

Title of Report	DE BEAUVOIR ESTATE PHASE 1 - APPROPRIATION OF LAND FOR PLANNING PURPOSES		
Key Decision No	CHE S160		
For Consideration By	Cabinet		
Meeting Date	12 December 2022		
Cabinet Member	Cllr Guy Nicholson, Deputy Mayor for Delivery, Inclusive Economy & Regeneration		
Classification	<p>Open with exempt appendix:</p> <p>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.</p>		
Ward(s) Affected	De Beauvoir		
Key Decision & Reason	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center; vertical-align: middle;">No</td> <td style="padding-left: 10px;">This report is not a key decision as it only affects one ward and does not have a significant impact on spending or saving.</td> </tr> </table>	No	This report is not a key decision as it only affects one ward and does not have a significant impact on spending or saving.
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Implementation Date if Not Called In	20 December 2022		
Group Director	Rickardo Hyatt, Group Director Climate, Homes and Economy		

1. Cabinet Member's introduction

- 1.1. Hackney's Council housing provides a safe, stable and affordable place to live for more than 20,000 families in the borough. As the demand for homes has grown and house prices and private sector rents have increased, the availability of Council homes has become more important than ever.
- 1.2. That's why Hackney is building. Between May 2018 and May 2022 through our pioneering, not-for-profit house building programme we started, completed or received planning permission for nearly 2,500 homes. More than half the homes we build are for social rent, shared ownership or Hackney Living Rent, with the rest sold outright to help pay for them – a model now followed by other Councils across London and the UK.
- 1.3. But we're not stopping there. Despite the challenges caused by the coronavirus pandemic and the increasing cost of construction, we're determined to develop plans to deliver more new Council homes in the years ahead.
- 1.4. Phase 1 of the De Beauvoir Estate development sits within the Council's current Housing Supply Programme and aims to deliver 189 new mixed tenure homes, non-residential space and associated public realm improvements. 59 of these homes will be new social rent Council homes.
- 1.5. The project comprises five development sites (outlined in red on the plan at Appendix 1), all located in the south west of the borough, on the De Beauvoir Estate within the De Beauvoir Ward. The De Beauvoir Estate is bounded by Southgate Road to the west, Downham Road to the north, Hertford Road to the east, and the Regent's Canal to the south. Four of five sites are located towards the north of the estate, next to Downham Road, with the fifth site positioned at the south of the estate next to the Regent's Canal. The five sites currently comprise of an underused car park and garages, storage areas, a multi-use games area (MUGA) and a small community facility used by the De Beauvoir Estate Tenants and Residents Association (TRA), both of which will be relocated. No existing homes will be demolished as a result of the redevelopment of these sites.
- 1.6. This report seeks authority to appropriate, for planning purposes, land at Downham Road West, 81 Downham Road/TRA, Downham Road East, Hertford Road and Balmes Road on the De Beauvoir Estate. 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.
- 1.7. As with all the new developments the Council builds, this will not just prioritise local people for a new home – it will ensure wider improvements for the local neighbourhood through investment in better public spaces and re-provided community facilities.

1.8. I commend this report to Cabinet.

2. **Group Director's introduction**

2.1. The Housing Supply Programme is based on 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 Downham Road West, 81 Downham Road/TRA, Downham Road East, Hertford Road and Balmes Road, in order to bring forward the 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.

2.4. Cabinet is also requested to record formally that no objections were received to the open space advertisements placed under Sections 122(2A) and 123(2A) of the Local Government Act 1972 in respect of the appropriation of and future disposals of the land at Downham Road West shown outlined in red on the plan at Appendix 2.

3. **Recommendations**

Cabinet is recommended:

3.1. **To agree that the land at Downham Road West, 81 Downham Road/TRA, Downham Road East, Hertford Road and Balmes Road, shown edged red on the plan at Appendix 1, which is currently held for housing purposes under the Housing Revenue Account (HRA), is no longer required for those purposes.**

3.2. **To approve the appropriation of the land set out at 3.1 for planning purposes to facilitate the carrying out of the development pursuant to section 122(1) of the Local Government Act 1972.**

3.3. **To agree that following completion of the development proposals at 3.2 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 for 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.**

3.4. **To authorise the Group Director Climate, Homes and Economy and the Director of Legal, Democratic and Electoral Services to deal with all**

necessary arrangements to effect the appropriation set out in this report.

4. Reason(s) 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/use scheme at De Beauvoir Phase 1, the appropriation of the land shown within the red line at Appendix 1 is required.
- 4.3. The land at Downham Road West, 81 Downham Road/TRA, Downham Road East, Hertford Road and Balmes Road, as shown in Appendix 1, for which authority to appropriate is being sought, is currently housing land administered under the Housing Revenue Account (HRA). Once the development has been completed, the land will be appropriated as housing land and transferred back to the HRA.
- 4.4. The land at Downham Road West shown on the Plan at Appendix 2, is currently open space land, as such it is subject to a change of use for mixed tenure housing. Notice of the intended appropriation for planning purposes and future disposals has been advertised in the Hackney Gazette on 22 and 29 September 2022.
- 4.5. Cabinet is requested to formally record that no objections have been received to the proposed appropriation of the land at Downham Road West shown on the Plan at Appendix 2. Once the development has been completed, the land will be appropriated as land and transferred back to the HRA.
- 4.6. 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 while 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 3 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 De Beauvoir Phase 1 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 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**

Policy Context

- 6.1. The Council's Sustainable Community Strategy 2018-2028 has five priorities, and the De Beauvoir Phase 1 development assists in meeting these priorities in the following ways.
- 6.2. The first priority is centred around creating an area where everyone can enjoy a good quality of life and where the whole community can benefit from growth. The De Beauvoir Phase 1 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 spaces have been designed following extensive engagement with the existing community so that they meet their needs while also being inclusive, welcoming and accessible to incoming residents.
- 6.3. The construction of the De Beauvoir Phase 1 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. The scheme will provide a number of new commercial spaces on the ground floors of the sites that will be let to businesses to provide local facilities.
- 6.4. The architectural, mechanical and electrical and public realm designs for the De Beauvoir Phase 1 development are centred around creating a greener and more environmentally sustainable community as per the third priority of the Sustainable Community Strategy 2018-2028.
- 6.5. The fourth priority of creating an open, cohesive, safer and supportive community will be achieved through the provision of improved landscaping; increasing communal space across all five sites, providing new play areas that cater to all ages, together with sports facilities which includes redesigning the underused existing Multi-Use Games Area (MUGA) and re-providing as two MUGAs in different areas of the estate as part of the new

development. This is alongside offering employment and training opportunities.

- 6.6. 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.

Equality impact assessment

- 6.7. A full Equality Impact Assessment (EIA) has been completed to assess the equalities impacts of the De Beauvoir Phase 1 development. This assessment identifies opportunities to promote equality or avoid negative equality impacts as a result of the development. On balance, the negative impacts are outweighed by the positive impacts on different equality groups. The EIA action plan reflects that the relationship and ongoing support for De Beauvoir Estate residents is paramount to ensure any emerging issues are promptly addressed particularly in the context of the Covid-19 pandemic.
- 6.8. 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 De Beauvoir Phase 1 development contains 19 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.

Sustainability and climate change

- 6.9. The architectural, mechanical and electrical and public realm designs for De Beauvoir Phase 1 are driven by the sustainability goals of the project. The development will exceed 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 facades, quality indoor spaces and a new public realm which has both social and environmental benefits.
- 6.10. The De Beauvoir Phase 1 development will redevelop garages and associated car parking spaces/podiums, alongside underused depot space, 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 De Beauvoir Phase 1. The development includes the introduction of a new public realm, enhanced landscape areas, as well as improved access to the existing estate through the family of buildings that will be constructed, which will help integrate new and existing buildings. Two new Multi-Use Games Areas will promote play in the community.
- 6.11. 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.

- 6.12. The new buildings for the De Beauvoir Phase 1 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.
- 6.13. Recycling construction waste and the development of a Site Waste Management Plan (SWMP) are mandatory, and a draft SWMP and Construction Logistic Plan (CLP) is included with the planning application. The principal contractor will be required to produce both a full SWMP and CLP, and minimise construction-related disruption to residents and other neighbouring buildings during the construction period.
- 6.14. In line with Hackney's Cycle Parking and Storage Standards, the scheme encourages sustainable transport through the provision of 440 secure cycle spaces within the entrances to each building and 29 cycle spaces within the landscape boundaries for the new public realm.
- 6.15. The De Beauvoir Phase 1 development and others will fall under the Ultra Low Emission Zone (ULEZ) when construction commences. An assessment has been undertaken to quantify the potential impacts on local air quality associated with the construction and operation of the proposed development. Based on the results of the assessment, it is considered that redevelopment of the site would not cause a significant impact on local air quality. During the construction phase, the site has the potential to generate dust nuisance beyond the application boundary. However, through the implementation of a Dust Management Plan, the impacts will be effectively minimised and are unlikely to be significant.
- 6.16. The proposed development will be car-free and therefore the impact of operational traffic on local air quality is anticipated to be negligible. The transport and building-related emissions have both been assessed as Air Quality Neutral. A review of local air quality monitoring data has been undertaken to assess the suitability of the site for residential use. The data indicates a possible exceedance of the long-term air quality objective for NO₂ at residential facades on Downham Road. Mechanical Ventilation with Heat Recovery (MVHR) is therefore proposed for all residential units, with NO_x filtration where required.

Consultations

- 6.17. An extensive consultation programme was undertaken prior to the planning application being submitted, 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 could provide feedback on the proposals.

6.18. The proposals for De Beauvoir Phase 1 were presented to the Residents Steering Group, Tenants and Residents Association, 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 De Beauvoir Estate and to surrounding addresses.

6.19. Activities undertaken as part of the consultation process have included:

- An estate wide consultation exercise was held for all residents of De Beauvoir Estate; the first taking place in April 2019, the second in November 2019 (including block specific events) and the final public consultation taking place in September 2020, with a pre-planning submission public exhibition in March 2021
- The De Beauvoir Estate project webpage has been kept updated throughout, so that interested stakeholders could find out more about the proposals and view the materials online
- Newsletters have been regularly distributed to local residents and businesses since March 2018, with the last one being issued in October 2021 and an update due to go out shortly.

6.20. Throughout the design development stages, eight pre-application discussions and workshops were held with LB Hackney Planning and Design officers, alongside a pre-application meeting with the GLA.

6.21. During the design development process 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 where possible. These include:

- Planning
- Housing Management
- Highways
- Play team
- Refuse and Recycling
- Sales and Marketing
- Heating team
- Building Maintenance
- Building Safety
- Building Control
- Civil Protection Service
- Grounds Maintenance
- Leasehold Services
- Property and Asset Management.

- 6.22. In addition the project team presented the proposals to Hackney's Regeneration Design Advisory Group, Hackney's Design Review Panel, local ward councillors, the Resident Steering Group, Police Crime Prevention Advice Service, Kingsland Conservation Areas Advisory Committee (KCAAC) and the Hackney Society.
- 6.23. Appropriation of the open space at Downham Road West as shown in Appendix 2 does not require a formal consultation. The Council is, however, required to formally consider any objections received in response to the advertisements placed in compliance with the open space requirements. No objections were received in response to the advertisements that were placed in editions of the Hackney Gazette dated 22 and 29 September 2022.

Risk assessment

- 6.24. 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 De Beauvoir Phase 1 is required to reduce the risk of legal action, which could result in delays and increased costs of delivering the project. While the appropriation does not prevent any claims for compensation, it limits claims to six years. Right of Light insurance will be obtained and the cost of this will need to be managed alongside other project expenditure to maintain agreed viability levels.

8. VAT implications on land and 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 of Legal, Democratic and Electoral 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.
- 9.4. 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.
- 9.5. 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.
- 9.6. 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.
- 9.8. There is a requirement in Section 122(2A) of the 1972 Act that, before any proposed appropriation which includes such open space takes effect, it is advertised in a local newspaper for two consecutive weeks and that any objections which are received are formally considered.
- 9.9. As individual units, once constructed, will be disposed of under long leases, there is also the requirement under Section 123(2A) of the 1972 Act that such disposal be similarly advertised in a local newspaper for two consecutive weeks and that any objections which are received are also formally considered. This requirement is also reproduced in identical terms in Section 233 of the 1990 Act which relates to disposals of land that have been appropriated for planning purposes.

The advertisements in respect of both the proposed appropriation and the proposed disposal appeared in the Hackney Gazette editions of 22 September 2022 and 29 September 2022. This report fulfils the requirement to formally record that no objections were received.

Appendices

Appendix 1 - [Red line boundaries plan of De Beauvoir Phase 1 sites](#)

Appendix 2 - [Red line boundary of open space land at the Downham Road West site shown in plan](#)

Appendix 3 - Exempt

Exempt

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 documents

None.

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