

Title – Gloucester House and Durham Court – South Kilburn

Proposed decision

To appropriate the whole Site (Gloucester House and Durham Court site) including the open space for planning purposes. Plans are attached. Appendix 1 – Gloucester House and Durham Court Site Boundary and Appendix 2 – Extent of Public Open Space.

Date decision must be taken – 15/09/17

Decision Maker –

Decision taken in capacity as/on behalf of – Strategic Director, Regeneration and Environment.

Non – Key

Not exempt

Authority for Delegated Decision

Cabinet Paper dated 19/06/17

Decision Made

To appropriate the whole Site (Gloucester House and Durham Court) including the open space for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990 (1990 Act).

Reason for Decision

Appropriation is required to proceed with the redevelopment of the Gloucester House and Durham Court site.

A detailed planning application for the redevelopment of the Site was submitted on 9 May 2014, resolution to grant planning permission was given on 20 August 2014 (case number 14/1896) and a planning decision notice was issued on 23 September 2014.

On 9 May 2014 a Compulsory Purchase Order (CPO) for land surrounding and including Gloucester House and Durham Court was made. The CPO was confirmed by the Secretary of State for Communities and Local Government on 20th February 2015.

The redevelopment of Gloucester House and Durham Court site consists of:

- The demolition of 209 residential units and garages contained within the Gloucester House and Durham Court site
- Erection of 236 new residential units - market sale (134 new homes) and affordable social rented (102 new homes)
- Relocation and improvement of the public open space and play area at the north of the Site
- New public realm and improved routes through the Site
- Landscaped private and shared gardens
- Basement car park providing 91 spaces
- Space for an energy centre for the South Kilburn District Energy System.
- Market and affordable dwellings including a range of 1 to 4 bed flats and 3 and 4 bed duplex family units

On 19 June 2017 Cabinet approved to commence the advertisement of the Council's intention to appropriate the part of the Site which includes open space in accordance with its powers set out in section 122 of the Local Government Act 1972 (1972 Act) and to dispose of open space at Gloucester House and Durham Court Site to a third party in accordance with the provisions of section 233 of the 1990 Act.

Cabinet agreed to delegate to the Strategic Director of Regeneration and Environment, in consultation with the Lead Member for Regeneration, Growth, Employment and Skills, authority to consider the representations made by the public in response to the advertisement to appropriate and dispose of the open space and thereafter to decide whether to appropriate and dispose of the open space.

A public notice under section 122(2A) of the 1972 Act was published in the Brent and Kilburn Times on 29th June 2017 and the 6th July 2017 stating that the Council was intending to appropriate land for planning purposes which includes land that forms part of open space and providing 21 days from the first publication date for written objections. The Council has received no objections to the appropriation.

Cabinet agreed to delegate to the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Growth, Employment and Skills, authority to appropriate the open space at the Gloucester House and Durham Court Site, and to appropriate and dispose of the whole Site including open space for planning purposes if the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Growth, Employment and Skills decides to do so following consideration of any objections.

No objections have been received. Following consideration it is agreed to appropriate the part of the Site which includes the open space land.

In respect of the remainder of the Site which is held for the purposes of Part II of the Housing Act 1985 (1985 Act), Cabinet agreed to delegate to the Strategic Director of Regeneration & Environment and reconfirmed its approval (given on 22 April 2013) to seeking the Secretary of State's consent under section 19(2) of the 1985 Act in order to appropriate any part of the land consisting of a house or part of a house.

The Secretary of State's consent for the purpose of section 19(2) has been sought and was received on 18 August 2017

Highlight any associated risks/finance/legal/equality considerations

Appropriation of the whole Site for planning purposes will facilitate the carrying out of the development. There is a compelling case in the public interest to appropriate the open space and the remainder of the Site for planning purposes as developing the Site would serve in the public interest and accordingly, such development outweighs the effect of the acquisition on the rights of individuals. In addition, the development and regeneration will ultimately contribute to the economic and social well being of the area.

To date, enquiries have not revealed any specific third party rights which would be adversely affected by the development. However given the history and location of the land it is possible that such rights or interests may exist. If a third party is able to establish an easement or other right or interest over parts of the Site (such as a right of way, a right to light or a restrictive covenant) that party could potentially apply for an injunction to prevent or halt the development and regeneration of the Site. The effect of appropriation is therefore to facilitate the re-development and

improvement of the Site allowing any third party rights and interests in the Site that may exist to be overridden, subject to the payment of statutory compensation. It should be noted that third parties who suffer loss as a result of any interference with the rights would be entitled to claim compensation. The Development and Sale Agreement (which the Council enters into) includes that the Developer will indemnify the Council in relation to any claims for compensation arising.

Part of the land to be appropriated includes open space with a public children's play area, however a new replacement play area will be provided. The Planning Committee Report of 20 August 2014 identified that in order to justify the proposed redevelopment it is important that the replacement facility is of a significantly improved quality. The report found that overall, the proposals appear to be of sufficient quality to justify the redevelopment of the existing play area and inconvenience that will be caused during construction when no play area within the Site will be provided.

It should also be noted that Paddington Recreation Ground is around 330m away, South Kilburn Urban Park approximately 400m away and in May 2016 the new Woodhouse Urban Park in South Kilburn opened which is just over 500m away.

Financial Implication

There were minor costs associated with the appropriation in respect of the advertisement costs, which were placed in order to comply with the relevant statutory requirements. These are covered by existing budgets.

Although the developer would be liable to meet claims for compensation from third parties in respect of any interference with their rights caused by the development, it is possible that such claims might be made against the Council. However, as noted above, there will be indemnity from the developer in respect to any such claims made against the Council within the Development and Sale Agreement.

Legal Implications

In relation to the part of the Site which includes open space land which is held by the Council, Cabinet were advised that section 122 of the 1972 Act provides that a Council may appropriate land from one purpose to another if the land is no longer required for the purpose for which it is held immediately before the appropriation. This is something the Council must specifically consider, but it does not mean that the land should be unused or "surplus to requirements" before section 122 can be relied on. The test is concerned with the relative needs, in the public interest, for which land has been or might be put. In addition, the Council must have (at least in theory) a power under which it could acquire land by agreement for the "new purpose" to which the land is to be put. In the present case that requirement would be satisfied by the Council's power to acquire land by agreement for planning purposes under section 227 of the 1990 Act.

Section 122(2A) of the 1972 Act provides an additional requirement in relation to the appropriation of open space which is to advertise the Council's intention to appropriate the open space for two consecutive weeks in a local newspaper and to consider any objections made by the public before reaching a decision. Section 233(4) of the 1990 Act imposes a similar requirement to advertise the intention to dispose of land held for planning purposes which consists of forms part of an open space for two consecutive weeks and to consider any objections before reaching a decision.

Once appropriation has taken place section 233 of the 1990 Act enables the Council to dispose of the land appropriated for planning purposes to such person in such manner and subject to such condition as appear to the Council to be expedient in order to secure the best use of the land or to secure the erection construction or carrying out on the land any buildings or works appearing to be needed. The consent of the Secretary of State is needed where the disposal of the Site is for less than the best consideration that can reasonably be obtained except in the case of leases for a term of 7 years or less.

Where land has been appropriated for planning purposes, then under section 203 of the Housing and Planning Act 2016 (2016 Act) private rights and interests of third parties will be overridden when development is carried out, provided that planning permission has been obtained for the building or maintenance work and/or uses that cause interference with those rights and interests. The maintenance or building work and/or uses must also be for a purpose related to the purpose for which the land was acquired, vested or appropriated.

The power under section 203 of the 2016 Act to override rights and interests such as rights to light and restrictive covenants, allows construction or maintenance work to be carried out, or the use of the land to be changed, even if doing so interferes with such a right. Under section 204 of the 2016 Act, the person who causes interference is liable to pay statutory compensation to any affected third party, and if that person fails to do so, the liability for compensation would be enforceable against the Council.

As noted above, although no specific adverse third party rights have been identified through enquiries made to date, given the history and location of the Site it is possible that some third party rights or interests may be affected by the development.

In respect of the part of the Site held for the purposes of Part II of the 1985 Act, on [18 August 2017] the Council obtained the consent of the Secretary of State under section 19(2) of that Act in order to appropriate parts of the land consisting of a house or part of a house.

Diversity Implications

All secure tenants and leaseholders have already vacated the housing land on the Site. Secure tenants have been re-housed predominantly into an earlier phase of the South Kilburn Regeneration Programme.

The appropriation includes open space with a public children's play area however a new replacement play area will be provided. Whilst the community will be without the open space in this location during the construction period, it is important to note that there will be a re-provision following the completion of the development and as mentioned above, there are three other areas of open space within a radius of 500 metres.

The Planning Committee Report of 20 August 2014 identified that in order to justify the proposed redevelopment it is important that the replacement facility is of a significantly improved quality. The report found that the proposals appear to be of sufficient quality to justify the redevelopment of the existing play area and inconvenience that will be caused during construction when no play area will be provided.

There is a need to ensure that the Council's Equality Analysis in relation to the different projects comprising the South Kilburn regeneration programme and their impact on residents (including leaseholders) with protected characteristics is kept up to date, and that reports to Members provide sufficient information to demonstrate adequate consideration of the impacts on all protected groups.

As with all other schemes that are part of the South Kilburn regeneration programme, full consideration must be given to residents and leaseholder with protected characteristics, particularly people with disabilities and / or other types of vulnerabilities due to older age, children and young people, residents with childcare and/or caring responsibilities, socio-economic status (lone parents and large families).

All of the proposed units (to be constructed on the Site) will be constructed to be Lifetime Homes compliant. Ten percent of all units will be designed to be wheelchair accessible, or easily adaptable properties and the allocation process includes officers reviewing occupational therapy (OT) requirements for secure tenants so that their physical needs can be pre-built into the scheme such that their individual homes are tailored to take account of any identified OT needs.

Due regard must be paid to black, Asian and minority ethnic and religious groups (e.g. community ties and wider community infrastructure, needs of large families, etc). The proposed development would contribute towards the wider rebalancing of the affordable unit mix across South Kilburn where the aim is to provide a greater proportion of larger, three and four bedroom units.

Details of any Alternative Options considered and rejected

The alternative would be not to appropriate the land for planning purposes. However the land is required planning purposes as defined and if it is not appropriated, it could entail an unacceptable risk to the development proceeding.

Parties Consulted – Lead Member for Regeneration, Growth, Employment and Skills

Members declaration of interest - None