



## Report of the Executive Member for Housing and Development

<b>Meeting of:</b>	<b>Date:</b>	<b>Wards:</b>
Executive	11 July 2019	Junction

<b>Delete as appropriate</b>	<b>Exempt</b>	<b>Non-exempt</b>
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### APPENDIX 3 TO THIS REPORT IS NOT FOR PUBLICATION

Appendix 3 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 Land at Wedmore Estate, Wedmore Street, London N19

### 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 Land at Wedmore Estate, Wedmore Street, London N19 (“the Land”), edged red on the plan attached.

The appropriation is necessary for the purpose of facilitating the construction on the Land of 19 new dwelling units comprising 3 x 1 bedroom 2person units, 9 x 2 bedroom 4 person units and 7 x three bedroom 5 person units, with associated amenity space, 13.6sqm of communal storage space, provided in a new residential block ranging from two to six storeys in height along with bicycle storage and improvements to the public realm.

Planning permission P2017/4763/FUL has been granted for the development (see Appendix 1).

1.2 Since 17 January 2019 the Council through its Rights of Light consultants, Point 2 Surveyors, has been actively investigating the effect that the Council’s proposed development will have on adjoining owners and have established that there are several parties that 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 Land which is held under Part 2 of the Housing Act 1985 in the Housing Revenue Account.

- 1.4 In order to implement the Wedmore Estate redevelopment, it is necessary for the Council to appropriate the Land for planning purposes.

## **2. Recommendations**

- 2.1 To authorise the Interim Corporate Director of Resources to appropriate the Land 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 that would be infringed by the Wedmore Estate redevelopment;
- 2.2 To authorise the Interim Corporate Director of Resources in consultation with the Acting Director of Law and Governance and Corporate Director of Housing to agree the settlement of rights of light claims with owners and occupiers of the two affected properties and ancillary affected leases, together with any associated fees;
- 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 met from the capital budget for the Wedmore Estate 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 The Land is a part of Wedmore Estate and the Council owns the freehold of the Land. The Land is currently used as a carpark for residents and children's play spaces.
- 3.3 The redevelopment of the Land will create 19 new dwelling units comprising 3 x 1B2P units, 9 x 2B4P, and 7 x 3B5P units with associated amenity space, and 13.6sqm of communal storage space, provided in a new residential block ranging from two to six storeys in height, along with bicycle storage, and improvements to the public realm. All 19 new homes will be for Social Rent.
- 3.4 The key objectives of the redevelopment of Wedmore Estate are to provide much needed genuinely affordable housing as well as social, economic, and environmental benefits to Islington's community. The new development will replace the existing car parking and children's play areas. All car parking spaces will be relocated elsewhere on the estate and the new play area will be integrated with the existing communal garden and improved to replace the tired and disjointed facilities allowing for improved surveillance and to remove anti-social behaviour in the area.
- 3.5 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 a green bio diverse roof that will enhance the ecology on the development.

- 3.6 The Council and representative have already communicated with owners of the properties confirming their statutory rights will not be affected by the redevelopment and will be working with them to reach voluntary agreement.

## **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 the Land is appropriated for planning purposes and since planning permission for the development 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 Pursuant to section 203, 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 is trying to commence negotiations with the appointed surveyor of the owners of a freehold. Only one of the leaseholders contacted had reverted to the Council initially and subsequently did not respond to further contact. A list of the affected parties and a detailed breakdown of the stage of negotiations can be found in the exempt **Appendix 3**.
- 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**

- 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 Wedmore estate 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 Wedmore estate 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 used as car parking spaces and a children's play area that are to be re-provided elsewhere on the estate and is therefore no longer required for the purpose for which it is currently held. It is now required for planning purposes namely the construction of 19 new dwelling units comprising 3 x 1B2P units, 9 x 2B4P, and 7 x 3B5P units with associated amenity space, and 13.6sqm of communal storage space, provided in a new residential block ranging from two to six storeys in height, along with bicycle storage, and improvements to the public realm in accordance with the planning permission already granted.
- 6.2.2 The appropriation does not require the Secretary of State's consent as there are no houses situated on the Land to be appropriated (section 19 Housing Act 1985).
- 6.2.3 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.
- 6.2.4 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.
- 6.2.5 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 of the LGA enables the Council to prioritise relative needs. It follows that the Council is entitled to look at the current use of the Land as well as the prospective use of the Land and on this project, what the Land can deliver. The Council can consider matters such as whether sufficient use is currently made of the Land and the need to secure an enhanced form of redevelopment.
- 6.2.6 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**
- 6.2.7 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 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 19 new dwelling units with associated amenity space, and 13.6sqm of communal storage space, along with bicycle storage, and improvements to the public realm, commences.
- 6.2.8 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 Wedmore Estate redevelopment.

- 6.2.9 Negotiations with the Dominant Owners of those properties affected by the redevelopment have 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 Wedmore Estate 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.
- 6.2.10 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 and 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 a copy of the RIA is attached in Appendix 2 of this report.
- 6.3.3 The DCLG's Guidance on Compulsory purchase process and The Crichel Down Rules (February 2018) advises that compulsory acquisition under s.203 of the Housing and Planning Act 2016 "... should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes sufficiently justify... interfering with the human rights of those with interests in the land affected...". Furthermore, following the introduction of the Human Rights Act 1998 the City Council is required to act in accordance with the European Convention on Human Rights (ECHR) in deciding whether or not to implement the arrangements.
- 6.3.4 Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions ("human rights"). Appropriation of property engages s.203 to authorise interference with rights of light involves interference with a person's rights under this Article. As these rights are enjoyed by corporate bodies as well as individuals all of those whose rights will be affected can claim an infringement. However, the right to peaceful enjoyment of possessions provided under this Article is a qualified rather than absolute right, as the wording of Article 1 of Protocol 1 permits the deprivation of an individual's possessions where it is in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- 6.3.5 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.

- 6.3.6 Article 8(1) provides that everyone has the right to respect for his private and family life, his home and his correspondence. Article 8 would be engaged as a result of interference with rights to light to a private residence. Article 8(2) allows for interference which is "in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health and morals, or for the protection of the rights and freedoms of others".
- 6.3.7 There must therefore be a balancing exercise between the public interest and the individual's rights whereby any interference in the individual's rights must be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim, thereby striking a "fair balance" between the rights of the individual and the rights of the public.
- 6.3.8 Planning permission has been granted for the development of the Land and the public benefits arising from the development, and thus the public interest, are set out earlier in this report. Furthermore, notwithstanding the overriding of their 'rights to light', compensation will still be available to those who are affected. On this basis it is considered that the public interest in facilitating the development of the Land outweighs the rights of the individuals to peaceful enjoyment of their possessions and to their homes and that the proposed use of s.203 powers results in a proportionate infringement.

## 7. Conclusion and Reason for the decision

- 7.1 By exercising its appropriation powers, the Council will ensure that its redevelopment of the Land proceeds in accordance with the planning permission already granted.

### Appendices


- Appendix 1 – Copy of planning permission P2017/4763/FUL
- Appendix 2 – Copy of Residents Impact Assessment
- Appendix 3 - Breakdown of the stage of communications and negotiations in - Exempt

### Background papers:

- None

### Final report clearance:

#### Signed by:



Executive Member for Housing and Development

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