

MUNICIPAL YEAR 2015/2016 REPORT NO. 86

MEETING TITLE AND DATE:

Cabinet 21st October 2015

REPORT OF:

Ian Davis, Director -
Regeneration &
Environment

Agenda Part: 1**Item: 14****Subject:** Alma – Appropriation for Planning Purposes**Key Decision:** KD 4195**Wards:** Ponders End**Cabinet Member consulted:** Cllr Oykenner

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1. EXECUTIVE SUMMARY

- 1.1 On 18th July 2012, Cabinet granted authority for the commencement of the Alma Regeneration Scheme (Key Decision 3510).
- 1.2 This report seeks Cabinet approval for the Council to use its powers to appropriate for planning of the Alma development site to proceed without frustration in respect of any claimed third party rights.
- 1.3 The development is of strategic importance to the Council as the Alma Estate is subject to a major regeneration initiative.

2. RECOMMENDATIONS

- 2.1 It is recommended that Cabinet, in accordance with section 122 of the Local Government Act 1972 resolve to appropriate the Council owned land contained in the Alma development site (as set out at Appendix 1 of this Report and shown edged red, excluding the land hatched in green) 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 Alma development site is a 7.9 hectare site in Ponders End the majority of which is owned by the Council. The Alma Estate Regeneration Programme was approved by Cabinet on 18 July 2012 (Key Decision 3510). The July 2012 Cabinet Report explained that the Alma Estate was identified as an estate renewal project following an objective analysis of the Council's housing estates. In September 2013, Cabinet approved the recommendation to appoint Countryside Properties as the developer partner to comprehensively redevelop the estate (Key Decision 3769). Countryside Properties and their architects, Pollard Thomas Edwards Architects (PTEa) have now had the outline planning application and a detailed planning application for Phase 1 of the development site determined by the Planning Committee.
- 3.2 The outline planning application includes 993 homes of which it is proposed that 399 homes are to be affordable homes. The detailed planning application includes 228 homes of which 132 homes are to be affordable homes.
- 3.3 Following determination by the Planning Committee the planning applications need to be considered by the GLA, and are also subject to Sec. 106 Agreements being completed for both the outline planning application and the detailed planning application.

Once planning consent for the detailed planning application has been granted (i.e. the issuing of the planning consent notice(s); which will be after the GLA have commented and the S.106 has been completed) work will commence on the demolition of the existing properties on the Phase 1 development site.

- 3.4 On completion of demolition construction of the new development will start.

4.0 APPROPRIATION OF LAND FOR PLANNING PURPOSES

- 4.1 Whilst the Council owns the majority of the Alma development 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 this report seeks authority to appropriate the land to planning purposes, which has the effect of extinguishing any rights.
- 4.2 The Council is proposing to acquire land not in its ownership by negotiation. It is proposing to seek Compulsory Purchase Order (CPO) powers to ensure that those properties presently not in Council

ownership can be acquired should negotiations to purchase not be successful. Cabinet authority was given in December 2014 for the making of the CPO (Key Decision 4003).

- 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 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 rights e.g. that of a sheep drover to cross land is extinguished.
- 4.5 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.
- 4.6 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.
- 4.7 It is the intention to bring a further report back to Cabinet that land presently not in the Council's ownership has been acquired to seek authority to appropriate that land for planning purposes.

5.0 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Not appropriating the land for planning purposes could result in serious delays if a third party sought to assert any rights over the development site.
- 5.2 Not appropriating the land for planning purposes would also put the Council in breach of the Development Agreement that has been entered into with the developer Countryside Properties.

6.0 REASONS FOR RECOMMENDATIONS

- 6.1 To help enable the development of the Alma development site the Council must ensure that the Council owned land within the site as set out at Appendix 1 of this Report and shown edged in red, excluding the land hatched in green, 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 Alma development site for planning purposes, these costs will be funded by the developer Countryside Properties Ltd.

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 by the developer Countryside Properties Ltd.

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.

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.