

APPENDIX B

Appropriation of Phase 1 land at Tustin Estate, 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 Tustin Estate.
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 housing at Tustin Estate, namely providing people with quality, affordable accommodation. Better housing can also result in better educational attainment, a general improvement in wellbeing, and will provide employment and training opportunities from the construction works. 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. As set out in the report, a rights of light report has been commissioned which provides details of the potential effect of the development on adjoining properties. However, some rights may not be apparent from inspection and historic ones 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 Tustin Estate for Planning Purposes

11. As configured now, the Phase 1 land at the Tustin Estate to be appropriated compromises 80 homes at Hillbeck House and Ullswater House, open land and garages at Manor Grove and car parking at Ilderton Road. Planning consent has been secured for the development outlined in the main report.
12. As discussed in the main report, there may be an adverse impact on the rights of light to nearby properties from the development. 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 development will not be able to proceed.
13. 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.
14. 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.
15. The land shown at Appendix A is no longer required to be held for housing purposes and is now to be held for planning purposes in order to facilitate the consented housing development.

Rational for Appropriating the land at Tustin Estate back to Housing Purposes

16. Once land is appropriated for planning purposes, it should be appropriated back 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.
17. 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.
18. The appropriation of the land whilst denying the beneficiaries of any third party rights over the land, the ability to frustrate the redevelopment 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.