



Democratic Services

Location: Phase II
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To: COUNCILLOR IAN EDWARDS
LEADER OF THE COUNCIL

COUNCILLOR MARTIN GODDARD
CABINET MEMBER FOR FINANCE

COUNCILLOR JONATHAN BIANCO
CABINET MEMBER FOR PROPERTY, HIGHWAYS
& TRANSPORT

COUNCILLOR EDDIE LAVERY
CABINET MEMBER FOR RESIDENTS' SERVICES

c.c. All Members of the Residents' Services Select
Committee
c.c. Michael Naughton, Place Directorate
c.c. Karrie Whelan – Corporate Director of Place

Date: 11 July 2024

Non-Key Decision request

Form D

HAYES ESTATE REGENERATION: APPROPRIATION OF LAND FOR PLANNING PURPOSES

Dear Cabinet Member,

Attached is a report requesting that a decision be made by you as an individual Cabinet Member. Democratic Services confirm that this is not a key decision, as such, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 notice period does not apply.

You should take a decision **on or after Friday 19 July 2024** in order to meet Constitutional requirements about publication of decisions that are to be made. You may wish to discuss the report with the Corporate Director before it is made. Please indicate your decision on the duplicate memo supplied and return it to me when you have made your decision. I will then arrange for the formal notice of decision to be published.

Anisha Teji
Democratic Services

Title of Report: Hayes Estate Regeneration: Appropriation of Land For Planning Purposes

Decision made:

Reasons for your decision: (e.g. as stated in report)

Alternatives considered and rejected: (e.g. as stated in report)

Signed Date.....

*Leader of the Council/ Cabinet Member for Finance / Cabinet Member for Property, Highways
& Transport/ Cabinet Member for Residents' Services*

HAYES ESTATE REGENERATION: APPROPRIATION OF LAND FOR PLANNING PURPOSES

Cabinet Member(s)	Councillor Ian Edwards Councillor Jonathan Bianco Councillor Eddie Lavery Councillor Martin Goddard
Cabinet Portfolio(s)	Leader of the Council Cabinet Member for Property, Highways & Transport Cabinet Member for Residents' Services Cabinet Member for Finance
Officer Contact(s)	Michael Naughton, Place Directorate
Papers with report	None
PUBLIC/PRIVATE	This report is public, but it contains a confidential (exempt) appendix in Part 2.

HEADLINES

Summary	Cabinet Members are requested to approve the appropriation of the Hayes Town Centre phase 1 site for planning purposes, to support the ongoing delivery of Hayes Regeneration Project.
Putting our Residents First Delivering on the Council Strategy 2022-2026	This report supports our ambition for residents / the Council of: Live in good quality, affordable homes in connected communities This report supports our commitments to residents of: Thriving, Healthy Households The regeneration of the Hayes Town Centre estate also contributes to the Council's Housing Strategy 2021/22-2025/26.
Financial Cost	The potential financial cost to the Council is set out in Appendix 1
Select Committee	Residents' Services Select Committee
Ward(s)	Hayes Town

RECOMMENDATIONS

That the Leader of the Council and Cabinet Members:

- 1. Approve the appropriation of the Hayes Town Centre phase 1 Site (“Phase 1 Site“) for planning purposes pursuant to section 122(1) Local Government Act 1972 and section 227 Town and Country Planning Act 1990, to facilitate the use of powers available to a local authority within Section 203 Housing and Planning Act 2016 ('2016 Act') to override covenants that affect land and potential rights to light that benefit neighbouring properties that may be infringed by the construction of phase 1.**
- 2. Authorise the Corporate Director of Place:**
 - a. To deal with any necessary arrangements to record the appropriation of the land included within the Phase 1 Site for planning purposes”) including the transfer of the Phase 1 Site from the Housing Revenue Account (HRA) to the General Fund account (GF) at the current red book value; and**
 - b. To negotiate and enter into agreements by deed and payment of any compensation for the release of third-party rights affected by the development of the Phase 1 Site where this can be achieved on reasonable terms within a reasonable timescale; or**
 - c. To take all necessary steps to settle any claims for compensation under section 204 of the Housing and Planning Act 2016.**

Reasons for recommendation

Approval of these recommendations enables the Council to move forward with the regeneration of Phase 1 of the Hayes Town Centre estate as per previous Cabinet Reports on 22 October 2020 and 17 June 2021, the Preferred Bidder for Development Agreement of March 2022 and Contract award of July 2022, the Appointment of Consultants of April 2023 and further the actions of the Compulsory Purchase process as agreed by the Cabinet on 11th November 2021.

This is in line with the Council's objectives in terms of addressing concerns about the quality and longevity of the homes, delivering excellent resident engagement, maximising the opportunities to provide new high-quality housing, including affordable housing in the Borough and enhancing place-making around Hayes Town Centre.

Alternative options considered / risk management

Alternative options including the taking out of an insurance policy would likely incur additional cost to the Council and also would not remove the risk of injunction by affected landowners.

The Council has taken specialist external legal advice on the appropriation process to minimise risk of challenge.

Democratic compliance / previous authority

Previous delegated authority on the Hayes Regeneration Project exists from Cabinet in [June 2021](#) to the Leader of the Council and relevant Cabinet Members, set out in this report, in order to make this decision.

Select Committee comments

None at this stage.

SUPPORTING INFORMATION

Background

Hayes Town Centre Estate, sometimes known as Austin Road Estate, consists of 260 homes including 79 leasehold properties built in the 1970s consisting of medium rise flats and maisonettes with a high-rise point block of 15 storeys, made up of a mixture of 1, 2 and 3 bedroomed homes.

In response to concerns raised by residents about building condition and anti-social behaviour on these estates, the Council has been exploring ways to improve the standard of residential provision for current residents. It has also taken into account the opportunity to deliver additional housing supply and a high-quality public realm, which is in line with its planning policies for Hayes Town Centre, the Hayes Housing Zone and the Borough generally.

Working in line with Greater London Authority (GLA) and Ministry for Housing, Communities and Local Government (MHCLG) good practice guidance, the Council undertook a formal Options Appraisal exercise in the summer of 2020 to look at the potential options that would achieve the objectives above. As a result, in October 2020 the Cabinet agreed that officers should undertake further design work on a redevelopment option for both estates in consultation with residents, with final proposals on the re-housing offer and indicative design to be put to residents in a GLA compliant resident ballot.

Current status

The Residents Ballot in April 2021 was a confirmation of “Yes” from both Resident communities, so the Council made a compulsory purchase order in respect of the Estate to assist with land assembly and progressed the appointment of a Development Agreement, which the Council awarded in September 2022 and works have commenced. Higgins now wish to amend its terms so that the Council takes on responsibility for risks such as third-party claims in relation to interference with rights to light. The Estates are currently held within the Council’s Housing Revenue Account. Cabinet members approved to proceed with the process to appropriate the site in early April 2024.

Construction at the HTC phase 1 site is continuing at pace, with piling having almost completed and works will start on the superstructure works imminently. The super structure is planned to

complete by August 2024, by which time it is likely that any rights to light infringements will have taken place.

Appropriation for Planning Purposes

Section 122 of the Local Government Act 1972 (“the Local Government Act”) enables the Council to appropriate land which belongs to the Council for any statutory purpose for which it is authorised to acquire land and which is no longer required for the purpose for which it is held immediately before the appropriation. The Phase 1 Site is currently held within the HRA and in the case of housing land, the requirements are subject to section 19 of the Housing Act 1985 which provides that no part of the land consisting of a house or part of a house (acquired for housing purposes) should be appropriated without consent of the Secretary of State – as all buildings at the Phase 1 Site are demolished, no consent is needed from the Secretary of State. The Council must, therefore, consider whether the Land is no longer needed for the purpose for which it is so held if it is to be appropriated.

The meaning of the words “no longer required for the purpose for which it was held immediately before the appropriation” was considered by the Courts in the context of the predecessor to section 122. In that instance “not required” was held to mean “not needed in the public interest of the locality”. The Phase 1 Site is no longer considered to be held within the HRA as it is a cleared site.

Appropriation of the land for “planning purposes” (in order to engage the provisions of sections 203 – 205 Housing and Planning Act 2016 (“the 2016 Act”)) requires the Council to consider the following factors whether;

- a. the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the Land or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the Land is situated;
- b. the proposed development, re-development or improvement will contribute to the promotion or improvement of the economic, social and/or environmental well- being of the area;
- c. it is in the public interest that the proposed development should be carried out, having regard to the provisions of the development plan, whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the Land;
- d. as noted above, the Land is no longer required for the original purpose for which it was acquired
- e. rights capable of being overridden by sections 203 - 205 of the 2016 Act exist and whether interference with such rights is necessary

Planning purposes” is defined in section 246(1) of the Town and Country 1990 Act (“the 1990 Act”) and acquisition for such purposes includes acquisition under section 226 or 227 of the 1990 Act.

Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the 1990 Act. The consequence (by virtue of section 203 - 205 of

the 2016 Act) is that the erection, construction or carrying out of any maintenance or any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are carried out in accordance with planning permission, even if they interfere with third party rights.

The purpose of section 203 - 205 of the 2016 Act is to ensure that where land has been appropriated for planning purposes, and provided that work is carried out in accordance with planning permission, then existing rights, which could prevent the development of that land from proceeding, can be overridden. The rights are overridden whether the Local Authority or a person deriving title from it undertakes the development. Persons who would otherwise benefit from those rights are entitled to claim compensation for the interference with them (Section 204 of the Housing and Planning Act 2016).

It is considered reasonable for the Council to use its powers in this case to appropriate the Land for planning purposes as the appropriation will facilitate the carrying out of development and improvement to the land and contribute to the promotion of the economic, environmental or social well-being of the Borough. The development programme for which the Land is required will deliver much needed new housing, including affordable housing, and new public realm and landscaping. Therefore, it can be stated that the new development is likely to contribute to the economic, social or environmental well-being of the area.

The Human Rights Act 1998 ("the 1998 Act") prevents public authorities from acting in a way that is incompatible with rights protected by the 1998 Act. Of particular relevance to the acquisition of interests in land or overriding of interests/rights in land are Article 8 of the European Convention regarding respect for privacy and family life and Article 1 of the First Protocol which concerns the protection of property.

Such rights are qualified rights and may therefore be overridden where it is considered that the interference with these rights are proportionate and that the interference is necessary in the interests of, amongst other things, national economic wellbeing. However, compensation could be payable in relation to interference with property rights. The proposed appropriation of the Land has been advertised and all local residents/occupiers whose private rights may be infringed by the proposed development of the Phase 1 Site (informed by a report prepared by EB7) have been informed of the proposals. No representations have been received.

In considering this appropriation, the Council should carefully consider the balance to be struck between individual rights and the wider public interest. The Cabinet, in making this decision will need to consider if the significant public benefits to be derived from the proposed development of the Phase 1 Site are of sufficient magnitude to justify the appropriation. The Cabinet had to consider the same matters when deciding whether or not to make the compulsory purchase order to assemble the land.

Appropriation from the General Fund (for planning purposes) back to the HRA –Town and Country Planning Act 1990.

The Council has the power to appropriate part of the Land from planning purposes back to housing purposes under section 232(1) of the 1990 Act and section 17 of the Housing Act 1985.

Section 232(1) and (6) of the 1990 Act respectively provides that “where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may appropriate the land for any purpose for which they are or may be authorised in any capacity to acquire land by virtue of or under any enactment not contained in this Part

“In relation to any such land as is mentioned in subsection (1), this section shall have effect to the exclusion of the provisions of section 122(1) of the Local Government Act 1972.”

The necessary power to acquire and hold land under Part II of the 1985 Act is provided by section 17 of the 1985 Act as it stipulates that:-

“a local housing authority may for the purposes of this Part acquire land as a site for the erection of houses, acquire land proposed to be used for any purpose authorised by sections 11, 12 and 15(1) (facilities provided in connection with housing accommodation)”.

Sub-section 17(2) provides that “the power conferred by subsection (1) includes power to acquire land for the purpose of disposing of houses provided, or to be provided, on the land or of disposing of the land to a person who intends to provide housing accommodation on it or facilities which serve beneficial purpose in connection with the requirements of persons for whom housing accommodation is provided”

The fact that the Council intends to develop the land for housing satisfies the requirement of relative need for the site to be held for housing purposes as greater than the need for it to be held for planning purposes.

RESIDENT BENEFIT & CONSULTATION

The benefit or impact upon Hillingdon residents, service users and communities

The benefits of the scheme to Hillingdon residents have been set out in previous Cabinet reports prior to Cabinet approval for the commencement of the procurement exercise.

Consultation carried out or required

Extensive consultation was undertaken with residents in the run up to the successful ballot and as part of the process of submitting the two hybrid planning applications. The ballot results demonstrate a great deal of support for the redevelopment plans and a keenness for the Council to deliver transformation quickly.

Specific consultation on the planned appropriation has been carried out, with notices erected on the site and letters sent to the affected landowners, advising them of the planned appropriation.

No representations have been made by the affected landowners (or any other landowners) following their being notified in early April, of the planned appropriation. They were given 2 weeks to respond, with a deadline of 26th April.

CORPORATE CONSIDERATIONS

Corporate Finance

There are no direct financial implications arising from an appropriation of the Land for planning purposes from the Housing Revenue to the General Fund, or back to the Housing Revenue Account for housing purposes.

Legal

The Council has obtained specialist legal advice from an external firm in respect of the appropriation which is set out within the body of this report.

BACKGROUND PAPERS

None.