

Item No. 5.	Classification: Open	Date: June 18 2009	MEETING NAME Major Projects Board
Report title:		Appropriation of Development Sites	
Wards affected:		East Walworth, Faraday, Newington, Grange, & Cathedrals	
From:		Strategic Director of Major Projects	

RECOMMENDATIONS

1. The Major Projects Board resolves to:
 - 1.1 In accordance with section 122 of the Local Government Act 1972 appropriate the sites set out at Appendix One and shown edged red on the plans at Appendices 2- 11 to this Report from their present holding purposes to planning purposes and in particular purposes set out in section 237 of the Town and Country Planning Act 1990.
 - 1.2 The appropriation of each site is conditional upon a request being received to appropriate by the Council's Registered Social Landlord partner and that request indemnifies the Council against any claims for compensation that might arise as a result of the appropriation
 - 1.3 Any of the appropriations becomes effective seven days after the Council acknowledges to the RSL that it has received a valid application to appropriate and a satisfactory compensation indemnity

BACKGROUND INFORMATION

2. The appropriation of land and buildings refer to the process whereby a Council alters its purposes for holding those land and buildings. For instance a site might have been purchased for providing housing under housing legislation. A little later it might have been decided appropriate to use part of the site to provide a new school. To effect that, the new school site will be appropriated from housing purposes to education purposes. Appropriation is an internal Council process that does not usually come under external scrutiny. The power to appropriate is contained within section 122 of the Local Government Act 1972
3. Section 237 of the Town & Country Planning Act 1990 [s237] provides that where a Council acquires land or appropriates land for planning purposes the development of the land may override third party rights enjoyed over the land. 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. For instance, if the Council starts building an office on land that it has appropriated for planning purposes and a nearby owner produces a valid claim that s/he has the right to cross the land by way of a historic grant then that owner cannot have the construction work stopped but if there is an adverse effect in value of their property from the loss of that right they may claim compensation.
4. If having appropriated or acquired land for planning purposes a Council transfers that land to another party perhaps a house builder, that other party will benefit from being able to override third party rights during construction work. This is important to those building or having construction work carried out because it gives them certainty the work will not be stopped as a result of a third party obtaining an injunction from the court. Such an injunction could severely delay the construction project and give rise to considerable additional financial costs.

5. Prior to developing land it is 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 ones may not always be recorded at the Land Registry. The application of s237 therefore mitigates risk. Therefore when acquiring Council land, developers invariably require it to be 'cleaned' by the application of s237.
6. The right to claim compensation for the depreciation in value caused by the loss of right is enforced against the owner of the land but if that owner does not meet this obligation then the compensation claim can be enforced against the local authority. Therefore in order to protect its financial interests it is prudent for a Council to obtain a satisfactory indemnity from the person/company requiring an appropriation to facilitate the development of a site.
7. On 27 July 2005 the Executive approved the principle of transferring sites to housing partners to provide replacement social housing to rent to compensate for the loss of social housing that will arise from the demolition of the Heygate Estate.
8. On 6 March 2007 [minute 13] the Executive resolved *that subject to an appropriate indemnity against the Council's liability to compensation, the Elephant and Castle early housing sites, if considered desirable are appropriated from current departmental holdings to holding for planning purposes pursuant to the exercise of s237 of the Town and Country Planning Act 1990. At the same meeting it was resolved to that the appropriation of the site [Phase 1A Aylesbury Estate] for planning purposes be approved.*
9. In the light of these resolutions the Council has entered into Development Agreements with Registered Social Landlords [RSLs] to achieve the regeneration of the Elephant & Castle replacement housing sites and phase 1A of the Aylesbury Estate. One of the terms of these agreements is that if called upon by the partner RSL to appropriate any of the sites in accordance with s237 the Council is obliged to do so provided it has been provided with a satisfactory indemnity to protect the Council's financial interests in the event of any compensation claims being lodged.

KEY ISSUES FOR CONSIDERATION

10. There is no prescribed procedure for appropriations except insofar as the intention to appropriate open space land must be advertised. The procedure tends to be a matter of local protocol at Councils and has not tended to be subject to scrutiny. In the current risk adverse environment a lawyer instructed by one RSL has examined every part of the Southwark's procedure and commissioned Counsel Opinion from two different QCs. These Opinions have given rise to a number of issues including wording of Executive resolutions, delegated powers of Officers and form of recording appropriations. Not all of these concerns are accepted but rather than become involved in a lengthy and expensive dispute it is considered appropriate for the Major Projects Board to make an explicit resolution in respect of the sites concerned.
11. The appropriations are to achieve the proper planning of the sites in question. To achieve this they need to be developed or redeveloped and the appropriations will remove uncertainty in this process and bring it forward.
12. Prior to any appropriation it is essential that the partner RSL provides the Council with an acceptable indemnity that ensures the Council is protected in full against the costs of any compensation arising as a result of the appropriation.
13. Since the appropriations are dependent upon a request being received from and an indemnity being received a mechanism needs to be provided to effect them. If they were to become immediately effective there would be no incentive to give nor would the Council receive the essential compensation indemnities. Therefore they should become effective seven days after the Council receives a formal request and acceptable

indemnity. This gives a certain process and avoids delegated powers being exercised as well as protecting the Council's financial position.

FINANCIAL CONSIDERATIONS

14. The appropriations will not give rise to any additional revenue or capital costs to the Projects but there may be a residual financial risk to the Council in associated with the payment of compensation claims in the event of the RSL ceasing to exist or being wound up.

POLICY IMPLICATIONS

15. The appropriations should bring forward the regeneration of the sites affected.

COMMUNITY IMPACT STATEMENT

16. Statements are contained in previous reports affecting the sites.

EQUALITY AND DIVERSITY IMPLICATIONS

17. As part of the regeneration of the each site proceeding, an Equality and Diversity Impact analysis has been carried out and where potential adverse implications are identified action has been taken to overcome/mitigate them.

CONSULTATION

18. Extensive consultation has taken place in respect of each site.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Finance Director

19. The use of the s.237 powers to appropriate land for planning purposes provides the developers with an economic benefit. This benefit is in terms of a surety that an injunction could not delay the construction. However, there would be a risk to the council that compensation could be payable in the event of a successful claim. Therefore, we are seeking to be indemnified by the developer against the full cost of any compensation claims that may arise.
20. In the highly unlikely event that such indemnity could not be called upon then the Council would bear the cost of any compensation claim."

Director of Communities, Law and Governance

21.
 - 21.1 Section 122 of the Local Government Act 1972 provides that a Council may appropriate land from one purpose to another if immediately before the appropriation the land is no longer required for the purpose for which it is held. Most of the land is held for housing purposes but is now required for development for planning purposes as authorised by the planning consent.
 - 21.2 As referred to in paragraph 8 of this report the Executive resolution on 6 March 2007 that the appropriation should take place "if desirable", appears to have been insufficient to give effect to the appropriation and the Memoranda of Appropriation fail to record any date when the purported appropriation took place. This point in relation to procedural formality is made in the second Counsel's Opinion referred to in paragraph 10 above.
 - 21.3 Once appropriation has taken place, Section 233 of the Town and Country Planning Act 1990 enables the Council to dispose of the land appropriated for planning purposes to

such person in such manner and subject to such conditions as appear to the Council to be expedient in order to secure the best use of the land or to secure the erection, construction or carrying out on it of any buildings or works appearing to be needed with the proper planning of the Council's area. The consent of the Secretary of State is needed where the disposal is for less than the best consideration that can reasonably be obtained, except in the case of short leasehold interests. Before disposing of any land consisting of or forming part of an open space, the Council will need to publish a notice of their intention to do so for at least two consecutive weeks in a newspaper circulating in the area and consider any objections.

- 22.4 Section 237 of the Town and Country Planning Act 1990, already referred to in paragraph 3 of this report, allows works to be carried out on land appropriated for planning purposes as long as such works are in accordance with planning permission, even though these works will interfere with an interest or right affecting the land or involve a breach of a restriction as to the use of the land under contract. As also referred to in paragraph 3, compensation is payable where loss has been suffered as a result of the interference with any such rights.

Head of Property

22. Appropriation is a useful means of reducing the risks inherent in site development. It enables people with legitimate claims for issues such as loss of light to be compensated, but without allowing regeneration to be held up should claimants choose to take legal action. It is regarded as an important step by many developers and can be a contractual obligation, such as in the Aylesbury Estate phase 1A where it is part of the conditionality. As appropriation can make the Council liable for compensation claims, it is necessary for suitable indemnities to be obtained in all cases.
23. The proposals are therefore supported, subject to:
- The council being indemnified against the full cost of any claims for compensation
 - Arrangements being made for the transfer of any financial liabilities within the council to the satisfaction of the Director of Finance
 - Land ownership records being amended appropriately.
 - The full budgetary impact of transferring land from the HRA to the general fund is fully accounted for

BACKGROUND PAPERS

Background Papers	Held At	Contact
Project file	63-67 Newington Causeway London, SE1 6BD	Patrick McGreal ☎ 0207 525 5626

APPENDICES

No.	Title
Appendix One	Table showing sites to be appropriated
Appendix Two	Plan showing Bolton Crescent site
Appendix Three	Plan showing Brandon Street site
Appendix Four	Plan showing Comus Place site
Appendix Five	Plan showing Symington House site
Appendix Six	Plan showing Library Street site
Appendix Seven	Plan showing New Kent Road site
Appendix Eight	Plan showing Royal Road site
Appendix Nine	Plan showing Prospect House site
Appendix Ten	Plan showing Stead Street site
Appendix Eleven	Plan showing Phase 1A Aylesbury site

AUDIT TRAIL

Lead Officer	Jon Abbott	
Report Author	Patrick McGreal	
Version	Final	
Dated	9 June 2009	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Finance Director	Yes	Yes
Director Regeneration [Neighbourhoods]	No	No
Head of Property	Yes	Yes
Strategic Director of Communities Law and Governance	Yes	Yes
Executive Member for Regeneration	Yes	No
Date final report sent to Constitutional Support Services		June 9 2009

APPENDIX ONE

**SITES TO BE APPROPRIATED IN ACCORDANCE WITH
S122 OF THE LOCAL GOVERNMENT ACT 1972**

Appendix No of Plan	Address	Present Holding Purpose	Holding Purpose following Appropriation	RSL Partner	Comments
2	Bolton Crescent	Housing	Planning	Wandle	Open space - intention to appropriate advertised
3	Brandon Street	Housing	Planning	L&Q	
4	Comus Place	Housing	Planning	L&Q	
5	Symington Hse	Housing	Planning	Family Mosaic	
6	Library Street	Housing	Planning	L&Q	
7	New Kent Road	Housing	Planning	L&Q	
8	Royal Road	Commercial Property Holdings	Planning	Family Mosaic	
9	Prospect House	Housing	Planning	L&Q	
10	Stead Street	Environment and Leisure	Planning	Guinness Housing Trust	
11	Phase 1a Aylesbury Estate	Housing	Planning	L&Q	

The extent of the sites is shown edged red on the plans at Appendices 2-11.