

APPENDIX 3

AYLESBURY ESTATE: COMMUNITY FACILITIES AT PLOT 18 DELIVERY

Appropriation of the land (shown hatched on the plan) at Appendix 2 for purposes set out in section 226 of the Town and Country Planning Act 1990 and to purposes set out in section 9 of the Housing Act 1985

Background to appropriation

1. Under section 122(1) of the Local Government Act 1972 the council may appropriate land for any purpose for which it is authorised to acquire land when the land is no longer required for the purposes for which it is held.
2. Under section 226(1)(a) and 227 of the Town and Country Planning Act 1990 the council may acquire land if they think the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. This includes development of the sort contemplated in the regeneration of the subject land at the Plot 18 site. The power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless it considers the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility.
3. There are clear social and environmental benefits resulting from the implementation of the development scheme for the Plot 18 site. This enables the demolition and redevelopment of the Plot 18 site, in line with the consented scheme for that site, which will deliver a significant quantum of new high-quality homes, across a range of tenures as set out in the main report, including homes specifically for the over-55s, in addition to a range of community facilities comprising a new library with stay and play facilities, community trust offices, GPs surgery and medical centre, early years facility and new high quality open space. This will contribute significantly to delivering the council's vision for the regeneration of the wider Aylesbury estate in accordance with the Aylesbury Area Action Plan and thereby contributing to the social, economic and environmental well being of the estate and the wider borough. Accordingly, the council may appropriate for the purposes of the development proposals land that it already owns if that land is no longer required for the purposes for which it is held.
4. The land shown on the plan at Appendix 2 is vacant and is no longer required for its current purpose - housing and ancillary uses - and is not needed in the public interest for those purposes. The land can therefore be appropriated from its current use. As the appropriation to planning purposes will facilitate the scheme of development to deliver the redevelopment of the Plot 18 site in accordance with the existing detailed planning consent, it may be appropriated for planning purposes.
5. Section 122(2)(A) of the Local Government Act 1972 provides before appropriating 'open' land, notice of the intention to do so is to be advertised for two consecutive weeks in a local newspaper. The view has been taken that the subject land may fall within this classification, and the council has accordingly complied with the advertisement requirements and will consider any objections to the appropriation.

6. Where land has been appropriated for planning purposes, Section 203 of the Housing and Planning Act 2016 (power to override easements and other rights) applies such that 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. The effect of triggering section 203 is that private rights are effectively overridden and converted into a claim for compensation pursuant to s 204. 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 203 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.
7. Prior to developing land it is usual 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 the power to override rights contained in s203 therefore mitigates this risk.
8. The right to claim compensation for the depreciation in value caused by the loss of right is enforced against the owner of the land, which in this case is the council.

Rationale for appropriating the subject site to planning purposes

9. The site outlined in Annexe 2 is currently vacant having been cleared in order to bring forward the redevelopment of the site in accordance with the adopted planning framework to address a need for new homes and community facilities, and the site has been identified to be redeveloped for this purpose. Planning consent has been secured for the scheme outlined in paragraph 4 of the main report. As there may be impacts on the rights of light to nearby residents from the consented scheme there is the risk one or more of them may apply to the court for an injunction. If an injunction is granted, the scheme will not be able to proceed. In any event, the risk of an application for an injunction is such that it will deter prospective builders from bidding to construct the new building or result in a substantial risk contingency that undermines the viability of construction. In these circumstances, it is appropriate to utilise the powers of section 203 to overcome this risk and enable the redevelopment of the Plot 18 site enabling much-needed new homes and a broad range of community facilities to be built.
10. As indicated above, the land is now required to be held for planning purposes to facilitate the redevelopment proposals associated with the planning permission for the Plot 18 site. When land has been appropriated, for section 203 purposes it will continue to benefit from its over-riding provisions even when the land is no longer held for planning purposes.
11. The land identified at Appendix 1 is no longer required to be held for housing purposes. As indicated above, the land is now required to be held for planning purposes to facilitate the redevelopment proposals associated with the planning permission.

12. The appropriation of the land, whilst denying the beneficiaries of any third party rights over the land the ability to frustrate the regeneration of the land, will not take away their ability to claim for compensation in respect of any diminution in the value of their land as a result of their rights being overridden.

Rationale for appropriating the subject site to back to housing purposes

13. Once the land is appropriated for planning purposes, it should be appropriated back to housing purposes as this will be its ultimate usage and the cleansing effect of section 203 means that it can be developed in confidence that the works won't be at risk of an application for an injunction to frustrate the development.
14. Section 9 (1) (a) of the Housing Act 1985 provides a local housing authority may provide housing accommodation by erecting houses on land acquired. It is therefore apt that, following the section 203 appropriation, the land is appropriated in accordance with section 122(1) of the Local Government Act 1972 for purposes within section 9 1 1A) (a) of the Housing Act 1985. The site will be developed to provide residential accommodation over a range of tenures, including specialist homes for the over-55s, as well as a broad range of community facilities.