



CABINET

Subject Heading:

Appropriation of the Piece of Land at New Zealand Way, Rainham RM13 8JT

Cabinet Member:

Councillor Damian White, Leader of the Council

SLT Lead:

Neil Stubbings, Director of Regeneration Programme Delivery

Report Author and contact details:

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Policy context:

Havering Housing Strategy 2014-2017
National Planning Policy Framework 2012
Draft London Plan 2017
Emerging Havering Local Plan 2017
HRA Business Plan 2017-2047
Romford Housing Zone - Overarching Borough Agreement with the GLA
Havering Local Development Framework and Romford Area Action Plan 2008
Romford Development Framework 2015

Financial summary:

Appropriation of the Land will enable the proposed development to go ahead and the completed dwellings will increase the Council's housing stock.

The cost of appropriation process are being met from existing budgets

Is this a Key Decision?

Yes

When should this matter be reviewed?

Autumn 2019

Reviewing OSC:

Towns and Communities

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The subject matter of this report deals with the following Council Objectives

Communities making Havering	[X]	
Places making Havering		[X]
Opportunities making Havering	[X]	
Connections making Havering	[]	

SUMMARY

On 16 August 2018 the Council granted the Outline Planning Permission under application reference P1004.18 to develop 30 new affordable dwellings at New Zealand Way. The development would comprise 2 bedroom and 3 bedroom houses, with associated landscaping and car parking, on the land bounded by New Zealand Way, Queenstown Gardens and Gisborne Gardens, Rainham. The Decision Notice was issued on 17 August 2018.

The proposed development site at New Zealand way is classified as highways maintainable at public expense and it is highway verge. For the proposed development to go ahead the Council, like any other developer, is required to carry out a stopping up process. On 22 November 2018 the Planning Committee granted a resolution to authorise commencement of stopping up process. The stopping up notice reference HAV017087 was displayed on site on 25 January 2018 and it is due to expire on 22 February 2019.

1. The freehold title to the land which is owned by the Council identifies that the land is subject to rights of drainage and rights in respect of supply of water, gas, electricity and other services in favour of third parties. Such third party easements or covenants may create a risk of the scheme being frustrated by way of injunction to delay, halt or prevent construction. The proposal is that the Council uses its powers under Section 122 (1) of the Local Government Act 1972 (LGA 1972) to appropriate the land from housing purposes to planning purposes to remove this risk; and
2. It is our understanding that the land meets the broad definition of public open space as contained within *section 20* of the Open Spaces Act 1906 as “any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied”.

The development includes 10 shared ownership units with 40% equity transferred to leaseholders this constitutes a disposal of the land for the purposes of s123 LGA 1972. In order to dispose of public open space a local authority is required to advertise its intention to dispose of public open space land in a local newspaper for two consecutive weeks and to consider objections. The statutory procedure is set out in section 123(2A) LGA 1972. This should be done before any final decision is taken on the disposal, so that proper consideration is given to the responses that are received. Additionally it is important to ensure that the decision to dispose of open space land must include consideration of the consultation and the need/provision for open space within the locality.

For the reasons highlighted above in order to override any private rights that subsist in the land, it will be prudent to appropriate the land for planning purposes

and satisfy the statutory requirements referred to above when disposing of land falling within the definition of open space.

Decision is, therefore, being sought from the Cabinet to agree the appropriation of the land from its current holding to that for planning purposes in order to best facilitate the proposed development at New Zealand.

Decision is also sought from the Cabinet that will permit the commencement of the statutory advertisement process needed to satisfy the requirements of section 123(2A) LGA 1972

RECOMMENDATIONS

That Cabinet:

1. Based on the reasons set out in this report, **Agree** in principle :
 - i. subject to Recommendation 2 below that the land referred to below bounded by New Zealand Way, Queenstown Gardens and Gisborne Gardens, Rainham RM13 8JT, (shown in redline boundary on the plan attached as Appendix 1 to this Report) is no longer required to be held for the purposes for which the Council presently holds it and that it should be appropriated to planning purposes with a view to its subsequent development in due course;
 - ii. to appropriate the land at New Zealand Way for planning purposes under S122 (1) of the Local Government Act 1972;

and

2. **Authorise**, for the purposes of carrying out Recommendation 1.ii above and in accordance with section 122(2A) Local Government Act 1972, that notices are placed in a local newspaper circulating in the area for two consecutive weeks expressing both an intention to appropriate the land to planning purposes and following the completion of the process, **Authorise** the Director of Regeneration Programme Delivery following consultation with the Lead Member for Regeneration,
 - i. to consider any objections to the intended appropriation before it is made
 - ii. to consider also the outcome of the Equalities Impact Assessment before the intended appropriation is made.
3. In the event that the Cabinet approves the above resolutions, subject also to 2 above, to also **delegate** authority to the Director of Regeneration Programme Delivery, following consultation with Lead Member for Regeneration, Legal Services and Head of Democratic Services to:

- i. determine and implement the appropriation;
- ii. agree the timing of the implementation and all matters related to appropriation;
- iii. undertake all the appropriation processes in respect of the site; and
- iv. deal with all matters arising from the decision and to complete appropriation process. This is to include completion of the statutory processes for the appropriation of the open space and the appropriation for planning purposes in respect of the site, in the event that there are no representations on the above issues.

REPORT DETAIL

In July 2015 the first outline planning application reference P1536.15 was submitted to the London Borough of Havering planning for the development of 32 new dwellings comprising 2-bedroom and 3-bedroom houses and flats. The application was refused planning permission according to the decision issued on 5 July 2016.

The land has been subject to an application for a registration as a Town or Village Green ("TVG"). The appointed Inspector held a hearing on 11 January 2018. Following the hearing by the Inspector the application for registration was rejected and a report was issued on 25 January 2018.

Following refusal of application as a Town or Village Green ("TVG") as confirmed in the report received from the Inspector and dated 25 January 2018, the Council decided to submit a fresh planning application for a revised proposal for the site in June 2018. The revised proposal with application reference P1004.18 consists of 30 new affordable dwellings comprising 2 bedroom and 3 bedroom houses, with associated landscaping and car parking, on the land bounded by New Zealand Way, Queenstown Gardens and Gisborne Gardens, Rainham. The new proposal addressed all the reasons stated for the refusal of the first planning application. On 16 August 2018 the Council granted the Outline Planning Permission to the proposed scheme. The Decision Notice was issued on 17 August 2018.

The land, which is classified as highway maintainable at public expense, is currently a highway verge. Hence in order to carry out the proposed development it is required to be stopped up. On 22 November 2018 the Planning Committee granted a resolution to authorise commencement of stopping up process. The stopping up notice reference HAV017087 was displayed on site on 25 January 2018 and it is due to expire on 22 February 2019.

The land is registered in the list of highways maintainable at public expense but it was originally acquired for housing purposes and currently held in the HRA. Although, land has been used for highways purposes, there is no any evidence that the land was appropriated away from the housing (which purpose includes ancillary recreation land use). An appropriation of the land cannot be implied, it

must have been made by the statutory process as set out in this report. Therefore, when the highways use ceases, the land will retain the original housing land use holding. However, as mentioned previously, in order to override (but not extinguish) any private rights that subsist in the land and remove any threat of injunctive action which could stop the progress of the development it is considered prudent to remove that risk and appropriate the for planning purposes. Also should there be any inconsistencies between the acquisition intention of the original housing purpose holding of the land and the proposed development of the land, that risk can be overcome through the appropriation of the land to planning purposes.

REASONS AND OPTIONS

Reasons for the decision:

The proposal will deliver 30 affordable houses for local residents. This option to go ahead with the development was accepted because it fulfils the objectives of Council's Affordable Housing Programme and Development Plan.

For the reasons highlighted in the recommendation and in order to minimise risk and override any private rights that subsist in the land it will be prudent to appropriate it for planning purposes.

Other options considered:

The other option considered would be to dispose of the land to a private developer.

Rejected – Due to the negative value of the site the opportunity to deliver much needed affordable Housing would be lost and bring no benefit to the Council and residents

IMPLICATIONS AND RISKS

Financial implications and risks:

In November 2018, a reputable valuation firm was instructed to investigate and submit a valuation report on the Market Value of the freehold interest on the Land at New Zealand Way. The report was submitted on 29 November 2018. According

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to the information contained in the report the proposed development site has zero residual land value.

Finance Officers have confirmed the Surveyor's fee incurred is £4,000 and it is anticipated that the legal fees will be in the region of £2,000. These costs are one off revenue costs and will be met from existing service budgets.

The appropriation of the land will enable the proposed development to commence.

The land is currently registered in the list of highways maintainable at public expense. Following completion and occupation of the development, the maintenance of the asset would become the responsibility of Housing Services. Hence, the appropriation would save highways the annual cost of maintenance of £1,808.48.

Legal implications and risks:

The London Borough of Havering holds the freehold title of the land. Although not registered as open space, the land meets the definition Public Open Space as contained within Section 20 of the Open Spaces Act 1906. Hence it would be appropriate to follow the statutory consultation procedure requirement set out in section 122 (2) (b) LGA 1972.

For the reasons set out in the report, the Council is seeking to appropriate land for planning purposes under sections 122 Local Government Act 1972 ("LGA 1972").

The land is land that has been used for purposes ancillary to the main use for housing purposes. By virtue of there being no dwellings on the subject land, the consent of the Secretary of State is not required.

Section 122 LGA 1972 enables the Council to appropriate (transfer) land it owns from one use to another use as long as (1) the new use is for a purpose it could have purchased the land and (2) the land is no longer required to be held for the purpose for which it is held immediately before the appropriation. The Council must, therefore, consider whether the land is no longer needed for the purpose for which it currently holds it if it is to be appropriated for planning purposes.

The meaning of the words "no longer required for the purpose for which it was held immediately before the appropriation" in law means "not required" or "not needed in the public interest of the locality".

The appropriation for planning purposes must follow the process set out in sections 122 LGA 1972. This involves placing notices in two consecutive editions of a local weekly newspaper and the formal consideration of any representations made in response to those notices. There is a legal duty to consider such representations fully and properly.

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Appropriation of the land for “planning purposes” (in order to engage the provisions of section 203 Planning and Housing Act 2016 (“PHA 2016”)) requires the Council to consider the following factors, that is, whether:

The appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated;

It is considered reasonable for the Council to use its powers in this case to appropriate the land for planning purposes as the appropriation will facilitate the carrying out of development, on the land and this which will contribute to the promotion of the economic, environmental or social well-being of the borough

“Planning purposes” is defined in section 246(1) Town and Country Planning Act 1990 (“TCPA 1990”) and acquisition for such purposes includes acquisition under section 226 or section 227 TCPA 1990.

Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the TCPA 1990. The consequence is that the erection, construction or carrying out of any maintenance or any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are done in accordance with planning permission, even if they interfere with third party rights.

The power contained in Section 203 does not remove the legitimate rights of the persons taking the benefit of the easements or other rights to compensation arising from interference with such rights, but it does remove the potential for such persons to frustrate the development by obtaining an injunction to prevent interference with their rights.

Investigation of the title to the land has identified the existence of third party rights. Although it is not certain at this stage that the re-development of the land would interfere with such rights the power contained in Section 203 does not remove the legitimate rights of the persons taking the benefit of the easements or other rights to compensation arising from interference with such rights, but it does remove the potential for such persons to frustrate the development by obtaining an injunction to prevent interference with their rights.

Additionally, whilst the rights to light survey report we received confirmed that there are no rights to light that subsist in the land, similarly, it would be better for the Council to be in a position to be able to resolve such issues as a right to compensation rather than a delaying factor should any arise during the course of the re-development.

The purpose of Section 203 PHA 2016 is to ensure that where land has been appropriated for planning purposes, and provided that work is done in accordance with planning permission, then existing rights, which could prevent the development of that land from proceeding, can be overridden. The rights are

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overridden whether the Council or another person carries out the development. Persons who would otherwise benefit from those rights are entitled to claim compensation for the interference from the person carrying out the development.

A local authority is in the position of a trustee in relation to the land that it holds on behalf of the community. Therefore, it has a statutory duty to sell land at the best price reasonably obtainable. Where land is sold for consideration less than market value it requires the express consent of the Secretary of State (section 123(1), LGA 1972). It is understood that any disposal of the land would be at market value.

Human Resources implications and risks:

The content and recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

Equalities implications and risks:

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants. The Council demonstrated its commitment to the above provision by conducting a consultation exercise to ascertain the views of residents impacted by the potential loss of the highway grass verge. Residents living within the immediate vicinity generally felt that the loss of the grass verge would have an impact on families with small children and people using the space for pastimes.

In terms of impact on the health and wellbeing of existing and new residents, it is also acknowledged that the loss of the existing green space may impact on resident's mental health and wellbeing and potential to access physical activity opportunities. However, based on the Open Space Study carried out at planning stage it is evident that the loss of green space can be mitigated as there are alternative open spaces nearby which are available for use one of which is Lessa

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recreation ground which is four minutes' walk from New Zealand Way site. The site is also within reasonable walking distance of the Ingrebourne Valley/Hornchurch Country Park. Additional children's play facilities will also be provided in the Lessa recreation ground through the payment of £30,000 to the Council.

Above all, an area of land covering about 0.11 hectare has been retained to provide a space for community amenity. This area of land will be landscaped with judicious planting, made accessible to all and with timber benches strategically located within the landscaped area. The design and features of this communal amenity will endeavour to be conducive to social cohesion, encouraging all ages and backgrounds to use this space. Principles of designing out crime will be used to minimise the actual or perceived fear of crime by limiting dark corners/spaces, making it open, light and friendly.

The addition of 30 new homes has the potential to increase air pollution, both during the build phase of the development and in the longer term with additional traffic and heating systems. The design of the homes will include as energy-efficient and low-polluting forms of heating and lighting etc. as realistically feasible. During the build phase, the noise, dust and pollution of the development will be minimised where possible for surrounding residents. The proposed development also includes for electric charging points to minimise air pollution.

It is anticipated that the Council's new build development scheme will benefit local residents requiring affordable housing, who are more likely to be people and families on low incomes.

In order to comply with current Building Regulations dwellings three of the thirty houses proposed for the site will be wheelchair adaptable while the remaining twenty-seven will be accessible and adaptable.

This section of the report has been viewed by the Corporate Diversity Advisor and based on comments received; the equality and impact assessment section is currently being developed and will follow the report in due course.

As mentioned above, an equality impact assessment exercise is being developed to ascertain the views of local residents impacted by the potential loss of the open space. The outcome of the exercise will be considered prior to the intended appropriation being made.

The Human Rights Act 1998 ("the 1998 Act") prevents public authorities from acting in a way that is incompatible with rights protected by the 1998 Act. Of particular relevance to the acquisition of interests in land or overriding of interests/rights in land are Article 8 of the European Convention regarding respect for privacy and family life and Article 1 of the First Protocol, which concerns the protection of property.

Such rights are qualified rights and may therefore be overridden where it is considered that the interference with these rights are proportionate and that the

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interference is necessary in the interests of, amongst other things, national economic wellbeing.

It is acknowledged that the appropriation of land for planning purposes may result in interference with property rights. However, compensation will be payable in accordance with statute. The assessment to be undertaken by the Council will take into account the social, economic and environmental wellbeing of the locality. Moreover, in considering this appropriation, the Council will consider the balance to be struck between individual rights and the wider public interest.”

BACKGROUND PAPERS

None