

Notice of Non-key Executive Decision

Subject Heading:	Appropriation of the Land at Solar, Serena and Sunrise Lodge RM12 4YS (Regeneration Site)
Cabinet Member:	Councillor Damian White, Leader of the Council
SLT Lead:	Neil Stubbings, Director of Regeneration Programme Delivery
Report Author and contact details:	Clement Ojediran, Development Surveyor Tel: 01708434131 E-mail: clement.ojediran@havering.gov.uk
Policy context:	Havering Housing Strategy 2014-17 HRA Business Plan 2017-2047 National Planning Policy Framework 2012 Draft London Plan 2017 Emerging Havering Local Plan 2017 Emerging Havering Local Plan 2017 Havering and Wates Regeneration LLP Business Plan and Budget 2020/2021
Financial summary:	Appropriation of the Land at the specified location will override any rights that may exist in the land and hence enable the proposed estate regeneration to go ahead. The completed dwellings will increase the Council's housing stock. The cost of appropriation will be met from the existing Regeneration budget.
Relevant OSC:	Towns and Communities OSC
Is this decision exempt from being called-in?	Yes –it is a Non-Key Executive Decision by a Member of Staff

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

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Place an X in the [] as appropriate

Part A – Report seeking decision

DETAILS OF THE DECISION REQUESTED AND RECOMMENDED ACTION

In February 2020, Cabinet Authorised the Director of Regeneration to consider the appropriation of land at the appropriate time in Work Package One from the Housing Revenue Account (HRA) to the General Fund, for planning purposes and to consider the appropriation of land at the appropriate time in work package one back to the HRA. This will enable the Work Package One to commence.

Work Package One consists of the following sites: Napier & New Plymouth, Waterloo Estate and Solar, Serena & Sunrise. The appropriation of land at Solar Serena Sunrise as shown outlined red at appendix 1 is the subject of this report.

The proposal for Solar, Serena & Sunrise Avenue regeneration site comprises 175 dwellings in a mix of 1 and 2 bedroom dwellings with associated landscaping and car parking. The proposed development allows for 77% affordable units. Planning application submission was made on 19th November 2019 and validated with application reference number P1809.19 on 2nd December 2019. The project obtained resolution to grant planning permission on 25th June 2020 and the Planning Decision Notice was issued on 27th April 2021.

The Solar Serena Sunrise site is held for housing purposes.

The Council's investigation of title established that the land is Council-owned. The title for the Land and due diligence identified that the land may be subject to rights in favour of third parties/ Appendix 1 denotes all Rights which have been identified. Such third party rights, in the form of easements or covenants, may constitute risks to the proposed scheme, as the development may be frustrated by way of injunction to delay, halt or prevent construction.

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 prior to carrying out development works. This action will overcome potential injunctive rights that may prevent the development from going ahead. It is therefore proposed that the Council uses its powers under Section 122 (1) of the Local Government Act 1972 (LGA 1972) to appropriate the land for planning purposes so as to remove any of the risks.

Although there is no strict requirement to appropriate the Land, appropriation of the land for planning purposes engages the provisions of s203 of the Housing Act 2016, which enables a local authority to override existing easements and other private rights subject to payment of compensation. In overriding private rights and providing for payment of compensation the remedy of injunctive action, which could stop the progress of development, is removed.

The Cabinet reports 13th February 2019 and 12th February 2020 both state, it has always been the council's over-arching vision "to facilitate the regeneration of key areas of the borough; to kick-start renewal of key town centres and estates; and deliver truly affordable homes for local people"... Any returns to the council are being identified to

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fund future regeneration programmes across the borough and help fund renewal of our cherished town centres across the borough at a time when the traditional high streets are under significant threat from changing consumer habits. This threat is partially prevalent and will continue to be so for many months in the aftermath of COVID 19.

As appropriation for planning purposes will override third party rights in coming to a decision these rights must be considered and balanced against the advantages created by the development.

Third parties have therefore been given the opportunity to comment on the proposed appropriation for planning purposes and an advertisement was placed on the Council website, in the Romford Recorder, on site and at a local convenience shop on Abs Cross Lane in this regard inviting comments to be made to the Director of Regeneration within a 28 day period.

The Council has not received any objections from local residents. The outcome is likely to be as a direct result of the extensive engagement and communication the Council has had with local residents. The JV Partnership concluded 5 neighbourly/boundary matters. An assessment of potential residents who may have their rights of light was conducted following receipt of GL Hearn's Report dated 30th August 2019. Following thorough assessments carried out by the Council it was found that none of the residents identified in the Report had rights of light.

Insurance

The Council have insured against the risks as set out in the policy attached at exempt Appendix [2]

Appropriation from the General Fund to the HRA

In order to ensure the newly developed land is able to be let as housing a transfer of function is needed from the General Fund (for planning purposes) back to the HRA. This is because a local authority can only use property for the purpose for which it was designated.

The following recommendations are therefore made for the appropriation of land from:-

1. The HRA to the General fund (for planning purposes) and then
2. Back again from the General fund to the HRA.

The above transactions will occur within 1 day of each other.

If timings were left for any longer, separate land valuations would need to take place to deal with the transfer of funds between the HRA and the General Fund (**here** accounting for the value of the property) to the General Fund and then back again from the General Fund to the HRA. It is therefore more practical and efficient for both transfers to occur one day after the other. . The Council commissioned Wilks Head & Eve, a property

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Valuer, to carry out the valuation of the land/ property. According to the valuation report, the land value is £6,910,000 together with purchaser costs (Stamp Duty Land Tax) of £459,380 (See Appendix [3] for the valuation)

Recommendations:

The Director of Regeneration is asked to:

1. **Agree** that the land at Solar, Serena and Sunrise Lodge RM12 4YS, (the redline boundary is shown on the plan attached as Appendix 1 to this Report) (“the Land”) is no longer required to be held for housing purposes and that it should be appropriated for planning purposes.
and
2. **Agree** that the Land shall be appropriated from the General Fund back to the HRA for housing purposes immediately following the appropriation for planning purposes.

AUTHORITY UNDER WHICH DECISION IS MADE

According to Havering Council’s Constitution Part 3 under:

Functions delegated to the Staff

3.1 General provisions and limitations

(a) Staff shall exercise powers under this scheme in compliance with:

(i) the rules of procedure set out in Part 4 of this constitution

(ii) corporate policies and strategies

(iii) any additional conditions imposed either by the Council or by statute or any statutory code of practice.

(b) The exercise by staff of the powers delegated under this constitution involving the incurring of any expenditure is subject to there being sufficient approved provision within the budget to cover that expenditure.

(c) A staff member exercising a decision-making power delegated under this constitution may consult with the Leader of the Council, with the relevant individual Cabinet member or with the Chairman of the relevant committee, as appropriate, when the staff member considers such consultation necessary or appropriate in light of the decision required.

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(d) A staff member may refer any matter within a delegation or authorisation to them to the Leader of the Council, the Cabinet, the relevant individual Cabinet member or to an appropriate Council committee or sub-committee for decision provided that the matter is within the delegated powers and duties of whom or to which it is referred

3.3 Powers of Members of the Senior Leadership Team **Financial responsibilities**

(b) To oversee the delivery of programmes agreed by Council and Cabinet.

At Cabinet, 12th February 2020 - Havering and Wates Regeneration LLP Business Plan and Budget 2020/2021 Cabinet agreed to “**Authorise** the Director of Regeneration to consider the appropriation of land at the appropriate time in work package one from the Housing Revenue Account (HRA) to the General Fund, for planning purposes and to consider the appropriation of land at the appropriate time in work package one back to the HRA”
(Recommendation 4)

STATEMENT OF THE REASONS FOR THE DECISION

The re-development proposal at Solar, Serena and Sunrise Lodge will deliver 175 dwellings in a mix of 1 and 2 bedroom dwellings with associated landscaping and car parking. The proposed development allows for 77% affordable units and mainly for local residents.

Any form of challenge as a result of existing private rights poses risks to the proposed development and could delay, halt or prevent the development. Investigation of title has assessed the risks to be minimal. However, it is prudent to carry out the appropriation to ensure the development can proceed. The appropriation is also in keeping with the Council's obligations to provide clear title to the Havering and Wates LLP before the site is handed over for development.

In order to minimise risks and override any private rights that subsist in the land it will be prudent to appropriate the land (proposed development site) for planning purposes.

OTHER OPTIONS CONSIDERED AND REJECTED

The other option considered was to assume that the neighbours who we perceived to be affected by the proposed re-development would not come forward to claim any existing rights or there would not be any third party rights that could subsist in the land.

The risk associated with the above option would be very high. Should there be any challenge to the proposed developments, by way of injunctive action, this could bring

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development to a halt and therefore it is prudent to proceed with the appropriation for planning purposes.

PRE-DECISION CONSULTATION

There has been a series of consultation with the Strategic Planning Committee and the public prior to making planning application submission and the comments and suggestions received have been incorporated into the final proposal.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Clement Ojediran

Designation: Development Surveyor

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

This report seeks authority to appropriate the Land at Solar Serena Sunrise Estate from the HRA to the General Fund (for planning purposes) and then appropriate back the land from the General Fund to the HRA

On February 2020 Cabinet delegated authority to the Director of Regeneration to consider appropriation **at the appropriate time in work package one** from the HRA to the General Fund, for planning purposes and to consider the appropriation of land at the appropriate time in work package one back to the HRA. Solar Serena Sunrise forms part of works package one.

Appropriation for Planning Purposes

Section 122 of the Local Government Act 1972 ("the Local Government Act") enables the Council to appropriate land which belongs to the Council for any statutory purpose for which it is authorised to acquire land and which is no longer required for the purpose for which it is held immediately before the appropriation. In the case of housing land, the requirements are subject to section 19 of the Housing Act 1985 which provides that no part of the land consisting of a house or part of a house (acquired for housing purposes) should be appropriated without consent of the Secretary of State – as all

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buildings at Solar Serena Sunrise are demolished, no consent is needed from the Secretary of State. The Council must, therefore, consider whether the Land is no longer needed for the purpose for which it is so held if it is to be appropriated.

The meaning of the words “no longer required for the purpose for which it was held immediately before the appropriation” was considered by the Courts in the context of the predecessor to section 122. In that instance “not required” was held to mean “not needed in the public interest of the locality”.

Appropriation of the land for “planning purposes” (in order to engage the provisions of sections 203 – 205 Housing and Planning Act 2016 (“the 2016 Act”)) requires the Council to consider the following factors whether;

- a. 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;
- b. the proposed development, re-development or improvement will contribute to the promotion or improvement of the economic, social and/or environmental well-being of the area;
- c. it is in the public interest that the proposed development should be carried out, having regard to the provisions of the development plan, whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the Land;
- d. as noted above, the Land is no longer required for the original purpose for which it was acquired
- e. rights capable of being overridden by sections 203 - 205 of the 2016 Act exist and whether interference with such rights is necessary

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

Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the 1990 Act. The consequence (by virtue of section 203 - 205 of the 2016 Act) 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 carried out in accordance with planning permission, even if they interfere with third party rights.

The purpose of section 203 - 205 of the 2016 Act is to ensure that where land has been appropriated for planning purposes, and provided that work is carried out in accordance with planning permission, then existing rights, which could prevent the development of that land from proceeding, can be overridden. The rights are overridden whether the Local Authority or a person deriving title from it undertakes the development. Persons who would otherwise benefit from those rights are entitled to claim compensation for the interference with them.

It is considered reasonable for the Council to use its powers in this case to appropriate

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the Land for planning purposes as the appropriation will facilitate the carrying out of development and improvement to the land and contribute to the promotion of the economic, environmental or social well-being of the Borough. The development programme for which the Land is required will deliver new Council homes. Therefore, it can be stated that the new development is likely to contribute to the economic, the social or environmental well-being of the area.

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 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 The Council has sought to negotiate with the landowners affected and offer either temporary or permanent alternative access arrangements for those affected by the appropriation (depending on the nature of the interference). However, compensation could be payable in interference with property rights. An investigation of title has taken place and the rights which are to be interfered with are set out at Appendix [1].

In considering this appropriation, the Council should carefully consider the balance to be struck between individual rights and the wider public interest. The Director of Regeneration, in making this decision will need to consider if the significant public benefits to be derived from the proposed development of the Land are of sufficient magnitude to justify the appropriation.

Appropriation from the General Fund (for planning purposes) back to the HRA – Town and Country Planning Act 1990.

The Council has the power to appropriate the Land from planning purposes back to housing purposes under section 232(1) of the 1990 Act and section 17 of the Housing Act 1985.

Section 232(1) and (6) of the 1990 Act respectively provides that "where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may appropriate the land for any purpose for which they are or may be authorised in any capacity to acquire land by virtue of or under any enactment not contained in this Part"

"In relation to any such land as is mentioned in subsection (1), this section shall have effect to the exclusion of the provisions of section 122(1) of the Local Government Act 1972."

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The necessary power to acquire and hold land under Part II of the 1985 Act is provided by section 17 of the 1985 Act as it stipulates that:-

“a local housing authority may for the purposes of this Part acquire land as a site for the erection of houses, acquire land proposed to be used for any purpose authorised by sections 11, 12 and 15(1) (facilities provided in connection with housing accommodation)”.

Sub-section 17(2) provides that “the power conferred by subsection (1) includes power to acquire land for the purpose of disposing of houses provided, or to be provided, on the land or of disposing of the land to a person who intends to provide housing accommodation on it or facilities which serve beneficial purpose in connection with the requirements of persons for whom housing accommodation is provided”

The fact that Council intends to develop the land for Council homes satisfies the requirement of relative need for the site to be held for housing purposes as greater than the need for it to be held for planning purposes. There is no requirement that the land must remain appropriated for planning purposes at the time any building works take place or that the land must have been held for planning purposes immediately before disposal. The benefits of appropriation for planning purposes engaged via s122 (1) LGA 1972 are retained so long as all the conditions relating to it as set out in this report are met.

FINANCIAL IMPLICATIONS AND RISKS

Contained in Exempt Appendix

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

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 AND SOCIAL INCLUSION 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:

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- (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 well-being 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 existing dwellings and associated amenities. Residents living within the immediate vicinity generally felt that the loss of existing amenity space would have an impact on families with small children and people using the space for pastimes.

In terms of impact on the health and well-being of existing and new residents, there is provision for generous amenity spaces/ area for play within the current proposals. The proposed area for play 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 these communal spaces will endeavour to be conducive to social cohesion, foster neighbourliness, 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.

Besides the provisions made for area of play in the current proposals there is also a Harrow Lodge Park together with a huge Recreation Ground adjacent to the proposed development site.

While the addition of 175 new homes proposed for the site 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 incorporate 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 developments also include for electric charging points to minimise air pollution.

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

In order to comply with the requirements of the current Building Regulations, 90% of the dwellings shall comply with Building Regulations Optional Requirement Approved Document M4(2) Category 2: Accessible and adaptable dwellings (2015 edition) and 10% of the residential units provided shall be capable of easy adaptation to Building

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Regulations Optional Requirement Approved Document M4(3) Category 3: (Wheelchair user dwellings) (2015 edition).

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 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 well-being 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

Cabinet, 12th February 2020 - Havering and Wates Regeneration LLP Business Plan and Budget 2020/2021 (Recommendation 4).

Appendices

Appendix 1 - Schedule of Rights
Appendix 2 - Insurance Policy
Appendix 3 - Land Valuation Report
Exempt 4 Appendix- Financial Implications
Appendix 5- Public Notice

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed



Name: Neil Stubbings - Director of Regeneration Programme Delivery

Date: 30/04/2021

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____