

Item No. 15.	Classification: Open	Date: 18 October 2022	Meeting Name: Cabinet
Report title:		Cator Street – appropriation for planning purposes	
Ward:		Peckham	
Cabinet Member:		Councillor Darren Merrill, Council Homes and Homelessness	

FOREWORD – COUNCILLOR DARREN MERRILL, CABINET MEMBER FOR COUNCIL HOMES AND HOMELESSNESS

This is a technical report which explains the process and reasons why the council requires appropriation for planning purposes to bring forward 50 new extra care homes and environmental improvements to Cator Street. It also details the further appropriation to housing as this will be its end use.

RECOMMENDATIONS

That Cabinet:

1. Confirms that the land shown outlined 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.
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 50 new council extra care homes and various environmental improvements.

5. The report further recommends the land be appropriated 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. The site currently is vacant and cleared, having previously been used as a Learning and Business Centre. This is a predominantly residential area and the council holds the freehold of the site within its General Fund.
8. Planning consent was granted on 4 June 2020 for the construction of a four storey building with residential accommodation on the upper floors and a dementia day care centre on the ground floor (planning application 19/AP/2196). The new building will mirror and connect with the existing Tayo Situ House to the south, forming a single 'perimeter block' set around a landscaped courtyard.
9. The 50 new homes in the development will all be let as council homes and will operate as extra care homes. The development is intended to help address an identified shortfall in provision for people over 65 with particular health issues and who require additional support.
10. The consented scheme includes 47 one bed units and three two bed units.
11. Construction work commenced in September 2022.

KEY ISSUES FOR CONSIDERATION

12. 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.
13. 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 titles SGL222622 and TGL250462.
 - b. The development of the site has planning consent – which it does under application number 19/AP/2196.
 - 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 to housing is correct – which it is, on the grounds the land will be used to provide accommodation by erecting housing on the site.

14. Cabinet will want also to consider that the course of action recommended is necessary and proportionate.
15. 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 on balance the impact on neighbours' amenity is considered to be acceptable.
16. The daylighting sunlight report, does recognise there will be some impact to neighbouring properties. These adverse impacts were not of a degree to cause refusal of planning consent, but their existence poses a risk in being able to build the scheme, because if affected persons enjoy rights to light, and these are interfered with by the development, they may be able to apply to the court for an injunction to stop construction proceeding.
17. 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.

Appropriation

18. 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.
19. This gives the council the certainty that having commenced construction works, a person with the benefit of either a registered or 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.
20. 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 should an application to injunct have to be considered by a court – nor the risk an injunction might be successful and the development stopped.
21. Appropriation is considered to give a high 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.
22. 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.

23. In this case it is recommended that the land outlined on the plan at Appendix A be appropriated 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

24. a. To mitigate against the construction of new Council housing being frustrated or delayed by legal injunction.
- b. To address an identified shortfall in the provision of extra care homes for elderly residents.

Community impact statement

25. 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.
26. 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.
27. 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.

28. 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.
29. The proposed development will have a positive impact on a specific demographic of people who fall within two of the protected character groups noted above. That is, older people, particularly those with mental and physical health issues, that require support to enable them to live independently within their own community. Based on existing knowledge of the area around the development it is not thought that the appropriation process will disproportionately affect any people or group of people sharing a protected characteristic.

Health impact statement

30. Over the next 10 years the overall population of Southwark is expected to increase by 9% and by 35% in the 65 plus age group. It is predicted there will be a substantial increase in individuals aged over 65 years, leading to a greater demand for specialist housing for older people with memory and other cognitive deficits.
31. In response to these predictions the council is committed to utilising extra care housing provision like the Cator Street development as a flexible care and support option to address the wellbeing and resilience of both adults and older people in Southwark.

Climate change implications

32. The schemes sustainable development implications were fully considered as part of the planning application process prior to planning consent being granted. The development will include solar panels on the roof and a heat pump as the renewable energy component of the energy system.
33. The development also includes extensive landscaping that will improve the biodiversity interest of the site.

Financial Implications

34. 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.
35. Where, as is the case here, land is appropriated from the General Fund to the Housing Revenue Account (HRA) an accounting adjustment is required to transfer the certified value of the land (£3.2m) between the accounts. This will have the effect of increasing the capital financing requirement for the HRA with an equal and opposite decrease for the General Fund with a corresponding impact on their respective contributions to the council's

overall debt interest costs. The revenue impact of this transaction will be an increase in HRA interest costs of £130,000 per annum based on approx. 4% interest rate that HRA pays for borrowing and corresponding decrease in General Fund revenue costs.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

36. The report recommends the appropriation of council owned land for planning purposes, and thereafter, the appropriation of that land for housing purposes.
37. 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.
38. 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.
39. The land must be no longer required for the purpose for which it is currently held. The report confirms at paragraph 7, and at paragraph 15 of Appendix B that the land is no longer required for its current education purposes.
40. 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.
41. 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.

42. 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).”

43. 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.

44. 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.

45. 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 22/093)

46. 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 on the site at Cator Street. 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. As outlined in the financial implications section of the report, the appropriation from the General Fund to the Housing Revenue Account will impact on their respective capital financing requirements and resulting debt interest payments.

Strategic Director of Housing and Modernisation

47. 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 – available at link by inserting application number 19/AP/2196	https://planning.southwark.gov.uk/online-applications/search.do?action=simple&searchType=Application

APPENDICES

Appendix	Title
Appendix A	Land at Cator Street
Appendix B	Rationale for appropriation

AUDIT TRAIL

Cabinet Member	Councillor Darren Merrill, Council Homes and Homelessness	
Lead Officer	Steve Platts, Planning & Growth	
Report Author	James Oates, Sustainable Development	
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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	Yes	Yes
Cabinet Member	Yes	Yes
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