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| Item No. 9. | Classification: Open | Date: 24 July 2018 | Meeting Name: Cabinet |
| Report title: | | Aylesbury Estate: First Development Site (FDS) | |
| Ward(s) or groups affected: | | Faraday | |
| Cabinet Member: | | Councillor Johnson Situ, Growth, Development and Planning | |

FOREWORD - COUNCILLOR JOHNSON SITU, CABINET MEMBER FOR GROWTH, DEVELOPMENT AND PLANNING

The transformation of the Aylesbury estate will create new quality homes in the area, dramatically improve living conditions with new community facilities and increase the amount of genuinely affordable homes in the area.

This report notes the current position in relation to the delivery of the First Delivery Site. The process for a principal contractor for the first package of development works on the FDS is now underway and the compulsory purchase order (CPO) inquiry concluded with just one statutory objector remaining and a secretary of state decision is expected in due course.

The report also requests confirmation that the council-owned land highlighted in Appendix 1 is no longer required for the purpose it is being used. The former use of the property has been superseded and the recommendation in this report will result in it being held for the better planning of the area, a more accurate reflection of the reason for the council holding the property. Changing the purpose for which the council holds an asset is known as appropriation. Appropriating the land removes the risk of anyone benefitting from a third party right over the land seeking an injunction to stop the development; they will however have the right to financial compensation for any loss in value to their property arising from any infringement of that right. This will de-risk the delivery of the approved scheme of over 800 new homes including more than 300 new homes at social rent.

RECOMMENDATIONS

1. That Cabinet notes the current position in relation to the delivery of the First Development Site at Phase 1b/1c of the Aylesbury regeneration programme:
 - Demolition of the vacant buildings within the site underway and well advanced;
 - CPO inquiry concluded with just one statutory objector remaining and a secretary of state decision is expected in due course;
 - A detailed tender process for a principal contractor for the first package of development works on the FDS is now underway.
2. That Cabinet confirms that the area of council-owned land hatched black on the plan at Appendix 1 is no longer required for the purposes for which it is currently held 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 (as amended), subject to compliance with the

advertisement requirements of section 122(2A) of the Local Government Act 1972.

3. That Cabinet confirms that, following completion of the appropriation at paragraph 2 above, the area of council-owned land hatched black on the plan at Appendix 1 will no longer be required for planning purposes and approves the appropriation of the land to housing purposes in accordance with section 9 of the Housing Act 1985 and section 122(1) of the Local Government Act 1972 (as amended), subject to compliance with the advertisement requirements of section 122(2A) of the Local Government Act 1972.

BACKGROUND INFORMATION

4. The background to the regeneration of the Aylesbury Estate has been covered extensively in previous reports.

KEY ISSUES FOR CONSIDERATION

The scheme

5. The currently consented scheme for the redevelopment of the First Development Site will deliver a total of 830 new mixed-tenure housing units across a range of tenures, including homes for private sale, intermediate shared ownership homes and homes for social rent; a number of the new homes will be dedicated to residents with extra care needs and those with learning difficulties. As previously reported to cabinet, an application has been made to vary the existing consent for the FDS which will increase the quantum of new homes to be delivered on the FDS to 842 units and makes changes to the tenure mix of those units. The detailed changes to the FDS tenure mix were set out in detail in the report to cabinet of 31st October 2017.

Appropriation

6. 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 the council 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. The council could either insure against such compensation claims but this will be costly or accept the risk of an injunction that may be fatal to development or potentially result in unquantifiable but significant costs.
7. The compensation to which persons affected by the loss of a right to 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).

8. In this case, it is recommended that the land be appropriated from housing purposes to planning purposes and thereafter back to housing purposes as to hold the land for planning purposes may cause adverse financial implications. The rationale for the appropriations of the land shown at Appendix 1, which is in the council's freehold ownership, is set out at Appendix 2 and cabinet is recommended to approve the appropriations.
9. The appropriation stages are summarised as follows:

| Land currently held for housing | | |
|--------------------------------------|---|--|
| Appropriate from housing to planning | ↓ | Third party rights infringed by development cannot be enforced by injunction |
| Appropriate from planning to housing | ↓ | Construction of FDS can proceed |

10. The rationale for the appropriations is summarised as follows:
- to mitigate against the construction of the FDS being frustrated or delayed by injunctions;
 - to mitigate against consequential delays to the delivery of new homes across a range of tenures on the FDS;
 - to de-risk the construction of the FDS so as to encourage the maximum number of bidders and achieve a lower construction cost;
 - to avoid any potential adverse accounting implications through the appropriation of the land back to housing from planning purposes.

Policy implications

11. The proposed scheme has detailed planning consent and its implementation facilitates the objectives of the relevant policy framework. The Aylesbury Area Action Plan (AAAP) is a key material consideration for all applications within the area it covers. The AAAP was adopted by the council in January 2010, following a three-year process of consultation and engagement including an Examination in Public in 2009. It is part of the statutory development plan and deals directly with the redevelopment of the Aylesbury Estate. The policies in the AAAP have significant weight in any decisions on planning applications within the area. In addition, the statutory development plan for the borough comprises the London Plan, Core Strategy and saved policies from the Southwark Plan, while National Planning Policy Framework provides national planning guidance.
12. The appropriation allows for the delivery of delivery additional of new high quality, mixed tenure homes within the FDS, including specialist residential facilities comprising extra care homes and homes for residents with learning difficulties, plus new public spaces, in line with the planning consent for the site.

Community impact statement

13. The appropriation of land allows for the deliver of high quality new homes on part of the FDS site, across a range of tenures providing new homes for market sale, rent, intermediate shared ownership and social rent.
14. An independent study has been undertaken into the potential for third party

rights to light over the land proposed to be appropriated. This identifies that no properties with rights are sufficiently affected to have a claim for infringement of those rights. There remains, however, a residual risk that a neighboring land owners could successfully claim for loss of rights and therefore it is proposed to proceed with appropriation in order to mitigate this residual risk.

15. The council's intention to appropriate has been advertised in the local press for two consecutive weeks. To date, no responses have been received. Any future responses received will be reported back to cabinet.

Resource implications

16. There are no additional resource implications as a result of this report.

Legal implications

17. The appropriation of the land is authorised by Section 122(1) Local Government Act 1972 which states that "the Council may appropriate for any purpose for which the council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation". As stated earlier in this report, the council currently owns the land identified in Appendix 1, it is currently held for a purpose for which it is no longer required, and it is now being appropriated for the purposes of implementing a consented development scheme, which the council is authorised by statute to do.
18. Where the land to be appropriated includes open space, the council is required not to appropriate without having first advertised its intent to appropriate for a period of 2 consecutive weeks prior. The land proposed to be appropriated comprises cleared housing land and hard and soft landscaping, including unadopted footpaths. While this does not constitute formally designated open space, as outlined above, the council will nevertheless advertise its intent to appropriate the land as if it were open space, and will consider any responses.

Financial implications

19. The costs of undertaking the appropriation are minor and contained within existing budgets. The costs associated with any successful claims for compensation for loss of rights of light are to be passed to the developer under an indemnity agreement pursuant to the development partnership agreement.

Consultation

20. There has been extensive consultation on the overall regeneration programme for the Aylesbury estate, which has been set out in detail within previous reports. This includes extensive consultation on the formation of the AAP, non-statutory and statutory consultation undertaken on the outline masterplan and detailed FDS planning applications.
21. The council's intention to appropriate land has been advertised for two consecutive weeks in the local press. The details of any representations received will be reported back to cabinet.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

22. Not applicable.

Director of Law and Democracy

23. The report provides details of the progress that has been made with the delivery of the First Development Site and asks Members to note this.

Appropriation

24. The purposes for which a council can appropriate land must be authorised by statute. Section 203 of the Housing and Planning Act 2016 came into force on 13 July 2016. This section contains a power to override easements and other rights, and it replaces s.237 of the Town & Country Planning Act 1990.

25. Section 203 says:

"(1) A person may carry out building or maintenance work to which this subsection applies even if it involves

(a) interfering with a relevant right or interest...

(2) Subsection (1) applies to building or maintenance work where -

(a) there is planning consent for the building or maintenance work,

(b) the work is carried out on land that has at any time on or after the day on which this section comes into force

(i) become vested in or acquired by a specified authority or

(ii) been appropriated by a local authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990 [i.e. for purposes for which an authority can acquire land under ss226 and 227]

(c) the authority could acquire the land compulsorily for the purposes of the building or maintenance work, and

(d) the building or maintenance work is for purposes related to the purposes for which the land was vested, acquired or appropriated as mentioned in paragraph (b)."

26. What this means is that where land has been appropriated for planning purposes building work may be carried out on land even if this interferes with rights or interests if there is planning consent for the building work; and the work must be for purposes related to the purposes for which the land was appropriated, in this case planning purposes. By s.204 those third party rights are converted into an entitlement to compensation to be calculated in accordance with ss.7 and 10 of the Compulsory Purchase Act 1965.

27. This report confirms that the work being done on the land will be done in accordance with planning permission. Once the land has been appropriated and s.203 triggered, that work will be authorised even where it interferes with third party rights.

28. Section 122 of the 1972 Act provides that where land consists or forms part of an open space then the council may not appropriate the land unless before doing so they cause notice of their intention to do so to be advertised for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and

consider any objections to the proposed appropriation which may be made to them.

29. Following the appropriation of the land for planning purposes, it is recommended that the land is appropriated for housing purposes, as the land is to be used for the provision of new housing. At that point the land will no longer be required for planning purposes and will be appropriated for housing purposes in accordance with section 9 of the Housing Act 1985.

Strategic Director of Finance and Governance (FC18/006)

30. This report is requesting cabinet to note the current position in relation to the delivery of the First Development Site at Phase 1b/1c of the Aylesbury regeneration programme. The report also seeks confirmation and approval of the appropriation of the council-owned land as detailed in the report to progress the regeneration of the area. Full details and background is provided within the main body of the report.
31. The strategic director of finance and governance notes that costs will be contained within the current approved Aylesbury capital programme and notes that the costs associated with any successful claims for compensation for interference with rights are to be passed to the developer under an indemnity agreement pursuant to the Development Partnership Agreement.
32. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|--|--|-----------------------------|
| Aylesbury Area Action Plan | Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH | Matt Derry 020 7525 3787 |
| Link (copy and paste into your browser): http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/area-action-plans?chapter=5 | | |
| Gateway 2 - Contract Award Approval Development partner for the regeneration of the Aylesbury Estate (Cabinet, April 2014) | Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH | Matt Derry 020 7525 3787 |
| Link (copy and paste into your browser): http://moderngov.southwark.gov.uk/documents/s44910/Report.pdf | | |
| Aylesbury Regeneration Programme Delivery (Cabinet, 9 May 2017) | Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH | Matt Derry 020 7525 3787 |
| Link: http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=44960 | | |
| Aylesbury Regeneration Programme Delivery (Cabinet, 20 September 2016) | Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH | Matt Derry 020 7525 3787 |

| Background Papers | Held At | Contact |
|---|---------|---------|
| Link: http://modern.gov.southwark.gov.uk/ielssueDetails.aspx?Id=50010613&Opt=3 | | |

APPENDICES

| No. | Title |
|------------|----------------------------------|
| Appendix 1 | FDS Package A appropriation plan |
| Appendix 2 | Background to appropriation |

AUDIT TRAIL

| | | |
|---|---|------------------------|
| Cabinet Member | Councillor Johnson Situ, Growth, Development and Planning | |
| Lead Officer | Neil Kirby, Head of Regeneration South | |
| Report Author | Matt Derry, Senior Regeneration Manager | |
| Version | Final | |
| Dated | 13 July 2018 | |
| Key Decision? | Yes | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| | Officer Title | Comments Sought |
| | Director of Law and Democracy | Yes |
| | Strategic Director of Finance and Governance | Yes |
| | Cabinet Member | Yes |
| | Date final report sent to Constitutional Team | 13 July 2018 |