

MUNICIPAL YEAR 2013/2014 REPORT NO. 206

MEETING TITLE AND DATE:

Cabinet – 12 March 2014

JOINT REPORT OF:

Ray James, Director of Health, Housing and Adult Social Care and James Rolfe, Director of Finance, Resources and Customer Services

Contact officer and telephone number:

Geoff Richards 020 8379 2179 Email: geoffrey.richards@enfield.gov.uk

Agenda - Part: 1

Item: 9

Subject: Small Housing Sites – Appropriation of land for planning purposes

Wards: Town, Chase & Turkey Street

Key Decision No: KD 3780

**Cabinet Members consulted:
Cllr Oykenor and Cllr Stafford**

1. EXECUTIVE SUMMARY

- 1.1 On 18th July 2012 Cabinet approved the Small Housing Sites regeneration project and delegated authority to the Cabinet members for Housing and Finance & Property to both appoint and enter into a Development Agreement with the selected developer.
- 1.2 The Development Agreement to be entered into by the Council with the preferred developer includes a number of conditions that must be fulfilled by both the Council and the selected developer in order to allow the development of Small Housing Sites to proceed.
- 1.3 One of these conditions is for the Council to use its powers to appropriate the land for planning purposes.
- 1.4 Appropriating land for planning purposes is a necessary stage of any redevelopment project and similar reports have been approved for both the Ladderswood and Highmead projects.
- 1.5 This report seeks approval for the Council to use its powers to appropriate the land required for the Small Housing Sites development for planning purposes.

2. RECOMMENDATIONS

- 2.1 It is recommended that in accordance with section 122 of the Local Government Act 1972 the sites required for the completion of the Small Housing Sites development (set out at Appendix 1 and shown outlined in red on the plans set out at Appendix 2 to this report) should be appropriated from their present holding purpose to planning purposes and in particular the purposes of section 237 of the Town and Country Planning Act 1990.

3. BACKGROUND

- 3.1 The Small Housing Sites is one of the Councils priority regeneration schemes. Cabinet approved a recommendation to clear, remediate and redevelop the portfolio of Small Housing Sites July 2012 (Key decision reference: 3517). The decision was made after considering the results of a financial options appraisal of the sites, by independent consultants Drivers Jonas Deloitte March 2012.
- 3.2 The project will see six former sheltered housing blocks, previously comprising 109 small residential units that were no longer fit for purpose, and a former garage site replaced by exemplar developments providing 94 new homes.
- 3.3 Detailed planning applications were submitted by HTA August 2013 and approved at 26th November 2013 Planning Committee, subject to conditions and signing of the section 106 Agreement.
- 3.4 The Council is making good process to appoint a developer to construct the 94 new homes across the seven sites. The Development Agreement between LB Enfield and the chosen development partner will include a number of agreed 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 pursuant to section 122 of the 1972 Act.
- 3.5 It is recommended that the land required for the completion of the Small Housing Sites development should be appropriated for planning purposes, pursuant to section 122 of the 1972 Act.
- 3.6 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.

- 3.7 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. In the absence of converting the third party rights to compensatory claims the appointed developer would not commence construction works until the risk of an injunction had been resolved (by approving this report).

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Regarding procurement of land for planning purposes none; see reasons for recommendations below.

5. REASONS FOR RECOMMENDATIONS

- 5.1 All the bidders request that any Development Agreement entered into with the Council includes a requirement, as a condition precedent, for the Council to use its powers to appropriate the land for planning purposes. Failure to appropriate the land for planning purposes would delay the project and could even put the development at risk.

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

6.1 Financial Implications

- 6.1.1 The costs associated with appropriating the land required for the Small Sites development for planning purposes will be covered by the Development Partner. The developer will indemnify the Council from all costs incurred in appropriating the land for planning purposes

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, but it is now required for development for planning purposes as authorised by a 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 any such claims that may arise in this case will be met by the scheme.

6.2.4 The Council's Property Procedure Rules set out the process to be followed where an appropriation is proposed. A report needs to be made to the Directors of the services involved and they will need to approve the proposal in consultation, as necessary, with the relevant Portfolio holders. There are no specific financial requirements.

6.3 Property Implications

6.3.1 All the land involved is owned by the Council as it must be in order to be appropriated. The Development Agreement as described above requires the chosen developer to enter into an indemnity agreement to indemnify the Council for all costs and compensation that might arise from the appropriation process. Therefore there are no further property or cost implications.

7. KEY RISKS

If the recommendation is not adopted the project would be delayed and could even be put at risk.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The Small Housing Sites Project contributes to this aim by tackling inequality and access to social housing by providing new homes, a mix of tenure and employment opportunities across the area.

8.2 Growth and Sustainability

The Small Housing Sites scheme contributes to this priority by building strong and sustainable futures for our residents. The scheme attracts investment from the private sector, prioritises environmental sustainability including improving the energy efficiency of the residential buildings and promotes recycling and sustainable transport.

8.3 Strong Communities

Direct involvement in the process has allowed local people to shape their area and fostered a greater sense of community cohesion.

9. EQUALITIES IMPACT IMPLICATIONS

9.1 The overall scheme has been subject to an EIA.

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.