

Item No. 10.	Classification: Open	Date: 24 July 2018	Meeting Name: Cabinet
Report title:		Aylesbury Estate: Community Facilities at Plot 18 Delivery	
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 reports is updating Cabinet on the decision it made in October 2017 to begin the Compulsory Purchase Order process for Plot 18. Since then, this report notes the council has updated its leaseholder assistance policy. All remaining owners have received further revised financial offers for the acquisition of their properties since the cabinet resolution in October.

Vacant possession on Plot 18 will enable the delivery of new homes and particularly much needed social rent homes, a new library for the community, a new GP health centre, new community facilities, and a new public square on Plot 18 in the heart of the Aylesbury Estate. The new homes and facilities have planning permission and represent a significant investment for local residents; working with the community the early delivery of these facilities will directly benefit local residents.

We have made progress with purchasing a number of leasehold interests in the proposed Order area and the council will continue to seek voluntary purchase of all remaining interests. The full range of options and support for resident leaseholders remains a key priority to enable them to stay in the area. However, to give certainty on delivery of these new homes and community facilities it is necessary to continue with the decision in October, this report also seeks approval to appropriate council-owned land.

RECOMMENDATIONS

1. That Cabinet notes that on 31 October 2017 it resolved to make a compulsory purchase order (CPO) under section 226 (1)(a) of the Town & Country Planning Act 1990 for all land and rights within the area of land identified within the plan at Appendix 1.
2. That cabinet notes the content of this update report on progress towards obtaining vacant possession of the site and in particular that:
 - The council has updated its leaseholder assistance policy enabling qualifying residential leaseholders to purchase under improved shared equity or equity loan terms;

- All remaining owners have received further revised financial offers for the acquisition of their properties since the cabinet resolution to the use of CPO powers;
 - Officers have met all remaining leaseholders jointly about the proposed acquisition of their homes;
 - While officers will continue to engage with all remaining property owners to attempt to buy back those properties by agreement, the council will now proceed to make a compulsory purchase order.
3. That cabinet also notes the overall progress on the delivery of this project:
- Major enabling works contract comprising a package of site clearance and remediation and utilities diversions and connections has been let and is on site, reducing the risk for the main development works package;
 - A detailed tender process for a principal contractor for the main development works on Plot 18 is due to be commenced later this month.
4. That Cabinet confirms that the area of council-owned land hatched black on the plan at Appendix 2 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.
5. That Cabinet confirms that, following completion of the appropriation at paragraph 4 above, the area of council-owned land hatched black on the plan at Appendix 2 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

6. The background to the regeneration of the Aylesbury Estate has been covered extensively in previous reports.
7. In particular, on 31 October 2017 Cabinet considered a report on the delivery of the new homes community facilities on Plot 18 of the Aylesbury Estate and resolved to make a compulsory purchase order to enable the timely delivery of those facilities noting that the CPO would be made following an update report on progress towards obtaining vacant possession of the site. The present report provides that update.

KEY ISSUES FOR CONSIDERATION

The scheme

8. The currently consented scheme for the Plot 18 Site will deliver 122 new homes 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 the over-55s age group. The scheme will also deliver a range of community facilities including:

- Community Facility, comprising a new Library, multi-use space and offices for Creation Trust;
 - Health Centre, providing new premises for the Aylesbury Medical Partnership and the Aylesbury Health Centre (both currently located in Taplow);
 - A new Early Years facility;
 - Retail space, including a pharmacy to provide new premises for the Medi-pharmacy (currently located in Taplow) and café;
 - Public Open Space.
9. As previously reported to cabinet, an application has been made to vary the existing consent for Plot 18 which will deliver the same mix of community facilities and quantum of new homes but makes changes to the tenure mix of those units. The detailed changes to the Plot 18 tenure mix were set out in detail in the report to cabinet of 31 October 2017.

Vacant possession

10. While construction of the Plot 18 scheme can commence on land already within the council's control, full implementation of the scheme requires the council to achieve vacant possession of the block at 57–76 Northchurch to enable this building to be demolished and this land to be redeveloped as part of the scheme in line with the planning consent.
11. Cabinet was advised of the position in terms of outstanding interests in the building in October 2017. At that time, the 20 properties within the block comprised 3 leasehold properties, 1 property occupied on a secure tenancy, 13 properties occupied by households in temporary accommodation and 3 void properties. At the present date, there remains 3 leasehold properties and 1 property occupied on a secure tenancy, and there are now 11 properties occupied by households in temporary accommodation and 5 void properties.
12. The council's Area Housing Office is continuing to work with the 1 remaining household on a secure tenancy to facilitate their move to a new property. While the tenants have decant status and have previously bid on potential new homes, the Housing officers are meeting with the tenant to resolve any issues they are experiencing with bidding on appropriate properties.
13. The council has now undertaken a comprehensive review of values across the whole of the estate, which it has used to update its valuation of properties within the site. On this basis, all three outstanding leaseholders have been made revised financial offers for their properties within the last 2 months.
14. The current position in relation to attempts to purchase each remaining leasehold property is as follows:
15. 59 Northchurch owned by resident leaseholders, who have applied and been accepted for council rehousing assistance. The council has made a total of 4 offers made to date to purchase their property, dating back to September 2013, with the most recent in May 2018.
16. 70 Northchurch is owned by a non-resident leaseholder. The council has made a total of 5 offers to date, dating back to November 2009. The council's offer

September 2013 was accepted by the owners however unfortunately they subsequently withdrew from the sale. The council's most recent offer for this property was issued in May 2018.

17. It is understood that the owners of 72 Northchurch were previously non-resident leaseholders however their status has since changed and they are now understood to qualify as resident leaseholders. The council has made a total of 3 offers to date, dating back to May 2015. The council's offer of August 2016 was accepted by the leaseholder and terms of a sale were agreed in September 2016 however the leaseholders subsequently advised that they did not want to complete until the FDS CPO was confirmed and have since advised that they want to renegotiate terms. The council's most recent offer for this property was issued in May 2018.
18. Since the council's latest round of offers, officers from the council have met all leaseholders jointly to discuss the purchase of their properties, their rehousing options and their value expectations. Leaseholders were advised that the council recently updated its leaseholder offer, which now provides the opportunity for qualifying resident leaseholders affected by the regeneration to the Aylesbury to purchase replacement homes under shared equity or equity loan terms. The leaseholders have stated that their preference is to remain in their present properties and for these to be refurbished by the council however clearly this is inconsistent with the planning framework and consent for the site. The leaseholders have advised that they do not accept the council's valuation of their properties and are not prepared to consider rehousing options on a shared equity or equity loan basis. While officers will continue to engage with the remaining leaseholders to seek to negotiate the purchase of their properties by agreement in parallel, the council will now need to progress to making the compulsory purchase order in order to ensure that vacant possession of the site is secured within the required timescales.

Appropriation

19. 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.
20. 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).

21. 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 2, which is in the council's freehold ownership, is set out at Appendix 3 and cabinet is recommended to approve the appropriations.
22. 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 Plot 18 development can proceed

23. The rationale for the appropriations is summarised as follows:
- to mitigate against the construction of new homes and community facilities at Plot 18 being frustrated or delayed by injunctions;
 - to mitigate against consequential delays to the delivery of new homes and community facilities at Plot 18;
 - to de-risk the construction of the Plot 18 scheme 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

24. The policy considerations were set out in detail in the report to cabinet on 31 October 2017.
25. In April 2018, the council updated its leaseholder offer, in response to feedback received by leaseholders on the estate. The council's revised offer now also provides the opportunity for qualifying resident leaseholders affected by the regeneration to the Aylesbury to purchase replacement homes under shared equity or equity loan terms. The key details of the updated policy are as follows:
- Minimum share under shared equity purchases to be revised from 50% to 25%;
 - Homeowners will no longer have to invest their home loss payment as part of the acquisition of a replacement council property;
 - Homeowners will now be able to choose between two different council shared equity products – shared equity or an equity loan;
 - Inheritance clauses in shared equity and equity loan leases to be amended to allow one inheritance;
 - Pre-emption clauses to be removed from shared equity or equity loan leases;
 - Commitment to cover additional Stamp Duty Land Tax (SDLT) costs to homeowners as a result of homeowners opting for the new equity loan model.

26. The Aylesbury homeowner guide is being updated including to reflect these changes and will be sent out to all leaseholders on the estate shortly.

Community impact statement

Compulsory purchase

27. The community impact considerations were set out in detail in the report to cabinet on 31 October 2017 and remain valid. In addition to the considerations set out within that report, more detailed work has since been undertaken to further assess whether there are any adverse impacts on groups of any protected characteristic as defined under the Equalities Act 2010. An equalities impact assessment (EqIA) focusing specifically on the 4 remaining properties within 57-76 Northchurch which are still owned or tenanted was undertaken. The EqIA on the remaining residents of the Northchurch block built on the EqIA that was conducted in 2009. It considered the potential disproportionate impact upon the remaining residents as a result of the redevelopment of the site, due to their protected characteristics, and examined the range of mitigating measures put in place by the council to mitigate the potential disproportionate impacts.
28. While it noted that there is limited available data on the complete socio-demographic profile of the remaining occupied properties at 57-76 Northchurch, it used all available information on the demographic profile of residents to inform the assessment. The EqIA noted that there is a mix of gender and age living in these properties. However, there has been no indication that any dependants (below 16) live on the site. Four of the residents are over 50 years and so are approaching retirement age. Nearly all the residents have been identified as being from BAME backgrounds. There is incomplete data on disability, however, where residents have provided equality information no resident has declared any medical needs which would impact on re-housing.
29. A summary of the potential impacts on groups of protected characteristics and the associated mitigation measures extracted from the full EqIA is set out below:

Potential impact(s)	Group(s) affected	Mitigation(s)
Potential loss of access to key social infrastructure and services. Relocation can potentially increase distance from places of social connection located on or in close proximity to the Estate, e.g. schools, youth services, health and community centres.	Young people BAME communities	A range of options are available for resident leaseholders who want to stay in or close to the Estate to suit different circumstances. Three rehousing options available to secure tenants
Potential financial impacts	Young people BAME communities Disability Women Older people	A range of options are available for resident leaseholders designed to enable leaseholders to retain the value held within their current property. Policies are in place to ensure that people are not

Potential impact(s)	Group(s) affected	Mitigation(s)
		<p>required to use all available financial resources to secure a new property. Compensatory measures are available for Council tenants based on assessed need, including disturbance and home loss payments. Supporting material and engagement with residents has been undertaken by the Council to help ensure that they are clear about their options.</p>
<p>Housing demolition and subsequent housing displacement can have a negative impact on health.</p>	<p>Older people</p>	<p>The Council has provided residents with a range of options for relocation which will be based on their specific need.</p>
<p>Potential challenges securing a suitable and accessible home.</p>	<p>BAME communities</p>	<p>The Council has provided a range of rehousing options to residents. As part of their rehousing assessment they ensure that these options are linked to the residents need.</p>
<p>Increased personal security risks resulting from the number of vacant properties, dereliction and dead space.</p>	<p>BAME communities Older people Women</p>	<p>Security cameras are located next to the site offering 24-hour surveillance The Council has increased the frequency of warden patrols on the estate to reduce ASB, particularly around Taplow.</p>

30. As well as analysing the potential for disproportionate adverse impacts, specific to the residents remaining on the site, the EqIA also took into consideration the wider benefits from the redevelopment of the site. Summarising that the redevelopment of the site will provide the following benefits for the wider community:
- improved quality of housing and living conditions (including provision of affordable housing);
 - improved open spaces and public realm;
 - a range of new and expanded community facilities.
31. The EqIA concluded that there remained a compelling case in the public interest for the redevelopment.

Appropriation

32. The appropriation of land allows for the deliver of high quality new homes on part of the Plot 18 site, across a range of tenures providing new homes for market sale, rent, intermediate shared ownership and social rent, as well as a broad range of new community facilities.
33. 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 there are a limited number of nearby properties on and off the estate with potential rights to light that could be affected by the development. In any event, there is also a residual risk that neighbouring land owners could successfully claim for loss of rights and therefore it is proposed to proceed with appropriation in order to mitigate this risk.
34. 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

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

Legal implications

Compulsory purchase

36. The legal considerations were set out in detail in the report to cabinet on 31 October 2017 and remain valid.

Appropriation

37. 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 2, 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.

38. 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

Compulsory purchase

39. The financial considerations were set out in detail in the report to cabinet on 31st October 2017 and remain valid.

Appropriation

40. 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

41. 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, and non-statutory and statutory consultation undertaken on the reserved matters planning application for the Plot 18 development.
42. 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

Director of Law and Democracy

Compulsory purchase

43. The report contains details of the progress which has been made towards achieving vacant possession of the site at Plot 18 and also overall advances with the delivery of the project. In particular, paragraph 13 confirms that revised financial offers have been made within the last two months. Furthermore, paragraphs 25 and 26 refer to the leaseholder offer which has recently been updated and that the Aylesbury homeowner guide will shortly be distributed to homeowners.
44. The public sector equality duty which arises in accordance with section 149, Equality Act 2010 imposes an obligation on public authorities to have due regard to avoid discrimination against persons with certain protected characteristics. To

assist Members in discharging this obligation, a recent Equality Impact Assessment focusing solely on this site has been undertaken in respect of the properties within the Northchurch block of the Aylesbury Estate. A summary of the impacts identified is included at paragraphs 27 to 31 above and Members will take into account the mitigation proposed and also weigh any residual harm against the overall benefits of the estate regeneration.

Appropriation

45. 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.
46. 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)."
 47. 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.
 48. 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.
 49. 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.
 50. 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 (FC18/007)

51. This report is requesting cabinet to note the date of the resolution of CPO all land and rights within the area of land identified within the plan at Appendix 1, content of this update report on progress towards obtaining vacant possession of the site and the overall progress on the delivery of this project. 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
52. 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 loss of rights of light are to be passed to the developer under an indemnity agreement pursuant to the Development Partnership Agreement.
53. 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: 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	Plot 18 CPO plan
Appendix 2	Plot 18 appropriation plan
Appendix 3	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	Comments Included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		13 July 2018