

Community Wealth Building  
Islington Town Hall

Report of: Executive Member for Finance, Planning and Performance

Meeting of: Executive

Date: Thursday 20 April 2023

Ward(s): Barnsbury

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## Subject: New Barnsbury Estate; disposal of land and building interests, release of restrictive covenant, appropriation for rights of light and other third party rights and related CPO matters to support redevelopment

### 1. Synopsis

- 1.1. The council is committed to the delivery of more new, good quality affordable homes, to help Islington families tackle their housing needs and help with their cost of living. As part of delivering more homes, we will also create more jobs and training opportunities and make the borough a fairer place to live and work.
- 1.2. Newlon Housing Trust and its Joint Venture Partner, Mount Anvil, propose to redevelop the New Barnsbury Estate. On 23 March 2023 planning permission was granted, subject to certain conditions, for the phased demolition of all buildings and construction of approximately 914 new homes including the re-provision of all the existing homes to meet housing needs. It will also provide a new community centre and nursery facilities, replacement of the ground floor commercial floor space along Caledonian Road and substantial improvements to the public realm and green open spaces.
- 1.3. This report proposes a range of actions to enable this important scheme to progress. These include the transfer of some residual freehold and leasehold land interests and the removal of restrictive covenants. In addition, there are technical matters

including compulsory purchase powers and appropriation of rights which are supplemental to the previous decision of the council at the Executive meeting in April 2022 that if required, it would use compulsory purchase powers to support development delivery.

- 1.4. Compulsory purchase and appropriation does not remove the right for those impacted by the development to receive compensation but is intended to ensure that the development cannot be stopped, delayed, or hindered from delivery. All costs resulting from the recommendations contained in this report are borne by the development partners not the council.

## 2. Recommendations

- 2.1 To authorise the Corporate Director for Community Wealth Building, following consultation with the Executive Member for Finance, Planning and Performance, to authorise the transfers of land and leasehold interests, as identified edged yellow on the attached plan at Appendix 1, to Newlon as appropriate to enable development delivery.
- 2.2 To note, subject to certain conditions, that the council enter into the Deeds of Release to remove the restrictive covenant in respect of development.
- 2.3 To authorise the Corporate Director for Community Wealth Building, following consultation with the Executive Member for Finance, Planning and Performance, to authorise entering into the transactions and other documentation in respect of acquisition and/or appropriation for planning purposes, related to rights of light and all and any other rights, to support the development including any required acquisition and disposal of land interests and other related matters. A plan of the properties that with rights potentially impacted by development and appropriation, and therefore this recommendation, can be found at Appendix 2. In order to appropriate the council, need to have an interest in land to satisfy the legal requirements set down in the relevant sections of law and as such would need to acquire a relevant interest from Newlon accordingly, disposing of that interest back to Newlon shortly thereafter enabling the implementation of appropriation.
- 2.4 To authorise the Corporate Director for Community Wealth Building, following consultation with the Executive member for Housing and Development, and subject to the prior completion of a compulsory purchase indemnity agreement with Newlon Housing Trust, to approve the making of one or more Compulsory Purchase Orders (CPO) under sections 226(1)(a) and 226(3)(a) of the Town and Country Planning Act 1990, section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and any other power as relevant to ensure that all necessary interests in (and rights over, including new rights) the Order Land, (being that land edged red on the Plan at Appendix 3 and that land shown for the acquisition of new rights on the Plan at

Appendix 4, or such other version of the Order Map as the Director of Law and Governance may approve provided that such version does not include any additional land to that currently shown), can be compulsorily acquired.

- 2.5 That where the Corporate Director of Community Wealth Building approves the making of a CPO, to authorise the Director of Law and Governance to take all necessary steps to secure the making, confirmation, and implementation of that CPO. This includes (but is not limited to):
  - 2.5.1 The preparation, submission and exchange of all necessary documents required before and during the CPO process, including if necessary any applications for certificates required pursuant to section 19 or Schedule 3 to the Acquisition of Land Act 1981.
  - 2.5.2 Compliance with all procedural requirements.
  - 2.5.3 The entering into of agreements or giving undertakings to with any objectors or those with an interest in the land to facilitate the withdrawal of such objections to the CPO on terms recommended by the Corporate Director of Community Wealth Building.
  - 2.5.4 The appointment of and attendance, presentation and representation by any legal advisor or expert at any public inquiry (or similar).
  - 2.5.5 The ability to seek formal modifications to the CPO.
  - 2.5.6 The execution and service of any General Vesting Declarations and/or notices to treat and notices of entry or any other document or instrument required to effect implementation of a CPO.
  - 2.5.7 Taking and enforcing possession of the Order Land; and
  - 2.5.8 The referral and conduct of disputes relating to compensation at the Upper Tribunal (Lands Chamber), and
  - 2.5.9 To enter into a CPO indemnity agreement with Newlon Housing Trust (or such other entity as the Director may approve), under which Newlon Housing Trust will indemnify the Council in respect of the costs of the CPO process and compensation that may arise as a result of the making, confirmation, or implementation of any CPOs,
  - 2.5.10 The costs of all such actions, following agreement and confirmation, to be met in full by Newlon Housing Trust.
- 2.6 To authorise the Corporate Director of Community Wealth Building, pursuant to section 227 of the Town and Country Planning Act 1990 and/or any other power (as

relevant), to acquire any interests in (or new rights over) the Order Land by agreement and make payments equivalent to statutory compensation (or payments as are deemed reasonable in the circumstances or the provision of property or services in lieu of compensation), either in advance (but in contemplation of) or during the formal CPO process. The costs of all such actions, following agreement and confirmation, to be met in full by Newlon Housing Trust.

- 2.7 To authorise the Director of Law and Governance to transfer, lease or licence any interests in (or new rights over) the Order Land that have been acquired by the Council pursuant to the CPO or by agreement to Newlon Housing Trust or such other person involved in the development and which the Director of Law and Governance may approve.
- 2.8 To note that following the compulsory acquisition, voluntary acquisition and/or appropriation of any part or parts of the Order Land pursuant to the above that section 203 of the Housing and Planning Act 2016 and/or section 236 of the Town and Country Planning Act 1990 (as applicable) may then apply to override or extinguish (as applicable) (and subject to payment of compensation where requested) any third party rights or covenants (to which that section applies).
- 2.9 To authorise the approvals required to assemble the Order Land including (if necessary) via compulsory purchase to ensure the development can proceed should Newlon Housing Trust and the Council fail to reach a negotiated settlement with the relevant affected parties. The scheme requires the assembly of the Order Land with vacant possession and free from impediments (including third party rights) including potentially via compulsory purchase.

### 3. Background

- 3.1. Following extensive consultation with residents and other key stakeholders (which has included an independently run residents' ballot where residents voted for the transformation of their estate), Newlon Housing Trust and Mount Anvil submitted a planning application for the redevelopment of the New Barnsbury Estate.
- 3.2. The proposal is to demolish the existing estate in a phased redevelopment creating some 914 new homes. Existing social rented and market homes will be replaced alongside a significant uplift in affordable and market housing. The proposals include new buildings along Caledonian Road which will include commercial space. Wider improvements will improve the amenity and security for the benefit of all residents on the New Barnsbury Estate. The scheme also includes a replacement new community centre and nursery and substantial improvements to the public realm and green open spaces. Planning permission was granted on 23 March 2023.

- 3.3. Newlon Housing Trust require the support of the Council in respect of the transfer of land elements within the curtilage of the development which the council still own. These land elements, shown on the plan edged yellow at Appendix 1, have been independently valued by Cluttons Chartered Surveyors, who confirm that a transfer at a notional £1 is in order, supporting the council's desire to bring forward the development and reflecting RICS valuation guidance.
- 3.4. Additionally, when the transfer of the freehold of the estate was made to Newlon a restrictive covenant in respect of development was placed over the estate. This now needs to be lifted to enable the works to be delivered. The legal structure agreed will enable the release of the covenant but protect the council's position to ensure development is delivered. There is a purely nominal value to the interest which falls under the scheme of delegation to the Corporate Director for Community Wealth Building.
- 3.5. The Executive is therefore asked to agree that the council transfers the land in question and notes the Agreement to remove the restrictive covenant by way of completing the necessary appropriate documentation.
- 3.6. An implication of the redevelopment of the housing blocks on the Order Land is a potential reduction in the level of light reaching the windows of surrounding properties. The planning application included an Environmental Statement including a Chapter prepared by Point 2 Surveyors. The Chapter included a quantitative assessment of the daylight, sunlight and overshadowing impacts of the proposed buildings on neighbouring receptors, a description of the scale and nature of each effect and whether it was significant or not significant. The Council's Development Management Team, as well as its appointed third party professional advisor (Watermans) reviewed the Environmental Statement and took into account the effects and impacts in reaching its recommendation to the Planning Committee that it resolves to grant planning permission.
- 3.7. Newlon Housing Trust and Mount Anvil has also commissioned a rights of light report by Point 2 Surveyors to assess how the redevelopment would affect the light to, and the rights of surrounding properties.
- 3.8. Where a redevelopment materially impacts upon a right to light the affected party can take private legal action and there may, in certain circumstances, be an entitlement to injunct against the proposed development. There may also be other rights or restrictions which affect the development site, such as rights of access or to use certain amenities. . However, one of the effects of assembling land using planning powers or for planning purposes is to override or extinguish (as applicable) third party rights where they would otherwise be interfered with (by virtue of s203 of the Housing and Planning Act 2016 and/or section 236 of the Town and Country

Planning Act 1990 (as applicable). Such owners, would in return, be entitled to a claim for compensation. This mechanism will ensure there will be no impediment to the development, which would result in risk of substantial delays to the scheme moving forward and additional costs. Appropriate compensation would be payable to those impacted.

- 3.9. The Executive is therefore additionally asked to agree the use of the Council's powers to assemble land including via compulsory purchase, voluntary purchase and/or appropriation and in turn override/extinguish any third-party interests that exist (so as to manage any right to light or other issues).

## 4. Implications

### 4.1. Financial implications

- 4.1.1. In respect of the disposal of elements of land and leasehold interests there are no financial implications for the council. The land has been valued at a notional £1 following the RICS Red Book Valuation Guidelines by an independent firm of Chartered Surveyors, Cluttons and confirm that the proposed arrangements are in line with market conditions and reflect the council's fiduciary duty.
- 4.1.2. Any costs relating to the surrender of the long leasehold interests will be met in full by Newlon. The 999 year leasehold interest in the commercial units holds no value being so remote and the operational office use will be reprovided on similar terms within the development or close by if necessary at the cost of Newlon via the CPO process.
- 4.1.3. In respect of the Deed of Release the structure of the arrangements ensure that the release reflects the delivery of the proposed development being the requirement and intent of the covenant. That being satisfied and delivered removes any value to the release of the covenant. The costs covering the acquisition of the land and Deed of Release are to be met in full by Newlon Housing Trust.
- 4.1.4. Costs of and associated with assembling the Order Land with vacant possession and free of impediments (including 3rd party rights) including any costs in making and consequential to the making of any CPO are to be met in full by Newlon Housing Trust. In respect of all other costs relating to CPO, appropriation and all other such matters, these will be met in full by Newlon Housing Trust at no cost to the council.

## 4.2. **Legal Implications**

- 4.2.1. The Council has the power under s120 of the Local Government Act 1972 to enter into the land transfer and proposed Deed of Release for the purposes of any of its functions, or the benefit, improvement, or development of its area. The proposed transactions would satisfy these conditions.
- 4.2.2. The report confirms that the arrangements reflect the current market values and in agreeing the terms of the proposed arrangements the Council have acted in accordance with its fiduciary duty.
- 4.2.3. Furthermore, it should be noted that specialist legal advice has been provided to the Council by Pinsent Mason in respect of rights of light and other such rights, CPO and technical legal matters required as part of the redevelopment.

## 4.3. **Compulsory Purchase Order (CPO)**

- 4.3.1. This report follows up on the original report to Cabinet in April 2022 proposing the making of a CPO. This includes for the acquisition of the residential and commercial leases on the estate, residential and commercial interests adjacent to the estate, the appropriation for rights of light, other rights and matters required for the delivery of the development. This report proposes the making of one or more CPOs for the acquisition of all interests in (and rights over) the Order Land.
- 4.3.2. The council has the power under section 226(1)(a) of the Town and Country Planning Act 1990 to acquire compulsorily any land including rights and other interests in its area if it thinks that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired, and if the council thinks that the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of its area.
- 4.3.3. The acquisition of all interests in (and rights over) the Order Land together with the overriding/extinguishment of any third party rights is reasonably required to enable the proposed re-development scheme to proceed. Further, the redevelopment will contribute to the promotion and improvement of the economic, social, and environmental well-being of the area and local residents by providing better quality and additional social housing and other benefits for local residents and the wider community, for example environmental improvements and/or new or improved community facilities.
- 4.3.4. Section 226(3)(a) TCPA 1990 allows the Council to also include within a CPO any land adjoining the 'main' development site and which is required for executing works to facilitate the development.

- 4.3.5. Section 13(1) Local Government Act 1976 allows the Council to compulsorily acquire new rights over land. This is commonly used where the Council does not need to acquire all interests in the relevant land, and can achieve the development by acquiring rights, such as rights to oversail a crane or rights of way. It enables a proportionate use of compulsory acquisition powers, by reducing the interests in land which are acquired and therefore reducing the impact on affected persons.
- 4.3.6. A CPO should only be employed as an option of last resort, and only when all other opportunities to secure the redevelopment of the site have been fully explored and exhausted. However, the Secretary of State has recognised that it is appropriate in some situations to make a CPO at the same time as seeking to purchase by agreement given the amount of time needed to complete a compulsory purchase.

#### 4.4. **Human Rights**

- 4.4.1. A CPO should only be made where there is a compelling case in the public interest, which justifies the overriding of private rights in the land sought to be acquired. Human rights may also be relevant to appropriation of land for planning purposes, which can also override private right in land.
- 4.4.2. In respect of human rights, regard should be had in each case, in particular to the provisions of Article 1, the right to peaceful enjoyment of your possessions, Article 6, the right to a fair and public hearing and Article 8, the right to respect for private and family life, of the First Protocol to the European Convention on Human Rights (“ECHR”).
- 4.4.3. In relation to Article 1 whilst owners will be deprived of their property or those with third party rights will have, their rights overridden/extinguished, if the CPO is confirmed and implemented, this will be done in accordance with the law and they will be entitled to receive appropriate compensation for their interests. Further, the right under Article 1 is qualified rather than absolute as it permits the deprivation of an individual’s possessions or rights where it is in the public interest.
- 4.4.4. Interference with the right to respect for private and family life under Article 8 is justified under the Protocol if this is in accordance with the law and “necessary in a democratic society” for, amongst other things, economic wellbeing. The interference here will be in accordance with UK law (primarily the Town and Country Planning Act 1990). In considering whether the interference with the right is “necessary in a democratic society,” it is necessary to consider whether the interference is proportionate. In this context, proportionate means that the interference must be no more than necessary to achieve the identified legitimate aim. Here the legitimate



aim is the redevelopment of the New Barnsbury Estate and the requirements of s226 of the TCPA 1990 have been fulfilled, that is, the development, redevelopment or improvement will contribute to promotion or improvement of the economic social or environmental wellbeing of its area.

- 4.4.5. In relation to Article 6 those affected by the CPO will have the right to make representations to the Secretary of State and to be heard at any public inquiry.
- 4.4.6. Therefore, there must be a balancing exercise between the public interest and the individual's rights whereby the Council must be able to show that the interference with an individual's rights by the making of a CPO must be necessary and proportionate. The availability of compensation to those deprived of their property and rights is of relevance to the issue of proportionality.
- 4.4.7. The CPO should therefore only be made where there is a compelling case in the public interest, which justifies the acquisition/ overriding/extinguishment of private rights in or new rights over the land the subject of the CPO(s) and a method of last resort. Redevelopment to provide better quality and additional social housing and other benefits for local residents and the wider community, for example environmental improvements and/or new or improved community facilities is considered to demonstrate sufficient public interest to justify interfering with the private rights of those with an interest in the leasehold land.

#### 4.5. **Funding the Acquisition of the Land and other costs**

- 4.5.1 If the CPO is confirmed and implemented, the Council will be liable to compensate the owners for the compulsory acquisition of their land interests (or new rights over their land). To ensure there is no financial cost to the Council the making of the CPOs should be conditional upon Newlon Housing Trust entering into an indemnity agreement with the Council. The indemnity agreement will provide for Newlon Housing to indemnify the Council for all CPO and related costs including the costs of making the order and any compensation.
- 4.5.2 The indemnity agreement will provide for Newlon Housing to indemnify the council for all CPO and related costs including the costs of making the order and the compensation paid to owners for their interests acquired by the council.
- 4.5.3 The costs of the redevelopment are fully borne by Newlon Housing Trust and their joint venture partner Mount Anvil, through a combination of debt and equity. The sale of market homes and commercial units subsidises the provision of affordable homes, which shall benefit from grant funding.

4.5.4 Planning permission has been granted with the schemes delivery subject to the conditions and obligations set out on the Decision Notice and Section 106 Agreement under S106 of the Town and Country Planning Act 1990.

4.5.5 It is not believed that there are any special categories of land (i.e. any land held by the National Trust or any common, open space or fuel or field garden allotment), nor is there is any Crown land. Where there is any land and/or apparatus owned by statutory undertakers this will be diverted, renewed, or relocated as part of the development process. Any necessary applications for the stopping up of highways will be brought forward alongside the relevant phase of the development, and the principle of the highways and access routes into the development has already been considered and found to be acceptable during the planning application.

4.5.6 It is therefore considered that there are no impediments to the scheme proceeding.

## **4.6 Equalities Impact Assessment**

4.6.1 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.

4.6.2 An Equalities Impact Assessment is not required in relation to the land transaction elements of this report, because the scheme reprovides the spaces in the wider development.

4.6.3 A potential negative impact on individual residential or commercial leaseholders and adjoining landowners has been identified but this is mitigated through the CPO process that ensures that the rights of affected owners and occupiers are protected and that they are entitled to receive compensation in line with the relevant legislation and statutory guidance. The key principle is that owners/occupiers should not be any better or worse off as a result of a CPO including appropriation for rights of light and other relevant rights and matters. It is also relevant to take into account Newlon Housing Trust's Landlord Offer, referred to above.

4.6.4 All other impacts identified from the redevelopment proposals are positive as they are aimed at improving the lives and opportunities afforded to residents to access

decent and genuinely affordable homes and increase jobs and training opportunities, helping make Islington a fairer place to live and work.

4.6.5 Newlon Housing Trust and Mount Anvil undertook an Equalities Impact Statement as part of the planning application, which is attached at Appendix 5. Additionally, the council will undertake a Resident Impact Assessment in due course if required, reporting back on the outcome of a detailed RIA prior to exercising the delegation to make the CPO or the Corporate Director taking into consideration the outcome prior to exercising the delegation.

4.6.6 There are no other Human Resources or equality implications in respect of this proposal.

#### **4.7 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030**

4.7.1 Whilst there are no specific environmental or net zero implications associated with these transactions for which consent is being sought it should be noted that a redevelopment of this scale does have far reaching impact on environmental and net zero matters. The grant of planning consent sets out the conditions relating to construction matters including ensuring that appropriate construction methods are used, Net Zero Carbon strategies are embedded in the development and significant environmental improvements are delivered.

4.7.2 The significant environmental implications associated with construction of this project will occur at the time of the demolition/rebuilding and beyond. The required construction management programme will reflect the requirements of the conditions of the grant of planning permission to mitigate environmental impact.

4.7.3 The longer-term environmental benefits are reaped in the provision of modern energy efficient homes for the community and a significantly improved public realm.

## **5. Reasons for recommendations**

5.1. In order for the development to be delivered it is necessary for the land elements to be transferred and the restrictive covenant removed. This arrangement therefore supports a key council strategy of delivering new homes, especially those of affordable tenure in the borough.

5.2. The ability to assemble the land on the estate where proposals to build more high quality homes for local people, supported by local residents, have been proposed, is critical to their successful delivery. Given the significant project delivery risks it

is preferable to satisfactorily conclude negotiations with owners/interest holders as early as possible in the development process and voluntary acquisition is the preferred option in all cases. The acquisitions are currently underway.

- 5.3. In the event that it is not possible to voluntarily purchase the relevant interests in (and new rights over) the Order Land, the ability to use compulsory purchase powers should be authorised, subject to the necessary delegated internal approvals. The potential delays and costs associated with the CPO process are outweighed by the benefits to the wider community to be derived from the scheme and the significant investment already committed to bringing forward the proposals. It is therefore considered to be in the public interest for the Council to make one or more CPOs to secure the redevelopment to provide better and more homes and to promote economic, social, and environmental wellbeing and to contribute to sustainable development in Islington.
- 5.4. Additionally, the requirement of CPO, appropriation, and other related matters form part of the support by the council essential to the delivery of the scheme.
- 5.5. It is therefore considered to be in the public interest for the Council to enter into these arrangements to secure the redevelopment to provide better and more homes and to promote economic, social, and environmental wellbeing and to contribute to sustainable development in Islington.

**Appendices:**

- Appendix 1: Site location plan including interests for transfer
- Appendix 2; Plan of properties with rights potentially impacted by development and appropriation.
- Appendix 3; Area of potential compulsory purchase (all interests)
- Appendix 4: New Rights Plan showing land over which new rights may be compulsorily acquired
- Appendix 5; New Barnsbury Equality Statement

**Final report clearance:**

Authorised by:

Executive Member for Finance, Planning and Performance

Date: 6 April 2023

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