

Item No. 20.	Classification: Open	Date: 18 July 2022	Meeting Name: Cabinet
Report title:		Mandela Way Bermondsey. Appropriation of council owned land for Planning Purposes	
Ward:		South Bermondsey	
Cabinet Member:		Councillor Helen Dennis, Climate Emergency and Sustainable Development	

FOREWORD – COUNCILLOR HELEN DENNIS, CABINET MEMBER FOR THE CLIMATE EMERGENCY AND SUSTAINABLE DEVELOPMENT

The following report proposes the appropriation of council-owned land for planning purposes, formerly the Mandela Way lorry park, which has planning permission granted for industrial development. A revised scheme has been put forward by a new potential leaseholder which would create more workspace, including affordable workspace, generating additional employment opportunities and an income stream for the council which will enable us to fund other core services, including those for vulnerable residents. All parties are keen to progress this plan, but it has come to light that there may be an historic right of way benefiting an adjacent owner, albeit one which was not registered on the council's titles, nor one which has been exercised for the past 40 years. The purpose of this appropriation is therefore to remove the risk of injunction relating to the proposed scheme, enabling these wider social benefits to be derived from planning, without any impact on the adjacent land-owner's entitlement to compensation.

RECOMMENDATIONS

That Cabinet:

1. Confirms that with regard to the land shown edged on the plan at Appendix A that is currently held within the General Fund Commercial Property Holding Account , approves the appropriation of the land to planning purposes so that the provisions of s203 Housing and Planning Act 2016 are engaged, in order 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.

BACKGROUND INFORMATION

2. The land in question comprises the former Mandela Way Lorry Park accessed off Mandela Way SE1 and fronting Dunton Road. The land is held freehold by the council and a 250 year lease was granted in May 2015 for a premium to a hotel group for the development of Industrial workspace and

a commercial laundry. There is now agreement, subject to contract, for the lease to be assigned to British Land. The site is currently undeveloped hard surfaced land and is sublet for parking and storage of road maintenance materials to the adjoining owners Conways.

3. Planning permission was granted for the development of the site for Industrial development with workspace, Industrial uses and a commercial laundry. The proposed development would generate many jobs on an empty council owned industrial site and the consent was implemented by the creation of foundations. A revision to this scheme is now proposed creating more workspace (including affordable) and warehouse distribution instead of the laundry.
4. During the Nineteenth Century and the first half of the twentieth century the site was part of the Bricklayers Arms Railway Marshalling Yards. These fell out of use in the 1950's and 1960's and the yards have subsequently been mostly redeveloped for Industrial, warehousing and residential uses.
5. As the Bricklayers Arms site was sold off by British Rail many parts of the site enjoyed access rights over other areas of land adjacent and nearby. The council's land ownership title shows no such rights for adjacent owners however it has been recently established that an adjoining owner of an industrial unit on Mandela Way may have the benefit of an historic railway right of way across the Council's site which was not registered on either the leasehold or freehold titles.
6. The adjoining land was redeveloped in the early 1980's and its access road has always been over the Mandela Way Estate approach and not over the adjoining council owned site. The warehouse owners cannot realistically make use of this historic right of way and have not done so in the past 40 years.
7. The existence of this third party right could mean that development of the councils land can essentially be prevented by the ability of the adjoining owner to injunct the long leaseholder or the council as freeholder from developing the land such that the right is interfered with. If the council's land is appropriated for planning purposes the ability of the adjoining owner to injunct the developer is removed but his ability to claim compensation where appropriate remains.
8. The risk of an injunction at the start of works may make the development undeliverable. Cabinet has been asked on a number of occasions to appropriate different sites to mitigate such risk. This report is another to enable the de-risking of a development that will provide new additional workspace, industrial and warehouse / distribution including affordable workspace leading to the creation of many jobs.

KEY ISSUES FOR CONSIDERATION

9. The consented scheme which has been implemented by the digging of foundations cannot proceed whilst the possibility of an injunction to stop the works hangs over the project. Talks between the leaseholder and the adjoining owner to negotiate the removal of the right of way have not concluded with agreement and therefore for this and any variation of the scheme to progress, the appropriation of the land for planning purposes is required to remove the risk of injunction whilst protecting the right of the adjoining owner to claim compensation for the interference with their right.
10. With the Long Leaseholder having agreed to sell their interest to a large well-funded property group it is likely that redevelopment of the site will now progress and a site that has been awaiting development for many years will finally be built out, creating employment and considerable commercial rates receipts to fund the council's objectives.

Appropriation

11. 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 and the developer the certainty that having commenced construction works a person with the benefit of a 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 urban sites. As mentioned, the beneficiary of any such right is entitled to financial compensation for the loss of the right. It is sometimes possible to 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.
12. The compensation persons affected by the loss of any right 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).
13. In this case it is recommended that the land edged on the plan be appropriated from the General Fund Commercial Property Holding Account purposes to planning purposes. This will mitigate the risk of legal action designed to frustrate the development being instigated.
14. The rationale for the appropriation of the land shown at Appendix A is set out at Appendix B and Cabinet is recommended to approve the appropriation.

15. Cabinet has received similar appropriation reports mostly to enable new housing schemes to proceed to address the shortage of affordable housing within the Borough. What is proposed here is to enable the creation of warehouse, Industrial and workspace to enhance employment opportunities in the borough

Rationale for recommendations

16.
 - a. To mitigate against the construction of the development being frustrated or delayed by injunctions
 - b. To de-risk the construction project so as to enable the scheme to be funded and proceed without the threat of being stopped and held to ransom.
 - c. To deliver a current Council Plan commitment of job creation.

Community, equalities (including socio-economic) and health impacts

17. The Council Plan was the subject of extensive community consultation. The recommendations herein further the delivery of the *A Full Employment Borough* commitment set out in the Plan.
18. The development itself is in accordance with the policies set out in The Southwark Plan 2022 which was subject to extensive consultation with residents and which now, alongside the London Plan, forms the statutory development plan for the borough.
19. The development of the site is an industrial development with workspace (including affordable workspace), a range of industrial uses and warehouse distribution. The proposed development will generate many jobs on an empty council owned industrial site providing jobs and opportunities for employment for residents of the borough.
20. 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.
21. 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.
22. In considering the recommendation 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.
23. If the recommendation set out is approved, the development on the Council's land will be able to proceed with the construction of Industrial, Distribution and workspace with a proportion under a revised consent being affordable,
24. The impact of COVID-19, including loss of employment and recent rises in the cost of living has had a disproportionate impact on low income households and especially on vulnerable groups, widening health inequalities. Both the construction of this site and the warehousing and workspaces that will be provided on the site once complete will provide employment opportunities to all residents of the borough helping to mitigate these impacts and should have a positive effect on the health and well-being of Southwark residents.

Climate change implications

25. As set out in council's Climate Change Strategy, climate change and inequalities are linked. The climate emergency is a social justice issue and the council's climate change policy aims to reduce inequality. The future development of this site will help to reduce inequality in the borough by providing a range of employment opportunities and affordable workspace to support to those that can least afford the increase in utility bills and the impact of the changing climate.
26. Whilst the proposals for the site will deliver a ground floor distribution hub, which will increase vehicular traffic to the site, as we move forward this hub will be serviced by a fleet of modern vehicles, which will include electric and

hybrid vehicles, which deliver a considerably reduced impact on the environment than traditional diesel and petrol vehicles.

Financial Implications

27. There are no costs for the council other than internal costs for officer time. The developer / Leaseholder tenant will be required to indemnify the council against any compensation claims for diminution in value that may arise as a consequence of the construction of the scheme.
28. Where land is appropriated from the General Fund into planning and then subsequently back again there should be no transfers of debt as there would be in transfers from and to the Housing fund 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

29. The report recommends the appropriation of council owned land for planning purposes.
30. 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.
31. 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.
32. The land must be no longer required for the purpose for which it is currently held. The report confirms at paragraph 6 of Appendix B that the land is no longer required for its current purposes.
33. 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.
34. 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.

35. 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)."

36. 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.

37. 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.

Strategic Director of Finance and Governance (CE22/016)

38. This report is requesting cabinet to confirm that with regard to the land shown edged on the plan at Appendix A that is currently held within the General Fund Commercial Property Holding Account, approves the appropriation of the land to planning purposes so that the provisions of s203 Housing and Planning Act 2016 are engaged, in order 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 1972r. Full details of the recommendations are contained in the report.
39. The Strategic Director of Finance and Governance notes the recommendation to appropriate land as described in order to facilitate regeneration and the building of an Industrial scheme at Mandela Way. This land appropriation is proposed to occur in such a way that it will have a neutral financial impact.
40. Staffing and any other costs relating to this report to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Weblink
Council Plan 2018/9 – 2021/22	<p>Link (please copy and paste into browser): http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf</p>
Southwark Plan 2022	<p>Link (please copy and paste into browser): https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/new-southwark-plan</p>

APPENDICES

Appendix	Title
Appendix A	Mandela Way Former Lorry Park Bermondsey Map
Appendix B	Rationale for appropriations of the land

AUDIT TRAIL

Cabinet Member	Councillor Helen Dennis, Climate Emergency and Sustainable Development	
Lead Officer	Stephen Platts, Director Planning and Sustainable Growth	
Report Author	Marcus Mayne, Principal Development Surveyor	
Version	Final	
Dated	6 July 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Strategic Director of Housing and Modernisation	No	No
Cabinet Member	Yes	Yes
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