



London Borough of Enfield

Report Title	Appropriation of Planning Purposes
Report to	Acting Director of Meridian Water
Date of Report	28 June 2023
Executive Director / Director	Sarah Cary, Executive Director Place
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Ward(s) affected	Upper Edmonton
Key Decision Number	KD5523
Classification	Part 1 Public
Reason for exemption	N/A

Purpose of Report

1. The purpose of this report is to seek approval for the appropriation of Meridian Water One, Willoughby Lane and Meridian Way, London N18 (as set out in Appendix 1 of this Report and shown edged red (the Site) to planning purposes and the associated use of the powers under section 203 (s203) of the Housing and Planning Act 2016 (the 2016 Act) to convert third party rights into compensation.
2. Local authorities can convert certain third-party property rights into a right to the payment of compensation to enable a development to take place in accordance with a planning permission subject to complying with the requirements of the Act 2016.
3. To ensure any persons having the benefit of these rights could not take legal action to prevent or delay the proposed development because of interference with such rights, this report seeks authority to appropriate the land to planning purposes which will engage s203 allowing those rights to be converted into compensation.

4.

Recommendations

- I. To agree, in principle, the proposed appropriation of the Council's freehold land (shown edged red on the plan in Appendix 1) from investment purposes to planning purposes as the land is no longer required for the purposes for which it was held.
- II. To delegate authority to the Acting Director of Meridian Water in consultation with the Director of Law to deal with any necessary arrangements to effect and record the appropriation of the Site from its current purposes to planning purposes subject to the outcome of the public notice for open space (shown edged in red and hatched in blue on the plan in Appendix 2) with a requirement to report back to the Directors once the responses are considered and if there are any significant consultee responses.
- III. To delegate authority to the Acting Director of Meridian Water to use s203 powers subject to the payment of compensation. Vistry Partnerships (Countryside Partnerships) (the Developer) has indemnified the Council in terms of all compensation under the Development Agreement.
- IV. To note that the Council is satisfied that the development which will be facilitated by the Order will contribute to the achievement of the objects specified in s226(1A) of the Act, in short, the promotion and improvement of the economic, social and environmental well-being of Enfield. The appropriation will subsequently allow the Council to use its powers under s203 to override any easements and other rights of the affected neighbouring properties that are infringed upon, subject to the payment of compensation if a bona fide claim has been substantiated in accordance with the relevant legislation.

Background and Options

5. Outline planning permission was first granted for the redevelopment of the Property on 10 July 2017 (ref: 16/01197/RE3), which subsequently received reserved matters approval for Phase 1a on 24 May 2021 (ref: 20/03821/RM) (together the Phase 1a Permission). The Phase 1a Permission authorises a development of 300 residential units and works are underway on site.
6. A full planning application for Phase 1b received determination to grant on the 20 September 2022 (ref: 21/04742/FUL) (the Phase 1b Permission). In the process of Stage 2 GLA referral to grant permission for the scheme, the government issued a consultation document on 23 December 2022 and the GLA subsequently issued a statement on 10 February 2022, that all planning applications which involve residential buildings over 30 metres in height will need to be designed to provide two staircases before they are referred for the Mayor's decision.
7. Vistry Partnerships (Countryside Partnerships) have reviewed the Phase 1b scheme and have incorporated a secondary means of escape following the Department of Levelling Up Homes and Communities consultation guidance. Planning permission for Meridian 1b is expected imminently following GLA approval for the scheme was secured on the 22 May 2023. Any further

planning applications required for Meridian 1 will be applied for and implemented in line with the planning purposes of the redevelopment of this site in accordance with planning policy to provide a residential led mixed-use development.

8. The Phase 1b Permission authorises 676 residential units.
 - a. The Phase 1a Permission, Phase 1b Permission and a 'drop in application' for a single unit (together the **Development**) authorise redevelopment of the Property to provide:
 - i. 977 residential units
 - ii. 50% affordable housing
 - iii. c.2,000 sqm of commercial, retail, leisure and community floorspace; and
 - iv. 1.6 hectares of public open space
9. The Development forms part of the wider Meridian Water regeneration area. The Council aims to regenerate Meridian Water comprehensively over a period of approximately 20-25 years. The Council's adopted planning policy spanning the period 2010 to 2025 supports the delivery of approximately 5,000 new homes, 1,500 new full-time jobs, schools, community facilities, health services and open spaces, within a new character area. Over the lifetime of the development there is an aspiration to deliver up to approximately 10,000 new homes including thousands of affordable homes together with associated development which would be supported through future planning policy
10. Beyond Phase One, other notable planning consents at Meridian Water include permission for major strategic infrastructure works dated 22 July 2020 (ref: 19/02717/RE3) and Phase 2 consisting of up to 2,300 residential units, a hotel, commercial retail and social uses and a new primary school dated 31 March 2022 (ref: 19/02718/RE3). The outline planning permission (16/01197/RE3) authorising Phase 1a also consented a new railway station which has been built and is operational.
11. The development of the Property and much of the wider Meridian Water area is supported by planning policy, notably Policies 37 and 38 of the Core Strategy (2010) and the Edmonton Leaside Area Action Plan (2020).
12. The Council's development partner for Meridian One, Vistry Partnerships (Countryside Partnerships) has under the terms of the development agreement requested that the Council uses its powers to engage s203 of the 2016 Act. The Council has the power under s203 of the 2016 Act to carry out a development on land even though the development would interfere with the rights of adjacent landowners or breach covenants if certain conditions are met. These rights include rights of light and easements. If s203 is not engaged by the Council, third parties who have the relevant the rights could apply for an injunction to prevent the development proceeding.
13. Trowers & Hamlins LLP have outlined for LBE the circumstances in which s203 will be engaged. Four conditions must be met:
 - (a) there is planning consent for the building or maintenance work (Condition 1); and
 - (b) the work is carried out on land that has at any time on or after the 'relevant day' (which is 13 July 2016) either:

- i become vested in or acquired by a specified authority or a specified company acting on behalf of a specified authority; or
 - ii been appropriated by a local planning authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990 (the 1990 Act), or
 - iii the work is carried out on other qualifying land (Condition 2); and
- (c) the authority could acquire the land compulsorily for the building or maintenance work (Condition 3); and
- (d) the building work or maintenance work is for purposes related to the purposes for which the land was vested, acquired or appropriated as mentioned in paragraph (b) (Condition 4)

14. Applying the four conditions to the Property:

- i. Condition 1: The redevelopment of the Site is pursuant to a planning permission i.e. the Phase 1a Permission, so Condition 1 is satisfied insofar as any impact on is caused by Phase 1a, and Condition 1 will be satisfied for the remainder assuming the Phase 1b Permission is granted.
- ii. Condition 2: The Site was acquired by the Council in 2015. It has not been acquired by the Council or appropriated for planning purposes since July 2016. It was also not acquired by the Council prior to July 2016 for 'planning purposes', so it would not be considered other qualifying land (see s205 of the 2016 Act). As such Condition 2 is not satisfied. Therefore the intention is to appropriate to planning purposes prior to using s203 powers.
- iii. Condition 3: The Council has power to acquire the Property compulsorily (if it were not already owned by it), the relevant power in this case would be either section 226 of the 1990 Act or section 17 of the Housing Act 1985.
- iv. Condition 4: This is a question of fact as to whether the building work/use carried out on the Site is related to the purpose for which the Council will have appropriated the Site. This requirement will also met if the Site is developed for the purposes discussed above (which is the case).

15. Therefore, the Council intends to rely on s203 to override rights that are interfered with by the Development after the land has been appropriated to planning purposes.

16. In order to engage s203 and covert rights into compensation, the Council would first need to appropriate (under s122 Local Government Act 1972) the Site from it's existing purposes to planning purposes as referred to in the proposed resolutions of this report.

Preferred Option and Reasons For Preferred Option

17. Under the Deed of Variation to Development Agreement entered in August 2021 with Vistry Partnerships (Countryside Partnerships) for the development of the Site, the Council is required to use reasonable endeavours to exercise the powers in s203 if requested to do by Vistry, if the Council considers it necessary and appropriate to do so.
18. There is a need to appropriate for planning purposes to avoid the risk of development being frustrated by third-party rights, which could prevent the implementation of the proposed development, impact the programme and delay the delivery of homes. See paragraph 46 and the confidential annex.
19. The Site is no longer required for the purpose for which it is held prior to this appropriation by the Council, as advised in paragraphs 32 to 34 of this report.
20. The proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or any part, of the area (section 226(1)(a) and (1A), of the Town and Country Planning Act 1990 (the 1990 Act)) in the manner set out below in paragraphs 38 onwards.
21. Appropriating the land for planning purposes would allow powers under s203 of the 2016 Act to be enabled. This is the statutory procedure to override certain private third-party rights, subject to payment of statutory compensation to those affected. This will help to ensure that development of the Site can proceed in accordance with the planning permission granted, meet the development timetable and deliver the benefits of the development without undue delays.
22. In order to bring the Property and Development within the ambit of s203, the Council would need to appropriate the Property from its current purposes to planning purposes. Details are set out below.
23. The use of appropriation powers affects people's human rights and needs to be justified by a clear public interest case that overrides the individual rights of potential affected third party owners and occupiers of nearby properties.
24. The development is of strategic importance to the Council as Meridian One is subject to a major regeneration initiative. The public benefits of Meridian One (and the Meridian Water regeneration more broadly) are significant and are considered to greatly outweigh the impacts of those third parties affected.

Relevance to Council Plans and Strategies

Appropriation of Land

25. Local authorities who have acquired land for a statutory purpose must hold that land for that purpose. They can only change the purpose for which they hold land using statutory powers of appropriation.
26. The power to appropriate land to planning purposes in this context involves formally changing the purpose for which land is held, so that it is held for a 'planning purpose'.

27. Section 122 of the Local Government Act 1972 (the 1972 Act) permits the Council to appropriate any land which belongs to them and is no longer required for the purpose for which it is held immediately before the appropriation, for any purpose for which it is authorised by the 1972 Act or any other enactment to acquire land by agreement.
28. The most relevant acquisition power for these purposes is section 227 of the 1990 Act. This permits the Council to acquire by agreement any land which it thinks will facilitate the carrying out of development, re-development or improvement likely to contribute to the economic, social or environmental wellbeing of the area, or which is required in the interests of the proper planning of the area in which the land is situated.
29. The key requirements which must be met to appropriate are as follows:
- v. the land to be appropriated must already be held by the Council;
 - vi. the land must no longer be required for the purpose for which it is currently held; and
 - vii. the purpose for which the Council is appropriating must be authorised by statute.
30. Beyond meeting these statutory requirements, there are no other specific formalities which must be met before land can be appropriated.
31. The land (edged red and shown hatched in blue on the said plan at Appendix 2) comprises of 4,327 sqm of vacant land which may be considered to be open space laid out as a community garden as a temporary/ meanwhile use from December 2022 to approximately mid-2027. To proceed with appropriation, a public notice requirement for open space is required to be advertised for two consecutive weeks in a local newspaper. The appropriation will not impact the proposed use of the open space as a temporary meanwhile use (as a community garden) for residents of the Development in any way. Officers will consider any objections to the proposed appropriation which are received and will report back with significant responses to Officers delegated to record the appropriation.

Why the land is no longer needed for its current purposes

32. The Meridian One Land and area of land at Willoughby Lane and Meridian Way referred to in this report and shown edged red on the plan at Appendix 1 is no longer required for the purpose for which it is currently held. It is now required for the planning purpose discussed below.
33. The site is currently inaccessible to the public, due to its previous use as a gas pressure reduction station and gas holder site. The area is characterised by a poor quality environment and a lack of connectivity. The railway forms a barrier to the east.

34. The existing site is underutilised and lends itself to be fully redeveloped with the opportunity to provide much needed affordable homes and commercial and public facilities within the borough which will enable the development of key sites within the Meridian Water Masterplan area.

Planning purposes and public benefits

35. The 'planning purposes' for which the Site is required is the redevelopment of the Site in accordance with planning policy to provide a residential led mixed-use development. This is enhanced in scale and design from the Council's purpose at the time of acquisition of the Site in 2015. The Council considers that the planning purpose will be achieved through the planning permissions discussed at paragraphs 16 to 19 (above) but it is possible that variations to those permissions or additional permission may be required to develop or further develop the Site and could achieve the planning purposes.

36. An appropriation for planning purposes is a reference to the appropriation of it for purposes for which it can be acquired under sections 226 or 227 of the 1990 Act. In this case it is necessary to consider whether the land would be capable of being acquired under section 226 of the 1990 Act.

37. Section 226 of the 1990 Act empowers a local authority, on being authorised to do so by the Secretary of State, to acquire compulsorily land its area:

- If the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land (section 226(1)(a)); or
- which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which that land is situated (Section 226(1)(b)).

38. In this case it is appropriate to consider whether the land could be acquired compulsorily under the powers conferred by section 226(1)(a) of the 1990 Act. Section 226(1A) of the 1990 Act provides that a local authority must not exercise its power of compulsory acquisition under section 226(1)(a) of the 1990 Act, unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:

- the promotion or improvement of the economic well-being of the area;
- the promotion or improvement of the social well-being of the area; and
- the promotion or improvement of the environmental well-being of the area.

39. It is the view of Officers, supported by legal advice, that the Site could be acquired compulsorily under section 226(1)(a) in order to facilitate the carrying out of redevelopment and that such redevelopment would advance all three objectives identified at Section 226(1A). The benefits of the Meridian One

development (and wider Meridian water regeneration) that fulfil those objectives are detailed below. It is also notable the two compulsory purchase orders have been confirmed in relation to the Meridian Water development (in 2017 and 2021), including one relating to the access of the Site.

40. Meridian One, Phase 1 is supported by local, regional and national policy. The National Planning Policy Framework 2021 (NPPF) introduces a presumption in favour of sustainable development. In this respect, sustainable development is identified as having three dimensions - an economic role, a social role and an environmental role.
41. The principle of bringing Meridian Water Phase 1 forward as a residential-led development has been established in adopted policy and in the approved outline planning application for Phase 1 (16/01197/RE3).
42. The proposal accords with London Plan Policy GG2, which advocates making the best use of brownfield land, maximising publicly-owned sites and finding opportunities for sustainable intensification.
43. Enfield's Authority Monitoring Report 2020/2021 shows that during the preceding 10 years, the Borough had delivered a total of 5,616 homes which equates to approximately 562 homes per annum. Enfield's 2020 Housing Delivery Action Plan recognises that the construction of more affordable high-quality homes is a clear priority, with only 60% of approvals being implemented. A Local Housing Need Assessment (LHNA) was undertaken in 2020 and identifies an annual housing need of 1,744 homes across the Borough based on a cap of 40% above the London Plan annual target of 1,246 homes, in line with the Government's standard methodology.
44. The Council's Draft Enfield Local Plan (Regulation 18) (2021) acknowledges the sheer scale of the growth challenge for the Council and the Council's Housing and Growth Strategy 2020-2030 aims to deliver the London Plan targets for the borough.
45. Meridian Water is a key component in contributing to the vision, aims and priorities of the Council's Corporate Plan. Meridian One will deliver the first phase of redevelopment and regeneration within the Meridian Water masterplan:

More and better homes: Meridian Water will contribute to the Council continuing its pioneering approach to regeneration to create thriving, affordable neighbourhoods and places, and increasing the supply of affordable, quality housing options for ownership, social rent and private rent. Meridian One will contribute to this goal through the delivery of 977 new homes.

Strong, healthy and safe communities: Meridian One will contribute towards the overall strategy for Meridian Water which aims to deliver on the Council's aims to improve public health and people's well-being. Along with new homes Meridian One will deliver community and social infrastructure; new amenity spaces and parks.

An economy that works for everyone: Meridian One will deliver new ground floor commercial premises, workspace. Several social value outcomes will also be achieved, including educational programme and training opportunities at the Construction Skills Academy.

Need for appropriation

46. Vistry Partnerships (Countryside Partnerships) are seeking to mitigate the delivery and viability of homes at Meridian One. Further details are covered in the Confidential appendix. The impact on third parties of this decision are also considered in the Confidential appendix.

Conclusion and Summary

47. In order to progress the scheme and avoid delays to the programme, officers are seeking authority to be able to appropriate the Site for planning purposes and authorise the use of any necessary powers under section 203 of the 2016 Act if required. By exercising its powers, the Council will ensure that its development of the land proceeds in accordance with the planning permissions granted.

48. In balancing the benefits of the development and the concerns of those whose rights it is proposed to override, there is clear evidence that the public benefit in the form of the provision of more and better homes to meet local needs, meeting the vision, aims, priorities of the Council's Corporate Plan, strong, healthy and safe communities, an economy that works for everyone outweigh the private loss.

Safeguarding Implications

49. There are no specific Safeguarding implications arising from this report.

Public Health Implications

50. Glen Stewart 26th May 2023 - Housing is a basic human necessity as evidenced by the 30 year life-expectancy gap between those that are homeless and those that are not. There is a current housing shortage, work to reduce this shortage will contribute to the health of the public

Equalities Impact of the Proposal

51. An Equalities Impact Assessment (EQIA) was previously undertaken in 2013 for the scheme and is being kept under review.

Human Rights Impact

52. The decision to appropriate in order to engage section 203 should only be made where it is necessary, there is a compelling case in the public interest and the Council should be sure that the purposes for which the powers are being exercised justify interfering with the human rights of those whose interests will be affected. Particular consideration should be given to the provisions of Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) and this is considered below.

53. Consideration must be given to the interference with rights protected by the Human Rights Act 1998. In this case a decision to override rights represents

an interference with rights protected under Article 1 of the Protocol to the ECHR (the right to peaceful enjoyment of possessions) and Article 8 of the ECHR (right to respect for private and family life, home and correspondence). Any decision to interfere with such rights must strike a fair balance between the public interest associated with the development proposals referred to above and the interference with private rights.

54. Given the clear public benefit associated with the development proposals referred to in the body of the report, the fact that there is no feasible alternative means of achieving that public benefit, and a compelling case in the public interest for the use of the powers to override rights and the availability of compensation to those whose rights are overridden calculated on a diminution in value basis, it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate.

Environmental and Climate Change Considerations

55. Vera Vajda 31st of May 2023 -There are no Environmental and Climate Change implications.

Risks that may arise if the proposed decision and related work is not taken

56. If appropriation for planning purposes were not granted, the land will not be free from private rights over the land. This would risk development being frustrated by third party rights, which in turn could frustrate and delay (or even prevent) the delivery of homes.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

57. 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 Vistry Partnerships (Countryside Partnerships) by virtue of an indemnity in the Development Agreement and Vistry Partnerships (Countryside Partnerships) See Confidential Appendix.

Financial Implications

58. The appropriation and the associated use of the powers will have no impact on the Council's capital and revenue budgets. Please refer to the part 2 report for more detail.

Legal Implications

59. Section 122 of the Local Government Act 1972 (the 1972 Act) permits the Council to appropriate any land which belongs to them and is no longer required for the purpose for which it is held immediately before the appropriation, for any purpose for which it is authorised by the 1972 Act or any other enactment to acquire land by agreement.
60. The most relevant acquisition power for these purposes is section 227 of the 1990 Act. This permits the Council to acquire by agreement any land which it thinks will facilitate the carrying out of development, re-development or improvement likely to contribute to the economic, social or environmental

wellbeing of the area, or which is required in the interests of the proper planning of the area in which the land is situated.

61. Any reference to appropriation for planning purposes is, by virtue of the provisions in section 246 of the 1990 Act, regarded as a reference to appropriation for the purposes for which land can compulsorily be acquired under section 226 of the 1990 Act (which are the purposes set out in paragraph 41 above).
62. The Council must also be satisfied that the Land is no longer required for the statutory purposes for which it is currently held prior to the appropriation. This “surplus to requirements” component of s122 of the 1972 Act enables the Council to prioritise relative needs. It follows that the Council is entitled to look at the current use of the Land as well as the prospective use of the Land and on this project, what the Land can deliver. The Council can consider matters such as whether sufficient use is currently made of the Land and the need to secure an enhanced form of redevelopment.
63. Appropriating land for planning purposes can engage s203 of the 2016 Act allowing the Council to override private third-party rights, subject to payment of compensation under section 204 of the 2016 Act, provided the four conditions discussed in the main body of this report are met.
64. Provided all the conditions for the application of s203 are met third party right will be overridden automatically (i.e without further decision or action from the Council) and it is irrelevant who carries out the development. The affected third-party would be entitled to statutory compensation when development takes place, but they would not be entitled to obtain damages or to an injunction once the land has been appropriated.
65. The types of rights that can be overridden under section 203 comprise;
 - (a) a “relevant right or interest” i.e. “any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support)”, and
 - (b) a restriction as to the user of land arising by virtue of a contract.
66. Where it is known that appropriation for planning purposes would affect third-party rights, case law states that the Council must consider that it has sufficient reason in the public interest to interfere with third-party rights and that the interference is no more than is necessary.
67. The Council must act in accordance with the rights under the European Convention on Human Rights, and as advised in paragraphs 55 to 57 above, this includes Article 1 of the First Protocol (right to peaceful enjoyment of possessions) and Article 8 (right to respect for private life, family and home). The Council must strike a fair balance between the public interest and the individual's rights and consider whether the interference is "proportionate". In view of the factors described in this report it is considered that it is necessary to appropriate the Site for planning purposes and that there is a compelling case in the public interest to support the decision to do so.
68. Compensation, if payable, under section 204 of the 2016 Act is calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965. It is generally based on the reduction in the value of the claimant's land (rather than any “ransom value”). If there is a dispute about the amount of compensation which is due, the matter can be referred to the Upper Tribunal for determination.

Workforce Implications

69. There are no specific workforce implications arising from this report.

Property Implications

70. As the report relates to property matters, all property implications can be found in the body of the report.

Other Implications

71. N/A

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Appendices

Appendix 1 – Meridian One Land

Appendix 2 – Meanwhile/ Temporary Open Space

Background Papers