

**Decision Maker:** EXECUTIVE

**For pre-decision scrutiny at the Renewal, Recreation and Housing Policy Development and Scrutiny Committee 16<sup>th</sup> December 2020**

**Date:** 13<sup>th</sup> January 2021

**Decision Type:** Non 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 and Regeneration

**Ward:** Chislehurst and Crystal Palace

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1. Reason for report

- 1.1 This report concerns the appropriation of the land at Anerley Town Hall Overflow car park and Bushell Way following the planning permission granted for the sites in December 2020.
- 1.2 These projects are now moving from the planning phase into the delivery phase including dealing with overriding of easements and rights in land.

**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 the Council's 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 to override any easements and other rights to enable the Council to carry out the developments at Anerley Town Hall Overflow car park and Bushell 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.
- 2.5 Notes that the valuations of the sites for appropriation to the Housing Revenue Account are £470k for Anerley Town Hall car park and £1,350k for Bushell Way.

## 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: £6.2m
  5. Source of funding: Section 106 contributions, Internal Borrowing from the General Fund, GLA Affordable Housing Grant
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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 (LBB) granted planning permission for 10 affordable homes (4x 1 bed and 6x 2 bed) on the 19<sup>th</sup> November 2020 under ref: 20/02944/FULL1 at Anerley Town Hall overflow car park. The site is in use as a private overflow car park for the Anerley Town Hall. Planning permission for 25 affordable homes (10x one bedroom, 15x two bedrooms) on the 19<sup>th</sup> November 2020 under ref: 20/02903/FULL1 at Bushell Way. The site is owned by the Council, previously the site was Banbury House and is currently vacant.
- 3.2 The sites were 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 borough, 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 are both 100% affordable.
- 3.3 In order to override any easements or rights with either of the sites 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.
- 3.4 A local authority may exercise the power of appropriation where it considers development or re-development meets certain objectives. There must be 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 the relevant objectives.
- 3.5 The report also outlines the proposed approach of appropriating the land into the Housing Revenue Account (HRA). The decision to open the HRA was made in July 2020 by Full Council decision. The HRA is an account used to record all expenditure and income on running a Council's own housing stock and closely related services or facilities. It sits as a separate ring-fenced budget outside of the General Fund.
- 3.6 The basic premise for operation of an HRA is that all costs are met through the rental stream from tenanted properties. The report Housing Finances (ref: HPR2020/038) recommends that the sites are held in the HRA, as this will enable the Council to avail of grant funding for affordable housing. The timing of the appropriating into the HRA is important to ensure that the HRA is in surplus, ensuring the Council is eligible for the GLA Grant to support the scheme funding.
- 3.7 There is also a sequence to appropriation that the Council is guided by. The appropriation for planning purposes will allow the Council to start development on site. Works will commence after the expiry of the 6 week planning Judicial Review period.
- 3.8 Whilst the process of transferring the sites into the HRA does not take place on the open market, a market valuation of the site has been undertaken. The timing of appropriating into the HRA is important to ensure that the costs of the land value do not make it unviable for the HRA. The Leader previously agreed to delegate this to the Director of Housing, Planning and Regeneration in consultation with Director of Corporate Services and Director of Finance to undertake this at the relevant time.

### **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. public engagement has taken place using a number of means in conformity with the Council's Statement of Community Involvement, including:

- 273 letters and consultation material sent to local residents and businesses in the vicinity of the proposed development at Anerley
- 180 letters and consultation material sent to local residents in the vicinity of the proposed development at Bushell Way.

- 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 applications were then submitted to Planning and subject to 21 days of formal consultation, the application received comments and objections on the following matters for Anerley and Bushell:
- Traffic/parking
  - Overlooking
  - Construction
  - Design
  - Highways safety
- 4.4 All relevant planning matters have been overcome through both the planning application process and no objections remained. In relation to Anerley: three objections were received in relation to a potential loss of daylight from two from neighbouring properties to the south and west of the Development and one from a tenant in the Anerley Town Hall building. A Daylight and Sunlight Assessment has been submitted and there was considered to be little impact from a Planning perspective. No further correspondence has been received on this matter.
- 4.5 In relation to Bushell Way: twenty-five objections were received. All of these planning related objections were resolved through the formal planning process and there were no technical objections outstanding. Two comments were received in relation to sunlight/daylight and one from a neighbouring property in regard to existing rights of access within the Development envelop.
- 4.6 The Council was lawfully able to consider the applications as Local Planning Authority and the Development Control Committee resolved to grant planning permission at it's meeting on 19<sup>th</sup> November 2020. Planning permission takes effect from the date the permission is signed, and this will be happening imminently. There is no right of appeal against the grant of a planning permission is granted and any challenge needs to be brought by Judicial Review which must be commenced within 6 weeks form the date of the decision.
- 4.7 It is clear from the reasons given for the grant of planning permission that the both developments meet the planning requirements with the overall effects of the Development 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.

- 4.9 The searches have identified utilities and infrastructure under the sites – the contractors will discuss the issues with Thames Water to understand their requirements in due course and to enter into any further legal agreements as required. The compensation won't be at the same level as statutory compensation as Section 203 does not apply to statutory undertakers.

## **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 This does not preclude the prospect of an injunction, which is the primary remedy for any infringement of a right. However, since the planning application has been submitted no further correspondence on any of the objections received have been received, 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 COVENANTS**

- 6.1 Based on the aforementioned considerations during Planning, the Council has commissioned Rights of Light surveys in order to ascertain whether the development will infringe on the legal rights of light enjoyed by property owners.
- 6.2 For Anerley: due to the scale, height and massing of the proposed development, the location of it in relation to neighbouring property, officers do not consider there is a risk of any rights being infringed upon. As the survey has not been received as yet, the Council will enter into discussions with any property owners whose rights to light may be adversely affected by the Council's development. As part of the submission to planning, a Daylight and Sunlight survey was completed. This is for the purposes of a daylight and sunlight assessment which met the planning tests by concluding the proposed development sufficiently safeguards the daylight and sunlight amenity of the neighbouring properties.
- 6.3 At Bushell: A Shadow Study Report was undertaken, which used a massing model to create sun path diagrams to assess the impact upon neighbouring properties over different times of the year and the day. The study concluded that the rear garden of 1 Bushell Way is affected by the proposed only in January; the shadowing effect of the proposed building on 1 Bushell Way is

not dissimilar to the previous building on this site; and, there is minimal impact of shadowing on any of the remaining surrounding buildings.

- 6.4 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. COVENANTS AND RIGHTS OF ACCESS**

- 7.1 See Part 2.

## **8. STATUTORY POWERS OF APPROPRIATION**

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.

## **9. MEETING THE REQUIREMENTS**

- 9.1 As the planning permission is in place, 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.
- 9.2 Following the appropriation of the land, construction can proceed without risk of the Council being restrained by and Injunction by the beneficiary of any right or covenant.
- 9.3 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.

9.4 It is considered that the Anerley Town Hall Overflow Car Park planning permission meets the above conditions, for the following reasons:

(a) the promotion or improvement of the economic well-being of their area;

- The development will provide 10 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 Anerley Road, near to a number of retail and other amenities. Development in these areas is expected to maximise the benefits to support and enhance the vitality and viability. The development proposal will provide 10 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 10 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, sustainable 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 1-3 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 built up area of the borough, in close proximity to Anerley train station and other public transport links.

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

- It is a sustainable development which uses sustainable off site building methods reducing waste, noise, to the local area and reduces carbon emissions. The houses will also be low carbon in terms of running costs, with environmental and economic benefits by reducing bills for residents.
- It is a new, modern development which improves the overall façade of the area. This development will implement new amenities such as landscaping, and electric car charging vehicle points. This sustainable development will make individuals in the area more environmentally aware of the environment, their choices and will encourage them to live sustainably.

9.5 It is considered that the Bushell Way planning permission meets the above conditions, for the following reasons:

(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 a residential area with a range of local amenities and local services. Those residing in the homes will benefit existing businesses and 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.

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

- It is a sustainable development by using off-site construction methods reducing waste and noise. The modular units will also help to keep running costs at a minimum for residents which promotes an environmentally and economical way of living.
- The site is currently vacant and boarded off. This development will implement new amenities such as landscaping, cycle parking, electric charging vehicle points, pedestrian which further improve the overall area and its surroundings. The development will encourage individuals to live sustainably and boost local biodiversity with swift boxes and bug beds within the development.
- Furthermore, the scheme is designed to Secure by Design and will improve access and ingress and lighting providing benefits to those residing in the area.

## **10. IMPACT ON VULNERABLE ADULTS AND CHILDREN**

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

## **11. POLICY IMPLICATIONS**

11.1 Ensuring the delivery of the housing scheme at Anerley Town Hall Overflow Car Park will meet the Council's Housing and other policy objectives.

## **12. FINANCIAL IMPLICATIONS**

12.1 In exercising its statutory powers to appropriate the Land in Anerley Town Hall Overflow Car Park and Bushell Way, the Council may incur compensation costs which are unquantified at this stage. The survey costs are estimated to be around £1k and £3k respectively and will come out of the existing project budget.

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

12.3 In November 2020 the Leader agreed to delegate authority to the Director of Housing, Planning and Regeneration in consultation with the Director of Corporate Services and the Director of

Finance at the relevant time to appropriate these sites from planning purposes to housing purposes to be accounted for within the Council's Housing Revenue Account (HRA).

- 12.4 Valuations of the sites have now been carried out by Cushman & Wakefield, which value the sites at £470k for Anerley Town Hall car park and £1,350k for Bushell Way, which compares to the estimated values of £700k and £1,750k respectively (based on £70k per property) that were included in the Housing Finances report that was scrutinised by the Renewal, Recreation and Housing PDS Committee in November 2020.
- 12.5 The appropriation of the sites to the HRA would therefore result in a reduction to the General Fund Capital Financing Requirement (CFR) of £1,820k and an increase of the same amount to the HRA CFR.
- 12.6 Indicative financial implications relating to these sites was included in the Housing Finances report. As the land appropriation values are lower than those assumed in that report, the surplus generated by these sites within the HRA will increase, and full details will be included in the 30 year HRA business plan that is currently being developed.

### **13. PERSONNEL IMPLICATIONS**

- 13.1 No personnel implications applicable.

### **14. LEGAL IMPLICATIONS**

- 14.1 The legal powers available to the Council to appropriate the Land at Anerley Town Hall Overflow Car Park for planning purposes, in order to engage the provisions of Section 203 of the Housing and Planning Act 2016 Act and override third party rights, are identified and explained in paragraphs 7 - 8 of this report.
- 14.2 An appropriation for planning purposes following the grant of planning permission under section 246 of the Town and Country Planning Act confirms that the process is the same as the CPO process under sections 226 and 227 of the Town and Country Planning Act 1990 and a compelling case in the public interest must therefore be made.
- 14.3 In holding land for planning purposes, the Council will need to allocate it for 'planning and development' on the General Fund balance sheet.
- 14.4 Pursuant to s232 of the Town and Country Planning Act 1990, where land has been appropriated for planning purposes and is being held for that purpose, a Local Housing Authority can thereafter appropriate it for any purpose for which they are or may be authorised in any capacity to acquire land under any other enactment. In relation to land appropriated under section 232, the appropriation provisions in section 122(1) of the Local Government Act 1972 are excluded.
- 14.5 Where land is appropriated pursuant to s232 of the Town and Country Planning Act 1990 the stipulation in section 122(1) that the 'land must no longer be required for the purposes for which it is currently appropriated...' does not apply. Under s232 as long as land is held for planning purposes it can then be appropriated under any other enactment which authorises a Local Authority to acquire land.
- 14.6 Section 17(1)(a) of the Housing Act 1985 authorises a Local Housing Authority to acquire land as a site for the erection of houses.

- 14.7 Following the appropriation of the land under 232 of the Town and Country Planning Act 1990 as a site for the erection of houses under section 17(1) of the Housing Act 1985, the land will have to be re-allocated on the balance sheet as housing land within the Housing Revenue Account.
- 14.8 If the council is required to pay compensation relating to third party rights , that will be calculated based on any diminution in value of the land benefiting from the covenant.

**15. PROCUREMENT IMPLICATIONS**

15.1 N/A

<b>Non-Applicable Sections:</b>	
Background Documents: (Access via Contact Officer)	