

MAYOR AND CABINET			
Report Titles	RE-DEVELOPMENT OF HEATHSIDE AND LETHBRIDGE: PHASE 4 LAND APPROPRIATION		
Key Decision	Yes		
Ward	Blackheath		
Contributors	Executive Director For Customer Services, Executive Director For Regeneration And Resources Head Of Law		
Class	Part 1	Date	14 January 2015

1. Summary

- 1.1 Heathside and Lethbridge is an ongoing regeneration scheme being carried out in partnership with Family Mosaic. Phases 1 and 2 are complete and Phase 3 is currently being built. All three sites have been transferred to Family Mosaic's ownership. In February 2014, Mayor and Cabinet agreed that the Authority dispose of the Phase 4 site to Family Mosaic and this process is underway. Family Mosaic has also subsequently gained detailed Planning approval for the Phase 4 development.
- 1.2 In order to implement the redevelopment proposals, Family Mosaic have requested that the Council appropriate the Council owned land within Phase 4 for planning purposes.

2. Purpose of Report

- 2.1 To update Mayor and Cabinet on scheme progress.
- 2.2 To seek the necessary authority for the appropriation, for planning purposes, of the Council owned land within Phase 4 of the scheme, shown in bold edging on the attached plan in order to enable the powers in Section 237 of the Town and Country Planning Act (T&CPA) 1990 to be used to ensure that any restrictive covenants or other rights affecting the land can be overridden in the interests of the proper planning of the area, thereby allowing the redevelopment of the land to proceed.

3 Recommendations

The Mayor is recommended to:

- 3.1 subject to Secretary of State's consent under Section 19 of the Housing Act 1985 being obtained, agree to the appropriation of the

Council owned land within Phase 4 of the Heathside and Lethbridge Estate re-development scheme, shown in bold edging on the attached plan, from housing purposes to planning purposes under Section 122 of the Local Government Act 1972; and

- 3.2 approve the making of an application to the Secretary of State under Section 19 of the Housing Act 1985 for consent to the appropriation.

4 Policy Context

- 4.1 The re-development of Heathside and Lethbridge contributes to key national objectives, particularly meeting the decent homes standard and increasing the supply of affordable housing.
- 4.2 The whole scheme supports the Sustainable Community Strategy 2008 – 2020 especially the priority outcomes Reducing inequality – narrowing the gap in outcomes for citizens; Clean, green and liveable – where people live in high quality housing and can care for and enjoy their environment and Dynamic and prosperous – where people are part of vibrant communities and town centres, well connected to London and beyond.
- 4.3 Further, the re-development of Heathside and Lethbridge is in line with Lewisham’s established housing policy as set out in previous reports to Mayor and Cabinet and also contributes significantly to the Councils incoming Housing Strategy for 2009 –2014 ‘Homes for the future: raising aspirations, creating choice and meeting need’.
- 4.4 The Council has outlined ten corporate priorities which enables the delivery of the Sustainable Community strategy. The re-development of Heathside and Lethbridge addresses the corporate priorities to provide decent homes for all, to invest in social housing and affordable housing in order to increase the overall supply of new housing. The scheme will also develop opportunities for the active participation and engagement of people in the life of the community.

5 Project Progress

- 5.1 Summary of the principles of this project and progress to date:
 - The Council has an overarching Development Agreement in place with Family Mosaic for 6 Phase scheme which includes a bespoke financial model.
 - Family Mosaic has outline Planning permission for the overall scheme and is required to seek detailed Planning approval for each Phase. A development contractor is sought for each Phase.
 - The Homes and Communities Agency (HCA) have committed around £30m in support of the regeneration of Heathside and

Lethbridge across Phases 1 – 4.

- The structure of the scheme is that the Council forward funds the cost of obtaining vacant possession of the site and these costs are reimbursed by Family Mosaic. To date this has happened on Phases 1, 2 and 3.
- Of the 150 homes for social rent in Phases 1 and 2, around 120 are occupied by residents of the original Heathside and Lethbridge estate. Five resident leaseholders have bought into the development through shared equity.
- Phase 1: 138 homes were built between August 2010 and October 2012. This includes 80 homes for social rent, the rest being for sale and shared ownership. There are some ongoing significant problems with aspects of the building such as heating which are being addressed by Family Mosaic.
- Phase 2: 190 homes were built between January 2011 and April 2013, including 70 for social rent. Of these, 50 form a designated over 55's block designed to replace an over 55's block on the original estate.
- Phase 3: Contractor Ardmore started on site in August 2013 and homes are expected to be complete in stages during 2015 – 2016. There will be 98 homes for social rent, 8 for shared equity and 112 for sale.
- Phase 4: The Council has obtained vacant possession of Phase 4A. Tenants in Phase 4B will have the opportunity to move into new homes being built in Phase 3 however can also choose to move away through Homesearch. The contractor has been selected and start on site is due in early 2015. Planning approval for Phase 4 has been obtained by Family Mosaic.

6. Appropriating the Land

- 6.1 The Council owns the freehold interest of the Phase 4 site shown on the attached plan. There are 3 blocks within the site area, including 2 now vacant blocks (Travis House and Ferguson House) which comprise Phase 4A and Melville House which comprises Phase 4B and in respect of which the Council is in the process of re-housing the tenants and buying back leaseholders.
- 6.2 The Council acquires and holds property for various statutory purposes in order to provide its various functions. The subject property is currently held by the Council for housing purposes within the Housing Revenue Account. In accordance with Section 122 of the Local Government Act 1972, an authority may appropriate land from one purpose to another, when it is no longer required for the purpose for which it was previously held.
- 6.3 Land is held by the Council subject to any existing interests and rights belonging to third parties and the land will be sold subject to any such interests and rights on disposal. However, under Section 237 of the

Town and Country Planning Act 1990, the development of land which has been acquired or appropriated for planning purposes in accordance with planning permission is authorised even if that development would interfere with any interests or rights affecting the land. The effect of the appropriation is to extinguish any such interests or rights.

- 6.4 Where rights are extinguished, the owners of any such interests are entitled to compensation calculated under the compulsory purchase compensation rules for injurious affection. However, appropriation removes the potential for excessive compensation claims and the ability for owners to obtain injunctions preventing the redevelopment or claim damages.
- 6.5 In this instance, Officers are seeking to appropriate the land for planning purposes to extinguish rights of light over the site. As part of the original outline planning application process, Family Mosaic employed specialist consultants, Savills to advise on Daylight and Sunlight Criteria and also Rights of Light. Savills concluded as verified by the planning application that government BRE standards were met/exceeded with no material loss in daylight or sunlight criteria.
- 6.6 However, with regards to Rights of Light the development of Phase 4 will have some implications for properties in the existing estate (who will be re-housed and demolished as part of Phase 5) and also the Brain Injury Unit on Blackheath Hill which is located adjacent to this part of the development.
- 6.7 In the Development Agreement, the Council agreed to consider appropriating the site for planning purposes, although the decision whether or not to appropriate remains in the absolute discretion of the Mayor.
- 6.8 In view of the rights of light referred to in paragraph 7.6 above, it is recommended that in order to overcome this problem, the land be appropriated to planning purposes, which will enable Family Mosaic to rely on the protection provided by Section 237, provided planning permission for the proposed redevelopment scheme has been obtained and the redevelopment is carried out in accordance with that planning permission.
- 6.9 Assessment of compensation for the loss of rights would be calculated on the basis of the before and after market value of the affected properties. It will be for the owners to demonstrate that that the loss is likely to cause inconvenience to them and affect the enjoyment of their properties and to substantiate any claim for compensation.
- 6.10 Any claim for compensation will be made against Family Mosaic in the first instance. However, as the Council has a residual liability for compensation, an indemnity agreement will be entered into under which Family Mosaic will agree to indemnify the Council against any claim for

compensation. The Development Agreement provides for this indemnity agreement to be entered into.

7. Head of Planning's Comments

- 7.1 In March 2010, Family Mosaic gained outline planning approval for the overall master plan scheme and also detailed Planning approval for Phase 1. At the same time, Family Mosaic entered into a S106 agreement with the Council. Family Mosaic has subsequently gained detailed Planning approval for Phases 2, 3 and most recently Phase 4 of the scheme. Planning approval for Phase 4 of the scheme was granted in November 2014 and provides authority for Blocks D and F of the new build programme to commence.

Full details of the planning approval for Phase 4 can be found on the Council's website at;

<http://councilmeetings.lewisham.gov.uk/documents/s31907/DC.14.87333%20-%20Heathside%20and%20Lethbridge%20Estate%20SE10.pdf>

- 7.2 The development proposals will deliver a new residential development on the site which will also provide new public realm and publicly accessible open space and other community benefits such as a community centre and private nursery .

8. Legal Implications

- 8.1 The Council has power under the Local Government Act 1972 to appropriate land which is no longer required for the purpose for which it was acquired to use for any other purpose for which it has power to acquire land. In the case of land held for housing purposes, that power is subject to Section 19 of the Housing Act 1985. Under Section 19(1), an authority may not appropriate housing land with dwellings on it for other purposes without the consent of the Secretary of State. In this case, Section 19(1) is engaged as there are dwellings within the Phase 4 site which will not have been demolished at the time the appropriation takes effect and the appropriation is therefore subject to Secretary of State's consent being obtained. The legal implications associated with the appropriation of the site to planning purposes and the effect of Section 237 of the Town and Country Planning Act 1990 are set out in full in Section 6 of this report.
- 8.2 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 5 April 2011.

The duty consists of the 'general equality duty' which is the overarching requirement or substance of the duty, and the 'specific duties' which are intended to help performance of the general equality duty.

The duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

8.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

These are often referred to as the three aims of the general equality duty.

8.4 As was the case for the original separate duties, the new duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

8.5 The Equality and Human Rights Commission (EHRC) have issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Equality objectives and the equality duty
3. Equality information and the equality duty
4. Meeting the equality duty in policy and decision-making
5. Engagement and the equality duty

All the guides have now been revised and are up to date. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8.6 The EHRC guidance does not have legal standing unlike the statutory Code of Practice on the public sector equality duty which was due to be produced by the EHRC under the Act. However, the Government has now stated that no further statutory codes under the Act will be approved. The EHRC has indicated that it will issue the draft code on the PSED as a non statutory code following further review and consultation but, like the guidance, the non statutory code will not have legal standing.

9. Financial Implications

9.1 There are no financial implications arising from this report.

10. Human Rights Act 1998 Implications

10.1 The Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions Members therefore need to have regard to the Convention.

10.2 The rights that are of particular significance to the Mayor's decision in this matter are those contained in Articles 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).

10.3 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic well-being of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.

10.4 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.

10.5 Therefore, in reaching his decision, the Mayor needs to consider the extent to which the decision may impact upon the Human Rights of estate residents and other affected persons and to balance this against the overall benefits to the community which the redevelopment of the

Excalibur Estate will bring. The Mayor will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.

- 10.6 The effect of the extinguishment of the rights is set out at paragraph 6.4 above and is not considered to be adverse. It is also relevant to the consideration of this issue, that affected owners will be entitled to compensation for any diminution in the value of their properties resulting from the extinguishment of these rights.

11. Environmental Implications

- 11.1 The proposed new homes to be built by London & Quadrant would exceed the requirements of the Decent Homes Standard; this means greater energy efficiency, reduced maintenance costs and lower fuel bills for residents. This would also reduce the environmental impact of the new homes.
- 11.2 As new landlord L&Q would develop minimum standards that tenants can expect from their home. A key part of that would be the affordability and sustainability of the energy usage. The homes are designed using principles of passive solar design and have been modelled by energy consultants to ensure high thermal comfort whilst keeping heat loss to a minimum. This includes making the home air tight through construction detailing and incorporating a heat recovery ventilation system to further reduce energy loss and provide homes with fresh air. The Greater London Authority requires this scheme to achieve 20% renewable energy and a Code for Sustainable Homes level 3-4, as a minimum; both pieces of legislation necessitate an energy efficient home.

12. Crime and Disorder Implications

- 12.1 The regeneration scheme meets the police's Secured by Design standards and should lead to a reduction in crime and the fear of crime.

13. Equality Implications

- 13.1 Mayor and Cabinet approved the Equalities Impact Assessment for the regeneration of Heathside and Lethbridge in November 2009. Officers have since taken the new Equalities Analysis Assessment (EAA) additional categories into account in considering the impact of the regeneration scheme and regularly review the Impact Assessments to ensure that any equalities implications are considered. There are equalities implications in the decanting and re-building process and

there will also be benefits in the completed scheme that will impact on some of the most disadvantaged in the community. The Council's approach to re-housing tenants means that all residents' needs such as language and medical are individually taken into account.

14. Conclusion

- 14.1 The Mayor is required to note the current stage of the scheme and to approve that the Phase 4 site can be appropriated for planning purposes.

15. Background Documents and Report Author

- 15.1 There are no background documents to this report.
- 15.2 If you require any further information about this report, please contact Rachel George on 020 8314 8146