

Item No. 19.	Classification: Open	Date: 22 July 2014	Meeting Name: Cabinet
Report title:		Elephant and Castle Regeneration Progress	
Ward:		East Walworth, Newington, Cathedrals and Chaucer	
Cabinet Member:		Councillor Mark Williams, Regeneration Planning and Transport	

FOREWORD – COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION PLANNING AND TRANSPORT

The regeneration of the Elephant and Castle is now gathering pace, anyone travelling on the 343 or 136 bus through the area can see the scale and speed of change for themselves. The former Heygate Estate has nearly gone; One The Elephant is rising from the ground – along with the borough’s newest leisure centre and the Elephant Road development is now under construction. To maintain the development of the area and in line with the Regeneration Agreement signed with Lend Lease, the cabinet is recommended to transfer the council's land holdings to Lend Lease so construction of Elephant Park on the former Heygate site can begin.

To this end, the cabinet is recommended to approve the transfer of land held for housing purposes to planning purposes as set out below. Whilst maintaining the pace of regeneration, the council will honour its commitments to the Crossways Church. Therefore the transfer of the current Crossways Church site is delayed until their new site is completed or by 30 September 2016 - whichever is soonest. The council will work closely with the church to ensure they have a new building to move into in good time.

We are also keen to ensure the new Elephant Park contributes to Southwark reducing its CO₂ emissions, saving residents money on their energy bills and reducing harm to our environment. The original plan was for the council to identify a utility partner to establish a MUSCO which would provide, heat, power and water to the redeveloped area. However, this approach ultimately proved to be commercially undeliverable and it relied on large lorries to deliver fuel on a daily basis, which would have been detrimental to the quality of life for residents. This proposal has now been revised in favour of a more sustainable Combined Heat and Power energy centre. This will provide a low carbon heat source for all development within Elephant Park and will also have the capacity to serve developments in the wider area. Lend Lease's new approach is set out in a climate positive road map which has been endorsed by the C40 Cities Climate Leadership Group.

RECOMMENDATIONS

That Cabinet:

1. agrees to amend the Regeneration Agreement dated 23 July 2010 between the London Borough of Southwark and Lend Lease (Elephant & Castle) Limited as follows:

- (a) the transfer of the Crossways Church site is delayed until the earlier of the completion of the replacement Crossways Church at Hampton Street or 30 September 2016.
 - (b) to revise MUSCO provisions with the sustainable energy provisions provided within the Planning Committee approval (minute 6) on 15 January 2013.
2. confirms that the land edged black on the plan at Appendix B that is currently held for housing and leisure 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
 3. confirms that the land edged black on the plan at Appendix D that is currently held for housing 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

BACKGROUND INFORMATION

4. The regeneration of the Elephant and Castle area has for many years been an aspiration of the council. It is fair to say it has been a slow burner. However, the Regeneration Agreement signed four years ago by the council and Lend Lease has acted as a catalyst to the radical transformation currently taking place.
5. The projects currently under way have created employment and provision has been made for local people to benefit from these jobs. They also make for an impressive and exciting future worthy of listing here:
 - New leisure centre on former leisure centre site
 - Residential tower (One The Elephant) on former leisure centre site
 - Trafalgar Place on former Wingrave block of the Heygate Estate
 - New housing on Stead Street carpark site (with 85 dwellings for target social rent, including 28 family units)
 - Market Square forming part of 50 New Kent Road scheme
 - The Signal Building Newington Causeway
 - St Marys Churchyard; first phase of public realm improvements
 - Eileen House Newington Causeway demolished
 - Majority of properties on former Heygate Estate now demolished
6. The above is only part of the story the following projects are being progressed and will further change and enhance the locality:
 - Main Heygate regeneration starting later this year from Wansey Street
 - New tower on former Eileen House
 - 360 Tower on site of former London Park Hotel
 - Newington Triangle a comprehensive mixed use scheme that may include the relocation of the Ministry of Sound
 - A new tower by Neobrand adjacent their Signal Building
 - New United Reform Church in Hampton Street

- Transformation of the northern roundabout removing the subways; enhancing the public realm, improving safety for cyclists and better access for users of the Underground Northern Line Station
 - Regeneration of the existing shopping centre - a planning application is anticipated in the new year
7. The improved property market in the past two years has undoubtedly contributed to the rate of development but so has market perception. The Estates Gazette of 14 June 2014 observes *“the reason for the momentum is the really strong record of delivery at Elephant and Castle. Permitted schemes are being built and the policy principles are there to encourage new applications”*.

KEY ISSUES FOR CONSIDERATION

Regeneration agreement

8. This impetus needs to be maintained and the next key milestone of the council’s partnership with Lend Lease is the transfer of the main former Heygate Estate to enable it to be regenerated. This is scheduled for September and following that its redevelopment will proceed starting in Wansey Street. The Regeneration Agreement sets out the conditions to be met by the parties and the terms for the 999 year lease that will be granted to effect the transfer. There is, however, one condition that cannot at this time be met by the council and that is providing vacant possession of Crossways Church in New Kent Road, this can only be met when the proposed replacement church in Hampton Street is completed. However, the partners agree this cannot be allowed to delay the overall regeneration and the Regeneration Agreement will be amended to enable the transfer of the main site, excluding the church site, to proceed. The extent of land to be transferred to Lend Lease at this time is set out at Appendix A. Crossways Church is shown hatched thereon and cabinet is recommended to agree to its temporary exclusion until the replacement Crossways Church is constructed or 30 September 2016 (whichever is the sooner) when it will be subsequently transferred to Lend Lease.
9. On the transfer of the main site the council will receive consideration from Lend Lease in accordance with the terms of the Regeneration Agreement.
10. The Regeneration Agreement contains a number of provisions relating to a multi utility service company (MUSCO) that was envisaged to provide energy and other utilities to the regeneration area. An alternative solution that meets both the council’s and the C40 Cities Climate Leadership Group sustainability aspirations was approved by the Planning Committee on 15 January 2013 and is being implemented. The cabinet is therefore recommended to agree to the revision of the MUSCO provisions in the Regeneration Agreement. Further provisions around this issue will be dealt with as part of the planning applications for individual phases.

Appropriations

11. The Regeneration Agreement has provisions whereby Lend Lease can request that the council appropriates its land from housing to planning purposes; such a request has been made in respect of the land shown at Appendix B. For the reasons set out below, the use of appropriation powers is considered to be justified in the circumstances.

12. The appropriation of land and buildings refer to the process whereby a council alters the purpose for which it holds land and/or buildings. 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 gives developers of land certainty that having commenced construction works a person with the benefit of an unregistered (with the Land Registry) 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 brownfield sites. As mentioned, the beneficiary of any such right is entitled to financial compensation for the loss of the right. Developers can either insure against such compensation claims or quantify them whereas the grant or even risk of an injunction may be fatal to development or result in perhaps significant unquantifiable costs.
13. The Regeneration Agreement provides that if there are any compensation claims following on from the appropriation Lend Lease will reimburse the council's costs of dealing with such claims and paying compensation.
14. The rationale for appropriating the land shown at Appendix B is set out at Appendix C and cabinet is recommended to approve the appropriation.

Replacement Crossways Church

15. The council has undertaken to relocate Crossways Church from its present site on New Kent Road to a new building to be provided on the site of the former Castle Day Centre in Hampton Street (shown edged black at Appendix D). This is pursuant to the council's statutory compensation obligations. A planning application for the proposed new church has been made. Clearly until the new church is available for occupation it is not reasonable to seek the existing one to close, hence the temporary exclusion of the current church from the land being transferred to Lend Lease referred to in paragraph 6.
16. The new Church is to be built within a locality that has been built on a number of times over the centuries and third party rights may exist that could adversely affect the construction of the new church. It is therefore prudent, in order to mitigate against the risk of the new construction being frustrated or delayed, to appropriate that land for planning purposes.
17. The rationale for appropriating the land shown at Appendix D is set out at Appendix E and cabinet is recommended to approve the appropriation.

Community impact statement

18. The Elephant and Castle regeneration has been the subject of extensive consultation. A full Equalities Impact Assessment for the overall regeneration was submitted as part of the outline planning application determined by the council's Planning Committee on 15 January 2013.

Financial implications

19. The temporary exclusion of the Crossways church from the land being transferred reduces the risk of any penalties that the council may have incurred for delayed transfer of land under the original development agreement. It also prevents delays in land receipts paid to the council.

20. It is expected that alternative provisions for the provision of energy and utilities instead of the MUSCO will be delivered at or below the original forecast cost. Therefore, there are no new costs or receipts arising from this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

Variations

20. The report recommends the variation of the Regeneration Agreement (“RA”) to provide that the lease of the Heygate Site will exclude the Crossways Church land. The variations will provide a mechanism where that land can be included in the main lease once vacant possession of that area has been obtained.
21. The RA envisages that it may need to be varied during its lifetime. The proposed variations will set out a mechanism to enable the lease to be granted notwithstanding the continued occupation of Crossways Church thereby enabling construction to commence earlier than would otherwise have been the case.

Appropriations

22. A council holds 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.
23. The land must already belong to the council – the report confirms at paragraph 2 and elsewhere that the land being appropriated is in the council’s ownership.
24. The land must be no longer required for the purpose for which it is currently held. In respect of the Heygate site the report confirms at Appendix C paragraph 6 that the land has been held for housing purposes. The land is no longer required to be held for that purpose as the housing on that site was beyond economic repair and no longer fit for use, and has been, or is in the process of being, demolished.
25. 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 227 of the Town and Country Planning Act 1990 (“TCPA 1990”) provides that a council may acquire land by agreement for any purpose for which it is authorised to acquire land compulsorily by s226 TCPA 1990.
26. 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”.

27. Similarly the Castle Day Centre Site is no longer required for its prior purpose as a day centre and garages held for housing purposes, and it is required to be held for planning purposes to enable the construction on it of a new church.
28. As indicated above, where land has been appropriated for planning purposes then under section 237 of the Town and Country Planning Act 1990 (power to override easements and other rights) the erection, construction or carrying out or maintenance of 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 planning permission, notwithstanding that it interferes with certain private rights such as restrictive covenants and easements. As a consequence of the amendments made by the Planning Act 2008 Schedule 9, paragraph 4(1), the power to override easements and other rights now also applies where the use of the land which has been appropriated would otherwise involve interference with a third party right, such as a restrictive covenant. The effect of triggering section 237 is that private rights are effectively overridden and converted into a claim for compensation. The level of compensation for interference with rights or breach of restrictive covenant is assessed on the basis of the loss in value of the claimant's land as a consequence of the interference or breach of covenant. An important consequence of the operation of Section 237 is that a claimant cannot secure an injunction, to prevent the development from going ahead - as indicated above, their remedy is a claim for compensation.

Strategic Director of Finance and Corporate Services (FC14/006)

29. This report seeks cabinet approval to amend the Regeneration Agreement dated 23 July 2010 between the London Borough of Southwark and Lend Lease (Elephant & Castle) Limited. In addition, it seeks approval to the appropriation of the land to planning purposes to facilitate the carrying out of the development proposals for the area.
30. The financial implications are set out in the body of this report. The strategic director for finance and corporate services notes that there are no new financial implications arising from this decision.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet report and minute of 7 July 2010	Council offices, 160 Tooley Street, SE1 2QH	Patrick McGreal 0207 5255626
Link: http://moderngov.southwarksites.com/ieListDocuments.aspx?CId=302&MID=3330#A18874		
Planning Committee reports and minute 15 January 2013	Council offices, 160 Tooley Street, SE1 2QH	Patrick McGreal 0207 5255626
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=119&MId=4301&Ver=4		
C40 Cities Climate Leadership Group		
Link: http://www.clintonfoundation.org/our-work/clinton-climate-initiative/programs/c40-cci-cities		

APPENDICES

Appendix	Title
Appendix A	Plan of land to transfer to Lend Lease imminently
Appendix B	Plan of Heygate land to be appropriated
Appendix C	Rationale for appropriation of Heygate land
Appendix D	Plan of land for replacement Crossways Church
Appendix E	Rationale for appropriation of land for replacement Crossways Church

AUDIT TRAIL

Cabinet Member	Councillor Mark Williams, Regeneration, Planning and Transport	
Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Patrick McGreal, Property Services	
Version	Final	
Dated	5 July 2014	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	11 July 2014	