

WIMBOURNE STREET N1 7JD, APPROPRIATION OF LAND FOR PLANNING PURPOSES**CABINET MEETING DATE
(2021/22)****19 July 2021****CLASSIFICATION:****Open with exempt appendix.****If exempt, the reason will be listed in the main body of this report.****WARD(S) AFFECTED****Hoxton West****CABINET MEMBER****Deputy Mayor Guy Nicholson****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****Ian Williams, Acting Group Director, Chief Executive's Directorate**

1. CABINET MEMBER'S INTRODUCTION

- 1.1 The Council is facing an unprecedented housing crisis with more than 13,000 families waiting for a Council home and more than 3,000 of these are currently living in unsuitable temporary accommodation. The Council is committed to providing new homes, and the cross-subsidy, direct-delivery approach has targeted construction of 2,000 new homes between 2018 and 2022. More than half of these homes will be genuinely affordable – whether social rent council homes, low cost home ownership or new living rent homes – and will be paid for by building and selling homes outright and renting a small number of homes at market rates.
- 1.2 The Council's Housing Supply Programme was approved by Cabinet in 2016. The Housing Supply Programme will be delivered directly by the Council to provide new Council homes for social rent, shared ownership and private sale in order to generate cross subsidy for the construction of the former.
- 1.3 The Housing Supply Programme will deliver additional new build homes on Council owned sites currently occupied by non-residential uses, for example garage blocks. Importantly; no green spaces will be built on, there will be no loss of play space and, where necessary, existing parking spaces in use will be re-provided.
- 1.4 The Wimbourne Street development project sits within the Council's Housing Supply Programme and will contribute to the Council's target to build over 3,000 new homes for social rent, shared ownership and outright sale.
- 1.5 This report seeks authority to appropriate, for planning purposes, land at Wimbourne Street on the Wenlock Barn Estate.
- 1.6 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 affected residents to shape and influence the scheme.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 The Housing Supply Programme is based upon the delivery of mixed tenure developments. It is intended that the programme is 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 Wimbourne Street in order to bring forward the Housing development.
- 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.

3. RECOMMENDATION(S)

Cabinet is recommended to:

- 3.1 Agree that the land at Wimbourne Street, shown edged red on the plan at Appendix 1, and which is currently held for housing purposes under the Housing Revenue Account (HRA), is no longer required for those purposes and approve the appropriation of the land for planning purposes to facilitate the carrying out of the development proposals for the area in accordance with section 226 of the Town and Country Planning Act 1990 and section 122(1) of the Local Government Act 1972.**
- 3.2 Agree that following completion of the development proposals paragraph 3.1 the land shown edged red on the plan at Appendix 1 will no longer be required for planning purposes and approve the appropriation of the land to housing purposes to be transferred to and administered from the Housing Revenue Account and in accordance with section 9 of the Housing Act 1985 and section 122(1) of the Local Government Act 1972.**
- 3.3 Authorise the Group Director, Chief Executive's Directorate and the Director of Legal to deal with all necessary arrangements to effect the appropriation set out in this report.**

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 Wimbourne Street, the appropriation of the land shown within the red line at Appendix 1 is required.
- 4.3 The land at Wimbourne Street, 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 development). 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 The Council's Housing Supply Programme was approved by Cabinet in 2016. The Housing Supply Programme will be delivered directly by the Council to provide new council homes for social rent, shared ownership and outright sale, the latter in order to generate cross subsidy for the construction of the former.
- 5.2 The Wimbourne Street development 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, and the Wimbourne Street development assists in meeting these priorities in the following ways.
- 6.1.2 The first priority is centered around creating an area where everyone can enjoy a good quality of life and where the whole community can benefit from growth. The Wimbourne Street development will provide a mix of homes with differing levels of affordability, which caters to all ages and accommodates people's changing needs over time. The new community places and spaces have been designed for and in agreement with the existing community so that it meets their needs whilst also being inclusive, welcoming and accessible to incoming residents.
- 6.1.3 The construction of the Wimbourne Street development will create jobs, training and apprenticeship opportunities for local people, which will allow

local residents and businesses to fulfil their potential and enjoy the benefits of increased prosperity, in line with the second priority.

- 6.1.4 The architectural, mechanical and electrical and public realm designs for the Wimbourne Street development are centred around creating a greener and more environmentally sustainable community as per the third priority of the Sustainable Community Strategy 2018 - 2028.
- 6.1.5 The fourth priority of creating an open, cohesive, safer and supportive community will be achieved through the provision of improved landscaping and new play areas as part of the new development, as well as offering employment and training. The scheme will provide a new commercial space on the corner of Wimbourne Street and New North Road that, will be let to a business to provide local facilities.
- 6.1.6 The proposed improvements to the public realm will help create a healthy and safer neighbourhood which is pedestrian, cyclist and child friendly to support the fifth priority relating to promoting healthy and active residents.

6.2 Equality Impact Assessment

- 6.2.1 The Council is committed to building new homes that are adaptable to the varying needs of occupiers over time, and that will enable people to live independently in their homes for longer. The Wimbourne Street development contains six dwellings which meet Part M4(3) of the Building Regulations – ‘wheelchair user dwellings and adaptable dwellings’. All other dwellings are designed to M4(2) standards which refer to accessible and adaptable dwellings.

6.3 Sustainability

- 6.3.1 The architectural, mechanical and electrical and public realm designs for Wimbourne Street are driven by the sustainability goals of the project. The proposal has been carefully understood in terms of performance and carbon footprint. The resulting proposal exceeds the minimum building standards, providing a holistic environmental scheme. The project has a broad range of rigorous requirements that go beyond the minimum regulations and practices, achieving high performance facade, quality indoor spaces and a new public realm which has both social and environmental benefits.
- 6.3.2 The Wimbourne Street development will redevelop garages and associated car parking spaces, to provide high quality housing and soft landscaping to enhance the appearance and the ecological value of the environment. A number of environmental benefits will arise from the main works at Wimbourne Street. The development includes introducing a new public realm, improved landscape areas as well as improved access to the existing estate, which will help integrate new and existing buildings. A new play area will promote play in the community.

- 6.3.3 Reducing building energy consumption is a key policy consideration. This scheme meets the requirement to reduce CO² emissions by 35% from Part L of Building Regulations 2016 as per the requirements of London Policy and the Council. In order to achieve the zero carbon target, this scheme will be required to make a carbon offset payment.
- 6.3.4 The new buildings for the Wimbourne Street development will provide high quality energy efficient homes that meet current regulatory requirements relating to sustainability including Building Regulations, the Mayor's London Plan and the Council's Housing SPG. The new homes have been designed with Air Source Heat Pumps (ASHP) to achieve the required energy levels in accordance with current London Plan energy targets, and to support the transition from fossil fuels to renewable energy.
- 6.3.5 Recycling construction waste and the development of a Site Waste Management Plan are mandatory. The principal contractor will be required to minimise construction related disruption to residents and other neighbouring buildings including Wimbourne House
- 6.3.6 The scheme encourages sustainable transport through the provision of 141 secure resident and visitor cycle spaces - in line with Hackney's Cycle Parking and Storage Standards. These will be provided within private gardens or within a communal lockable bike stores.
- 6.3.7 The Wimbourne Street development and others will fall under the Ultra Low Emission Zone (ULEZ) when construction commences. In order to reduce the impact on air quality during the construction phase, development proposals must demonstrate how they plan to comply with the Non-Road Mobile Machinery Low Emission Zone and reduce emissions from the demolition and construction of buildings following best practice guidance.

6.4 Consultations

- 6.4.1 A robust consultation programme was undertaken consisting of public drop-ins, meetings and other forms of correspondence. The engagement and consultation targeted local residents and key elected and community stakeholders. The aim was to ensure that as many people as possible were engaged and understood the proposals.
- 6.4.2 The proposals for Wimbourne Street were presented to the Tenant Management Organisation, local ward councillors and the community at a series of public drop-ins and briefings. There have also been a number of newsletters produced that provided information on the scheme and these have been delivered across the Wenlock Barn Estate and to surrounding addresses.
- 6.4.3 Activities undertaken as part of the consultation process have included:

- Resident consultation events were held for residents of Wenlock Barn Estate in July 2018 and November 2018.
- The Hoxton West project webpage has been kept updated throughout, so that interested stakeholders could find out more about the proposals and view the materials online.
- Newsletters were sent to local addresses in March 2019, September 2019 and July 2020.
- In September 2019 a briefing session was held to update Ward Councillors of the scheme.
- In November 2019 there was a joint residents consultation event for both the Buckland Street and Wimbourne Street developments.
- In March 2021 a newsletter was sent to all residents.

6.4.4 Throughout the design development stages, five pre-planning application meetings were held with the Hackney planning department. Two meetings were held in 2017, a further two in 2018 and the final consultation with Hackney's planning department was held in November 2019.

6.4.5 During RIBA Stage 3 and 3+ the project team met with various stakeholders at Hackney Council to discuss specific aspects of the proposed scheme. Comments made at these meetings have been incorporated into the design. These include:

- Planning
- Highways
- Play team
- Refuse and recycling
- Sales team
- Heating/maintenance
- Building safety.

6.4.6 In addition the project team presented the proposals to Hackney's Regeneration Design Advisory Group, Hackney's Design Review Panel and local ward councillors.

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.

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

- 7.1 The recommendation to appropriate the land at Wimbourne Street is required to reduce the risk of legal action, which may result in a delay and an increase in cost of the scheme. Whilst the appropriation does not prevent any claims for compensation, it limits it to 6 years and with the improvements the regeneration will make to the area, the financial loss is likely to be minimal. Because of this, it has been decided that LBH will self insure against this risk.

8. VAT Implications on Land & Property Transactions

- 8.1 In relation to the new dwellings the majority of the costs should not have VAT on them. However, in relation to the commercial element on the ground floor, this part will incur costs with the standard rate of VAT.

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 development 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 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.

9.6 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.

10. APPENDICES

10.1 Appendix 1 - Red line boundary plan of Wimbourne Street - Existing site plan

10.2 **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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