



Officer Key Decision

Report from Strategic Director Regeneration & Environment

Appropriation of Phase 4 Peel Precinct London NW6

Wards Affected:	Kilburn
Key or Non-Key Decision:	Key decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	Two Appendix 1 Site Plan (existing) Appendix 2 Site Plan (Phase 4)
Background Papers:	<ul style="list-style-type: none"> ▪ None
Contact Officer(s): (Name, Title, Contact Details)	<p>Emma Sweeney Head of Estates Regeneration Tel 0208 937 1650 Emma.sweeney@brent.gov.uk</p> <p>Radha Hirani Assistant Project Manager Tel 0208 937 2059 Radha.hirani@brent.gov.uk</p>

1.0 Purpose of the Report

- 1.1 To appropriate the land known as Phase 4 at Peel Precinct London NW6 (the Appropriation Land) for planning purposes as developing the Appropriation Land would serve in the public interest. The Appropriation Land is shown edged red on the plan attached to Appendix 1.
- 1.2 The Appropriation Land is to be disposed of for redevelopment as part of the South Kilburn Regeneration. Further details are set out in the Cabinet Reports dated 12 February 2018, Cabinet Report dated 24 April 2017 and Executive Report dated September 2014 (the Cabinet Reports)
- 1.3 Pursuant to the Cabinet Report dated 12th February 2018, Cabinet delegated powers to the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Growth, Employment and Skills (now Cabinet Member for Regeneration & Planning) authority to appropriate and dispose of the Appropriation Land and if the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Growth and Employment and Skills (now Cabinet Member for

Regeneration and Planning) decided to do so following the consultation to appropriate the Appropriation Land for planning purposes.

- 1.4 All outstanding interests in the land have been acquired by private treaty. The land is now vacant and there are no secure tenants remaining on site. The building is to be demolished as part of the scheme.
- 1.5 The existing building included 15 homes for social tenants, 13 households have been rehoused permanently in earlier phases of the regeneration or to homes in South Kilburn not due for demolition. 2 social units were void as the previous tenants are now deceased and accordingly the Appropriation Land is no longer required for the purpose for which it was used for.
- 1.6 The Peel scheme as a whole (of which the Appropriation Land forms part) will deliver 308 homes in total (181 for private sale, 85 shared ownership and 4 social rent), private open space, cycle parking, a health centre, community restaurant, gym, pharmacy, food store, workspace and a market square. The Appropriation Land and development of the Appropriation Land is within the public Interest and will contribute to the economic and social-well-being of the area. Existing Site Red Line Plan attached Appendix 2.

2.0 Recommendation(s) that

The Strategic Director of Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning (formerly Lead Member for Growth, Employment and Skills)

- 2.1 Consider the representations made by third parties
- 2.2 Agree that the Appropriation Land is surplus to requirements and is no longer required for the purpose for which it is currently held.
- 2.3 Once consideration has been given to the representations made pursuant to paragraph 2.1 and that the Appropriation Land is surplus to requirements as outlined in paragraph 2.2 above to then agree that the Appropriation Land is to be appropriated for planning purposes pursuant to the Planning Permission.

3.0 Detail

- 3.1 The Agreement for Lease and Development between the Council and Countryside Properties PLC (the Developers) was entered into on the 31 July 2018 subject to, amongst other things, the appropriation of the Appropriation Land for planning purposes provided that the Developers indemnify the Council in relation to any claims for compensation arising.
- 3.2 An application was made to the Secretary of State on the 7 February 2020 to request permission to appropriate the Appropriation Land to planning purposes pursuant to section 19 of the Housing Act 1985.
- 3.3 On the 6 May 2020 the Secretary of State gave permission for the Council to appropriate the Appropriation Land for planning purposes.
- 3.4 Accordingly, if a third party is able to establish an easement or a right over parts of the Appropriation Land (the easements could include but are not limited to a

right of way or a right to light) then the third party could potentially prevent the development and regeneration of the Appropriation Land and apply for an injunction to prevent the conclusion of the development.

- 3.5 The effect of appropriation is therefore to facilitate the re-development and improvement of the Appropriation Land and to override third party rights and interests in the Appropriation Land that may exist. It should be noted that third parties may be entitled to compensation for loss of their rights.
- 3.6 There is a compelling case in the public interest to appropriate the Appropriation Land for planning purposes as developing the Appropriation Land would serve in the public interest and accordingly, such development outweighs the effect of the acquisition of the rights of individuals. In addition, the development and regeneration will ultimately contribute to the economic and social well-being of the area.
- 3.7 On the 6 May 2020 planning permission was granted for the Peel Precinct scheme including the Appropriation Land under Planning Application Ref :19/3259 Full planning application for a phased development for the demolition of 2 Canterbury Road, 1-7 and 15-33 Peel Precinct and 8-14 Neville Close, and erection of seven buildings (A to G) ranging between 5 and 16 storeys, plus part basement, comprising private sale residential units (Use Class C3), shared ownership residential units (Use Class C3), social rented residential units (Use Class C3); new health centre (Use Class D1), new gym (Use Class D2), flexible use class within retail and commercial units (Use Class A1/A3/B1) at ground floor, associated landscaping, highways and public realm improvements (including new public space and market square), private open space, associated car parking, cycle parking and servicing provision. Peel Precinct, 97-112 Carlton House, Canterbury Terrace, 8-14 Neville Close, 2 Canterbury Road & Peel Site Garages, London, NW6 (the Planning Permission).
- 3.8 The officers consulted with third parties that may have private rights over the Appropriation Land for a period of 8 weeks from 5 January 2022 to 1 March 2022. In total 33 third party interests were consulted. No responses were received from the consultees.

4.0 Financial Implications

- 4.1 This report relates to a decision to appropriate land known as Phase 4 at Peel Precinct London NW6 (the Appropriation Land) for planning purposes.
- 4.2 The South Kilburn Programme model is self-financing and based on a process whereby the Council obtains planning consent for a particular site, markets the site to suitable delivery partners, who offer a land receipt plus potential overage in return for a long leasehold interest. In return for the site, the delivery partner will build affordable and social housing homes, while also delivering capital receipts to support the capital programme.
- 4.3 The land appropriation is in line with the strategy set out for the Peel Site development.
- 4.4 There are no direct financial implications from this report. The Council would be indemnified by the developer in relation to any claims for compensation arising from the appropriation.

5.0 Legal Implications

5.1 In considering whether or not the Appropriation Land should be appropriated for planning purposes (and potentially disposed of subsequently in connection with such planning purposes), thereafter engaging the powers conferred by section 203 of the Housing and Planning Act 2016, the Strategic Director of Regeneration and Environment, in consultation with the Lead Member for Regeneration, Property and Planning (formerly Lead Member for Growth, Employment and Skills) will consider:

- whether the land which is to be appropriated is already owned by the Council (this is a prerequisite to appropriation);
- whether the land which is to be appropriated is no longer required by the Council for the purpose for which it is currently held (again, this is a prerequisite to appropriation);
- whether the purpose for which the Council would be appropriating the land is a purpose authorised by statute (in the case of land to be appropriated for planning purposes, the relevant purposes would be authorised by sections 226 and 227 of the Town and Country Planning Act 1990);
- whether the proposed redevelopment of the Peel site would be in the public interest;
- whether the public interest benefits which would arise from the redevelopment of the Peel site would be sufficient to justify interference with any private rights, such that the interference was proportionate;
- whether the Council could (in the alternative) acquire the land compulsorily for the purposes of the redevelopment;
- whether any related financial liabilities of the Council would be indemnified; and
- whether prior consultation had taken place (as outlined above).

5.2 Appropriation of the whole Site for planning purposes would facilitate the carrying out of the development. There is a compelling case in the public interest to appropriate the Appropriation Land for planning purposes, as developing the Appropriation Land would serve the public interest by providing new and improved housing and community facilities and accordingly, such development outweighs the effect of the appropriation on the private rights of individuals. In addition, the carrying out of the proposed redevelopment, regeneration and improvement of land within Appropriation Land (in accordance with the Planning Permission will ultimately contribute to the promotion and improvement of the economic and social well-being of the Council's area – and these benefits could not be realised within a reasonable timescale (in the context of the Council's comprehensive South Kilburn Regeneration Programme) without interference with the private (third party) rights affected by the appropriation.

- 5.3 If a third party is able to establish that it has an easement or a right over the Appropriation Land or over a part of the Peel Site (such easements could include but are not limited to a right of way or a right to light) then the third party could potentially obstruct the redevelopment and regeneration of the Appropriation Land by applying for an injunction to prevent the delivery of the development. The effect of appropriation, followed by the engagement of the powers in section 203 of the Housing and Planning Act 2016 which override such third party rights that may exist within the Appropriation Land and convert them into a right to compensation only (as opposed to a right to apply for an injunction), is therefore to facilitate the re-development and improvement of the Appropriation Land. It should be noted that third parties may be entitled to compensation for loss of their rights. Such compensation would be awarded for injurious affection (compensating for any depreciation in the value of the land or property arising from the interference with the right) rather than on a reinstatement or ransom basis.
- 5.4 Under the Agreement for Lease and Development the Council would agree to appropriate its interest in the Appropriation Land for planning purposes. The Agreement for Lease and Development include provisions requiring the Developers to indemnify the Council in relation to any claims for compensation arising from any interference with third party rights in connection with the Council's appropriation and disposal of land under, respectively, section 122 of the Local Government Act 1972 and section 233 of the Town and Country Planning Act 1990, or arising from the subsequent and related exercise of the powers under section 203 of the Housing and Planning Act 2016.

6.0 Equality Implications

- 6.1 Under Section 149 of the Equality Act 2010, the Council has a duty when exercising functions to have 'due regard' to the need to:
- a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited under the Act;
 - b) advance equality of opportunity; and
 - c) foster good relations between those who share a "protected characteristic" and those who do not.

This is the Public Sector Equality Duty (PSED). The 'protected characteristics' are: age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.

- 6.2 There are no specific equality implications arising from this report.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Not Applicable

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 Human Resources Not Applicable
- 8.2 Property Implications - all leaseholder interests all dwellings acquired within the Peel Precinct scheme have been extinguished at Land Registry.

Report sign off:

Alan Lunt

Strategic Director of Regeneration and
Environment