



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

<b>Meeting of:</b>	<b>Date:</b>	<b>Ward:</b>
Executive	21 March	Tollington

<b>Delete as appropriate</b>	<b>Exempt</b>	<b>Non-exempt</b>
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**APPENDICES 1 AND 2 TO THIS REPORT ARE NOT FOR PUBLICATION**

**SUBJECT: Appropriation of Land for Planning Purposes  
Site Known as Hanley Crouch Community Centre ('The Laundry'),  
Sparsholt Road, London N19**

## **1. Synopsis**

1.1 This report seeks the Executive Committee's approval for 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 Hanley Crouch Community Centre 'The Laundry', Sparsholt Road, London N19 for the purpose of facilitating the construction of part 3, part 4 storey residential terrace comprising of 8 residential units (7 x 4B7P house and 1 x 4B8P house) ('the Hanley Crouch Scheme').

Planning permission was granted on 3 April 2014 ref P2013/4924/FUL and this development is the second phase of a wider scheme, the Ivy Hall Scheme. Further details of both schemes are set out in paragraph 4 below.

1.2 The Council is the freeholder of the property which is held within the Housing Revenue account.

1.3 Since 14<sup>th</sup> October 2017 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 two parties which may have the benefit of Rights of Light which will be affected by the new development.

## **2. Recommendations**

- 2.1 To delegate authority to the Corporate Director of Resources to complete the purchase of land for planning purposes under section 122 Local Government Act 1972 the Council's property known as Hanley Crouch Community Centre 'The Laundry', Sparsholt Road, London N19 for the purpose of securing the construction of the Hanley Crouch Scheme, in accordance with the planning consent that has been granted by the local planning authority and which is required for the proper planning of the area;
- 2.2 To delegate authority to the Corporate Director of Resources, in consultation with the Corporate Director of Law and Corporate Director of Housing, to agree the settlement of rights of light claims with owners and occupiers of 2 affected properties and any ancillary affected leases, together with any associated fees and thereafter;
- 2.3 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 Hanley Crouch 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.
- 4.2 The Hanley Crouch Scheme is a part of the Ivy Hall Scheme. The Ivy Hall scheme required the demolition of an existing single storey structure occupied by the Ivy Hall Community Centre (D1 non-residential institutions use class) and also used as covered car park. The redeveloped site at Ivy Hall consisted of a part-two, part-three, part-five storey mixed use building comprising of a new community centre (D1 non-residential institutions use class 1,000 sqm) and 23 residential (8 x 1B2P flats, 11x 2B4P flats, and 4 x 3B5P flats) which are all for social rented housing and comprises of 100% of the Affordable Housing provision.

The planning committee resolved on 3 April 2014 to grant planning permission for both developments being ref: P2013/4952/Ful for the Ivy Hall Scheme and P2013/4924/Ful for the Hanley Crouch Scheme. Both the Ivy Hall and Hanley Crouch Schemes are linked and inter-dependent and development conditions are made in a combined letter of undertaking by the Director of Housing in the form of a section 106 agreement as amended by a variation Directors Letter for Hanley Crouch dated 20 December 2016. The description, reason and manner of this dependency is explained below.

- 4.3 The Hanley Crouch Scheme is the second phase of both developments and allows for the provision of 8 new residential units for sale at market value, the receipts of which would contribute to the funding for the redevelopment of Ivy Hall and its carpark. Without the sales receipts the Ivy Hall Scheme would be unviable. To ensure that the sales receipt for the Hanley Crouch scheme would be used to provide funding for the Ivy Hall scheme, the planning consent P2013/4924/FUL for the Hanley Crouch Scheme was strictly conditional

upon the Council obtaining planning consent for and actual redevelopment and occupation of the Ivy Hall Scheme prior to the demolition of the Hanley Crouch Site.

- 4.4 The residential units in the Ivy Hall scheme were completed in May 2017 and fully occupied by September 2017 and the new Brickworks community centre was completed in September 2017 and occupied in January 2018.

The demolition of the Hanley Crouch Community Centre 'The Laundry' commenced on the 4 June 2018 and completed in October 2018.

- 4.5 The benefits of the Hanley Crouch Scheme, therefore, needs to be viewed in conjunction with the Ivy Hall Scheme as its proceeds assures the deliverability of the Ivy Hall Scheme.
- 4.6 The Ivy Hall Scheme provides for a new community centre with enhanced services that amalgamates the now demolished smaller community centres which were previously on the two respective sites to create a larger 1000sqm community centre at the Ivy Hall site. This new much larger piece of social infrastructure efficiently uses resources and can adapt easily to accommodate a range activities and user groups. The new community centre, now completed and known as Brickworks Community Centre, is an accessible centre for the whole of Tollington Ward. Facilities include a reception office, large communal foyer area, café with seating area, meeting rooms, kitchens, a sports hall, children's play spaces, a nursery provider with external play space, 2 therapy rooms, 2 offices for community organisations, a roof garden and music room. Brickworks also boasts a special "Changing places" toilet, which provides additional facilities such as a hoist, a changing bench and a shower for people with profound and multiple disabilities, beyond those usually found in a standard accessible toilet.
- 4.7 Creating a larger community hub at Ivy Hall negates the need to re-provide a community centre on the Hanley Crouch site, which can be re-developed to provide a small residential scheme comprises of 8 family-sized homes which are more in keeping with the area as well as vital sales receipts for the Ivy Hall Scheme.
- 4.8 There will be greater opportunities for co-location of services and staffing, and due to the design of the building, greater flexibility for use of the community centre spaces, to provide facilities and services for the community, during the day and evening, seven days a week.
- 4.9 A range of energy and environmental improvements and benefits are included in the new building to minimise longer-term running costs, and has achieved a BREEAM rating of Excellent, create natural benefits through landscaping, species protection, along with photo-voltaic cells, communal heating, increased insulation and rainwater harvesting as examples of energy efficiency methods being built in.
- 4.10 The inclusion of third party letting of education space on commercial basis on the upper levels of the building, maximises the building footprint and creates the provision of a high value income stream for the longer-term to go directly to frontline services.
- 4.11 Key to the success of this project is the concept of cross subsidy of the development costs. This has led the Council's New Homes Team to propose a 100% private family scheme on the Hanley Crouch site, and a 100% affordable scheme of predominantly 1, 2 and 3 bed units representing 23 new homes with the community centre on the Ivy Hall site.

- 4.12 The Laundry was predominantly a two storey building which has grown organically over the years to meet the expanding needs of the community association that was using it. As a result of this piecemeal development 'the Laundry was essentially a collection of a number of incongruous building elements to the existing quiet residential street of Sparsholt Road. The Hanley Crouch Scheme redevelopment will provide a terrace of 8 three-storey houses. The proposed houses are of a modern design and seek to provide a modern interpretation of the existing Victorian terrace. The design of the elevation proposes the use of brick as the main material. The architectural language of the proposals draws upon the existing terraced housing comprising of bay windows, vertically proportioned openings and paired entrances. The houses will each have a small front garden and also a large rear garden.
- 4.13 Demolition of ('The Laundry'), commenced on 4 June 2018 and main elements completed in October 2018 <sup>1</sup>The return date for tenders for the construction of the Hanley Crouch scheme is 14<sup>th</sup> December 2018 and the anticipated start on site is May 2019.
- 4.14 A Rights of Light Report was commissioned which sets out the likely compensation that will have to be paid to the two affected owners as a consequence of the development infringing on the adjoining owners' existing rights of light. A more detailed breakdown of the stage of negotiations and levels of compensation offered can be found in the Exempt Appendix 1.

## **5. Proposal and Issues**

- 5.1 Without the exercise of appropriation, 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.
- 5.2 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.
- 5.3 S.203 ensures that all rights of light claims are resolved by payment of statutory compensation to affected parties.
- 5.4 eb7 Limited has made contact with all the affected parties and has commenced negotiations with them. 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 1
- 5.5 If agreement is not reached with any party the matter can be referred to the Upper Tribunal for determination.

## **6. Options and Analysis**

- 6.1 Do nothing: 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 which could result in the project becoming financially unviable.

- 6.2 Appropriate; 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.

## **7. Implications**

### **7.1 Financial implications**

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 Hanley Crouch Scheme. Detailed financial implications are as set out in the Exempt Appendix 2.

### **7.2 Legal Implications**

#### **Statutory Power to appropriate**

- 7.2.1 This report seeks Executive Committee 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 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 8 new residential homes in accordance with the planning permission already granted to enable the funding of the Ivy Hall Scheme that delivered a new community centre and 23 new social rented residential units.
- 7.2.2 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.
- 7.2.3 By virtue of the provisions in 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.
- 7.2.4 These objectives are addressed by the Reporting Officer in paragraph 4 of this Report. The need for the site known as Brickworks is stated by the Reporting Officer as being necessary to replace both the former Hanley Crouch Community Centre and Ivy Hall Community Centre, both of which had developed in piecemeal over the years, unfit for purpose and difficult to modernise or make compliant with current regulations. The Hanley Crouch Community Centre on the site was dated with inflexible and limited facilities, with a number of elements such as the roof and heating system being at the end of their life as well as being poorly insulated. The proposals will result in improved facilities as outlined in paragraph 4.6 above.
- 7.2.5 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 in conjunction with

the larger Ivy Hall Scheme. 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.

- 7.2.6 The mere fact that the current site is no longer required as a community centre does not preclude appropriation simply because the new community centre that has been reprovided elsewhere. This also does not mean however that the existing purpose continues to the redeveloped Hanley Crouch Scheme. Crucial to this issue is the basis on which compensation will be calculated for injurious affection caused by the redeveloped scheme. Under s203 of the Housing and Planning Act 2016 third party rights will be overridden and compensation paid on the basis of the scheme carried out, not on the purpose for which the land is held. It will be the new redeveloped scheme that will be the cause of the injurious affection. The redeveloped scheme, comprising 8 new residential units will therefore be the new purpose for which the land is held.
- 7.2.7 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.
- 7.2.8 No consent from the Secretary of State under Section 19 of the Housing Act 1985 is required for the appropriation as the land does not fall within that defined in that section.
- Power to Interfere with Rights**
- 7.2.9 Reliance in due course on s203 of the Housing and Planning Act 2016 in order to override the rights of adjoining owners and any other property rights on an appropriation of land for planning purposes is possible where the requirements in s226 Town and Country Planning Act 1990 (TCPA) are met. This is because the definition of appropriation for planning purposes in s203(2) and 203(7) of the Housing and Planning Act 2016 is as per the definition in section 246(1) TCPA which incorporates the requirements set out in s226 TCPA. Therefore, the requirement to be satisfied i.e. that 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 8 residential units commences.
- 7.2.10 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. The Reporting Officer has confirmed that several adjoining private landowners enjoy rights of lights 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 to the Hanley Crouch Scheme redevelopment.
- 7.2.11 The Council's Corporate Property New Homes Team section through its consultants are in negotiations with the owners of those properties affected by the redevelopment. They are confident that non-statutory based compensation packages will be agreed with each of the affected property owners in due course but in view of the timescale and financial risk to

the new Hanley Crouch Scheme development it is necessary for the Council to appropriate the site for planning purposes pursuant to the planning permission which the Executive Committee are recommended to do in this Report.

- 7.2.12 On 5 November 2018 and 11 December 2018 eb7 Limited wrote to the respective two affected property owners serving notice of the Council's intention to appropriate the site for redevelopment in accordance with the planning permission.
- 7.2.13 Furthermore, if the requirements set out in s226(1A) TCPA are satisfied in relation to appropriation, sections 203(2)(c) and s203(7)(c) of the Housing and Planning Act 2016 also incorporate reference to a requirement for the local authority to have the ability to compulsorily acquire the land for both the building work and its subsequent use in order for the provisions to become operative. The Council plainly has powers to compulsorily acquire land if this is the meaning that should be ascribed to the wording in section 203(2)(c) and s203(7)(c), having regard to the explanatory notes to the Act. However, a court may determine that the wording implies that there must, in the Council's opinion, be a compelling case in the public interest to justify the operation of these sections in this particular instance before the building works commence. This not only goes to the economic, social and environmental well-being of the area to which the Hanley Crouch Scheme will contribute, but may require consideration of the measures that are necessary to ensure that there are sufficient funds in place to ensure that the Hanley Crouch Scheme development is completed and further that there are no impediments to the redevelopment.
- 7.2.14 If appropriation is not granted and the Council commence works, it would potentially be infringing those affected owners' rights to light. The remedy for such an infringement by the affected 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 according to agreed timescales.
- 7.2.15 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 owners in writing of the Council's intention to appropriate and its effect on their rights of light.

### **7.3 Resident Impact Assessment**

- 7.3.1 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.
- 7.3.2 The RIA is accompanying the report as Appendix 4.

**8. Reasons for the decision:**

8.1 By exercising its appropriation powers, the Council will ensure that its development of the land for part 3, part 4 storey residential terrace comprising of 8 residential units (7 x 4B7P house and 1 x 4B8P house) proceeds in accordance with the planning permission already granted.

**Appendices**

- Exempt Appendix 1 - breakdown of the stage of negotiations and levels of compensation offered and/or accepted
- Exempt Appendix 2 - Financial Implications
- Appendix 3 – copy planning permission P2013/4924/FUL and planning permission P2013/4952/FUL
- Appendix 4 - Resident Impact Assessment

**Background papers:**

- None

**Final report clearance:**

*Diarmuid Ward.*

8 March 2019

**Signed by:** Executive Member for Housing and Development

Date:

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