

APPENDIX B

Appropriation of land at Cator Street, SE15

Appropriation of the land at Appendix A for purposes set out in section 226 of the Town and Country Planning Act 1990 and to purposes set out in section 9 of the Housing Act 1985.

Background to appropriation

1. Under section 122(1) of the Local Government Act 1972, the Council may appropriate land for any purpose for which it is authorised to acquire land, when the land is no longer required for the purpose for which it is held.
2. Under section 226(1)(a) and 227 of the Town and Country Planning Act 1990, a Council may acquire land if they think the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. This includes development of the sort contemplated at Cator Street.
3. The power in section 226(1)(a) is subject to section (1A) of section 226. This provides that the acquiring authority must not exercise the power unless it considers the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has responsibility.
4. There are clear economic, social and environmental benefits associated with the provision of new extra care housing at Cator Street, namely providing people with quality accommodation. Accordingly, the Council may appropriate land for the purposes of the development proposals if that land is no longer required for the purposes for which it is held.
5. For the reasons set out below, the land shown on the plan at Appendix A is no longer required for its current purposes. The land can therefore be appropriated from its current use.
6. Where land has been appropriated for planning purposes Section 203 of the Housing and Planning Act 2016) applies. This means that the erection, construction or carrying out of maintenance or any building or work on the land (by the Council or a person deriving title from the Council) is authorised, if it is done in accordance with the planning permission, notwithstanding that it interfered with third party rights, such as restrictive covenants and easements.
7. The effect of triggering section 203 is that third party rights are overridden and converted into a claim for compensation pursuant to section 204.

8. The level of compensation for interference with third party rights is assessed based on the loss in value of the claimant's property because of the interference. An important consequence of the operation of section 203 is that a claimant cannot secure an injunction to prevent the development from going ahead – their remedy is a claim for compensation.
9. Prior to developing land it is usual practice to make prudent enquiries of what rights might exist over the land, this will involve inspecting the land to see if there are any obvious rights and checking land ownership information. However, some rights may not be apparent from inspection and historic one may not always be recorded at the Land Registry. The application of the power to override rights contained in section 203 therefore mitigates this risk.
10. The right to claim compensation for interference with third party rights is enforced against the owner of the land, which in this case is the Council.

Rationale for appropriating the land at Cator Street for planning purposes

11. The land at Cator Street was previously occupied by the Council as the Learning and Business Centre. That use came to an end a number of years ago and the building was to be re-purposed as a dementia day-care centre until structural problems were discovered, necessitating its demolition in 2015-16. The site is currently vacant and surplus to requirements as a Learning and Business Centre.
12. The site currently is held on the general fund. In order to regularise the situation and in recognition of the sites suitability for redevelopment it is considered correct to appropriate it for planning purposes.
13. Planning consent has been secure for the scheme outlined in the main report.
14. As discussed in the main report, there may be an adverse impact on the rights of light to nearby properties from the scheme. Appropriation will eliminate any risk of one or more property owners or occupiers applying to the court for an injunction. If an injunction is granted, the scheme will not be able to proceed.
15. In these circumstances, it is appropriate to utilise the powers of section 203 to overcome this risk and enable the much-needed new homes to be built.
16. As indicated above, in order to facilitate the consented redevelopment for new housing, it is now required to hold the land for planning purposes. When land has been appropriated for section 203 purposes, it will continue to benefit from its overriding provisions even when the land is no longer held for planning purposes.

17. The land shown at Appendix A is no longer required for its previous use and is now to be held for planning purposes in order to facilitate the consented housing development.

Rational for appropriating the land at Cator Street back to housing purposes

18. Once land is appropriated for planning purposes, it should be appropriated to housing purposes, as this will be its ultimate use. The cleansing effect of section 203 means that it can be developed in confidence that the works will not be at risk of an application for an injunction to frustrate the development.
19. Section 9(1)(a) of the Housing Act 1985 states a local housing authority may provide housing accommodation by erecting houses on land required. It is therefore apt that following the section 203 appropriation the land is in accordance with section 122(1) of the Local Government Act 1972 appropriated for purposes within section 9(1)(a) of the Housing Act 1985.
20. The appropriation of the land whilst denying the beneficiaries of any third party rights over the land the ability to frustrate the regeneration of the land will not take away their ability to claim for compensation in respect of any diminution in the value of their land as a result of their rights being overridden.