Member	Councillor Stephanie Cryan, Council Homes and Homelessness	
Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	James Oates, Regeneration North	
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Strategic Director of Finance and Governance	Yes	Yes
Strategic Director of Housing and Modernisation	Yes	Yes
Cabinet Member	Yes	Yes
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