

# MUNICIPAL YEAR 2012/2013 REPORT NO. 143

**MEETING TITLE AND DATE:**

Cabinet – 23 January 2013

**JOINT REPORT OF:**

Ray James, Director of Health, Housing and Adult Social Care and Neil Rousell, Director of Regeneration, Leisure and Culture

<b>Agenda Part: 1</b>	<b>Item: 12</b>
<b>Subject: Highmead – Appropriation for Planning Purposes</b>	
<b>Wards: Upper Edmonton</b>	
<b>Key Decision No:3440</b>	
<b>Cabinet Member consulted: Cllr Oyken</b>	

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## 1. EXECUTIVE SUMMARY

- 1.1 On 14<sup>th</sup> September 2011 Cabinet granted authority for the Council to enter into a Development Agreement with the selected developer.
- 1.2 The Development Agreement that the Council entered into on 30<sup>th</sup> March 2012 includes a number of conditions that must be fulfilled by both the Council and the developer in order to allow the development of Highmead to proceed.
- 1.3 One of these conditions was for the Council to use its powers to appropriate the land for planning purposes.
- 1.4 This report seeks approval for the Council to use its powers to appropriate the land required for the Highmead development for planning purposes.

## 2. RECOMMENDATIONS

- 2.1 In accordance with section 122 of the Local Government Act 1972 appropriate the sites set out at Appendix 1 and shown outlined on the plans at Appendix 2 to this Report from their present holding purposes to planning purposes and in particular the purposes set out in section 237 of the Town and Country Planning Act 1990.

### **3. BACKGROUND**

- 3.1 The Highmead site is located in the Upper Edmonton ward of the London Borough of Enfield. The site contains the commercial premises at 68-90 Fore Street with 1-11 Highmead which is a row of 3-bed maisonettes above and 12-61 Highmead was an 11 storey block (Highmead Tower). It also includes the nearby car park at Trafalgar Place.
- 3.2 In December 2009 Cabinet approved the Highmead Tower report (Key decision reference: 2944) that recommended the demolition of Highmead Tower. The tower has now been demolished.
- 3.3 In March 2010 Cabinet approved the Highmead Strategy report (Key decision reference: 3002). The report recommended a design-led comprehensive demolition and rebuild strategy for Highmead.
- 3.4 In September 2011 Cabinet approved the Highmead Development Partner Selection report (Key decision reference: 3306). This report recommended the appointment of a developer and that a Development Agreement was entered into with that developer to secure the delivery of the Highmead development.
- 3.5 On 30<sup>th</sup> March 2012 the Council granted planning consent for the development of Highmead and entered into a Development Agreement. This agreement includes a number of conditions that both the Council and the developer must fulfil to help enable completion of the development. One of these conditions is for the Council to use its powers to appropriate the land for planning purposes
- 3.6 It is recommended that the land required for the completion of the Highmead development should be appropriated for planning purposes pursuant to section 122 of the 1972 Act in order that section 237 of the 1990 Act shall apply to it.
- 3.7 Local authorities may appropriate land in their ownership for planning purposes. If land is appropriated for planning purposes then the power under section 237 of the 1990 Act to override easements and other rights, for example, rights of light and restrictive covenants can be used when developing that land. That power may be used either by the local authority or by a person deriving title to the land in question from the local authority, e.g. a private developer who has entered into an agreement to develop the land.
- 3.8 Any rights overridden by section 237 are automatically translated into a right to claim compensation for resulting loss. This means that the holders of the original rights no longer have the ability to seek an injunction against the development for infringement of their rights. The developer will not commence constructions works until this risk of an injunction has been resolved (by approving this report).

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 None; see reasons for recommendations below.

#### **5. REASONS FOR RECOMMENDATIONS**

5.1 The Development Agreement entered into by the Council includes a requirement, as a condition precedent, for the Council to use its powers to appropriate the land for planning purposes. If the Council does not appropriate for land for planning purposes the developer could terminate the Development Agreement.

#### **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

##### **6.1 Financial Implications**

6.1.1 It is anticipated that any cost arising from the Council exercising its powers to appropriate for planning the land at 64-90 Fore Street and the land comprising Trafalgar Place Car Park will be met fully by the developer. This will be at a nil cost to the Council.

##### **6.2 Legal Implications**

6.2.1 Under section 122 of the Local Government Act 1972 the Council may appropriate land from one purpose to another if that land is no longer required for the purposes for which it is held. In this instance the land is currently held for housing purposes and use as a car park but it is now required for development for planning purposes as authorised by the planning consent.

6.2.2 Section 237 of the 1990 Act allows works to be carried out on land appropriated for planning purposes as long as those works are in accordance with planning permission, even though those works may interfere with an interest or right affecting the land or involve a breach of a restriction on the use of the land. Appropriation of land for planning purposes under the 1990 Act in order to facilitate a redevelopment scheme is a usual and advisable procedure so that those with interests protected by easements and other legal rights may be dealt with fairly but without compromising the deliverability of the scheme. .

6.2.3 Compensation is payable where loss is suffered as a result of interference with any such rights. It is noted that the Developer is to meet any such claims that may arise in this case.

##### **6.3 Property Implications**

The Property Implications are contained in the body of this report.

## **7. KEY RISKS**

If the recommendation is not adopted the developer may decide to terminate the Development Agreement.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The new Highmead scheme ensures fairness for all members of the local community by consulting the community on the proposals for Highmead and through the provision of affordable homes in the new development.

### **8.2 Growth and Sustainability**

Growth and sustainability are central to the proposals for Highmead.

The new Highmead development will provide growth in terms of increasing the supply of quality residential housing in the area; improving the quality of the retail space; and by providing a community space.

The new Highmead development prioritises environmental sustainability within the scheme design. In addition to the new buildings achieving high levels of energy efficiency, the development takes a sustainable approach to car parking.

### **8.3 Strong Communities**

Transience has been identified by the local community as being a major problem in the Highmead area. The proposals for Highmead aim to counter this trend by increasing home ownership levels in the area. One of the objectives for the new community centre is that it can act as a focus for local residents and foster a greater sense of community cohesion in the area.

## **9. EQUALITIES IMPACT IMPLICATIONS**

9.1 Not applicable.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

10.1 Not applicable

## **11. HEALTH AND SAFETY IMPLICATIONS**

11.1 Not applicable.

**12. HR IMPLICATIONS**

12.1 Not applicable.

**13. PUBLIC HEALTH IMPLICATIONS**

13.1 Not applicable.

**Background Papers**

None.

## **Appendix 1**

Land and buildings at and to the rear of 68 to 90 Fore Street Edmonton (as registered at the Land Registry under title number EGL257538) and the land known as Trafalgar Place Car Park (as registered at the Land Registry under title numbers MX10675, MX325800, MX70053, P59662, P59663 and P59664)

## **Appendix 2**

[Site plans to be attached]