

| <b>MAYOR AND CABINET</b> |  |             |              |
|--------------------------|--|-------------|--------------|
| <b>Report Titles</b>     | Deptford Southern Housing Sites regeneration project – Appropriation of Land                                 |             |              |
| <b>Key Decision</b>      | Yes  |             |              |
| <b>Ward</b>              | NEW CROSS  |             |              |
| <b>Contributors</b>      | EXECUTIVE DIRECTOR FOR CUSTOMER SERVICES,<br>EXECUTIVE DIRECTOR FOR RESOURCES &<br>REGENERATION, HEAD OF LAW |             |              |
| <b>Class</b>             | Part 1   | <b>Date</b> | 15 July 2015 |

## **1. Summary**

- 1.1 The Deptford Southern Housing sites scheme consists of two developments being carried out as part of an ongoing programme the Council has led in Deptford since 2006. The previous phases of that ongoing programme have seen completion of the Wavelengths extension, Frankham Street parking boulevard, Tidemill/ Deptford Lounge development and relocation of Deptford Green School. These have paved the way for further development opportunities now being carried out in Amersham Vale and a further site that sits across Reginald Road and the old Tidemill School.
- 1.2 Previously Mayor and Cabinet have been informed of key stages of the schemes including statutory Section 105 consultation in September 2013. Following on from a competitive dialogue process Mayor and Cabinet agreed that Family Mosaic, Mulalley and Sherrygreen Homes be appointed as the preferred development partner in February 2014. In March 2015 it was agreed to start the re-housing of tenants and buy back of leaseholders in 2 – 30A Reginald Road.
- 1.3 In order to implement the redevelopment proposals for the Deptford Southern Housing sites, the Council is now required to appropriate the land for planning purposes.

## **2. Purpose of Report**

- 2.1 To seek the necessary authority for the appropriation, for planning purposes, of the Council owned land within 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 shown hatched black on the attached plan 1, from housing purposes to planning purposes under Section 122 of the Local Government Act 1972;
- 3.2 agree to the appropriation of the Council owned land shown in bold edging on the attached plans 1 and 2 from education purposes to planning purposes under Section 122 of the Local Government Act 1972;
- 3.3 note that the consent of the Secretary of State under Schedule 1 of the Academies Act to the appropriation of the education land referred to at recommendation 3.2 has already been obtained; and
- 3.4 approve the making of an application to the Secretary of State under Section 19 of the Housing Act 1985 for consent to the appropriation referred to at recommendation 3.1.

### **4 Policy Context**

- 4.1 The re-development of the Deptford Southern Housing sites contributes to key national objectives, particularly meeting the decent homes standard and increasing the supply of affordable housing.
- 4.2 The re-development will provide 321 new homes, of which 117 are expected to be affordable (including 77 for rent). This is to replace an existing block of 16 homes and bring new life into an old school building.
- 4.3 Development of the sites 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. It also supports the Council's corporate priorities notably 'Clean, Green and Liveable' and 'Decent Homes For All.'
- 4.4 Further, the re-development of the two Deptford sites 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 Council's incoming Housing Strategy for 2015 – 2018.

4.5 The scheme will increase local housing supply and by introducing a range of housing types and tenures for a range of income households, the scheme will help to widen housing choice. More specifically, the scheme contributes to a host of strategic objectives. By obtaining funding from the HCA and using Council owned land for the purposes set out here, the Council is engaging with delivery partners and making the best use of available resources. A key principle of the scheme is to make the new development a desirable place to live, supporting the strategic objectives around design quality and safety, accessibility and improving environmental performance. In addition, Family Mosaic will manage all new homes, regardless of tenure through an integrated management body that will work with existing residents to ensure it provides high quality housing management.

## **5 Project Progress**

5.1 Summary of the principles of this project and progress to date:

- Family Mosaic, Mulalley and Sherrygreen Homes were appointed as the preferred development partner by Mayor and Cabinet in February 2014.
- The Development Agreement covering both sites is agreed
- Section 105 consultation has carried out with residents of 2 – 30A Reginald Road three times during the development of the scheme, most recently this was in May 2013.
- There has been further informal consultation carried out by the developer with residents of Reginald Road and a local community group and there is a programme of consultation planned for the coming months.
- The partners have begun the process of developing the planning application, which is due to be submitted in the Autumn 2015.

5.2 The schemes will provide:

- 204 new homes on the Reginald Road/ Tidemill site, including 53 for social rent, 25 for shared ownership and 126 for sale. This equates to 38% affordable housing.
- 117 new homes are to be built on the Amersham Grove site, including 24 for social rent; 15 for shared ownership and 78 for sale. This equates to 33% affordable housing.
- All existing tenants of Reginald Road are to be re-housed and all can be accommodated in the new homes being built on either site or elsewhere in the borough should they so choose.
- Family Mosaic have offered to provide a new home to resident leaseholders through shared equity – as used on other regeneration schemes such as Heathside and Lethbridge.
- Family Mosaic use 'target rent' levels rather than up to the 80% of market rents levels allowed through 'affordable rent' with a lower rent commitment for those residents who are re-housed into the new homes

from 2 – 30A Reginald Road

- Homes will be built to London Housing Design Guide space standards, Code for Sustainable Homes level 4, rented homes will be built to lifetime homes standards and 10% of homes will be wheelchair adaptable.
  - The park at Amersham Grove will be built to in accordance with the Planning approval and it will meet the specification agreed with the Council's parks team. The park will remain in the ownership of the Council.
- 5.3 There is a significant background to this scheme, of which there is a summary in the report 'Deptford Southern Housing Sites project – section 105 housing consultation outcome' which was approved by Mayor and Cabinet on the 11<sup>th</sup> September 2014. This history has included a number of changes including to the area of the Tidemill regeneration, notably to take out two Giffin Street blocks, which will now remain in situ.

## **6. Appropriating the Land**

- 6.1 The Council owns the freehold interest of the site shown on the attached plan. Within the site area is the old Tidemill school and annex buildings and part of the old Deptford Green School site. There is one housing block, 2 – 30A Reginald Road where the Council has just started the process of re-housing the tenants and Officers will soon commence negotiations to buy 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 a mixture of housing purposes within the Housing Revenue Account and education purposes within the General Fund. 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 The precise design of the scheme is yet to be finalised and consultation with residents and community groups is taking place prior to and alongside the formal Planning process. However the developers are carrying out daylight and sunlight studies to assess and seek to minimise the impact on local properties. Further, they are using key principles of maximising daylight and sunlight, creating attractive amenity spaces and ensuring careful consideration of relationships to neighbouring properties.
- 6.6 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.
- 6.7 In view of the potential rights of light referred to in paragraph 6.5 above and other existing interests and rights which may exist, it is recommended that in order to overcome this problem, the land be appropriated to planning purposes, which will enable the developers 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 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 the developers in the first instance. However, as the Council has a residual liability for compensation, an indemnity agreement will be entered into under which the developers 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 The sites are located within the Deptford Regeneration and Growth Area of the Council's adopted Core Strategy (2011) and are identified in the Site Allocations DPD (2013).
- 7.2 The Frankham Street site forms part of the wider Deptford Regeneration Area allocation which envisaged mixed use commercial/creative floor space, relocation of Tidemill School, relocation of library, housing and community use (work/office space and community café). Commercial, leisure and educational uses have already been provided to the north of

Giffin Street, therefore it is considered acceptable for this element of the redevelopment to comprise housing only. The Amersham Vale site is allocated for redevelopment for new public open space (39%) and housing (61% of site).

- 7.3 The principle of redevelopment of both sites for housing, incorporating new areas of public realm, is therefore accepted, subject to satisfactorily addressing other planning policy objectives including design and provision of affordable housing.
- 7.4 The schemes have yet to be submitted for planning approval however the developers have entered into pre-application discussions with officers and the schemes have been reviewed by the Lewisham Design Review Panel. These discussions are at an advanced stage and officers consider that the emerging schemes are progressing positively in line with policy. Public consultation is due to take place ahead of the applications being submitted.

## **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.
- 8.2 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 in the Reginald Road block 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.
- 8.3 Consent to appropriate the former school sites to planning purposes has already been obtained under Schedule 1 of the Academies Act 2010.
- 8.4 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 1<sup>st</sup> 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 Mayor should have regard to the matters referred to at paragraph 6.5 above. 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 the developers 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 the developers will develop minimum standards that tenants can expect from their home. A key part of that will 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 agree that the Deptford Southern Housing sites 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