

Decision Maker: EXECUTIVE
FOR PRE-DECISION SCRUTINY AT THE RENEWAL,
RECREATION AND HOUSING POLICY DEVELOPMENT AND
SCRUTINY COMMITTEE

Date: 20th September 2020

Decision Type: Urgent Executive Key

Title: LAND APPROPRIATION

Contact Officer: Isabelle Haddow, Interim Head of Regeneration
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Chief Officer: Sara Bowrey, Director of Housing, Planning, Property and Regeneration

Ward: Plaistow and Sundridge

1. Reason for report

- 1.1 This report concerns the appropriation of the land for Brindley Way following the planning permission granted for the site on the 31st July 2020 under planning reference 20/0030/FULL1.
- 1.2 The project is now moving from the planning phase into the delivery phase including dealing with all the property aspects including rights and restrictive covenants.

RECOMMENDATION(S)

That Members of the Renewal, Recreation and Housing Policy Development and Scrutiny Committee:

- 2.1 Note and comment on the contents of the report.

It is recommended that the Executive:

- 2.2 Exercises its powers of appropriation pursuant to section 226 of the Town & Country Planning Act 1990;
- 2.3 Resolves that it is the intention of the Council to appropriate the relevant land for planning purposes in order to engage section 203 of the Housing and Planning Act 2016 in order to override the restrictive covenant, easements and other rights to enable the Council to carry out the development at Brindley Way;

- 2.4 Resolves to give delegated authority to the Director of Renewal, Recreation and Housing in consultation with the Portfolio Holder for Renewal, Recreation and Housing and the Director of Corporate Services to approach any affected parties to agree statutory compensation and ensure that all appropriate legal documents are completed.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Not Applicable:
 2. BBB Priority: Children and Young People Excellent Council Quality Environment Safe Bromley Supporting Independence Vibrant, Thriving Town Centres Healthy Bromley Regeneration Not Applicable: Further Details
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Financial

1. Cost of proposal: The estimated cost of any compensation cannot be quantified at this point
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Capital Programme
 4. Total current budget for this head: £3.8m
 5. Source of funding: Section 106 contributions and Investment Fund
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Personnel

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Applicable Not Applicable: Further Details
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

3. BACKGROUND

- 3.1 The London Borough of Bromley granted planning permission for 25 affordable homes (10x one bedroom, 15x two bedrooms) on the 14th July 2020 under ref 20/00300/FULL1. The site is owned by the Council and is currently in use as a car park. The redevelopment of the site will retain 84 public car park spaces with 15 spaces reserved for residents of the new development.
- 3.2 This site was identified for redevelopment as part of the Council's strategy to support the housing challenges facing the borough. There are currently around 1700 households in Temporary Accommodation within the London Borough of Bromley, of which many are in costly forms of nightly paid accommodation. This incurs a large cost to the Council and unstable living conditions for many of the borough's residents. The development has been delivered in direct response to these issues and is 100% affordable.
- 3.3 The registered title for the development site is subject to restrictive covenants one of which restricts development without the prior approval of the beneficiary. Consideration of adjoining properties right to light as a result of the development is also given. The 'right of light' refers specifically to a property's right to a certain amount of light where there is considered to be a loss caused through new development. It is a civil matter, separate from local planning authority consideration.
- 3.4 In order to override the restrictive covenant and any rights to light which may be infringed by the Council's development, the Council will need to appropriate the development site for planning purposes pursuant to section 246(1) of the Town and Country Planning Act 1990.
- 3.5 A local authority may exercise the power of appropriation where it considers development or re-development to meet certain objectives. There is a compelling case in the public interest to appropriate the land for planning purposes under section 226 of the Town and Country Planning Act 1990, to engage section 203 of the Housing and Planning Act 2016 and enable the development to proceed and the public benefits to be realised. This report recommends that the land is appropriated, and outlines how it meets these objectives.
- 3.6 It should be noted that the Property Legal team sent a letter to Sundridge Park Estate Bromley (the owner of the covenant) on 11th July 2019 to request that they release or vary it and a response is yet to be received.

4. PLANNING PERMISSION

- 4.1 Through the planning process, the Council has engaged and consulted a wide range of consultees upon the potential impact of development. The development of the planning proposal has been subject to a range of public awareness and engagement exercises, including public engagement prior to the submission of the application to the London Borough of Bromley's Planning department. Substantive public engagement has taken place using a number of means, including:
- A public exhibition with a display building at the Bromley Civic Centre receiving 155 comments and feedback on the proposal;
 - 344 letters and consultation material sent to local residents in Burnt Ash Lane, Milk Street, Miller Close, Pike Close, Ravensleigh Gardens and Roslin Way. As well as Burnt Ash Lane Library; St Andrews Church Hall and all commercial properties from 71-134, Burnt Ash Lane Parade;
 - Held a public engagement event/evening held with approx. 70 local residents in attendance with consultation material outlining the proposal and how to comment on the design.

- 4.2 Comments received through any of the public engagement were considered as part of the project group and updated proposals were submitted to Planning. All public engagement was undertaken in accordance with the Statement of Community Involvement policy with a formal statement submitted as part of the application.
- 4.3 The application was then submitted to Planning and subject to 21 days of formal consultation, the application received comments and objections on the following matters:
- Parking
 - Crime
 - The location of housing
 - Construction
 - Light
- 4.4 To address these concerns, changes and revisions were made to the proposals and further work undertaken. The Council commissioned a Daylight and Sunlight Assessment, which used 3D modelling of the proposals to assess the impact upon neighbouring properties. In planning terms, the impact has also been deemed as acceptable due to the orientation of the proposed development in relation to the existing windows. No further correspondence on this matter has been had and after 6 weeks from the date of the planning permission, the decision to grant permission is free from legal challenge.
- 4.5 The local planning authority (LPA) granted permission following the publication of the Decision Note 31st July 2020 (following the public Development Control Committee 14th July 2020). Permission was granted under the following conditions, (amongst others):
- Affordable housing is set at social rent levels in accordance with Government levels, in perpetuity and in accordance with the Council's housing nomination policy;
 - The implementation of glazed obscured side windows;
 - Sustainable drainage design and details to be submitted and approved by the LPA;
 - A land contamination assessment to be submitted for approval and remediation works shall be carried out on site in accordance with the LPA and Policy 118 of the Bromley Local Plan;
 - Construction management plan programme detailing the timing of car parking closure periods and relevant mitigation plan be submitted, including an air quality neutral assessment, be submitted and approved by the LPA.
- 4.6 The above are being processed and undertaken in relation to the construction commencement dates and will be submitted as the scheme moves to delivery.
- 4.7 It is clear from the reasons given for the grant of planning permission that the development meets current planning requirements including the impact of the Development on amenity, particularly on daylight in the context of the Development location, with the overall effects found to be acceptable. The project is now moving from the planning phase into the delivery phase including dealing with all the property aspects including rights and restrictive covenants.
- 4.8 Whilst the consultation undertaken by the Council was not directed towards the appropriation, further public consultation is not considered necessary to enable the Council to form the view that the proposed development as a whole is in the public interest. The Council will engage directly with the particular right holders if any, in respect of the release of rights in order to engage the provisions of section 203 of the 2016 Act to commence the development.

5. OPTIONS AND ANALYSIS

- 5.1 In assessing this report, officers have considered the likely implications of not exercising the Council's statutory powers to appropriate the land for planning purposes and to engage section 203 of the 2016 Act. These are:
- that the Development will not proceed as proposed and the public benefits will be lost;
 - Following commencement of development, an injunction could be brought forward by affected neighbours for the infringement of their rights of light.
- 5.2 It was in the planning process that the issue of rights of light arose when several objectors living in the vicinity of the property raised this as an issue in their objection submissions. As detailed above, through the planning process further work was undertaken (para. 4.4) and no further correspondence has taken place from the objectors. This does not preclude the prospect of an injunction, which is the primary remedy for any infringement of a right. However, since there has been no further correspondence on this matter, that the impact of the development is not considered to be substantive based on the analysis at planning and the time to reach negotiated settlements causing delays to development; officers do not consider this risk to appropriating the land for planning purposes proportionate.
- 5.3 Furthermore, the grant of planning permission provides strong support that the development will be of benefit to the public, which may be relevant to the question for a court as to whether or not to grant an injunction, but is by no means conclusive in light of current case law. Because of the urgent need for Temporary Housing, officers had prioritised the public benefits but will resolve any claims for compensation where an actionable right is found to exist after receipt of the Right of Light Report when it has been commissioned.
- 5.4 Significant uncertainty therefore leads officers to consider that removing the risk of injunction is important in order to deliver the wider social benefits of the scheme.

6. RIGHTS OF LIGHT AND RESTRICTIVE COVENANTS

- 6.1 Based on the aforementioned considerations during the planning process, the Council has not commissioned a Rights of Light survey in order to ascertain whether the development will infringe on the legal right of light enjoyed by property owners.
- 6.2 When a survey is commissioned, the Council will enter into discussions with any property owners whose rights to light may be adversely affected by the Council's development and will try to ascertain the current beneficiary/ies of the restrictive covenants imposed upon the Council at the time the property was transferred in 1927 and which inter alia restricts the development or re-development of the site without the prior approval of the person or persons currently having the benefit of the said covenants.
- 6.3 It is important to note that ascertaining the current beneficiaries may become a protracted process and given the council's need for urgent Temporary Accommodation in the Borough, it will be necessary to appropriate the land for planning purposes presently and to reach agreement with any affected parties thereafter.

7. STATUTORY POWERS OF APPROPRIATION

- 7.1 Section 203 of the Housing and Planning Act 2016 is the legal mechanism by which the council is permitted to proceed to carry out the development works notwithstanding that they will interfere with a covenant, easement or any other third party right. The party with the benefit of such a right is no longer able to protect that right by way of an injunction preventing the Council

from commencing the development. Instead, the injured party or parties will gain the right to statutory compensation.

- 7.2 Under Section 204 of the Housing and Planning Act 2016 the Council is liable to pay compensation for any interference with the relevant right or interest or breach of restriction which is authorised by section 203 of the 2015 Act. The compensation is calculated on the same basis as compensation payable under the Compulsory Purchase Act 1965.
- 7.3 Section 226 of the Town and Country Planning Act 1990 permits the Council to appropriate land which is required for planning purposes to facilitate the delivery of the development permitted by the grant of planning permission together with the realisation of the associated public benefits.
- 7.4 Section 246 of the Town and Country Planning Act 1990 provides that reference to the appropriation of land for planning purposes is a reference to the appropriation of it for purposes for which land can be acquired under sections 226 and 227 of the 1990 Act.

8. MEETING THE REQUIREMENTS

- 8.1 As the planning permission is in place and is free from challenge, the next stage is to appropriate the land for planning purposes. There are compelling reasons for the Council to appropriate the site as the proposed development will facilitate the carrying out of the development for which planning permission has been granted in relation to the land.
- 8.2 It is important to note that the planning permission is retained regardless of this decision and development can proceed without risk following the appropriation of the land.
- 8.3 A local authority can exercise the power of appropriation where the development or re-development is likely to contribute to the achievement of any one or more of the following objectives:
 - (a) the promotion or improvement of the economic well-being of their area;
 - (b) the promotion or improvement of the social well-being of their area;
 - (c) the promotion or improvement of the environmental well-being of their area.
- 8.4 To demonstrate the Brindley Way planning permission meets the above conditions, the following evidence is presented:
 - (a) the promotion or improvement of the economic well-being of their area;
 - The development will provide 25 households currently living in temporary accommodation a permanent form of housing at affordable rent levels. This will provide residents and households a form of rental stability, greater financial security, enabling those to make positive economic choices to the benefit of the economic well-being of the area.
 - The scheme is located in close proximity to Burnt Ash Lane 'Neighbourhood Area and Shopping Parade' in the Local Plan. Development in these areas is expected to maximise the benefits to support and enhance the vitality and viability. The development proposal will provide 25 additional houses. The close proximity to the local shops is likely to support the economic vitality of the local shopping parade as future residents are likely to use and depend on these local amenities. Furthermore, the future residents of the site will use other local services in the area, supporting the economic wellbeing of the area.

(b) the promotion or improvement of the social well-being of their area;

- The development will benefit the social well-being of the area as it will provide 25 affordable houses for those currently living in temporary accommodation. The houses will benefit those currently in temporary accommodation as well as those in the future as the site will remain as affordable housing in perpetuity.
- The scheme will also create mixed communities as the scheme will provide for a range of household sizes, as the 1 and 2 bedroom houses will be able to accommodate for 1-4 people. Families and those living independently will be accommodated as part of the proposal, promoting community cohesion as part of the development area and to the wider area.
- The site is also located in a predominately residential area and is close to nearby amenities and public transport links.

(c) the promotion or improvement of the environmental well-being of their area.

- It is a sustainable development which uses sustainable building materials to reduce carbon emissions. These materials help to keep running costs at a minimum for residents which promotes an environmentally and economical way of living.
- It is a new development which improves the overall façade of the area. This development will implement new amenities such as landscaping, cycle lanes, pedestrian which further improve the overall area and its surroundings. This sustainable development will make individuals in the area more environmentally aware of the environment, their choices and will encourage them to live sustainably.

9. IMPACT ON VULNERABLE ADULTS AND CHILDREN

The proposed recommendations support the delivery of affordable housing, supporting children and vulnerable people through the provision of housing supply.

10. POLICY IMPLICATIONS

N/A

11. FINANCIAL IMPLICATIONS

11.1 In exercising its statutory powers to appropriate the Land in Brindley Way Car Park, the Council may incur compensation costs which are unquantified at this stage.

11.2 It is currently anticipated that any such costs will be contained within the existing contingency allocation for the scheme.

12. PERSONNEL IMPLICATIONS

N/A

13. LEGAL IMPLICATIONS

13.1 The legal powers available to the Council to appropriate the Land at Burnt Ash Car Park for planning purposes, in order to engage the provisions of Section 203 of the 2016 Act and override third party rights, are identified and explained in paragraphs 7 - 8 of this report.

14. PROCUREMENT IMPLICATIONS

N/A

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	Burnt Ash Lane Car Park, Bromley Sunlight and Daylight Assessment, Erban Consulting