



Mayor and Cabinet

Building for Lewisham, Appropriation for Planning Purposes: Former Fairlawn Primary School Annexe Site and Former Ladywell Leisure Centre Site

Date: 24 January 2024

Key decision: Yes

Class: Part 1

Ward affected: Forest Hill and Ladywell

Contributors: Executive Director Place, Executive Director of Corporate Resources and Director of Law, Corporate Governance and Elections.

Outline and recommendations

It is recommended that Mayor and Cabinet:

- (i) Agrees to the appropriation of the Council-owned land known as the former Fairlawn Primary School Annexe, as outlined in red on the plan attached at Appendix A, from housing purposes to planning purposes under Section 122 of the Local Government Act 1972, as it is no longer required for the purpose for which it is currently held and the Council believes that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land pursuant to section 226(1)(a) of the Town and Country Planning Act 1990;*
- (ii) Agrees to the appropriation of the Council owned land known as the Former Fairlawn Primary School Annexe, as outlined in red on the plan attached at Appendix A, from planning purposes back to housing purposes under Section 122 of the Local Government Act 1972;*
- (iii) Agrees to the appropriation of the Council-owned land known as the former Ladywell Leisure Centre, as outlined in red on the plan attached at Appendix B, from housing purposes to planning purposes under Section 122 of the Local Government Act 1972, as it is no longer required for the purpose for which it is currently held, and the Council believes that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land pursuant to section 226(1)(a) of the Town and Country Planning Act 1990;*
- (iv) Agrees to the appropriation of the Council-owned land known as the former Ladywell Leisure Centre, as outlined in red on the plan attached at Appendix B, from planning purposes back to housing purposes under Section 122 of the Local Government Act 1972;*
- (v) Delegates authority to the Executive Director Place in consultation with the Director of Law, Governance and Elections to deal with any necessary arrangements to record the appropriation of the site for planning purposes including the transfer of the land from the Housing Revenue Account (HRA) to the General Fund account (GF) at the current red book value; the transfer of the land from the GF to the HRA at the current red book value; to negotiate and enter into agreements by deed and payment of compensation for the release of third-party rights where this can be achieved on reasonable terms within a reasonable timescale; and to take all necessary steps to settle claims for compensation pertaining to rights of light under section 204 of the Housing and Planning Act 2016.*

Timeline of engagement and decision-making

Mayor and Cabinet, 11 July 2018 – New Homes Programme

Mayor and Cabinet, 15 January 2020 – Building for Lewisham Programme

Mayor and Cabinet, 15 June 2020 - Ladywell Redevelopment

Mayor and Cabinet, 9 July 2020 – Building for Lewisham Update

Mayor and Cabinet, 10 March 2021 - Building for Lewisham Programme Requirements

Mayor and Cabinet, 19 May 2021 - Building for Lewisham Programme Requirements

Mayor and Cabinet, 14 July 2021 – Building for Lewisham Programme – Enabling Works

Mayor and Cabinet, 12 January 2022 – Building for Lewisham Update

This report is a Key Decision, therefore any decision will be subject to scrutiny

1. Summary

- 1.1. Officers have undertaken to provide regular updates to Mayor and Cabinet on the delivery of new housing and to seek approvals as required for the Building for Lewisham programme, in addition to the wider housing delivery in the borough.
- 1.2. This report relates to the proposed developments of the former Fairlawn Primary School Annexe site and former Ladywell Leisure Centre for new housing. Planning permission for 12 new homes on the Fairlawn site was secured on 26 May 2023 (DC/23/130308). Planning permission for 102 new homes on the Ladywell site was secured on 24 October 2023 (DC/22/129317). Officers are working on the next steps to deliver the schemes.
- 1.3. Following planning permission, the next step is to appropriate the land for planning purposes and back to housing purposes. This process de-risks the delivery of scheme by preventing a third party from obtaining an injunction to prevent or delay construction.
- 1.4. If the recommendations in the report are approved, officers will continue to assess the viability of the schemes and seek to procure a main contractor for each site. A further report will be presented to Mayor and Cabinet with further recommendations once the procurement exercise has concluded.

2. Recommendations

It is recommended that Mayor and Cabinet:

- 2.1. Agrees to the appropriation of the Council owned land known as the Former Fairlawn Primary School Annexe, as outlined in red on the plan attached at Appendix A, from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 as it is no longer required for the purpose for which it is currently held, and the Council believes that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land pursuant to section 226(1)(a) of the Town and Country Planning Act 1990;
- 2.2. Agrees to the appropriation of the Council owned land known as the Former Fairlawn Primary School Annexe, as outlined in red on the plan attached at Appendix A, from planning purposes back to housing purposes under Section 122 of the Local Government Act 1972;

- 2.3. Agrees to the appropriation of the Council-owned land known as the Former Ladywell Leisure Centre, as outlined in red on the plan attached at Appendix B, from housing purposes to planning purposes under Section 122 of the Local Government Act 1972, as it is no longer required for the purpose for which it is currently held and the Council believes that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land pursuant to section 226(1)(a) of the Town and Country Planning Act 1990;
- 2.4. Agrees to the appropriation of the Council owned land known as the Former Ladywell Leisure Centre, as outlined in red on the plan attached at Appendix B, from planning purposes back to housing purposes under Section 122 of the Local Government Act 1972;
- 2.5. Delegates authority to the Executive Director Place in consultation with the Director of Law, Governance and Elections to deal with any necessary arrangements to record the appropriation of the sites for planning purposes including the transfer of the land from the Housing Revenue Account (HRA) to the General Fund account (GF) at the current red book value; the transfer of the land from the GF to the HRA at the current red book value; to negotiate and enter into agreements by deed and payment of compensation for the release of third-party rights where this can be achieved on reasonable terms within a reasonable timescale; and to take all necessary steps to settle claims for compensation pertaining to rights of light under section 204 of the Housing and Planning Act 2016.

3. Policy Context

- 3.1. The Council's Corporate Strategy (2022-2026) explains our values, priorities and focus for the next four years, our learning from how the borough worked together in response to the pandemic, and how we plan to continue improving our services for residents, businesses and partners in an ever more challenging environment.
- 3.2. Above all, the strategy outlines the principles that showcase who we are as a borough and as an organisation. Our focus is on equality, putting our residents at the centre of everything we do, and ensuring transparency and sound financial management are embedded within all key decisions Council officers make to enhance the life-chances and outcomes for those who reside in this borough.
- 3.3. Delivering this strategy includes the following priority outcomes that relate to the provision of new affordable homes:
 - Cleaner and Greener – working to tackle the climate crisis through our development policies.
 - A Strong Local Economy – continue to expand our apprenticeship programme and invest in our high streets, doing what we can to be the best place in London for new businesses.
 - Quality Housing and Safer Communities – we will deliver more social homes for Lewisham residents, providing as many people as possible with safe, comfortable accommodation that they can be proud of and happy to live in.
 - Open Lewisham – we will co-design services and ensure strong consultation processes that reach out to people whose voices are seldom heard.
- 3.4. Housing Strategy (2020-2026), includes the following themes that relate to the provision of new affordable homes:
 1. delivering the homes that Lewisham needs.
 2. preventing homelessness and meeting housing need.
 3. improving the quality, standard and safety of housing.

4. supporting our residents to live safe, independent and active lives.
5. strengthening communities and embracing diversity.

4. Background

- 4.1. In January 2020 the Building for Lewisham programme was officially launched. The programme is to provide much needed genuinely affordable homes delivered now through the Council's own Strategic Housing & Growth team, within the Place Directorate
- 4.2. The Fairlawn Nursery Annexe is a small piece of land off Waldenshaw Road, as outlined in red on the attached plan at Appendix A, and is ten minutes' walk from Fairlawn Primary School itself. The school previously used the Annex as an early years nursery.
- 4.3. The nursery was closed by the School in August 2016 as it was no longer financially viable to keep the nursery open due to falling child numbers and the high running costs of the separate building and site which meant the nursery was being heavily subsidised.
- 4.4. The Education Team confirmed that, due to a reduced child population, there is surplus space on the main school site off of Honor Oak Road. If the school were to want to open a nursery again in the future, this could be accommodated on the main site, rendering the Annexe site redundant for educational purposes.
- 4.5. Mayor and Cabinet agreed a budget in July 2020 to bring forward proposals to develop the Fairlawn Nursery Annexe site. The development is subject to the normal financial viability hurdles as part of the Building for Lewisham Programme.
- 4.6. The site was held in the Council's General Fund (GF) for educational purposes. As the proposal is to use the site for new housing, officers were required to seek consent of the Secretary of State for Education to change the use of the land. Following a report to Mayor and Cabinet in 10 March 2021, officers made the required application.
- 4.7. In July 2022 the Council received notification from the Secretary of State that the land could be changed from education use to housing use.
- 4.8. Following this, the project team secured planning permission on 26 May 2023 under application no. DC/23/130308 for 12 new homes in a single structure four storeys in height, along with associated landscaping provision and related highways works. The 12 homes are a mix of 1, 2 and 3 bed properties including a 1 bed wheelchair home.
- 4.9. The Ladywell site is the land of the former Ladywell Leisure Centre which was demolished in 2014 to make way for a housing development. The site is outlined in red on the attached plan at Appendix B.
- 4.10. On 15 June 2022, Mayor and Cabinet agreed to an officer recommendation to appropriate the land from the General Fund (Leisure) to Housing Revenue Account in order for the future proposed housing use.
- 4.11. Mayor and Cabinet agreed a budget in July 2020 to bring forward proposals to develop the Ladywell site. The development is subject to the normal financial viability hurdles as part of the Building for Lewisham Programme.
- 4.12. The project team secured planning permission on 24 October 2023 under application no. DC/22/129317 for 102 new homes across four residential blocks ranging from 3 to 7 storeys, the construction of a single-storey building comprising storage and electrical substations and the construction of replacement cycle and refuse stores for Place Ladywell together with the re-provision of existing car parking on Longbridge Way and the creation of new public realm including children's play space, cycle parking, car

parking and associated works.

- 4.13. In line with the well documented increases in construction costs, as well as the increase in the cost of borrowing, officers are taking a programme-wide approach to viability and will continue to assess how best to bring forward this scheme through the procurement process.

5. Appropriation

- 5.1. Under Section 122 of the Local Government Act 1972, the Council may appropriate for any purpose for which the Council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.
- 5.2. Under Section 226(1)(a) of the Town and Country Planning Act 1990 the Council has power to acquire compulsorily land in its area for planning purposes if it thinks that the acquisition will facilitate the carrying out of development/re-development or improvement on or in relation to the land. The Council must not exercise the power under Section 226(1)(a) unless it thinks that the development/re-development or improvement is likely to contribute to the achievement of one or more of the following objects:
 - (a) the promotion or improvement of the economic well-being of the area;
 - (b) the promotion or improvement of the social well-being of the area;
 - (c) the promotion or improvement of the environmental well-being of the area.
- 5.3. The Council has power to appropriate land for planning purposes on the same basis as that stated in 5.2. In this case, the appropriation of the land for planning purposes will facilitate the development of the land in question, promote both social and environmental well-being in the immediate vicinity, and increase the quantum of affordable tenure housing in the borough's asset portfolio.
- 5.4. Land is held by the Council subject to any existing interests and rights belonging to third parties. Under Section 203 of the Housing and Planning Act 2016, a person may carry out building work or use land to which Section 203(1) and 203(4) apply even if it involves interfering with a relevant right or interest or, breaching a restriction as to the user of the land arising by virtue of a covenant. The power applies where:
 - (i) there is planning consent for the building works;
 - (ii) the land has at any time on or after 13 July 2016 either been vested in or acquired by the authority or appropriated for planning purposes
 - (iii) the authority could acquire the land compulsorily for the works/use; and
 - (iv) the works/use is for purposes relates to the purposes for which the land was vested, acquired or appropriated.
- 5.5. The power will therefore apply following the appropriation of the land for planning purposes.
- 5.6. These land titles are held within the Housing Revenue Account for housing purposes. It is proposed that these parcels of land be appropriated for planning purposes under section 122 of the Local Government Act 1972 and subject to the powers provided by section 237 of the Town & Country Planning Act 1990. This will support the regeneration potential of the land.
- 5.7. The effect of appropriating land in this way is that the rights of affected third parties (such as rights of light and rights of access) can be over-ridden to preclude an adjacent or other owner's right to obtain a court injunction whose outcome establishes the infringement of the enjoyment of easement of light. A court could mandate a remedy whose effect would be to stop progression of the development and/or make it unviable

due to the necessary diminution in the quantum of homes the proposed design could consequently accommodate.

- 5.8. Appropriation de-risks the possibility of the scenario described in 5.7 above, to the extent that adjacent etc owners, identified through analysis, to suffer an actionable injury (to their enjoyment of an easement to right of light) can only seek compensation through negotiation, and cannot obtain an injunction via the courts.
- 5.9. 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, and employing industry standard codes of practice in calculating compensation sums. The project financial modelling appraisal has a sum set aside to cover for such a claim.
- 5.10. Whilst it is possible to identify the registered rights / interests that may be interfered with as part of any proposed development through detailed title investigation and site surveys, it is much harder to identify unregistered rights / interests that are likely to be interfered with as part of any development project. The ability of s203 HPA 2016 to override rights and interests applies not only to registered rights and interests but also unregistered rights and interests.
- 5.11. Indemnity insurance has been considered but this would not prevent the risk of injunction, therefore officers recommend appropriation of the site.
- 5.12. The sites have a number of adjacent properties owned by third parties. Right to Light surveys have been carried out to establish if there is any loss of light to those properties as a result of the proposed development. The surveys found that there is an impact and as a result, the Right to Light surveyor has undertaken an assessment of the impact and level of compensation that may be applicable.
- 5.13. The assessed level of compensation should claims come forward is minimal and can be managed within total scheme budgets.
- 5.14. Through the recommended appropriation, the assets would transfer from the Housing Revenue Account into the General Fund. So as not to place additional burden on the General Fund, officers recommend that Mayor and Cabinet agree to appropriate the land back for housing use.

6. Financial implications

- 6.1. There is no direct cost to the appropriation of land, however by appropriating the land the Council will enable the New Build programme to proceed and thus reduce the risks of not being able to take advantage of external grant monies or Right to Buy receipts allocated to this programme with the consequential impact that these funds fall out of grant programme and need to be returned to the granting authority.
- 6.2. As stated in the report, the assessed level of compensation that may be claimed is considered minimal and can be managed through the total scheme cost budgets allocated to the schemes.
- 6.3. The transfer of land from the HRA to the General Fund and back to the HRA, does not result in any cost to the General Fund. Any compensation due will be paid from the HRA project budget.

7. Legal implications Melanie Dawson (Principal Lawyer – Place Directorate)

Appropriation for Planning Purposes – General Comments

- 7.1. The Council has power under section 122 of the Local Government Act 1972 to appropriate land belonging to it that is no longer required for the purpose for which it was held immediately before the appropriation, provided that the new purpose is one for which the Council would be authorised to acquire land by agreement.
- 7.2. Appropriation for planning purposes allows the Council to commence development

works even though such works might interfere with the rights of third parties affected by the development. If the Council chose not to appropriate for planning purposes prior to works commencing, then it would potentially be infringing third party rights. The remedy for such an infringement is an injunction which the courts may grant at their discretion. Alternatively, damages might be awarded if the court considers this an adequate remedy. If affected third parties initiated proceedings, the court might also grant an injunction pending the court's decision on whether there has been an infringement of their rights or not. Therefore, if the Council chooses not to appropriate for planning purposes as proposed, it is possible that commencement of the development and delivery of the schemes might be delayed.

- 7.3. A decision to override third party rights is an interference with rights protected under Articles 1 and 8 of the Protocol to the European Convention on Human Rights. Such interference must strike a fair balance between the public interest associated with the developments proposed and private rights. The Council must further ensure that any interference is no more than is necessary.
- 7.4. The public benefit associated with each development is described in this report and any person who can show that they hold an interest in the land will be entitled to compensation in accordance with the relevant statutory provisions. It is therefore considered that the interference with the private rights of those affected would be lawful, justified and proportionate, and compatible with the European Convention on Human Rights.
- 7.5. Compensation to affected third parties will be calculated on the same basis at compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965. If there is a dispute about the amount of compensation which is due, the matter can be referred to the Upper Tribunal for determination.

Equalities

- 7.6. In deciding to proceed with the exercise of appropriation as proposed in this report the Council must pay due regard to its Public Sector Equality Duty, as set out in Section 149 of the Equalities Act 2010 and consider whether any adverse impacts on a protected group can be mitigated.
- 7.7. Within the process of engaging and negotiating with affected third parties, officers should take account of vulnerable parties in accordance with the Public Sector Equality Duty.

Appropriation between the HRA and the General Fund

- 7.8. Section 32(2) of the Housing Act 1985 requires that there should be no disposal of land (including by way of appropriation) held within a Housing Revenue Account (HRA) without the consent of the Secretary of State. The Secretary of State has issued a number of general consents known as the General Housing Consents 2013. Paragraph A3.2 of the General Consents allows the Council to dispose of 'vacant land' without the need for a specific consent from the Secretary of State. It is confirmed that the land to be appropriated is 'vacant' land. Further to that, it states (at paragraph 8 of the Commentary to the General Consents) that the disposal can be for any price determined by the local authority.
- 7.9. The appropriation from the HRA to the General Fund and back will result in an accounting adjustment rather than a sale/purchase of land. In conducting its financial affairs, the Council must comply with the requirements of the Local Government Act 2003, the Local Authorities (Capital Financing & Accounting – England) Regulations 2003, the Localism Act 2011 and have regard to the CIPFA Treasury Management and Prudential Codes.

8. Equalities implications

- 8.1. The appropriation of the Council-owned land at Fairlawn is not believed to have any direct equalities implications to local residents. As stated, impacted residents may have the right to claim compensation which would be independently assessed by relevant industry professionals, namely right of light surveyors already appointed by the project team.
- 8.2. The appropriation will allow for the unhindered delivery of new Council owned homes for social rent, which result in a net positive outcome for a greater number of people. Not providing new Council owned homes for social rent means that there are greater disproportionate impacts on those on the Housing Register and in temporary accommodation, as they will remain inadequately housed for longer.
- 8.3. Lewisham Homes on the Council's behalf consider any impact and implications in relation to protected characteristics as the scheme progresses through design, planning and construction stages. It should be noted that the Council is committed to ensuring our developments will be inclusive and feature accessible and adaptable homes that will meet the needs of our residents throughout their life.
- 8.4. Equalities implications will continue to be assessed as the schemes progress through the design, planning and construction process.

9. Climate change and environmental implications

- 9.1. Existing planning consents are and will be in line with the high standards expected by Lewisham Council and the GLA. Developments such as Fairlawn will of course comply with and meet all current requirements of codes of practice and the like to reduce energy consumption, emissions, and promote climate change through good design and construction practice.
- 9.2. In relation to the new Fairlawn building, the energy supply for the 12 homes will be provided through air source heat pumps and solar panels will generate power to light the communal areas. All homes have been assessed for overheating, solar gain, ventilation and the like, and measures are now incorporated into the design to ensure compliance with all relevant criteria, minima, and standards required.
- 9.3. Every effort has been made to enhance the natural environment on the land at Fairlawn, as well as the landscape around the proposed structure within the site's red line boundary, and the amenity space provided for each resident household.
- 9.4. The requirements for bio-diversity net gain, urban greening factor, meeting the energy hierarchy and designing a sustainable urban drainage system, as well as consideration of flood risk have all been incorporated into the design of Fairlawn.
- 9.5. Demolition and subsequent construction management plans are conditioned in the planning permission, and mandate that details are provided to the authority at the relevant stage of the construction process. Council officers will ensure compliance.

10. Climate change and environmental implications

There are no direct crime and disorder implications arising from this report

11. Health and wellbeing implications

- 11.1. There are no direct health and wellbeing implications arising from this report although the provision of new social homes will have a positive impact on health and wellbeing of people on the housing register waiting for permanent accommodation.

12. Social Value Implications

- 12.1. Lewisham Council will address social value benefits for the Lewisham community when procuring and awarding contracts for works.

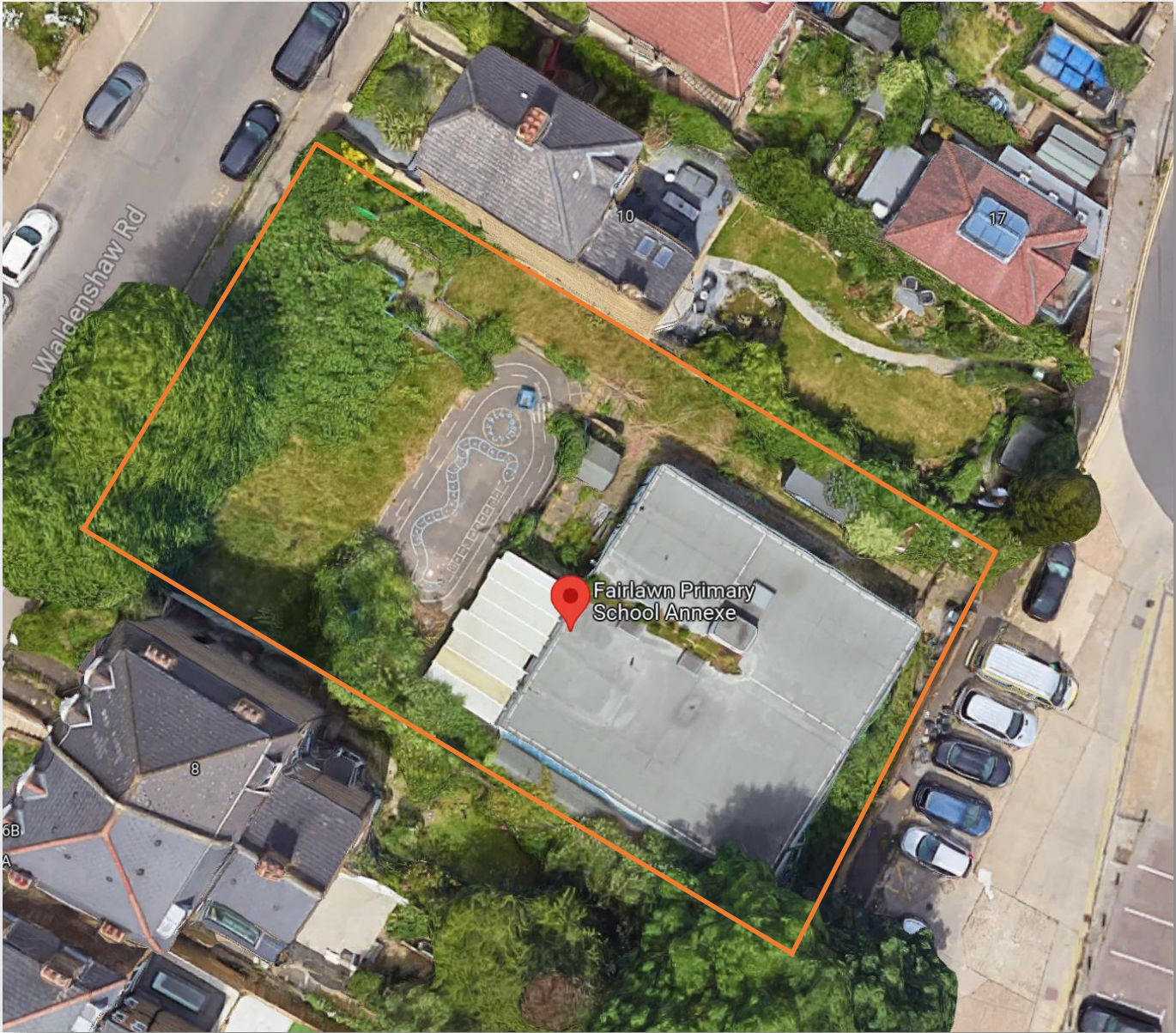
Appendix 1

Annex A – plan showing the land to be disposed of by transfer at Fairlawn Primary School Annexe, Waldenshaw Road, London, SE23 3XP, edged red.



Appendix 2

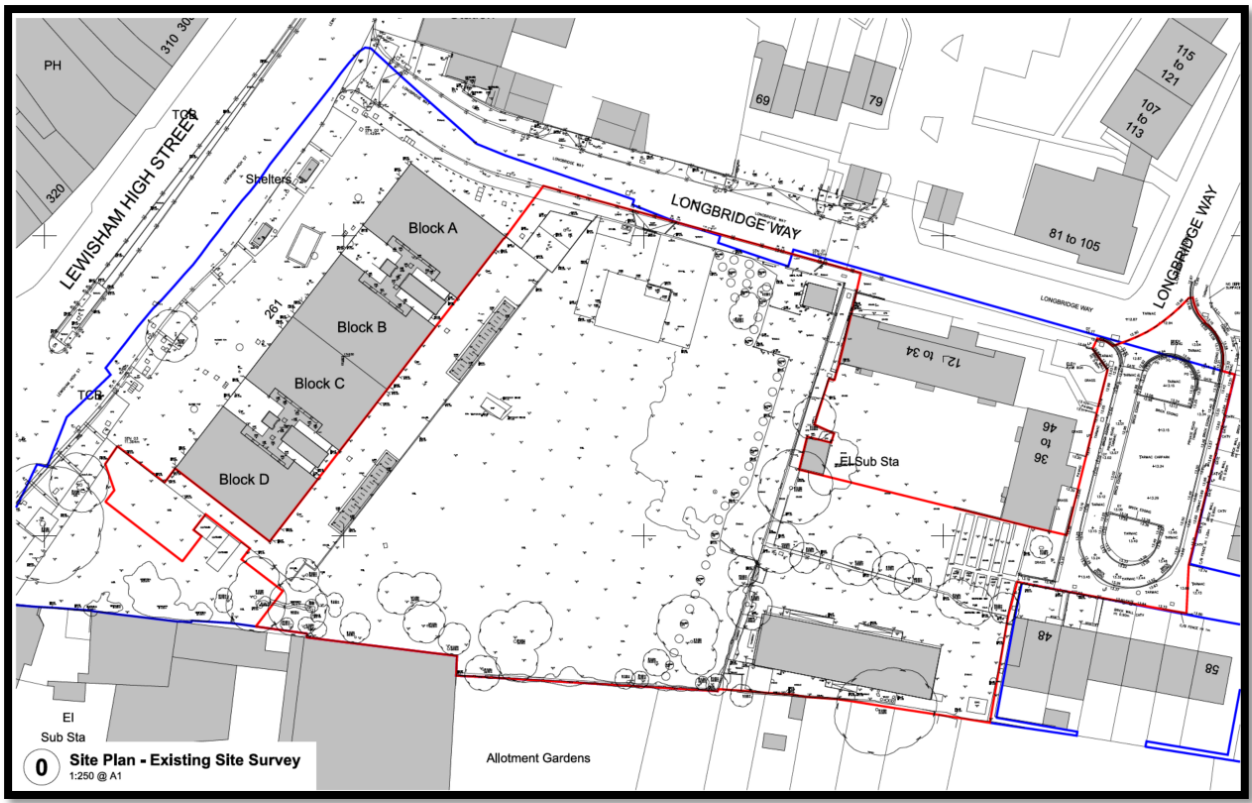
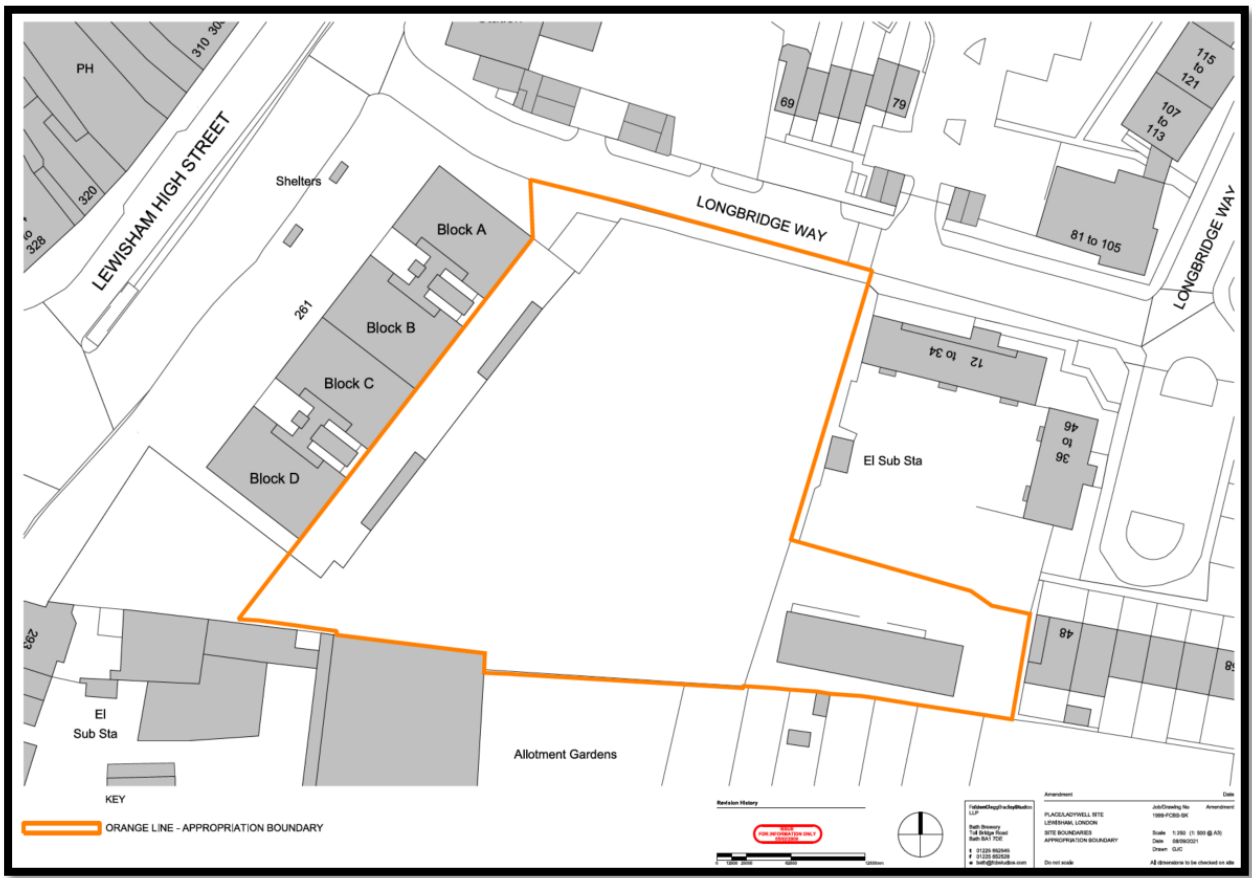
Satellite image of Fairlawn Primary School Annexe, showing existing derelict single-storey school building and adjacent properties of 8 and 10 Waldenshaw Road.



Appendix 3 New homes proposed for the land at Fairlawn, showing inset artistic renditions of the proposed building, with views from Waldenshaw Road and the rear of the site.



Appendix 4 Ladywell Park Gardens – Appropriation Boundary



Ladywell Park Gardens - Existing Site

Appendix 4 cont'd Ladywell Park Gardens - Consented design

