

<b>Title of Report</b>	<b>MARIAN COURT, E9 6TD - APPROPRIATION OF LAND FOR PLANNING PURPOSES</b>		
<b>Key Decision No</b>	CHE S158		
<b>For Consideration By</b>	Cabinet		
<b>Meeting Date</b>	12 December 2022		
<b>Cabinet Member</b>	Cllr Guy Nicholson, Deputy Mayor for Delivery, Inclusive Economy & Regeneration		
<b>Classification</b>	<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>		
<b>Ward(s) Affected</b>	Homerton		
<b>Key Decision &amp; Reason</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center; vertical-align: middle;">No</td> <td style="padding: 5px;">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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<b>Implementation Date if Not Called In</b>	20 December 2022		
<b>Group Director</b>	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. As part of this commitment and through the Estate Regeneration Programme, in July 2020 we secured planning permission to build 160 new homes on the former Marian Court site. More than half of these homes will be genuinely affordable Council homes – whether social rent or shared ownership, and will be paid for by building and selling some homes outright. The proposal was subsequently referred to the Greater London Authority (GLA) for review, and written approval was received on 6 July 2020.
- 1.5. This report seeks authority to appropriate, for planning purposes, vacant land at the Marian Court site, fronting Homerton High Street in Homerton ward. 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.
- 1.6. I commend this report to Cabinet.

## **2. Group Director's introduction**

- 2.1. The Estate Regeneration 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 Marian Court, 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.

3. **Recommendations**

**Cabinet is recommended:**

- 3.1. **To agree that the land at Marian Court, 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 agree to 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 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.**
- 3.4. **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 scheme at Marian Court, the appropriation of the land shown within the red line at Appendix 1 is required.
- 4.3. The land at Marian Court, as shown in Appendix 1, is currently housing land administered under the Housing Revenue Account (HRA). Following appropriation for planning purposes, the land 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 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 2 provides further background information.
- 4.5. The demolition of the last remaining block at Marian Court is due to complete in December 2022, with the last of the foundations being removed in January 2023. The site will have no residential properties remaining as of the date of the Cabinet Meeting and, therefore, consent of the Secretary of State (by virtue of section 19 of the Housing Act 1985) is not required.

## 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 Marian Court 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 Marian Court development assists in meeting those 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 Marian Court 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 and retail 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.

- 6.3. The construction of the Marian Court development will create jobs, training and apprenticeship opportunities for local people, which will allow residents and businesses to fulfil their potential and enjoy the benefits of increased prosperity, in line with the second priority.
- 6.4. The architectural, mechanical and electrical and public realm designs for the Marian Court 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 and new play areas as part of the development; as well as offering employment and training opportunities during the construction phase, such as local labour, apprenticeship, and Hackney 100 placements. The scheme will also provide new commercial spaces that will be let to businesses to provide local facilities.
- 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. 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 Marian Court development contains 16 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

- 6.8. The architectural, mechanical and electrical and public realm designs for Marian Court 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.
- 6.9. The Marian Court development will 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 including open spaces that incorporate a range of play areas for children of different ages, and foster community cohesion through their accessibility to those with mobility issues and the wider community. Cohesion is further enhanced by the provision of an enlarged, replacement community centre and making the development tenure blind.

- 6.10. 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.
- 6.11. The new buildings for the Marian Court 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 original energy strategy approved at planning in July 2020 included a gas-fuelled Combined Heat and Power (CHP) system, with photovoltaic panels (PVs) on the roof. The built scheme will adopt air source heat pump (ASHP) technology and retain PVs on the roof, in order 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.
- 6.12. 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.
- 6.13. In line with Hackney's Cycle Parking and Storage Standards, the scheme encourages sustainable transport through the provision of secure cycle spaces and will be car-free, encouraging pedestrian/cycle movement through the development. The location also has good access to public transport.
- 6.14. The Marian Court development 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.

#### Consultations

- 6.15. 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, current and former Marian Court residents with a Right to

Return, businesses 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.

6.16. The proposals for Marian Court were presented to existing and former residents, the Resident Steering Group, local ward councillors and the local community at a series of meetings, drop-in events, workshops and briefings. There have also been a number of newsletters produced that provided information and updates on the scheme.

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

- The Marian Court (and adjacent Bridge House development) project webpage has been kept updated throughout, so that interested stakeholders could find out more about the proposals and view the materials online
- During the scheme development there has been ongoing communication with former residents, particularly those with the Right to Return
- Various newsletters have been issued, the latest of which was in December 2020, notifying adjacent residents of the impending demolition of Marian Court, and a further communication went out to surrounding residents and businesses in autumn 2021
- Statutory consultation with local residents and businesses took place between January and April 2018
- Between March and September 2017 four public drop-in events were held at the Marian Court Community flat.

6.18. Throughout the design development stages, pre-planning application meetings were held with the Local Planning Authority. Further meetings have been held with the Planning Officer, with responsibility for this development.

6.19. 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
- Highways
- Strategic Property Services
- Refuse and Recycling
- Sales and Marketing
- Housing Services
- Building Safety.

6.20. In addition, the project team presented the proposals to Hackney's Regeneration Design Advisory Group, Hackney's Design Review Panel and local ward councillors, the Resident Steering Group and former residents with a Right to Return.

- 6.21. The 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.
- 6.22. As part of the process, Statutory Planning consultation was carried out over a period of four months, commencing in January 2018, with local adjoining owners/occupiers, external stakeholders including the GLA and with internal Council departments.

#### Risk assessment

- 6.23. 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 Marian Court 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. 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. 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. Paragraph 4.5 confirms that there will be no dwellings on the land to be appropriated. Therefore Secretary of State consent is not required.

### **Appendices**

Appendix 1 - [Red line boundary of Marian Court](#)

Appendix 2 - 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.

<b>Report Author</b>	Max Anderson Project Manager <a href="mailto:max.anderson@hackney.gov.uk">max.anderson@hackney.gov.uk</a> 020 8356 4793
<b>Comments for the Group Director of Finance and Corporate Resources prepared by</b>	Adam Jauncey Group Accountant - Housing (Finance and Resources) <a href="mailto:adam.jauncey@hackney.gov.uk">adam.jauncey@hackney.gov.uk</a> 020 8356 7922
<b>Comments for the Director of Legal, Democratic and Electoral Services prepared by</b>	Georgia Lazari Team Leader (Places) <a href="mailto:georgia.lazari@hackney.gov.uk">georgia.lazari@hackney.gov.uk</a> 020 8356 1369