

Woodberry Down - Phase 3 Land AppropriationKey Decision No - [N/A](#)**CABINET MEETING DATE (2020/21)**

29th September 2020

CLASSIFICATION:

Open

If exempt, the reason will be listed in the main body of this report.**WARD(S) AFFECTED**

Woodberry Down

CABINET MEMBER

Mayor Philip Glanville

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. Across the borough, we're building our own homes, acting as our own developer on our own land and working closely with local residents to build the genuinely affordable homes our borough badly needs.
- 1.2. While we'll continue to build homes ourselves where we can, it's vital that we use every option available to get more social housing built for our residents – and our unique partnership at Woodberry Down is doing just that. It started at a time when Councils were unable to build our own homes nor could they invest in modernising all their estates. Since 2009, we've built nearly 2,000 new homes, alongside a new secondary school, community facilities and seen the linked reopening of the stunning Woodberry Wetlands.
- 1.3. Crucially, this is all done together in a close partnership with residents through the Woodberry Down Community Organisation, and our partners Berkeley Homes and Notting Hill Genesis. The plans for this phase of the regeneration have been developed through years of consultation with local people, who support our plans and I am pleased that the Woodberry Down Community Organisation earlier this month reiterated that backing for Phase 3 at their Board AGM. I would like to take this opportunity to thank them and our contractual partners for their work to get to this point.
- 1.4. The recommendations in this paper are standard steps in any regeneration project and will help us to build hundreds of further new homes – many of which are socially rented homes for existing Council tenants and leaseholders whose current homes are coming to the end of their life. The number of social rented homes in this phase has increased and will help all those desperate to move into a modern, safe and more sustainable home. We'll also plant 175 new trees and provide the equivalent of 29 tennis courts of new open spaces – including a new fully public park. The plans also includes 4,135sqm of biodiverse green and brown roofs, including vegetation and planting, as well as an energy centre to provide low-carbon heat for the entire estate and 1,060 new cycle parking spaces.
- 1.5. Our partnership at Woodberry Down is already transforming the lives of residents of Woodberry Down, providing modern, high-quality social housing for families who need it most. This report ensures that work can continue and I recommend this paper to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1. The redevelopment of Phase 3 will provide 584 new homes of which 243 will be genuinely affordable social rent and shared ownership or shared equity homes, as well as an energy centre, a new park and retail space.

- 2.2. This report requests Cabinet authority to appropriate for planning purposes the land outlined in red on the plan at Appendix 1 - Phase 3.
- 2.3. Cabinet is advised that, if appropriation for planning purposes is not carried out, it may cause significant delays to the delivery programme, resulting in additional project costs and diminish the viability of the project.

3. RECOMMENDATION(S)

Cabinet is recommended to:

- 3.1. **Agree to the appropriation of land for planning purposes under section 122 of the Local Government Act 1972 of the land known as Woodberry Down Phase 3 shown outlined in red on the plan at Appendix 1.**
- 3.2. **Authorise the Group Director of Neighbourhoods and Housing and the Director of Legal to deal with all necessary legal arrangements to effect the appropriation as set out in this report.**

4. REASONS FOR DECISION

- 4.1. This report seeks authority to appropriate the land outlined in red on the plan at Appendix 1 for planning purposes to facilitate the development of Woodberry Down Phase 3. The site has obtained a resolution to grant planning permission. Appropriation of the land for planning purposes would prevent any legal action by a party whose rights may be infringed, which could delay or prevent the proposed redevelopment. It will also ensure that the commercial and market attractiveness of the scheme is not diminished by the existence of injunctive rights which can frustrate a development.
- 4.2. 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 development cannot be held up by injunctions in support of third party rights.
- 4.3. The purpose of an appropriation of land for planning purposes is to ensure that the redevelopment of the Council's land may benefit from the power in Section 203 of the Housing and Planning Act 2016 to override all third party rights including covenants and easements. Parties with interests and rights which are infringed as a result of the development following appropriation will not have a right to seek an injunction to prevent the development from being implemented. However, they may be entitled to claim compensation for any injuries caused.

- 4.4. Section 203 of the Housing and Planning Act 2016 provides that, subject to exceptions (for example the rights of statutory undertakers and communication code operators), any building works or changes of use which have the benefit of planning permission are authorised to be carried out on land that is appropriated for planning purposes, notwithstanding that such works or change of use might constitute an interference or disturbance with an easement or breach a restrictive covenant.
- 4.5. The Council in its capacity as a local authority is required to act in a way which is compatible with the Human Rights set out in the European Convention on Human Rights. Article 1 of the First Protocol of the European Convention on Human Rights is enshrined in English law by the Human Rights Act 1998 and seeks to protect property rights by providing that: “No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”
- 4.6. In exercising its powers to appropriate land the Council will have to consider whether the use of such powers is in the public interest and whether such use is proportionate to the end being pursued. The Council will also be required to comply with any legal conditions, as applicable.
- 4.7. It is accepted that appropriating the land for planning purposes may infringe private rights. However, as discussed in the CPO Cabinet paper of June 2018, (see 6.3 below) the Council considers this to be wholly justified on the grounds of public interest and the promotion of economic, social and environmental well-being, and that in any event an injured party will have the right to make a claim for appropriate compensation.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1. At its meeting on the 18th June 2018 the Council’s Cabinet agreed to the making of a CPO for Woodberry Down Phase 3. This report outlined in detail the need for regeneration, and the Council’s partnership arrangement with Berkeley Homes and Notting Hill Genesis, which will deliver high quality new build housing as well as commercial units, a new park and an energy centre.
- 5.2. The only possible alternative option would be to not appropriate the land. This is not recommended because it would mean that the project would not benefit from the advantages brought about by appropriation.

6. BACKGROUND

- 6.1. The development programme in Woodberry Down is being carried out in a phased manner and sites are being brought forward for development in line with the commitments set out in the Principal Development Agreement.

- 6.2. Phase 1 is now complete and works are well advanced on Phase 2. Phase 3 is therefore the next phase to come forward at Woodberry Down.
- 6.3. At its meeting on the 18th June 2018, the Council's Cabinet gave approval for the Compulsory Purchase Order (CPO) on Phase 3.
- 6.4. At the same meeting Cabinet was advised that the Council intends to appropriate the land for planning purposes under Section 122 of the Local Government Act 1972 once it is no longer required for its current purposes. The land will then benefit from the operation of Section 203 of the Housing and Planning Act 2016, which overrides existing rights that could prevent the development of the land from proceeding.
- 6.5. The CPO was confirmed on 24th September 2019, and the Phase 3 land and all third party interests vested in the Council on the 16th April 2020. At the time of writing it was intended that by the end of September the Council will have secured vacant possession.
- 6.6. Phase 3 received a resolution to grant planning permission on the 23rd April 2020 and that decision was reconsidered by the Planning Sub-Committee on 9 September, following the adoption of Hackney's new Local Plan.
- 6.7. The Council entered into a demolition licence with its development partner, Berkeley Homes, on 23rd April 2020 and demolition of the Happy Man Pub and the former Area Office has commenced. Demolition of the five housing blocks: Ashdale, Burtonwood, Chattenden, Bayhurst and Farningham will commence once vacant possession is secured.
- 6.8. Berkeley Homes plan to begin development of the Phase 3 site as soon as possible, and therefore wishes the Council to use its powers of appropriation in order to facilitate the development.
- 6.9. **Policy Context**
 - 6.6.1 A priority for the Council within its Sustainable Community Strategy 2018 - 2028 is to promote mixed communities in well designed neighbourhoods, where people can access high quality affordable housing. Appropriation of land for Phase 3 will enable the regeneration of Woodberry Down to continue and meet this objective.
- 6.10. **Equality Impact Assessment**
 - 6.7.1 The Equality Act 2010 introduced the public sector equality duty ("the Equality Duty" or "the Duty"). It covers the following nine protected characteristics: age, disability, gender, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sex and sexual orientation ("the Protected Characteristics").

- 6.7.2 The Council has fulfilled its duty under the Equalities Act 2010 by preparing an Equalities Impact Assessment which considers the Protected Characteristics.
- 6.7.3 In consideration of any impacts identified by the Equalities Impact Assessment the Council has prepared and made available a number of options to accommodate those with Protected Characteristics and those without Protected Characteristics.
- 6.7.4 Hackney Council is committed to improving equality and making the Borough a place for everyone. In practice, this means ensuring all actions taken by the Council contribute to its equality objectives.
- 6.7.5 Hackney has a high level of persons with Protected Characteristics (under the Equalities Act 2010). It also has high levels of deprivation and overcrowding. It is believed that the regeneration of housing estates, which provides new, improved housing in a better mix of sizes, improved accessibility and social infrastructure will improve the quality of life of many residents, and will support the Borough in meeting its Public Sector Equality Duty.

6.11. Sustainability

- 6.8.1 The delivery of the Woodberry Down regeneration scheme, which will be facilitated by the Land Appropriation, will provide mixed, balanced communities, better integrated with their surrounding areas, and with well-designed homes, improved community facilities, and a safer, more attractive environment. Through the incorporation of sustainable design and construction methods, energy, water and waste saving measures, as well as increased open/green space provision and measures to enhance the ecological value of the site, the proposed development is considered high quality and sustainable.

6.12. Consultations

- 6.9.1 Comprehensive and detailed consultation is an integral part of the delivery of Woodberry Down. As part of the wider regeneration programme, Phase 3 has been the subject of regular updates at the Woodberry Down Community Organisation (WDCO) Board meeting, as well as Round Table meetings with the scheme partners.
- 6.9.2 The Design Committee, made up of representatives from Berkeley Homes, Notting Hill Genesis, the Council and representatives from the local community have contributed to the development of designs for Phase 3. The planning application includes a Statement of Community Involvement within the Design and Access Statement detailing the scope of consultation with various stakeholders, as well as the local residents.

6.13. Risk Assessment

6.10.1 A risk register of project and technical risks is maintained and updated for the Woodberry Down regeneration programme. The risk register is reported on quarterly, with any major risks escalated as appropriate. There are both cost and programme risks if the land at Phase 3 is not appropriated for planning purposes.

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

7.1 The recommendation to appropriate land at Woodberry Down Phase 3 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 so any decision to appropriate land is to be taken by Cabinet (as further provided for by Rule 15.13 of London Borough of Hackney's Financial Procedure Rules).

9.2 The Council is authorised by Section 122 of the Local Government Act 1972 ("Section 122") 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.

9.3 In order to appropriate land "for planning purposes" 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; or (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.”

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, which has been fulfilled as set out in paragraph 9.3 above.

9.5 As the residential buildings will be demolished and there will be no houses or flats on the land, the consent of the Secretary of State is not required under section 19(2) of the Housing Act 1985.

9.6 By virtue of appropriating under 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 the easements or other third party rights to compensation (on the CPO basis) 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 The Site Plan

EXEMPT

None

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

Description of document (or None)

None.

Report Author	<i>Nicola Hudson - Tel : 0208 356 1325 Project Manager Woodberry Down nicola.hudson@hackney.gov.uk</i>
Comments for and on behalf of the Group Director of Finance and Resources	<i>Simon Theobald - Tel : 0208 356 4304 Head of Finance (Neighbourhoods and Housing) simon.theobald@hackney.gov.uk</i>
Comments for and on behalf of the Interim Director of Legal & Governance	<i>Georgia Lazari - Tel : 0208 356 1369 Regeneration Projects Lawyer georgia.lazari@hackney.gov.uk</i>