

<b>Item No.</b> 30.	<b>Classification:</b> Open	<b>Date:</b> 8 December 2020	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Appropriation of land: Garages at Fenham and Nutcroft Roads Peckham	
<b>Ward:</b>		Peckham	
<b>Cabinet Member:</b>		Councillor Leo Pollak, Housing	

## **FOREWORD – COUNCILLOR LEO POLLAK, CABINET MEMBER FOR HOUSING**

At the time of writing, more than 14,000 households were recorded on Southwark’s housing register in need of rehousing, having risen sharply as a consequence of the pandemic – behind these figures are stories of families living in overcrowded homes, delaying key life decisions due to extortionate housing costs, health problems linked to housing, children’s educational attainment and younger people’s ability to invest in themselves and their futures thwarted. In this context, Southwark is resolved to maximise the overall social rented stock in our borough, including through pursuing an ambitious programme for building new council homes.

Next year, we will begin construction on five new council homes at Fenham and Nutcroft Roads, as part of our long-term commitment to build 11,000 new council homes by 2043. Unlike in previous periods of council house building where large sites lent themselves to comprehensive estate development and (relatively) simpler approaches to land assembly, today most of our development sites involve the repurposing of existing housing land with a greater risk of historic property rights emerging that may frustrate the process. We owe it to residents on our waiting list and to neighbouring residents who have contributed positively to the design and associated landscaping of these new homes to mitigate any risk to the development, even where the risk is remote. Cabinet is therefore recommended to approve the appropriation of the highlighted land from housing to planning and back to housing, an administrative process that will enable construction of the approved scheme to proceed with confidence.

## **RECOMMENDATIONS**

That Cabinet:

1. confirms that the land shown edged red on the plan at Appendix A that is currently held for housing purposes is no longer required for those purposes 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.

2. confirms that following completion of the appropriation at paragraph 1 the land shown edged red on the plan at Appendix A 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.

## **BACKGROUND INFORMATION**

3. The land in question is shown edged red on the plan at Appendix A. It is owned freehold by the Council. It comprises a dozen lock up garages the majority of which are accessed from Fenham Road but two are reached from Nutcroft Road. This is a mainly residential area. Edwardian homes predominate with occasional post war Council infills. The locality is very well located for public transport being close to many bus routes and in easy walking distance of railways stations. As a result it has an 'excellent' Public Transport Access Level rating.
4. On 15 October 2020 by way of delegation planning consent was given for the demolition of the garages and the erection of new housing on the site.
5. On 28 November 2018 Council Assembly approved the current Council Plan. This sets a number of commitments to our community including *A Place to Belong*; one of the undertakings to meet this commitment is to *Build at least 1,000 more council homes.....by 2022*. The recommended appropriations in this report are to further this commitment.
6. In pursuit of this commitment, a number of sites throughout the borough have been identified as providing capacity for additional new homes. Once identified, the development of those sites is consulted upon with the local community, a planning application is made and if appropriate planning consent is granted for the proposed new homes. Thereafter, if there are any third party rights that present a risk to the development Cabinet has been asked on a number of occasions to appropriate the site to mitigate such risk. This report is another to enable the de-risking of a development that will provide new additional housing for social rent.
7. The consented scheme referred to above will provide for:

2	x	One bedroom flats
3	x	Two bedroom flats
		Landscaped grounds
		Cycle and refuse storage
8. All of these five new homes will provide housing to be let at Council rent levels.
9. The contract for the construction will shortly be procured and it is intended for construction to commence early next year.

## **KEY ISSUES FOR CONSIDERATION**

10. The consented scheme will be provided by an 'L' shaped two and three storey block that is clad in brickwork under a flat roof. It has been designed to be in sympathy with the surrounding housing in Fenham and Nutcroft Roads. As the scheme is very unlikely to impede upon the daylighting or natural lighting enjoyed by nearby residents a specialist report on these matters has not been commissioned. In its role as planning authority having regard to the height of proposed new housing and its juxtaposition the planning application was able to be determined without such a report. By avoiding commissioning such a report expenditure has been saved for investment in delivering the Council's new homes pledge.
11. Whilst daylighting/sunlighting is not considered a risk on this occasion there is the remote risk that persons in the vicinity may claim interference with another right over the land such as a right to cross over it. Whilst the risk is indeed remote it nevertheless exists and to mitigate this it is prudent to appropriate the land.
12. The determined planning application has taken into account relevant planning issues. As part of the planning process nearby properties were consulted and one objections to the application on the type of material used to provide an archway in the external design was received.

## **Appropriations**

13. 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 result in perhaps significant unquantifiable costs.
14. 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).

15. In this case it is recommended that the land edged red on the plan be appropriated from housing purposes to planning purposes. This will mitigate the risk of legal action designed to frustrate the development being instigated. Thereafter it is recommended the land appropriated to housing purposes as to hold the land for planning purposes will not be consistent with the ultimate use of the land.
16. The rationale for the appropriations of the land shown at Appendix A is set out at Appendix B and Cabinet is recommended to approve the appropriations.
17. The appropriation stages is summarised below:

Land currently held for housing purposes

Appropriate from housing to planning	↓	Third party rights infringed by development cannot be enforced by injunction
Appropriate from planning to housing	↓	Construction of new housing can proceed

18. Cabinet has received similar reports to enable new housing schemes to proceed to address the shortage of affordable housing within the Borough.

**Rationale for recommendations**

19.
  - a. To mitigate against the construction of new social housing being frustrated or delayed by injunctions/
  - b. To de-risk the construction project so as to encourage the maximum number of bidders and achieve a lower construction cost.
  - c. To deliver a current Council Plan commitment.

**Community impact statement**

20. The Council Plan was the subject of extensive community consultation. The recommendations herein further the delivery of the *A Place to Belong* commitment set out in the Plan.
21. The Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:
  - a) eliminate discrimination;

- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
22. Relevant protected characteristics for the purposes of the Equality Act are:
- Age
  - Civil partnership
  - Disability
  - Gender reassignment
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex and sexual orientation.
23. In considering the recommendations herein the cabinet must have due regard to the possible effects them on any groups sharing a protected characteristic in order to discharge its public sector equality duty. This is an ongoing obligation.
24. If the recommendations set out are approved, the Council will be able to proceed with the construction of five new homes. It will also result in the demolition of lock up garages. Based on the information available, it is not considered there are any particular groups sharing a protected characteristic that will be adversely impacted by the proposals. Indeed, the new housing should be beneficial across the range of protected characteristics.

### **Financial Implications**

25. The demolition of the existing garages and construction of the new homes will have a significant cost and an approved budget exists for this. The budget will need to make provision for any compensation claims for diminution in value that may arise as a consequence of the construction of the new homes. The budget will be reviewed when the procurement process mentioned at paragraph 9 has been completed.
26. Where land is appropriated from the housing revenue account to the general fund there is a transfer of debt between the accounts. When land is appropriated from general fund to the housing revenue account this debt transfer is reversed. As both appropriations will take place on the same day there will be no net transfer of debt, and there are, therefore, no financial implications arising directly from the recommendations made in this report.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

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

27. The report recommends the appropriation of council owned land for planning purposes, and thereafter, the appropriation of that land for housing purposes.
28. 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 is no longer required for the purpose for which it is held immediately before the appropriation.
29. The land must already belong to the council. Paragraph 3 of the report confirms that the land to be appropriated is in the council’s freehold ownership.
30. The land must be no longer required for the purpose for which it is currently held. The report confirms at paragraph 8 of Appendix B that the land is no longer required for housing purposes.
31. The purpose for which the council is appropriating the land must be authorised by statute. It is proposed that the land is 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 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 compulsorily by s226 TCPA 1990.
32. 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, re-development or improvement on or in relation to the land.” In the case of either s226 or s227 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; (c) the promotion or improvement of the environmental well-being of their area.” The Council’s plan to build new homes on the land, of which, the majority are council homes for rent and the remainder are intermediate, is capable of falling within all three categories.

33. 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 s237 TCPA.

S203 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).”

34. 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 s204 those third party rights are converted into an entitlement to compensation to be calculated in accordance with ss7 and 10 of the Compulsory Purchase Act 1965.

35. 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 s203 triggered, that work will be authorised even where it interferes with third party rights.

36. 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.

### **Strategic Director of Finance and Governance (H&M20/095)**

37. The Strategic Director of Finance and Governance notes the recommendation to appropriate land as described in order to facilitate regeneration and the building of new homes at Fenham Road. This land appropriation is proposed to occur in such a way that it will have a neutral financial impact. This scheme forms part of the Council's new homes direct delivery programme and any associated costs will be contained with the Housing Investment Programme.

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

38. This report ensures that the proposed development of the Fenham and Nutcroft Roads garage scheme can progress with the avoidance of legal challenge. The rights of light issues from the scheme are not considered significant but nevertheless exist. Extensive consultation with local residents, together with a commitment to make a minimum of 50% of the new social rented homes available to local tenants in housing need leads the way in which social housing can be developed in inner cities. The scheme contributes to the Council's target to build 2,500 new homes by 2022 and its pledge to build 11,000 new homes by 2043.

## **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Weblink</b>
Council Plan 2018/9 – 2021/22	<a href="http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf">http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf</a>
Planning documentation	<a href="https://planning.southwark.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=QCC4U6KBGG400">https://planning.southwark.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=QCC4U6KBGG400</a>
Report to Planning Sub-Committee B 14 September 2020	<a href="http://moderngov.southwark.gov.uk/documents/s90399/Item%207.2%20Report.rtf.pdf">http://moderngov.southwark.gov.uk/documents/s90399/Item%207.2%20Report.rtf.pdf</a>

## **APPENDICES**

<b>Appendix</b>	<b>Title</b>
Appendix A	Garages at Fendall and Nutcroft Roads Peckham
Appendix B	Rationale for appropriations of the land

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Leo Pollak, Housing	
<b>Lead Officer</b>	Eleanor Kelly; Chief Executive	
<b>Report Author</b>	Patrick McGreal, Regeneration North	
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<b>CONSULTATION WITH OTHER OFFICERS / 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
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