

# MUNICIPAL YEAR 2015/2016 REPORT NO. 197

**MEETING TITLE AND DATE:**

Cabinet – 15 March 2016

**REPORT OF:**

Director – Regeneration & Environment

Agenda – Part 1

Item 10

**Subject: Appropriation of land at New Avenue for planning purposes.**

**Wards: Cockfosters**

**Key Decision No: 4256**

**Cabinet Member consulted: Cllr Oyken**

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## 1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval for the Council to use its powers to appropriate the land required for the New Avenue development for planning purposes.
- 1.2 One of the conditions of the development agreement, entered into by the Council and the developer, is that the Council uses its powers to appropriate the land for planning purposes.
- 1.3 Failure to appropriate the land for planning purposes would at least delay the project and could even put the development at risk.
- 1.4 Reports to appropriate the land for planning have previously been approved for the Ladderswood, Highmead, Alma and Small Sites projects.

## 2. RECOMMENDATIONS

- 2.1 It is recommended that in accordance with section 122 of the Local Government Act 1972 the land required for the completion of the New Avenue Estate Regeneration Programme (shown outlined in red on the plan set out at Appendix A 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 Cabinet approved a sequence of reports to undertake a comprehensive redevelopment of the New Avenue Estate September 2011 and July 2012 (KD references 3347 and 3519 respectively). The area to be

redeveloped included Beardow Grove, Coverack Close, Oakwood Lodge, Shepcot House, Hood Avenue open space. The green to Cowper Gardens will be upgraded and a garage site to the rear of Lousada Lodge has since been added (KD4120) June 2015.

- 3.2 The provision of 412 new homes, including 140 affordable homes, multi-purpose nursery/community hub, parking and amenity space will transform this derelict estate and create a vibrant environment that will bring social, economic and environmental benefits to the estate and wider community.
- 3.3 The Development Agreement, between LB Enfield and our appointed development partner Countryside Properties, includes 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.
- 3.4 It is recommended that the land required for the completion of the New Avenue Estate Regeneration Programme should be appropriated for planning purposes, pursuant to section 122 of the 1972 Act.
- 3.5 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.
- 3.6 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 requested 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 at least 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 New Avenue land required 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 New Avenue 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 New Avenue 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. EQUALITY IMPACT IMPLICATIONS**

9.1 The overall scheme has been subject to an EIA.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

Not applicable.

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

Not applicable.

## **12. HR IMPLICATIONS**

Not applicable.

## **13 PUBLIC HEALTH IMPLICATIONS**

Not applicable.

## **Background Papers**

None