

MUNICIPAL YEAR 2015/2016 REPORT NO. 58

MEETING TITLE AND DATE:

Cabinet 16th September 2015

REPORT OF:

Ian Davis, Director -
Regeneration &
Environment

Agenda Part: 1**Item: 10**

Subject: Dujardin Mews Development –
Appropriation for Planning Purposes

Key Decision: KD 3734

Wards: Ponders End

Cabinet Member consulted: Cllr Oyken

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1. EXECUTIVE SUMMARY

- 1.1 On 18th July 2012, Cabinet granted authority for the commencement of the Alma Regeneration Scheme including the appropriation of the site to the Housing Revenue Account (Key Decision 3510)
- 1.2 This report seeks Cabinet approval for the Council to use its powers to appropriate for planning purposes the site at Dujardin Mews (previously known as Academy Street) to enable the Dujardin Mews development to proceed without frustration in respect of any claimed third party rights.
- 1.3 The development is of strategic importance to the Council because the new homes will be used to re-house residents from the Alma Estate which is subject to a major regeneration initiative. These homes will be the first new council homes built in the Borough for many years.

2. RECOMMENDATIONS

- 2.1 It is recommended that Cabinet, in accordance with section 122 of the Local Government Act 1972 resolve to appropriate the site at Dujardin Mews (as set out at Appendix 1 of this Report and shown edged red) from its present holding purposes to planning purposes and to authorise the exercise of the Council's powers set out in section 237 of the Town and Country Planning Act 1990 to override all adverse rights.

3. BACKGROUND

- 3.1 The Dujardin Mews site is a 0.6 hectare site in Ponders End the majority of which is owned by the Council and is sited adjacent to the new Oasis Hadley Academy School. In July 2012, Cabinet approved the development of the site for a 100% affordable residential scheme to re-house Alma Estate residents affected by the regeneration.
- 3.2 The site was temporarily referred to as Academy Street due to the adjacency of the new Academy School. Following discussions with the Alma Residents Association and following a residents' consultation exercise, the road is to be formally renamed Dujardin Mews after the double gold medallist of the London Olympics 2012, Enfield born Olympian Charlotte Dujardin.
- 3.3 The Council appointed Karakusevic Carson Architects and Maccreanor Lavington Architects in autumn 2012 to design a mews street on the site. On behalf of the Council, the design team worked up detailed proposals and submitted a detailed planning application for 38 new homes, which was approved at Planning Committee on May 24th 2013.
- 3.4 A resident consultation event on 11th December 2013 at Ponders End Youth Centre, that was well attended by Alma residents saw 48 questionnaires returned of which 90% were in favour of the site being used for new housing.
- 3.5 The scheme will provide 19 Council rented properties for existing Alma secure tenants, and 19 shared-equity properties which will be made available to Alma resident leaseholders subject to conditions. These new affordable homes are essential to enable the successful rehousing of Alma Estate residents.
- 3.6 Approval was made in January 2014 to appoint Durkan as contractor to build the scheme. Construction started in January 2015 and completion is scheduled for summer 2016.

4.0 APPROPRIATION OF LAND FOR PLANNING PURPOSES

- 4.1 In July 2012, Cabinet authorised the appropriation of the land from the General Fund to the Housing Revenue Account.
- 4.2 Whilst the Council owns the majority of the Dujardin Mews site, third parties may have rights (e.g. of way or of light), easements and covenants that the Council's development might interfere with. To ensure any persons having the benefit of these rights could not take legal action to prevent the proposed development because of interference with such rights, the Council firstly needed to acquire land not in its ownership via a Compulsory Purchase Order (CPO) and

subsequently to appropriate the land to planning purposes, which has the effect of extinguishing any rights.

- 4.3 There were two areas of privately owned land; the private road running through Gardiner Close, owned by Viridian Housing, and the public footpath on the western edge of the Dujardin Mews site. A report to Cabinet on 10th July 2013 sought approval to acquire these parcels of land via a CPO should other means fail to secure their ownership or rights over them. The power to acquire land via these powers is contained in the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981.
- 4.4 Following approval of Cabinet to seek a CPO, negotiations continued with Viridian Housing regarding access arrangements and purchase of their land prior to officially making and seeking confirmation of a CPO via the Department for Communities and Local Government (DCLG). Confirmation of the CPO was applied for in June 2014 and listed for a public inquiry in April 2015 (due to objection lodged by Viridian Housing). Prior to the inquiry agreement was reached with Viridian Housing over access through Gardiner Close resulting in them withdrawing their objection to the CPO.
- 4.5 Consequently the hearing was vacated as there were no other objectors (the footpath had no known owners) and the CPO was confirmed, subject to modification in March 2015. In terms of the CPO, qualifying persons received notice in accordance with statutory requirements of the Council's intention to proceed with vesting the land in its ownership pursuant to General Vesting Declaration. This was also advertised in the local press.
- 4.6 Local authorities may appropriate land in their ownership for planning purposes. This is a recommended route to enable development to proceed. 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 way and restrictive covenants can be used when developing that land. The importance of this appropriation is that any unknown of rights e.g. that of a sheep drover to cross land is extinguished.
- 4.7 Any rights overridden by section 237 are automatically translated into a right to claim compensation for resulting damages. 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.
- 4.8 Planning appropriation takes place after the acquisition of land rights, whether acquired by CPO or not, as the Council cannot exercise the powers over land it does not own.

5.0 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Not appropriating the land for the planning purposes could result in serious delays if a third party sought to assert any rights over the development site.

6.0 REASONS FOR RECOMMENDATIONS

- 6.1 To provide the 38 homes as part of the planning application, the Council must ensure that the whole site as set out at Appendix 1 of this Report and shown hatched red will be held for the purpose of section 237 to enable the development to continue ahead without the encumbrance of third party rights.

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

7.1 Financial Implications

- 7.1.1 Should any costs arise (which are likely to be minimal) as a result of appropriating the Dujardin Mews site for planning purposes, these will be funded from the Housing Revenue Account (HRA). The latest HRA 30-Year Business Plan includes all of the estimated capital and revenue costs of developing and managing the Dujardin Mews scheme.
- 7.1.2 If any specific costs arise due to planning appropriation these will be contained within the scheme budget.

7.2 Legal Implications

- 7.2.1 Appropriation of land in the way set out in this Report is permitted by section 122 of the Local Government Act 1972. This provides a general power for the Council to the effect that if any land belonging to the Council is no longer required for the particular purpose for which it is held it may be appropriated for any other purpose for which the Council has power to hold land. In this instance the land is currently held for holding purposes but is now required for development for planning purposes as authorised by the planning consent.
- 7.2.2 Section 237 of the Town and Country Planning Act 1990 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.

7.2.3 Compensation is payable where loss is suffered as a result of interference with any such rights.

7.2.4 The appropriation of the land which is the subject of this report is in accordance with the Council's Property Procedure Rules.

7.3 Property Implications

Given the relatively few rights granted in the registered title and the lack of immediate proximity of other buildings, then the risk of any substantive claim arising from this proposed appropriation is fairly low.

8.0 KEY RISKS

8.1 It should be noted that the effect of the appropriation may give rise to a right to compensation from those dispossessed of rights. Should any of these arise the costs will be met from the Housing Revenue Account.

9 IMPACT ON COUNCIL PRIORITIES

9.1 Fairness for All

9.1.1 The Alma Estate Regeneration Programme contributes to this aim by tackling inequality and access to social housing by providing new homes. The Dujardin Mews development makes up part of this programme.

9.2 Growth and Sustainability

9.2.1 The Alma Estate Regeneration Programme contributes to this priority by building strong and sustainable futures for our residents. The scheme is the one of the first steps towards delivering the planned regeneration of the Ponders End Priority Area, and housing growth, as set out in the NEEAAP and the Core Strategy.

9.3 Strong Communities

9.3.1 The community plays a central role in driving forward change and regeneration in the local area to create a stronger community in the Ponders End area.

10 EQUALITIES IMPACT IMPLICATIONS

- 10.1 An equalities impact assessment is in place for the Alma project.

11 PERFORMANCE MANAGEMENT IMPLICATIONS

- 11.1 This report does not recommend a change of service of implementation of new practices and therefore Performance Management Implications are not applicable.

12 PUBLIC HEALTH IMPLICATIONS

- 12.1 Housing is fundamental to the health of the public. Improving and increasing the supply of housing will have a positive effect across the borough.

Background Papers

None.