

**Report of:** Executive Member for Housing and Development

Meeting of	Date	Ward
Executive	7 February 2019	Clerkenwell

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## **APPENDIX 2 TO THIS REPORT IS EXEMPT AND NOT FOR PUBLICATION**

Appendix 2 to this report is exempt by virtue of the Local Government Act 1972, Schedule 12A, Part 1, paragraph 3 (as amended) in that these documents contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

### **SUBJECT: Appropriation of Land for Planning Purposes of Site Known as Charles Simmons House, 3 Margery Street, London WC1X 0HP**

#### **1. Synopsis**

- 1.1 This report seeks the Executive's agreement to authorise the Corporate Director of Resources to appropriate for planning purposes under section 122 of the Local Government Act 1972 the Council's property known as Charles Simmons House, 3 Margery Street, London WC1X 0HP

For the purpose of facilitating the construction of a part 4, 5 and 6 storey mixed use building comprising of 25 residential units (7 x 1bed units, 16 X 2 bed units and 2 x 3bed units), a community centre (D1 Use Class) and a flexible A1/A3/D1 unit and provision of play space and landscaping works.

Planning permission P2015/3050/FUL has been granted.

- 1.2 Since January 2015 the Council through its Rights of Light consultants, EB7 Limited, have been actively investigating the effect that the Council's proposed development will have on adjoining owners and have established that there are several parties which may have the benefit of Rights of Light which will be affected by the new development
- 1.3 The Council is the freeholder of the property which is held within the Housing Revenue Account.
- 1.4 In order to implement the redevelopment proposals for the Charles Simmons House redevelopment, the Council is now required to appropriate the land for planning purposes

## **2. Recommendations**

- 2.1 Subject to consent from the Secretary of State under section 19 of the Housing Act 1985 being obtained, to authorise the Corporate Director of Resources to appropriate the land edged red shown on the plan in Appendix 1 from housing to planning purposes in accordance with section 122 Local Government Act 1972 and subsequent use of the Council's powers under s203-s206 of the Housing & Planning Act 2016 to override rights to light of neighbouring properties infringed by this development;
- 2.2 To approve the making of an application by the Director of Law and Governance to the Secretary of State under Section 19 of the Housing Act 1985 for consent to the appropriation under paragraph 2.1.1 above
- 2.3 To authorise the Corporate Director of Resources in consultation with the Corporate Director of Housing and Adult Social Services to agree the settlement of rights of light claims with owners and occupiers of 6 affected properties and ancillary affected leases, together with any associated fees and thereafter;
- 2.4 To note that the cost of the proposed settlement of rights of light compensation payments and associated fees for leaseholders affected by this scheme will be from the capital budget for the Charles Simmons House scheme.

## **3. Background**

- 3.1 Islington's vision for housing as laid down in the Housing Strategy 2014 – 2019 is to make sure everyone in Islington has a place to live that is affordable, decent and secure. Secure and affordable housing is recognised as an enabler. Housing has an important role in shaping healthy places, preventing ill health, supporting residents into work and tackling child poverty. The council has a corporate objective to deliver 550 new council homes by 2022.
- 3.2 Charles Simmons House is a part of Margery Street Estate and the Council owns the freehold of the land. The building consists of 16 units, a mix of 8 x studio flats, 5 x 1 bed flats and 3 x 2 bed flats of which 4 were right to buy leaseholds and remaining 12 social rented units.

Former residents of Charles Simmons House have been rehoused and the Council has acquired by voluntary agreement four leaseholders previously sold under right to buy. The Council has used the vacant properties for temporary accommodation.

- 3.3 The redevelopment of Charles Simmons House will create a six-storey new build mix tenure and mixed use development replacing the existing residential block. The new residential scheme will deliver larger homes, all 25 new homes will be for Social Rent, a new larger community hall and a small commercial unit which is more in keeping with the area.
- 3.4 The key objectives of the redevelopment of Charles Simmons House are to provide much needed affordable housing as well as social, economic, and environmental benefits to Islington's community. The majority of the existing homes in Charles Simmons House are smaller in size providing studio accommodation and the redevelopment provides 1, 2 and 3-bedroom permanent family homes and a new community hall for the locality which benefits and improves community cohesion.

The new development and commercial unit will bring apprenticeships and employment opportunities. While only measuring 42 sqm, should this unit be occupied by a D1 use, it would provide a further uplift in social infrastructure floor space that could be occupied by a small social infrastructure provider. Notwithstanding the flexible use of the commercial unit, the proposal would result in a further increase in the level and quality of social infrastructure provision at the site, in accordance with DM4.12.

The design and construction of the new development uses a range of energy and environmental improvements. The benefits will be included in the new building to minimise longer-term running costs, and with a target of BREEAM Very Good, create natural benefits through landscaping, species protection, along with photo-voltaic cells and rainwater harvesting as examples of energy efficiency methods being built in. It will also allow for a future connection to the Bunhill district heating network enabling residents to benefit from cheaper energy costs. Some residents will have their own gardens on the ground floor and there will be green bio diverse roof that will enhance the ecology on the development.

The proposal would replace the existing community centre at the site, which is accessed from the rear of the site, upstairs to the first floor, with a larger community centre measuring 123 sqm, amounting to a 17 sqm uplift. The replacement community centre has been designed in accordance with DRP advice to provide a greater level of flexibility, would have an active ground floor frontage onto Margery Street, would be highly accessible and inclusive in its design, as well as having a dedicated outdoor amenity space. The proposal also includes a flexible retail/restaurant/education/training facility ground floor unit fronting Farringdon Road creating new employment and business opportunities.

## **4. Proposal and Issues**

- 4.1 Without the exercise of the council's appropriation powers, parties who are affected by the diminution of their rights to light have the ability to bring injunction proceedings to prevent the development. This could potentially halt the project and would result in a delay to the delivery of the development.
- 4.2 Once land is validly appropriated for planning purposes and since planning permission has already been granted, the Council will be empowered under section 203 Housing and Planning Act 2016 to override existing rights and extinguish adjoining owners' rights without the possibility of legal challenge.
- 4.3 S.203 ensures that all rights of light claims are resolved by payment of statutory compensation to affected parties.
- 4.4 The Council's representative has attempted to make contact with all the affected parties and has commenced negotiations. Of those who have responded offers have been made to 5 affected parties along agreed "rights of light" compensation principles. Access to one of the properties is still awaited and efforts to progress is continuing. A list of the affected parties and a detailed breakdown of the stage of negotiations and levels of compensation offered and accepted or rejected, can be found in the exempt Appendix 2.
- 4.5 If agreement on compensation payment is not reached with any party, the matter can be referred to the Upper Tribunal for determination.

## **5. Options and Analysis**

- 5.1 Do nothing option: if the Council decides not to appropriate the land then there is the potential that affected adjoining owners could bring injunction proceedings which could stop the construction of the project or delay its delivery. Delaying delivery of the project could result in the project becoming financially unviable.
- 5.2 Appropriation option: by exercising appropriation powers the threat of injunction proceedings for the infringement of rights of light is extinguished. Affected parties will still receive compensation but they will not be able to delay or stop the development.

## **6. Implications**

### **6.1 Financial implications**

Financial implications arising from the 2 appropriations:

- 6.1.1 The certified market value for the purposes of appropriating the land, from the HRA to the General Fund, associated with the whole development site at Charles Simmons is Nil.
- 6.1.2 The certified market value for the purposes of appropriating the land, back from the General Fund to the HRA, associated with the social rented unit builds at Charles Simmons is Nil.

## 6.2 **Legal Implications**

### **Statutory Power to appropriate**

- 6.2.1 This report seeks Executive approval to appropriate, under section 122 of the Local Government Act 1972 (LGA), land belonging to the Council which is was previously used as a residential block comprising 16 flats, 5 garages and a community centre and which is no longer required for the purpose for which it was held immediately before the appropriation. It is now required for planning purposes namely the construction of a part four, five and six storey mixed use building comprising 25 residential units (7 x 1 Bed units, 16 x 2 bed units and 2 x 3 bed units), a community centre (D1 Use Class) and a flexible A1/A3/D1 unit in accordance with the planning permission already granted.

In the case of land held for housing purposes, that power is subject to Section 19 of the Housing Act 1985. Under Section 19(1), an authority may not appropriate housing land with dwellings on it for other purposes without the consent of the Secretary of State. In this case, Section 19(1) is engaged as there are dwellings in the Reginald Road block which will not have been demolished at the time the appropriation takes effect and the appropriation is therefore subject to Secretary of State's consent being obtained.

- 6.2.2 Any reference to appropriation for planning purposes is, by virtue of the provisions in section 246 of the Town and Country Planning Act 1990 (TCPA), regarded as a reference to appropriation for the purposes for which land can compulsorily be acquired under section 226 TCPA.
- 6.2.3 By virtue of s226(1A) TCPA a local authority must not exercise the power granted under s226(1)(a) unless the development, redevelopment or improvement on or in relation to the land is likely, they think, to contribute to the achievement, the promotion or improvement of any one of more of the following objectives - the economic, the social and/or the environmental well-being of the area.
- 6.2.4 The Council must also be satisfied that the land is no longer required for the statutory purposes for which it was originally held before the appropriation. This "surplus to requirements" component of s122 enables the Council to prioritise relative needs. It follows that the Council is entitled to look at the current use of the property as well as the prospective use of the property and on this project, what it can deliver. The Council can consider matters such as whether the buildings conform to current environmental and space standards, whether there are physical defects that impede the use together with the costs of remedying such defects, as well as whether the buildings make sufficient use of the site and the need to secure an enhanced form of redevelopment.
- 6.2.5 Appropriation however requires more than a mere decision to hold land for a different purpose. Case law dictates that an authority cannot properly appropriate land to planning purposes unless it considers that the resulting interference with third party rights is necessary. A local authority cannot properly appropriate land to planning purposes unless it considers that it has good reason to interfere with third party rights which would be overridden by section 203 of the Housing and Planning Act 2016 as outlined below.

### **Power to Interfere with Rights**

- 6.2.6 Reliance on s203 of the Housing and Planning Act 2016 to override the rights of adjoining owners and any other property rights on an appropriation of land for planning purposes is dependent upon the requirements in s226 Town and Country Planning Act 1990 (TCPA) ,having been satisfied that is there is a compelling case in the public interest for the appropriation of this land, having regard to the European Convention on Human Rights must apply before construction of the 25 residential units, community centre and flexible A1/A3/D1 unit commences.

- 6.2.7 The enabling provisions in s203 (1) and (4) of the Housing and Planning Act 2016 are required for the construction, maintenance and use of the redevelopment, to the extent that this will interfere with private rights of adjoining owners. Several adjoining private landowners enjoy rights of lights (“Dominant Owners”) which will be affected by the new development. The operative provisions in section 203-207 are necessary in order to override these rights as well as to override other property rights, including any unknown rights that may impede the construction or use of the units in the Charles Simmons House redevelopment.
- 6.2.8 Negotiations with the and Dominant Owners of those properties affected by the redevelopment having been taking place for some time and reasonable attempts to reach voluntary agreement have been made as set out in this report. However, in order to ensure that the Charles Simmons House redevelopment can proceed within the agreed timescale and cost it is necessary for the Council to appropriate the site for planning purposes This will not preclude the continuation of negotiations with the Dominant Owners and it is anticipated that non-statutory based compensation packages will be agreed with most, if not all of them in due course.
- 6.2.9 If the Council were to commence the development works without appropriating the site from housing to planning purposes, it would potentially be infringing those affected Dominant Owners’ rights to light. The remedy for such an infringement by the affected Dominant Owners is an injunction. It is an equitable remedy and is within the court’s discretion to grant. The court can award damages where it considers this an adequate remedy. If the adjoining owners choose to institute proceedings for an actionable injury the court might also grant an injunction pending the court’s decision on whether there has been an infringement of their rights or not. The consequences of this for the Council will be to set back commencement of the development and delivery.

### 6.3 **Human Rights & Residents Impact Assessments**

- 6.3.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.
- 6.3.2 The RIA has been published and is attached as Appendix 3.
- 6.3.3 Due to the necessity for the Council to comply with its obligations under Article 8 of the Human Rights Act 1998 where the Council appropriates land for planning purposes, the Council has also informed the Dominant Owners of each of the affected property owner in writing of the Council’s intention to appropriate and its effect on their rights of light.

## 7. **Conclusion and Reason for the decision**

- 7.1 By exercising its appropriation powers, the Council will ensure that its redevelopment of Charles Simmons House for part 4, 5 and 6 storey mixed use residential building comprising of 25 residential units (7 x 1bed units, 16 X 2 bed units and 2 x 3 bed units), a community centre and flexible A1/A3/D1 unit proceeds in accordance with the planning permission already granted.

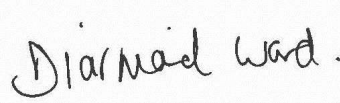
### **Appendices**

- Copy planning permission P2015/3050/FUL – Appendix 1
- Breakdown of the stage of negotiations and levels of compensation offered and/or accepted - Confidential/Exempt - Appendix 2
- Resident Impact Assessment – Appendix 3

**Background papers:** None

**Final report clearance:**

**Signed by:**

A handwritten signature in black ink that reads "Diarmaid Ward." The signature is written in a cursive style and is positioned to the right of the "Signed by:" label.

Executive Member for Housing and Development

**Date:** 17/1/19

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