

Item No. 14.	Classification: Open	Date: 20 June 2017	Meeting Name: Cabinet
Report title:		Appropriation of Land, 1 – 3 Odessa Street Rotherhithe	
Ward:		Surrey Docks	
Cabinet Member:		Councillor Mark Williams, Regeneration and New Homes	

FOREWORD – COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION AND NEW HOMES

The recommendation in this report will enable the redevelopment of this site to proceed. A disused youth club (which has been re-provided at The Docklands Settlement) and the blocked part of the Thames Path will be replaced with new housing, significantly improved public realm and the final link in the Thames Path in Southwark will be connected. This has been a long term ambition for the council and will mean residents and visitors alike will be able to walk along the river for its entire length through our borough. The appropriation of the site will enable the development to proceed without the risk of injunction from any impact it may have on the rights of light of nearby residents. If there are such impacts affected owners will be entitled to compensation for the loss in value to their property.

The new development will deliver seventy-four new homes of which 19 will be for affordable housing. This represents 35% on the basis of habitable rooms; the affordable units include larger three and four bedroom dwellings. In addition, a cafeteria will be provided on the ground floor which will enable Thames Path users to take on refreshment. As well as providing a key linkage to the Thames Path, the development will also provide a pocket park for the community.

The council is currently in the process of acquiring the affordable homes and these will form part of our new council home programme. They have been designed to our high standards and when complete half of the homes will be available for local people through our local lettings policy.

RECOMMENDATION

That Cabinet:

1. confirms that the land shown hatched on the plan at Appendix A that is currently held for children's and adults services purposes service purposes is no longer required for those purposes and approves the appropriation of the land to planning purposes in accordance with section 122(1) of the Local Government Act 1972 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.

BACKGROUND INFORMATION

2. On 9 December 2014 cabinet approved that this council-owned freehold property shown hatched on the plan at Appendix A be transferred to Hollybrook Homes once a restrictive covenant has been released affecting the land and planning consent had been secured for its regeneration.
3. Agreement was subsequently reached with the Greater London Authority for the lifting of the aforementioned covenant. On 8 November 2016 planning committee resolved to grant planning consent for the regeneration of the land with a restaurant and residential accommodation above. Following English Heritage's decision not to list the crane that is currently on the land, planning consent was granted for the scheme on 28 March 2017. The proposed regeneration is therefore nearing to be able to commence.
4. The rationale for the December 2014 cabinet resolution was:
 - Removal of an obstruction to extend the Thames Path
 - New river oriented public realm
 - Removal of a nightclub that had in the past been the source of complaints
 - Removal of a health and safety hazard namely the crane
 - Provision of new housing
 - New commercial space.
5. The sale contract with Hollybrook plc contains an obligation on the council that following grant of planning permission it is to appropriate the land for planning purposes subject to obtaining the necessary authority (from Cabinet) to do so and subject to an indemnity from Hollybrook in respect of the cost of any compensation payable as a result.

KEY ISSUES FOR CONSIDERATION

6. Hollybrook is concerned that nearby residents may have some loss of light as a result of the consented scheme. Although the potential impact was not sufficient to defeat the planning application the developer is concerned that one or more owners may seek an injunction that will cause delay, uncertainty and in a worse case scenario frustrate the development project.
7. 1-3 Odessa Street comprises a single storey building that has structural issues with a hard surfaced play area, behind it is a surfaced open area that fronts the river Thames and on that is an old derrick crane. This land is currently held by the council for children's and adults services purposes.

Appropriation

8. 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 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 will give Hollybrook (the developer of the land) the certainty that having commenced construction works a person with the benefit of an unregistered (with the Land Registry) right over land (such as a right to light) cannot apply to the court to have the development stopped. This is a very important tool in enabling development to proceed on urban sites. As mentioned, the beneficiary of any such right is entitled to financial compensation for the loss of the right.

9. The compensation persons affected by the loss of light may be entitled to is based on the value of their properties before the right has been infringed versus the value of the property with the infringed right. This compensation is based on 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).
10. The contract referred to at paragraph 5 has a provision that if the land is appropriated Hollybrook will fully indemnify the council against the cost of processing and meeting any compensation claims received. Although Hollybrook's development would cause the light infringement, liability for compensation ultimately rests with the council. Hollybrook's indemnity in these circumstances is therefore essential and has been secured contractually.
11. In this case reasoning for the appropriation of the land shown at Appendix A is set out at Appendix B and cabinet is recommended to approve appropriation proposed.

Rationale for recommendation

12. To mitigate against the benefits from the proposed regeneration of the land set out in paragraph 4 being frustrated by an injunction being sought and to carry out the contractual obligation referred to in paragraph 5.

Community impact statement

13. The recommendation in this report will give rise to a longer and improved Thames Path and encourage the Path's use by the community. A nightclub (albeit one that has been closed for a number of years) and a long standing vacant building will be removed as will a crane and be replaced with new housing and commercial facilities together with a new river focused public realm.
14. Appropriation of land involves overriding the rights of third parties. However their rights are not extinguished, they are converted into a right to receive compensation for the loss of that right, rather than a right to seek an injunction to stop the interference with that right. Case law suggests that the overriding of a right that would otherwise be actionable at law may be an interference with human rights. In considering whether or not to appropriate land such that rights may be overridden it is necessary to consider the human rights of the person(s) whose rights are being overridden, and the proportionality of this. In this case, it is considered that the public interest in improving the continuity of the Thames Path and the creation of new housing, commercial facilities and river focused public realm outweighs the interference with private rights.

15. The Equality Act 2010 imposes a general equality duty on public authorities (the Public Sector Equality Duty, PSED), in the exercise of their functions, to have due regard to the need to:
 - Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act
 - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
 - Foster good relations between people who share a relevant protected characteristic and those who do not share it.
16. For the purpose of the PSED the following are “protected characteristic” considerations:
 - Age
 - Civil partnership
 - Disability
 - Gender reassignment
 - pregnancy and maternity
 - race
 - religion or belief
 - sex and sexual orientation.
17. It is considered that there should not, be any disproportionately adverse effects on any sector of society arising from the recommendation in this Report.

Financial implications

18. Since children’s and adults services and planning purposes both fall within the General Fund there are no financial implications arising as a consequence of the principle of appropriation in this case.
19. The contractual obligation falling on Hollybrook referred to in paragraph 10 means that any compensation claims arising as a result of appropriation will be underwritten. Therefore there should be no adverse financial consequences from the report’s recommendation.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

20. The report recommends the appropriation of council-owned land currently held for children’s and adults’ services purposes to planning purposes.
21. 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(1) 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.
22. The land to be appropriated must be owned by the council. Paragraph 2 of this report confirms that the land to be appropriated is in the council’s freehold ownership.

23. The land must no longer be required for the purpose for which it is currently held. The report confirms at paragraph 7 of Appendix B that the land has been held for children's and adults' services purposes, and that it is no longer required for those purposes.
24. The purpose for which the council seeks to appropriate the land must be authorised by statute. It is proposed that the land is held for planning purposes as defined by s246(1) of the Town and Country Planning Act 1990 ("TCPA 1990"). "Planning Purposes" is defined as purposes for which land can be acquired pursuant to ss226 and 227 TCPA 1990, and is a purpose which is authorised by statute. Section 227 of TCPA 1990 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.
25. 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, redevelopment or improvement on or in relation to the land". The report sets out at paragraph 7 of Appendix B how the proposal will facilitate the development, redevelopment or improvement on or in relation to the land.
26. Where land has been appropriated for planning purposes then under s203 Housing and Planning Act 2016 (power to override easements and other rights) provides that building or maintenance work may be carried out on land even if it involves interfering with a relevant right or interest. This applies to building or maintenance work where there is planning consent for the work, where the work is on land vested in or acquired by or appropriated by a local authority for planning purposes, where the authority could acquire the land compulsorily for the purposes of the building or maintenance work and where the work is for purposes related to the purposes for which the land was vested, acquired or appropriated. Paragraph 3 of this report confirms that planning permission has been granted for the works proposed to be done on the site.
27. The effect of triggering s203 is that private rights are effectively overridden and converted into a claim for compensation. Compensation is assessed on the basis of the loss in value of the claimant's land as a consequence of the interference (the principle set out in ss7 and 10 of the Compulsory Purchase Act 1965).
28. The liability to pay compensation is enforceable against the authority pursuant to s204 Housing and Planning Act 2016. Accordingly an indemnity has been obtained from the developer in respect of this.
29. s122(2A) provides that a council may not appropriate under subsection (1) any land consisting of or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any representations to the proposed appropriation which may be made to them.

30. Paragraph 3 of Appendix B to the report confirms that notices were published in Southwark News on 9 March 2017 and 16 March 2017. No objections were received.

Strategic Director of Finance & Governance [FC16/046]

31. The strategic director of finance and governance notes the recommendation to appropriate land from children’s and adults’ services for planning purposes; the financial implications of this general fund land appropriation are set out within paragraphs 18 and 19 of this report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet report of 9 December 2014	160 Tooley Street London SE1 2QH	Paula Thornton 020 7525 4395
Link: (copy and paste link into browser) http://moderngov.southwark.gov.uk/documents/s50467/ReportExtending%20the%20Thames%20Riverside%20Footpath%20including%20Consequential%20Lands%20Transactions.pdf		
Planning Committee report of 8 November 2016	160 Tooley Street London SE1 2QH	Victoria Foreman 020 7525 5485
Link: (copy and paste link into browser) http://moderngov.southwark.gov.uk/documents/s64760/Report%20Former%20Odessa%20Street%20Youth%20Club%20Commercial%20Pier%20Wharf%20Odessa%20Street%20London%20SE16.pdf		

APPENDICES

Appendix	Title
Appendix A	Plan of land at 1 - 3 Odessa Street
Appendix B	Rationale for appropriation of 1 - 3 Odessa Street

AUDIT TRAIL

Cabinet Member	Councillor Mark Williams, Regeneration and New Homes	
Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Patrick McGreal, Regeneration - North	
Version	Final	
Dated	5 June 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Director of Law & Democracy	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		5 June 2017