



Mayor and Cabinet

Besson Street: Land Appropriation and Funding Strategy

Date: 13 March 2024

Key decision: Yes

Class: Part 1

Ward affected: Telegraph Hill

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

Outline and recommendations

This report recommends that the Mayor and Cabinet:

Agrees to the appropriation of the Council owned land shown on Appendix 1 (Besson Street site plan), for 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 it is believed that the appropriation 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 and allow the Council to use its powers under section 203 of the Housing and Planning Act 2016 to override any easements and other rights of the affected neighbouring properties that may be infringed upon.

Delegates authority to the Interim Executive Director Place in consultation with the Director of Law and Corporate Governance and the Executive Director of Corporate Resources to:

- deal with any necessary arrangements to record the appropriation for planning purposes.
- negotiate and enter into agreements and payment of compensation for the release of third-party rights; and/or
- take all necessary steps to settle claims for compensation under section 204 of the Housing and Planning Act 2016

Delegates authority to the Interim Executive Director of Corporate Resources, in consultation with the Executive Director of Place, to approve the extension to the term of the loan agreement with no increase to the total loan from 1 March 2024 to the 31 August 2024 in line with the land transfer date.

Timeline of engagement and decision-making

Mayor and Cabinet: 19 July 2023 – Interim Update to the Besson Street Business Plan.

Mayor and Cabinet: 6 December 2017 – Besson Street Selecting a Joint Venture Partner to Deliver New Build to Rent Homes.

Mayor and Cabinet: 13 July 2016 - Besson Street Re-development and Private rented Sector housing.

Mayor and Cabinet: 9 December 2015 – Besson Street Re-development and Private Rented Sector Housing.

Mayor and Cabinet: 5 March 2008 - Compulsory Purchase Order for land at Besson Street, Briant Street and New Cross Road.

Mayor and Cabinet: 19 September 2007 - Compulsory Purchase Order for the builder's yard at 112-114 New Cross Road and The Fox and Hounds public house at 58-60 Besson Street.

1. Summary

- 1.1. The Besson Street site is a 2.5-acre plot of land, wholly owned by the council, located within the “Kender triangle” in New Cross. The land was previously assembled via New Cross New Deal for Communities (NDC) and was not built due to financial constraints.
- 1.2. A report was bought to Mayor and Cabinet in December 2015, with a proposal that the Council undertake a pilot project, at Besson Street, in which the Council would handle public land in a new way to enable the site to be developed for high quality, secure Private Rented Sector (PRS) homes let at a range of rents. This development sees the council participating in a Joint Venture vehicle specifically for the purpose of developing PRS homes and the regeneration of the Besson Street area.
- 1.3. This Part 1 report updates Mayor and Cabinet on the work conducted on the recommended approach, to take the development forward and deals with the appropriation of part of the site from housing purposes to planning purposes.

2. Recommendations

It is recommended that Mayor and Cabinet:

- 2.1. Agrees to the appropriation of the Council owned land shown on Appendix 1 (Besson Street site plan), for 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 it is believed that the appropriation 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 and allow the Council to use its powers under section 203 of the Housing and Planning Act 2016 to override any easements and other rights of the affected neighbouring properties that may be infringed upon.

Delegates authority to the Executive Director Place in consultation with the Director of

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Law and Corporate Governance and the Executive Director of Corporate Resources to:

- deal with any necessary arrangements to record the appropriation for planning purposes.
- negotiate and enter into agreements and payment of compensation for the release of third-party rights; and/or
- take all necessary steps to settle claims for compensation under section 204 of the Housing and Planning Act 2016

2.2. To approve the extension to the term of the loan agreement with no increase to the total loan from 1 March 2024 to the 31 August 2024 in line with the land transfer date.

3. Policy Context

3.1. Policy Context

3.2. The Council's Corporate Strategy (2022-2026) outlines the Council's vision to deliver for residents over the next four years. Building on Lewisham's historic values of fairness, equality and putting our community at the heart of everything we do, the Council will create deliverable policies underpinned by a desire to promote vibrant communities, champion local diversity and promote social, economic and environmental sustainability. Delivering this strategy includes the following priority outcomes to the provision of quality housing in the borough:

- Tackling the Housing Crisis – deliver more social homes for Lewisham residents, working to provide as many people as possible with safe, comfortable accommodation that they can be proud of and happy living in.
- Develop a Lewisham Repairs Charter – improving the condition of the borough's housing stock.
- Support for renters – providing support through further landlord licensing and enforcement of poorly managed homes, holding landlords to account and giving a voice to renter across the borough.
- Safeguarding our heritage – preserving and restoring our historic buildings and landmarks, ensuring Lewisham's history is preserved and maintained for future generations.

3.3. Lewisham's 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. 9 December 2015, Mayor and Cabinet agreed that the Council should seek to develop a Build to Rent development on the Besson Street site using a Joint Venture (JV) with an experienced private sector partner, to bring in expertise and share risk.

4.2. 13 July 2016 Mayor and Cabinet agreed that officers should start a process, to select a partner to form a JV to deliver a Build to Rent housing scheme on Besson Street.

4.3. On 6 December 2017 Mayor and Cabinet approved the choice of Grainger PLC as the

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Council's preferred bidder to form a JV to deliver the Besson Street development in the manner previously agreed.

- 4.4. This 50/50 partnership between the Council and Grainger has now created a new ethical and socially minded commercial landlord, which will set new standards for the private rented sector. This development will also provide a new and fully fitted out GP surgery and health centre for New Cross, which is in keeping with the original ethos of the scheme, as a healthy living development. Providing stable, long term and inflation linked income, with a continuing 50% ownership by the council of the site and the development.
- 4.5. In December 2017, Mayor and Cabinet agreed the Heads of terms negotiated with Grainger through the partner selection process and agreed that the council could enter a JV with Grainger those terms.
- 4.6. The JV agreement was then formally signed in November 2018, and since then, the partnership has been working to design the Besson Street development based on the agreed vision for the site.
- 4.7. The planning application for the Besson Street development was submitted by the Besson Street LLP on 13 November 2019 and validated on 4 December 2019.
- 4.8. The Strategic Planning Committee granted planning permission on 30 July 2020 for the following development:
 - 324 residential units (35% affordable at London Living Rent level) in six blocks (Block A1– D), ranging in height between three and twelve storeys
 - 550sqm dedicated resident amenity space, with direct access to a roof terrace
 - 690sqm GP surgery
 - 120sqm pharmacy
 - 122sqm community centre
 - 100sqm flexible commercial space
- 4.9. The S106 legal agreement was finalised on the 12 January 2022, and full planning approval was achieved on the 28 January 2022.

5. Appropriation for Planning Purposes

- 5.1. The 19 September 2007 Mayor and Cabinet approved the compulsory purchase order in accordance with Section 226 of the Town and Country Planning act 1990 for the acquisition of all interests in the former public house and the builder's yard.
- 5.2. The original CPO resolution detailed above was only for the sites of the former public house and the Builders Yard. For avoidance of doubt a new CPO was submitted and approved at the 5 March 2008 Mayor and Cabinet to include all other rights and interests in the land: formally the sites of Wynne house, Bower House, and individual housing blocks on Briant Street, other than those interest already in ownership of the council. This is because the scheme involves the complete re-planning and re-development of the land and exercise of any rights and interest over the land could adversely affect this.
- 5.3. The 13 July 2016 Mayor and Cabinet agreed to the appropriation of the Council owned land shown hatched in red (Appendix 1), from housing purposes to planning purposes.
- 5.4. This report seeks approval for the appropriation for planning purposes of the former public house and the Builders Yard coloured in red on Appendix 1 (Besson Street Site Plan). The Council owns the freehold interest of the site which is currently accounted for in the General Fund. The site was previously held for commercial purposes in the GF and is now vacant land. The site is no longer required for this purpose. The proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social, or environmental well-being of the

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whole, or any part, of the area (section 226(1)(a) and (1A) Town and Country Planning Act 1990) in the following ways:

- **Economic Well-Being of the area** – see paragraph 4.8 above which sets out what the development will deliver. The development will enhance local employment opportunities through the creation of construction jobs and apprenticeship opportunities as well as opportunities created by the commercial and community space and will provide the Council with more affordable housing.
 - **Social Well-Being of the area** the new development will contribute to much needed housing in Lewisham, where there is high demand for affordable high-quality housing. The GP nursery and pharmacy and community facilities will address the need in the area.
 - **Environmental Well-Being of the area** the landscaping masterplan will provide a Garden Square at the heart of the scheme. It will host a variety of opportunities for play, exercise, and spaces to sit and relax. Alongside biodiversity features including an ecological garden and sustainable urban drainage. The building will also be sustainable using renewable energy sources.
- 5.5. Easements, covenants, and certain other rights over property are overriding interests which may exist even if they are not identifiable by investigation of title. For that reason, it is recommended that appropriation is used. Appropriation removes the potential for owners or beneficiaries of such rights to obtain injunctions preventing the redevelopment. Where rights are extinguished, the owners of any such interests are entitled to compensation calculated under the compulsory purchase compensation rules for injurious affection.
- 5.6. The purpose of the appropriation of the housing land within the scheme to planning purposes is to facilitate the comprehensive re-development of the entire Site by ensuring that third party rights do not impede the carrying out of the development and to ensure that all the land within the scheme is protected and treated in the same way.
- 5.7. The housing land within the scheme was originally part of the Kender Estate. The housing blocks on the land were decanted as part of the Kender Triangle housing masterplan and demolished in 2008. The rest of the scheme is already held for planning purposes as it was specifically acquired by the Council for this purpose when it was originally assembled.

6. Extension to the Term of the Development Loan Agreement

- 6.1. Grainger entered into a Loan Agreement with the JV (Lewisham Grainger Holdings LLP and Besson Street LLP) on 30 June 2022 to provide the pre-development funding for the Final Viability Test phase.
- 6.2. The loan provides funding for the detailed design work and main contractor procurement along with the refinancing of all other costs incurred to date. The original loan agreement expired on 30 June 2023.
- 6.3. Given the delays to the commencement for the procurement of the main contractor, the current scheme viability, and the added uncertainty of the second staircase redesign there was a requirement to extend the term of the loan agreement.
- 6.4. The 19 July Mayor and Cabinet approved the extension to the term of the loan agreement to 31 October 2023 and to increase the loan sum.
- 6.5. In October 2023 members agreed to a further extension to the term of the loan agreement but not an increase in the loan value to the end of February 2024, which was signed off via a side letter. Members were hopeful that at this point the government would have clarity on the second staircase requirements and that the next steps strategy for

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the development could be progressed.

- 6.6. However, as this has not materialised, and it is now necessary for a further extension to the term of the loan agreement to the 31 August 2024. The JV agreed that the loan term should now run until end of Pre-Development Phase, as this will align the expiry of the loan to the land transfer and Option agreement.
- 6.7. The JV will continue to pursue value engineering options and scope out a suitable funding strategy for the affordable housing to improve financial viability to a level that enables the scheme to proceed to construction.
- 6.8. The Programme

Milestone	Assumed Date
Second Staircase Redesign/Procurement	Early 2024 - January 2025
Start on Site	Late January 2025
Practical Completion	Late February 2028

7. Financial implications

- 7.1. Detailed financial implications pertaining to the extension of the loan period are contained in the part 2 report.

8. Legal implications

Appropriation

- 8.1. The Council has power under section 122 Local Government Act 1972 to appropriate land belonging to the Council that is no longer required for the purpose for which it was held immediately before the appropriation, provided the new purpose is one for which the Council would be authorised to acquire land by agreement. Section 227 of the Town and Country Planning Act 1990 provides that the Council may acquire by agreement any land which it requires for any purpose for which it may be authorised to acquire land under section 226 of the Town and Country Planning Act 1990. Section 226 allows the council to acquire compulsorily any land in its area if it will facilitate the carrying out of development, redevelopment, or improvement in relation to that land. The Council may not acquire land compulsorily unless the development is likely to contribute to one or more of the improvement or promotion of the economic wellbeing, social wellbeing, or environmental wellbeing of the local area.
- 8.2. In reaching its decision, the Council must consider the public need within the area for the existing use. The site to be appropriated is currently vacant. The Council cannot properly appropriate land to planning purposes unless it considers that the resulting interference with third party rights is necessary and there is a compelling case in the public interest for the land to be appropriated to enable the development to proceed and that the engagement of its powers would be proportionate and justified, notwithstanding the potential for it to interfere with unknown private rights.
- 8.3. Where the Council appropriates land for planning purposes, section 203 of the Housing and Planning Act 2016 allows the easements and third-party rights to be overridden. Compensation is calculated on the same basis as 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.
- 8.4. This report confirms that it is the opinion of officers that the site is no longer required for its current purposes and could be appropriated to facilitate development on the site and that such development could satisfy one or more of the objectives set out in s226(1A) of the Town and Country Planning Act 1990. Further, officers have confirmed in this report that the appropriation is necessary, there is a compelling case in the public interest and

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the purposes of the appropriation justify the interference with the human rights of those who would be affected.

Loan

- 8.1. The Council has a power to borrow for any purpose relevant to any of its functions (e.g., housing) or for the prudent management of its financial affairs. The Council must have regard to the Prudential Code for Capital Finance in Local Authorities published by CIPFA which requires borrowing to be prudent, affordable, and sustainable.

9. Equalities implications

- 9.1. This development will increase the number of affordable homes in the borough to enable more households on low incomes to access secure and safe accommodation, which will have positive equalities implications.
- 9.2. It should be noted that the Council is committed to ensuring developments are inclusive and feature accessible and adaptable homes that would meet the needs of our residents throughout their life.

10. Background papers

- 10.1. [MayorandCabinet 19 July 2023 Update to 2022-23 Besson Street Business Plan.pdf](#)
- 10.2. [MayorandCabinet 6 December 2017 Besson Street-Selecting a Joint Venture Partner to Deliver New Build to Rent Homes.pdf](#)
- 10.3. [MayorandCabinet 13 July 2016 Besson Street Re-development and Private Rented.pdf](#)
- 10.4. [Mayorand Cabinet 9 December 2015 Besson Street Re-development and Private Rented Sector Housing Part 1.pdf](#)
- 10.5. [MayorandCabinet 5 March 2008 Compulsory Purchase Order for land at Besson Street, Briant Street and.pdf](#)
- 10.6. [MayorandCabinet 19 September 2007 Compulsory Purchase Order for the builder's yard at 112-114 New Cross.pdf.](#)

11. Report author and contact

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12. Comments for and on behalf of the Executive Director Place

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13. Comments for and on behalf of the Director of Law, Governance and HR

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14. Appendices

- 14.1. Appendix 1 Besson Street Site Plan

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