

TITLE OF REPORT : KINGS CRESCENT PHASES 3 & 4 - APPROPRIATION OF LAND FOR PLANNING PURPOSES	
Key Decision No: NHQ81	
CABINET MEETING DATE (2020/21) 20 July 2020	CLASSIFICATION: Open with Exempt Appendix 2 By Virtue of Paragraph(s) 3, Part 1 of schedule 12A of the Local Government Act 1972 Appendix 2 is exempt because it contains information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
WARD(S) AFFECTED Brownswood	
CABINET MEMBER Deputy Mayor Rebecca Rennison	
KEY DECISION No REASON This report is not a key decision as it only affects one ward and does not have a significant impact on spending or saving.	

GROUP DIRECTOR

Ajman Ali, Acting Group Director of Neighbourhoods and Housing

1. CABINET MEMBER'S INTRODUCTION

- 1.1 Hackney is building thousands of new homes across our borough and investing in existing homes and estates to ensure that our tenants and leaseholders have the modern, high quality homes they deserve as part of the Council's Estate Regeneration Programme. As part of this, in 2017, we completed Phases 1 & 2 of the regeneration of Kings Crescent estate, building 273 award-winning new homes and refurbishing 101 existing properties. Last year, we secured planning permission to complete the estate's regeneration by building a further 219 new homes and refurbishing 174 remaining properties in Phases 3 & 4.
- 1.2 This report seeks authority to appropriate, for planning purposes, land at Kings Crescent Phases 3 & 4.
- 1.3 The approval of this proposal will allow the delivery of the scheme to progress, in turn ensuring that the Council delivers on its commitments to local people, building on the detailed work with stakeholders and residents to shape and influence the scheme.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 The Estate Regeneration Programme is based upon the delivery of mixed tenure developments. Based upon current market conditions the Programme is forecast to be self-funding.
- 2.2 This report seeks Cabinet authority to appropriate for planning purposes the land outlined in red on the plan at Appendix 1, at Kings Crescent estate, in order to bring forward the estate regeneration scheme known as Kings Crescent Phases 3 & 4.
- 2.3 The appropriation is required in order to enable the scheme to come forward in a timely and cost efficient manner, to meet Hackney's affordable housing programme commitments.

RECOMMENDATION(S)

Cabinet is recommended to:

- 3.1 **Agree to the appropriation for planning purposes under S122 of the Local Government Act 1972 of land at Kings Crescent Phases 3 & 4 shown**

outlined in red on the plan at Appendix 1, subject to the Secretary of State Consent under S19(2) of the Housing Act 1985.

- 3.2 Authorise the Group Director of Neighbourhoods and Housing and the Director of Legal to deal with all necessary arrangements to effect the appropriation set out in this report subject to the Secretary of State Consent, under S19(2) of the Housing Act 1985.**

4. REASONS FOR DECISION

- 4.1 Appropriation of land for planning purposes under section 122 of the Local Government Act 1972 ('the 1972 Act') provides the Council with a mechanism for helping minimise the delay or uncertainty associated with regeneration projects by ensuring that the proposed developments cannot be held up by injunctions in support of third party rights.
- 4.2 In order to de-risk the development of the mixed tenure scheme at Kings Crescent Phases 3 & 4, the appropriation of the land shown within the red line at Appendix 1 is required. As the red line boundary includes existing residential homes, the decision is required to go to the Secretary of State for approval.
- 4.3 The land at Kings Crescent as shown in Appendix 1, for which authority to appropriate is being sought, is currently housing land and the tenancies on the land are administered under the Housing Revenue Account (HRA). The land following appropriation will be transferred to and administered from the General Fund Account. Once the development has been completed, the land will be appropriated as housing land and transferred back to the HRA.
- 4.4 Subsequent to the transfer back to the HRA the Council will lose the benefits of the appropriation for planning purposes. The Council will not, however, lose the protection over whatever was built whilst the land was appropriated for planning purposes, and as such the newly built development would not be subject to an injunction (i.e. third parties whose rights have been injured as a result of the development will not be able to halt the redevelopment). The affected parties may however be able to seek compensation. Exempt Appendix 2 provides further background information.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 At its meeting in July 2011 the Council's Cabinet agreed to the Estate Regeneration Programme. A further report updating the Programme was approved in March 2014 and subsequently in October 2015 and April 2019. These Cabinet reports outlined the need for regeneration and the Council's approach to the delivery of high quality new build housing and improved living standards across a number of housing estates in the borough.
- 5.2 The Kings Crescent Phases 3 & 4 site is identified within this Programme. As such it is accepted that the site needs to be appropriated for planning purposes.

- 5.3 A 'do nothing' approach has been rejected, as not appropriating the land would put the scheme at risk of time delays and increased costs as a result of possible third party injunctions, and would diminish the commercial and market attractiveness of the project to prospective contractors.

6. BACKGROUND

6.1 Policy Context

- 6.1.1 The Council's Sustainable Community Strategy 2018-2028 has five priorities. The regeneration of Kings Crescent Phases 3 & 4 assists in meeting these priorities from the provision of new homes, external refurbishment of existing homes, new commercial, community space and associated public realm.

6.2 Equality Impact Assessment

- 6.2.2 The Council has fulfilled its duty under the Equalities Act 2010 by preparing an Equalities Impact Assessment that considers the Protected Characteristics. The regeneration programme provides new, improved housing with a better mix, improved accessibility and social infrastructure, enhancing the quality of life of many residents and supports the borough in meeting its Public Sector Equality Duty.

6.3 Sustainability

- 6.3.3 The Kings Crescent Phases 3 & 4 scheme efficiently uses land resources, optimising density whilst incorporating private balconies and terraces that correspond to the homes, gardens and open public spaces adjacent to the estate. The scheme has been designed with high levels of glazing to allow for sufficient levels of daylight and sunlight. In the construction phase the impact of operations will be minimised through the adoption of best practice measures, formalised in a Construction and Environmental Management Plan. The adverse impacts of surface water flooding will be minimised through the adoption of a comprehensive Sustainable Urban Drainage Strategy. The scheme will incorporate a wide array of features to enhance and protect biodiversity; such as more than 600 square metres of increased public open space in the form of three landscaped courtyards, two featuring sunken rainwater gardens, and 16 additional trees on the estate.

6.4 Consultations

- 6.4.1 Extensive consultation has taken place with existing residents on the estate and those from the neighbouring area during the design and planning process. This comprised:

- two lessons learnt workshops;
- three themed workshops;

- two residents' visits (to a community facility and comparable estate regeneration);
- one focus group interview; and
- four public consultation events.

6.4.2 The main forum to provide residents with information regarding the regeneration proposals is the Residents' Steering Group (RSG). Residents from the group have received training on the construction procurement process and will participate in the procurement of a building contractor. There has also been considerable consultation with residents and the RSG on the scheme design.

6.4.3 Hackney Council's Sales and Marketing team has been involved throughout the design process, providing comments on all aspects of the proposed design which may impact on the sales outcomes.

6.4.4 The Council's Strategic Property Services and Area Regeneration team has been involved in the design, as well as the sales and marketing strategy for the commercial space and workspace.

6.4.5 As part of the planning process a statutory consultation was also undertaken.

6.4.6 Key stakeholders involved in the regeneration have been:

- Residents from Kings Crescent;
- Kings Crescent Residents' Steering Group;
- Ward Councillors; and
- Council officers from Estate Regeneration, Area Regeneration, Housing Services, Finance, Procurement, Strategic Property Services and Sales & Marketing.

6.5 Risk Assessment

6.5.1 A risk register, scheduling project and technical risks, is maintained, updated and reported on a quarterly basis. Any major risks are escalated as appropriate. One such risk contained within the project risk register is that not appropriating the land could result in an adverse cost and programme impact to the regeneration scheme. The likelihood of this risk occurring is considered low but the impact of the risk is assessed high. The overall risk is high. Obtaining suitable insurance mitigates the risk. One condition of the insurance quote is that the Council appropriates the land.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 The recommendation to appropriate the Kings Crescent Phases 3 & 4 site for planning purposes is required to reduce the risk of legal action, and the potential delay this may cause to the regeneration scheme.

8. VAT Implications on Land & Property Transactions

- 8.1 There are no tax implications emanating from the recommendations in this report.

9. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES

- 9.1 Appropriations of land are an executive function under the Local Government Act 2000 and related Regulations. The decision to appropriate land is to be taken by Cabinet as per the Mayoral scheme of delegation and as further provided for by Rule 15.13 of London Borough of Hackney's Financial Procedure Rules, which further requires that the land has been declared surplus to its current use by the relevant Group Director.

- 9.2 The Council is authorised by Section 122 of the Local Government Act 1972 to appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement. Where land has been appropriated for planning purposes, the consequence is that the erection, construction or carrying out of any building or other works or future uses on such land is authorised, if done in accordance with planning permission, notwithstanding that it may involve interference with third party rights. The Council will be in a position to appropriate upon the grant of planning permission.

- 9.3 In order to appropriate land for planning purposes (as described in s226 of the Town and Country Planning Act 1990) the Council must be satisfied that this will:

- (i) facilitate the carrying out of development or improvement on or in relation to the land by being likely to contribute to the achievement of any one or more of the following objectives, namely:
 - (a) the promotion or improvement of the economic wellbeing of the Borough;
 - (b) the promotion or improvement of the social wellbeing of the Borough;
 - (c) the promotion or improvement of the environmental wellbeing of the Borough; or
- (ii) the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated. The provision of additional residential units which would be the result of the proposed developments would satisfy the first limb of the requirement set out in section 226(1)(a) of the Town and Country Land Act 1990.

- 9.4 Before the land can be appropriated under Section 122, the land must no longer be required for the purpose for which it was held immediately prior to appropriation. It is for the Council to determine whether the land is no longer required for the purposes for which it is held.

- 9.5 As the site includes four blocks of flats, an application by virtue of Section 19(2) of the Housing Act 1985 is required to obtain Secretary of State consent before the site can be appropriated.
- 9.6 By virtue of appropriating the land in question under Section 122 of the Local Government Act 1972 ("Section 122"), Section 203 of the Housing and Planning Act 2016 provides a statutory power for the Council to override third party easements and other rights. This will apply to building or other works to be constructed or maintained on the land or future uses where these are in accordance with a planning permission for the development of the land.
- 9.7 The power contained in Section 203 does not remove the rights of those persons having the benefit of easements or other third party rights to compensation arising from the interference with such rights, but it does remove the potential for such persons to delay the development by obtaining an injunction to prevent interference with such rights.

APPENDICES

Appendix 1

Red line boundary plan of Kings Crescent Phases 3 & 4

EXEMPT

Exempt Appendix 2

By Virtue of Paragraphs using Part 1 of schedule 12A of the Local Government Act 1972 this appendix is exempt because it contains information relating to the financial or business affairs of any particular person including the authority holding the information and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

None.

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