

<b>Item No.</b> 24.	<b>Classification:</b> Open	<b>Date:</b> 8 December 2020	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Appropriation of land: Aylesbury First Development site (FDS) and Plot 18	
<b>Ward(s) or groups affected:</b>		Faraday	
<b>Cabinet Member:</b>		Councillor Leo Pollak, Housing	

## **FOREWORD - COUNCILLOR POLLAK, CABINET MEMBER FOR HOUSING**

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 two major construction sites on the Aylesbury estate: the First Development Site (FDS) and Plot 18. Together these schemes will deliver 964 homes, of which 581 will be Council homes and 383 will be mixed tenure homes, as well as key community facilities for the wider area.

The report also requests confirmation that two areas of council-owned land are no longer required for the purpose they are being used. The former use of the land and property has been superseded and the recommendation in this report will result in these being held for the better planning of the area. 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 schemes.

## **RECOMMENDATIONS**

1. That cabinet notes the current position in relation to the delivery of the FDS (Phase 1b/1c in the Aylesbury Area Action Plan (AAAP)) of the Aylesbury regeneration programme.
2. That cabinet notes the current position in relation to the delivery of Plot 18 (Site 10 in the AAAP) of the Aylesbury regeneration programme.
3. That cabinet confirms that the area of council-owned land hatched black on the plan at **Appendix 1**, identified as the FDS Package B site area, is no longer required for the purposes for which it is currently held and resolves to appropriate 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).

4. That cabinet confirms that, following completion of the appropriation at paragraph 3 above, the area of council-owned land hatched black on the plan at **Appendix 1** identified as the FDS Package B site area will no longer be required for planning purposes and resolves to appropriate 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).
5. That cabinet notes the intention would be to proceed on 2-step appropriation of the land hatched black on the plan at **Appendix 1**; this to take into account that Ellison House is currently still occupied until the forecast date of March 2021.
6. That cabinet confirms that the area of council-owned land hatched black on the plan at **Appendix 2**, identified as 57-76 Northchurch and Taplow ramp site area, is no longer required for the purposes for which it is currently held and (upon vacant possession of 57-76 Northchurch) resolves to appropriate 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).
7. That cabinet confirms that, following completion of the appropriation at paragraph 6 above, the area of council-owned land hatched black on the plan at **Appendix 2** identified as 57-76 Northchurch and Taplow ramp site area will no longer be required for planning purposes and resolves to appropriate 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).

## **BACKGROUND INFORMATION**

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

## **KEY ISSUES FOR CONSIDERATION**

### *The schemes*

9. The currently consented scheme for the redevelopment of the wider FDS will deliver a total of 842 new homes (of which a number will be dedicated to residents with extra care needs and those with learning difficulties), a community facility and a FDS site-wide energy centre. Of the new homes, 581 will be delivered as council homes and the remaining 261 delivered as mixed tenure homes across a range of tenures (private sale, private rent, shared ownership and social rent) and managed by Notting Hill Genesis (NHG). The detail regarding the transfer to Council homes is set out in the report to cabinet of 14 July 2020.

10. The wider FDS development is being brought forward under 3 construction contracts:
  - Package A: delivering 229 council homes, a community facility and the public realm infrastructure across the whole site
  - Package B: delivering 352 council homes and a FDS site-wide energy centre
  - Package C: delivering 261 mixed tenure homes.
  
11. The current status of the delivery of the wider FDS development is:
  - Demolition of all the vacant buildings within the site was completed in September 2020
  - Construction of the Approved Premises facility is due complete in December 2020; this provides the decant accommodation for Ellison House (leased to the Ministry of Justice (MoJ)); allowing a 3-month decant period as agreed, hand over of the vacant building is due in March 2021
  - Construction Package A site is mid-way through a 3-year construction period
  - Construction Package B is due to start on site in March 2021
  - Construction Package C is forecast to start on site in March 2023.
  
12. The currently consented scheme for the Plot 18 will deliver key community facilities for the locality, comprising a new Library, Health Centre, Early Years facility, a public square, and a total of 122 new mixed-tenure homes across a range of tenures (private sale, private rent, shared ownership and social rent) of which 23 homes will be dedicated for those over 55 years of age.
  
13. The Plot 18 development is being brought forward under 1 construction contract which provides for phased release of the development site:
  - Main site: encompasses all the buildings and the public open space
  - Remaining site area (57-76 Northchurch, Taplow ramp and part of the Aylesbury Medical Centre): encompasses the associated new Highway necessary to access the Plot 18 building and, thereby, to complete the scheme. The site area also encompasses a grassed area to the North which will be part of the housing redevelopment of Phase 3.
  
14. The current status of the delivery of the Plot 18 development is:
  - Construction is well underway on the main site
  - 57-76 Northchurch has 1 unit occupied as temporary accommodation
  - the Area Housing Office is actively looking at rehousing options for this occupant; no CPO was required for this building as the leasehold properties were acquired by means of successful negotiation.

*Appropriation*

15. 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 or a right of way) 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.
  
16. 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).
  
17. 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** and **Appendix 2**, which is in the council's freehold ownership, is set out at **Appendix 3** and cabinet is recommended to approve the appropriations.
  
18. 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 can proceed

19. The rationale for the appropriations is summarised as follows:
  - to mitigate against injunction which would delay the construction of the FDS Package B area of development and the construction of the new road serving Plot 18

- to mitigate against consequential delays to the delivery of new homes on the FDS Package B area and the community facilities on Plot 18
- to avoid any potential adverse accounting implications through the appropriation of the land back to housing from planning purposes.

### **Policy implications**

20. Detailed Planning consent is in place for both the proposed schemes FDS and Plot 18 and both have already been implemented, in line with the objectives of the relevant policy framework. The Aylesbury Area Action Plan (AAP) is a key material consideration for all applications within the area it covers. The AAP 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 AAP 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.
21. The proposed appropriations de-risk the next tranche of development which will see the delivery of these Planning consented schemes for FDS and Plot 18.

### **Community impact statement**

22. The developments on FDS and Plot 18 deliver a number of key community benefits, including: new purpose-built community facilities for the locality, comprising a Library, Health Centre, Early Years facility; a significant number of new homes built to a high specification and representing much improved living accommodation; high quality public realm with street trees, clear sightlines and provision for cycles and pedestrians, and including a new public square.
23. An independent study has been undertaken regarding the FDS Package B site area, as shown at **Appendix 1**, into the potential for third party rights to light over the land area 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 neighbouring landowners could successfully claim for loss of other rights and therefore it is proposed to proceed with appropriation in order to mitigate this residual risk.
24. An independent study has also been undertaken regarding the Plot 18 57-76 Northchurch and Taplow ramp site, as shown at **Appendix 2**, into the potential for third party rights to light over the land proposed to be appropriated. This identifies that, as there is no construction of buildings on this area, no properties with rights are affected with potential rights to light. (Note, the appropriation of the main Plot 18 site area was covered

elsewhere, reference cabinet report dated 24 July 2018). There is however a residual risk that neighbouring properties with rights of way could successfully claim for loss of rights and therefore it is proposed to proceed with appropriation in order to mitigate this risk.

25. When considering the recommendations in this report, the Cabinet must have due regard to the continuing public sector equality duty (PSED) contained within the Equality Act 2010. That is, the need to eliminate discrimination, harassment, victimisation or other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and foster good relations between those who share a relevant characteristic and those that do not share it. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
26. With respect to the Aylesbury Estate, a number of equalities impact assessments (EqIA) have been carried out since the Aylesbury Area Action EqIA itself: regarding the FDS CPO (2017), Plot 18 CPO report (2018), and most recently regarding the Local Lettings policies for new homes on the FDS and Plot 18 (August 2020). These studies show that the estate is an area of low income and inequality, with incomes on average similar to the national average, (much lower than averages for Southwark and London where living costs are much higher); that there is a higher than average share of children living in low income households; that there is a young population and a high BAME population. The studies show a range of risks and opportunities in relation to the regeneration and set out mitigation measures. On the basis of these EqIAs previously undertaken, the public sector equality duty can be said to be met with respect to the proposed appropriations. It should also be noted that the appropriation of land is an administrative function with minimal impact to rights.
27. Overall, the resulting schemes on FDS and Plot 18, through the provision of new homes, a range of community facilities and new public realm, are anticipated to have a positive effect on equalities in the locality.

### **Resource implications**

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

### **Legal implications**

29. 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 at **Appendix 1** and **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 consented development schemes, which the council is authorised by statute to do.

### **Financial implications**

30. The costs of undertaking the appropriation are minor and contained within existing budgets. The likelihood of any claims for compensation for loss of rights is minimal but where any costs arise, these will be met from the existing Aylesbury HRA capital budget allocation.

### **Consultation**

31. 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 Aylesbury Area Action Plan (AAAP), non-statutory and statutory consultation undertaken in relation to planning applications: for the outline masterplan scheme, the detailed FDS scheme and the reserved matters Plot 18 scheme.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

32. Not applicable.

### **Director of Law and Democracy**

33. The report provides details of the progress that has been made with the delivery of the First Development Site and Plot 18 and asks Members to note this.

### *Appropriation*

34. A council holds land and 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.
35. The land must already belong to the Council. Paragraphs 3 and 6 confirm that the land which it is proposed to appropriate is owned by the Council.
36. The land must no longer be required for the purpose for which it is currently held. The report confirms that the land will shortly be vacant at which point it will no longer be required for its current purpose of housing.
37. The purposes for which a council can appropriate land must be authorised

by statute. It is proposed that the land is initially held for planning purposes. This is a purpose which is authorised by statute. Section 246 of the Town and Country Planning Act 1990 ("TCPA 1990") defines such purposes as, inter alia, those for which land can be acquired under ss226 or 227 of that Act. Section 227 provides that a council may acquire land by agreement for any purposes for which it is authorised to acquire land by agreement for any purposes for which it is authorised to acquire land compulsorily by s226 TCPA 1990.

38. 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 authorizes 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." In the case of either ss226 or 227 the acquiring authority must be satisfied that whatever development proposals it has for the land in question, these are likely to "contribute to the achievement of any one or more of the following objects – a) the promotion or improvement of the economic well-being of their area; b) the promotion or improvement of the social well-being of their area; and c) the promotion or improvement of the environmental well-being of their area." The Council's plan to build new homes on the FDS land, and a variety of community facilities on the Plot 18 land, is capable of falling within all three of those categories.
39. 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.
40. 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)."*
41. 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.

42. 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.
43. 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 the Housing Act 1985, which authorises the use of land for housing (s9), and buildings or land which will serve a beneficial purpose in connection with persons for whom housing is provided (s12).

#### **Strategic Director of Finance and Governance (HM 20/100)**

44. This report is requesting cabinet to note the current position in relation to the delivery of the FDS and Plot 18 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.
45. 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 met from the Aylesbury HRA capital budget allocation.
46. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

#### **Strategic Director of Housing and Modernisation**

47. This report provides details of progress that has been made with the delivery of the FDS and Plot 18 and asks members to note this. It references a previous cabinet report (14 July 2020) setting out how the council is progressing the implementation of revised delivery arrangements on the Aylesbury which sees the delivery of 581 council homes across FDS Packages A and B. These new council homes provide decant accommodation for remaining tenants and leaseholders in existing buildings on Phase 2, 3 and Phase 4a, in line with the recently agreed Local Lettings policy. This targeted rehousing will, in turn, progress the vacant possession of these existing buildings towards future development on the Aylesbury.

New homes on Plot 18 for people over 55 years of age at Social Rents, and under the management of Development Partner Notting Hill Genesis, will be offered to anyone eligible across the existing estate, in line with the recently agreed Local Lettings policy. This new housing offer presents further choice to those residents in relation to their rehousing options.

48. The Director of Housing notes that the appropriation of the land identified in **Appendix 1** and **Appendix 2** de-risks the delivery of new homes on the Aylesbury regeneration area.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Aylesbury Area Action Plan	Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH	Catherine Brownell 07986 398 673
<b>Web link:</b> <a href="http://www.2.southwark.gov.uk/downloads/download/4444/adopted_area_action_plans">http://www.2.southwark.gov.uk/downloads/download/4444/adopted_area_action_plans</a>		
Aylesbury Regeneration Programme Delivery (Cabinet, 24 July 2018, agenda item 9) (FDS A appropriation)	Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH	Catherine Brownell 07986 398 673
<b>Web link:</b> <a href="http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=50196">http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=50196</a>		
Aylesbury Regeneration Programme Delivery (Cabinet, 24 July 2018, agenda item 10) (Plot 18 CPO update and Plot 18 appropriation)	Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH	Catherine Brownell 07986 398 673
<b>Web link:</b> <a href="http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=50197">http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=50197</a>		
Aylesbury Regeneration Programme Delivery (Cabinet, 14 July 2020. agenda item 19) (FDS transfer of homes to Council)	Regeneration South Chief Executives' 160 Tooley Street London SE1 2QH	Catherine Brownell 07986 398 673
<b>Web link:</b> <a href="http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=57412">http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=57412</a>		

## APPENDICES

No.	Title
Appendix 1	FDS Package B appropriation plan
Appendix 2	57-76 Northchurch and Taplow ramp appropriation plan
Appendix 3	Background to appropriation

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Leo Pollak, Housing	
<b>Lead Officer</b>	Neil Kirby, Head of Regeneration South	
<b>Report Author</b>	Catherine Brownell, Principal Design and Technical Officer, Regeneration South	
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<b>Dated</b>	26 November 2020	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Strategic Director of Housing and Modernisation	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	26 November 2020	