

MUNICIPAL YEAR 2016/2017 REPORT NO. 103

MEETING TITLE AND DATE:

Cabinet
19 October 2016

REPORT OF:

Director – Regeneration &
Environment

Agenda – Part: 1

Item: 14

**Subject: The appropriation of land at the
Electric Quarter for planning purposes**

Wards: Ponders End
Key Decision No: 4392

Cabinet Member consulted: Cllr Sitkin

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1. EXECUTIVE SUMMARY

- 1.1 On 25th April 2012, Cabinet endorsed a comprehensive approach to the redevelopment of the Ponders End Electric Quarter site for the purposes of regeneration (Key Decision 3350).
- 1.2 The Council subsequently acquired land from the Secretary of State for Education in June 2015 (Key Decision: 3687). This land is required for the delivery of the Electric Quarter scheme.
- 1.3 This report seeks Cabinet approval for the Council to use its powers to appropriate the acquired land for planning purposes at Queensway as part of the Electric Quarter development site to proceed without obstruction in respect of any claimed third party rights.
- 1.4 The development is of strategic importance to the Council as the electric Quarter 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 land acquired from the Secretary of State for Education (as set out at Annex 1 of this report and shown edged in red and hatched in green) from its present holding purposes to planning purposes.

3. BACKGROUND

- 3.1 The Electric Quarter scheme will provide a mixed use residential development to create an attractive new centre with high quality public realm, community facilities and commercial space to regenerate this part of the High Street. Outline planning permission was granted in 5 March 2013 for a larger scheme than currently proposed but this scheme could not be delivered as part of the land had been acquired and developed by the Secretary of State for Communities and Local Government for a free school. Part of this scheme has been implemented and is currently being developed by Lovells, the selected developer, to provide some of the residential units.
- 3.2 A new planning application was submitted in October 2015 and a resolution to grant planning permission was made on 26 January 2016 subject to referral of the planning application to the Greater London Authority and the completion of a Section 106 agreement. The scheme (Planning reference: 15/04518/FUL) is for:-

“167 residential units and 1,379 sq m of commercial and community floorspace, involving a 4-storey block of 21 self-contained flats (9 x 1-bed, 6 x 2-bed and 6 x 3-bed) with communal rooftop play area, a 3-storey block of 18 terraced houses (2 x 3-bed and 16 x 4-bed) and 22 x 3-storey terraced houses in 4 blocks (17 x 3-bed and 5 x 4-bed) (PHASE 1), a 4-storey block of 19 self-contained flats (9 x 1-bed, 6 x 2-bed and 4 x 3-bed) with community hall/nursery on ground floor and communal rooftop play area, a 7-storey block of 25 x 1-bed self-contained flats with Library at ground and first floor, a part 4, part 6-storey block of 40 self-contained flats (21 x 1-bed and 19 x 2-bed) with 5 commercial units at ground floor and 22 x 3-storey terraced houses in 4 blocks (17 x 3-bed and 5 x 4-bed) (PHASE 2) with cycle and bin stores to ground floor of each block, new access and access roads, parking and associated landscaping involving demolition of 14,212 sq m of existing floorspace (residential, education, shops, community, commercial and car park).”

- 3.3 A compulsory purchase order was made in February 2016, the (Ponders End Electric Quarter) Compulsory Purchase Order 2016 ('CPO') under Section 226(1)(a) Town and Country Planning Act 1990. in respect of an area of land of approximately 2.14 hectares (5.29 acres) ('Order Land'). The eastern boundary is formed by Ponders End High Street. Part of the northern boundary comprises a series of two/three storey buildings that house a variety of small-scale office and warehouse functions associated with the Queensway Industrial Area, known as "the Works". The western boundary is formed by the playing fields of the Heron Hall Academy. Derby Road and Loraine Close, to

the south of the Order Land support a mix of detached, semi-detached and flatted properties.

- 3.4 The Council has made the CPO in order to acquire the remaining interests that will facilitate the development which has already started on site. The Council has acquired a number of interests within the Order Land but considers that no further interests are likely to be acquired within a reasonable timescale within the Order Land. However, discussions are continuing with owners of relevant interests who are willing to sell by agreement at market value, in accordance with the compensation code and, with a view to limiting the number of interests which need to be acquired compulsorily. This approach adopted by the Council accords with the advice contained in the DCLG Guidance on Compulsory purchase process and the Crichel Down Rules ("the Guidance").

4.0 APPROPRIATION OF LAND FOR PLANNING PURPOSES

- 4.1 The Cabinet's authority for the making of the CPO in respect of the Order Land was given in June 2015 (Key Decision 4076), although Cabinet authority was granted for a larger scheme on 24 April 2013 and an updated development boundary for the Electric Quarter Scheme, that included the Order Land, was approved on 25 June 2014. Whilst the council embarked on the CPO of the Electric Quarter development site, it continued to negotiate with affected landowners to acquire the remaining interests within the Order Land and with third parties who may have rights (e.g. rights of way or of light), easements and covenants that may interfere with the council's development. The Cabinet report of 17 June 2015 sets out in detail the planning justifications for the making of the CPO. The planning justification is also set out in the Statement of Reasons prepared in support of the making of the CPO.
- 4.2 Any land interests within the Order Land that have been or are acquired by the Council by private agreement or any land interests acquired compulsorily will have been acquired for planning purposes and will therefore benefit from the provisions of section 203 of the Housing and Planning Act 2016 ('2016 Act'). Section 203 of the 2016 Act overrides all existing third party rights or covenants that could prevent the development or use of the land from proceeding. The rights and covenants that are 'overridden' are effectively converted to a right to compensation.
- 4.3 The Council has also acquired two parcels of land from the Secretary of State for Education ('Additional Land') (See Annex 1) that fall outside of the Order Land boundary. This report explicitly seeks authority to appropriate the Additional Land to planning purposes as the Additional Land falls outside of the Order Land boundary but is required to deliver the Electric Quarter scheme.

- 4.4 In appropriating the Additional Land for planning purposes, the Council is seeking to exercise its powers set out in Section 122 of the Local Government (Miscellaneous Provisions) Act 1972. Section 122 of the 1972 Act sets out certain requirements that must be satisfied when appropriating land for a particular purpose. The requirements are satisfied in this case as follows:
- a) section 227 of the Town and Country Planning Act 1990 authorises the Council to acquire land for any purposes for which it is authorised to compulsorily acquired land under section 226 of the 1990 Act i.e. where the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land where such development, redevelopment or improvement will promote or improve the economic, social or environmental well-being of the area;
 - b) the Additional Land is owned by the Council;
 - c) the Additional Land is not held for any other purpose for which it is still required;
 - d) none of the Additional Land comprises open space as defined in the Act.
- 4.5 Officers are therefore satisfied that the appropriation satisfies the requirements of section 122 of the 1972 Act.
- 4.6 The same planning justifications are considered to apply to the appropriation of the Additional Land for planning purposes as were set out in support of the making of the CPO in the Cabinet report of 17 June 2015 and the Statement of Reasons. Copies of the 17 June 2015 report and Statement of Reasons are attached as Annexes 2 and 3.
- 4.7 Where the Council resolves to appropriate the land for planning purposes then all those with an interest in relation to the land that is overridden as a result of the application of section 203 will no longer be able to exercise that right, nor will they be able to apply for a court injunction to prevent the building or maintenance works taking place in breach of that right. This includes any party whose land benefits from an easement or restrictive covenant over the land, or who benefits from a right to light over the land. The beneficiary of the covenant/ right instead becomes entitled to compensation for breach of the covenant/right.
- 4.8 Officers have considered the impact of section 203 on those whose covenants/ rights are being overridden. For the same reasons as were set out in the June 2015 Cabinet Report and the Statement of Reasons prepared in support of the CPO, and in light of the ability of those impacted to obtain compensation, officers are satisfied that the benefits of the underlying regeneration scheme are such that the appropriation is justified.

- 4.9 Section 203 of the Housing and Planning Act 2016 states that any land to be appropriated for planning purposes must meet certain statutory pre-conditions that must be satisfied if section 203 is to apply. These include that there must be planning permission in place for the building or maintenance works in question and that the land would be capable of being compulsorily purchased by the council for the building and maintenance works (although it is not necessary for the land to have been included within a CPO).
- 4.10 As stated in section 4.1 if the order is confirmed, section 203 will apply to any land compulsorily acquired by the council pursuant to the London Borough of Enfield (Ponders End "Electric Quarter") Planning Compulsory Purchase Order 2015 (subject to the prior grant of planning permission for the works). The appropriation would therefore bring the Additional Land in line with the remainder of the land included within the boundary of the CPO.

5. ALTERNATIVE OPTIONS CONSIDERED

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

6. REASONS FOR RECOMMENDATIONS

- 6.1 To help enable the development of the Electric Quarter, the council must ensure that any council owned land within the Order Land will be held for planning purposes to enable the development to continue ahead without the encumbrance of third party rights.

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

7.1 Financial Implications

- 7.1.1 There are no financial implications that arise as a result of this reports' recommendation. The Council already owns the land and the costs have already been met from within the capital budget provision.

7.2 Legal Implications

Appropriation of the land to planning purposes would mean that the land takes the benefit of Section 203 of the 2016 Act which overrides all existing third party rights or covenants that could prevent the

development or use of the land from proceeding. The rights and covenants that are 'overridden' are effectively converted to a right to compensation. The decision to appropriate would be subject to challenge on public law grounds in the usual way. A judicial review challenge would result in costs being incurred by the Council in defending the claim. It is considered, however, that the risks of not appropriating the land, in terms of potential injunction risk, are more significant than the potential judicial review risk.

7.3 Property Implications

- 7.3.1 Strategic Property Services supports the comprehensive approach to the redevelopment of the Ponders End Electric Quarter for regeneration purposes. The acquisition of all assets within the development site area either compulsorily or by agreement is essential to the success of this scheme.
- 7.3.2 Nevertheless, whilst the use of section 203 of the Housing and planning Act 2016 overrides all existing third party rights or covenants that could prevent the development or use from proceeding, these rights are potentially subject to compensation which depending upon the type and nature of the covenant, right or restriction could be very costly. Alternatively, compensation levels payable may be low therefore it is recommended that a thorough risk analysis of all titles within the "order area" is undertaken to establish potential liabilities and costs and that these are reported to Members at the earliest opportunity.
- 7.3.3 In the event that part of the assembled site includes land held within the Housing Revenue Account, there will need to be a further appropriation valuation at Market Value and transfer of funds from the General Fund to the same value.

8. KEY RISKS

- 8.1 **Do nothing** – If we do not appropriate this land, then the council will be at risk of an injunction which could delay the delivery of the Electric Quarter and slow the regeneration of Ponders End High Street. The risk is mitigated by the proposed actions within this report
- 8.2 **Compensation** – It should be noted that the effect of the appropriation may give rise to a right to compensation from those dispossessed of rights. If this appropriation gives rise to the need for compensation payments to neighbours and landlords, then the council will need to pay these claims. This has been considered within the overall project costs of this scheme.

9. IMPACT ON COUNCIL PRIORITIES

9.1 Fairness for All

The regeneration of the Electric Quarter on Ponders End High Street contributes to this aim by tackling inequality and access to social housing by providing new homes.

9.2 Growth and Sustainability

The regeneration of the Electric Quarter on Ponders End High Street 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 North East Enfield Area Action Plan and the Core Strategy.

9.3 Strong Communities

The proposals for Ponders End High Street aim to increase home ownership levels in the area which will create a more mixed community and support greater footfall along the High Street. The proposed redevelopment will also provide a range of unit sizes to accommodate a diversity of community and commercial uses, and improving the public realm will facilitate the free flow of people between the High Street, Park, and the former Middlesex University site. The scheme will also provide sufficient space to accommodate the expansion of the local Mosque, which is very popular and at capacity.

10. EQUALITIES IMPACT IMPLICATIONS

10.1 In accordance with the Contract Procedure Rules Version 6, the Regeneration of Ponders End High Street has been subject to a Predictive Equality Impact Assessment in March 2012 and an Equalities Impact Assessment in October 2012 as part of the outline planning application. A revised Equalities Impact Assessment was submitted with the new planning application.

10.2 Overall the Equalities Impact Assessment finds the proposed development will respond positively to securing a development that promotes equality.

11. PERFORMANCE MANAGEMENT IMPLICATIONS

11.1 The Regeneration of Ponders End High Street contributes towards the achievement of:

- Core Policy 41 of the Enfield Core Strategy
- Shaping Enfield's Future
- North East Enfield Area Action Plan Submission Report

- Ponders End Central Planning Brief (approved for adoption)
- 5a of the Sustainable Community Strategy 2007-2017
- 2.10 “Improve the Quality of life for residents through the regeneration of the priority regeneration areas” of the Enfield Council Business Plan.

12. HEALTH AND SAFETY IMPLICATIONS

- 12.1 In relation to the possible purchase of land, it will be necessary, through the process of due diligence, to establish the extent of contaminated land and to ensure that appropriate measures are taken to mitigate risks and to ensure its suitability for projected end uses.
- 12.2 The Council would also need to ensure that any acquired land was properly managed in order to provide a satisfactory level of amenity, safety and security.

13 PUBLIC HEALTH IMPLICATIONS

- 13.1 The Health Impact Assessment prepared for the Outline Planning Application concluded that the development will have an overall beneficial effect on several determinants for health, in particular on employment and education (in terms of job training), which have been identified as priorities in the local area. The Health Impact Assessment was revised and refreshed in light of the new site boundaries as part of the submission of the new planning application.
- 13.2 Furthermore, the development has the potential to benefit several vulnerable groups which have been identified in the area. These groups include the unemployed, young people and children in poverty, mainly through the education and training opportunities, but also through the re-provision of a more modern and attractive library.

Background Papers

None

Appendices

Annex 1 – Land at Queensway, Ponders End

Annex 2 - 17 June 2015 Cabinet Report

Annex 3 - Electric Quarter Compulsorily Purchase Order - Statement of Reasons.