



Cabinet



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Report for:	Cabinet
Title of report:	Land assembly at St Margaret's Way for housing development (Appropriation of General Fund land and Housing to planning purposes and subsequently to the Housing Revenue Account for housing development purposes.)
Date:	19 th April 2022
Report on behalf of:	Councillor Margaret Griffiths, Portfolio Holder for Housing
Part:	I
If Part II, reason:	
Appendices:	Appendix 1 - Plan
Background papers:	Valuation Report – 24 th January 2022 (included in Part II)
Glossary of acronyms and any other abbreviations used in this report:	HRA – Housing Revenue Account

Report Author / Responsible Officer

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Corporate Priorities	A clean, safe and enjoyable environment Building strong and vibrant communities Ensuring economic growth and prosperity Providing good quality affordable homes, in particular for those most in need Ensuring efficient, effective and modern service delivery Climate and ecological emergency
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Wards affected	Leverstock Green
Purpose of the report:	<p>To be read in conjunction with Part II.</p> <p>To seek approval for the appropriation of a block of garages, domestic storeroom and adjacent amenity land at St. Margaret's Way, Hemel Hempstead.</p>
Recommendation(s) to the decision maker(s):	<ol style="list-style-type: none"> 1. Cabinet confirms that the site at St Margaret's Way is no longer required for its current purpose. 2. Cabinet agrees to delegate authority to the Strategic Director (Place) to apply for consent pursuant to section 19 Housing Act 1985 to the Secretary of State for Levelling Up, Housing and Communities (or equivalent successor title) to appropriate the flats (above a garage block) and amenity land held within the Housing Revenue Account at St Margaret's Way as shown edged red and green on the Plan ('HRA Land'). 3. Cabinet agrees to delegate authority to the Strategic Director (Place) to carry out a consultation in relation to the intended appropriation and the disposal of the public open space within the HRA Land at St Margaret's Way; if objections are received as part of the consultation process, the consideration of those objections will be referred back to Cabinet. 4. Cabinet agrees to delegate authority to the Strategic Director (Place) to take all necessary steps to appropriate the HRA Land from the Housing Revenue Account to planning purposes and the garages held within the General Fund within the Site for planning purposes pursuant to Section 122 of the Local Government Act 1972 and Section 227 of the Town and Country Planning Act 1990 for planning purposes subject to the completion of the processes authorised by Recommendations 2 and 3.. 5. Cabinet agrees to delegate authority to the Strategic Director (Place) to appropriate the Site at St Margaret's Way from planning purposes to the Housing Revenue Account prior to construction of the new build council houses as set out in Part II of the report.
Period for post policy/project review:	N/A

1 Introduction/Background:

In order to ensure a continued pipeline of the future affordable housing development sites, this report seeks approval to consider the appropriation of the land as shown at Appendix 1 ("Site") that includes garages held in the General Fund and the HRA Land for planning purposes and then the subsequent appropriation of the Site from planning purposes to housing to be held under the HRA at market value.

2 Key Issues/proposals/main body of the report:

The St Margaret's Way social housing new build project of 46 units received a resolution to grant planning permission, subject to a section 106 agreement at Development Management Committee on the 16th December 2021. The approved scheme includes the demolition of four flats, shown on the Plan outlined in red on the first floor, that are not fit for purpose due to their condition and size. They are situated above a garage block of seven garages, a domestic storeroom and are adjacent to amenity land (shown shaded green on the Plan). The proposals for the site will accommodate three additional houses and enhance the wider development. The flats above the garage block and amenity land are required to be appropriated from the Housing Revenue Account to the General Fund to be held for planning purposes and the garages need to be appropriated from the General Fund for planning purposes.

A red book valuation has been carried out by Brasier Freeth, and is included in Part II of this Cabinet report.

3 Options and alternatives considered

None

4 Consultation

Margaret Griffiths, Portfolio Holder for Housing

James Doe, Strategic Director of Place

Nigel Howcutt, Chief Finance Officer

Deborah Wickham, Interim Corporate Director (Housing)

Farida Hussain, Head of Legal and Democratic Services

Richard Rice, Head of Property Services

5 Financial and value for money implications:

The overall development budget is reviewed strategically as part of the annual review of the Housing Revenue Account Business Plan. Each individual scheme, following contract award, is subject to close financial monitoring with any variances agreed formally through a change control

The lifting of HRA borrowing cap has provided the opportunity to undertake additional borrowing, through the Public Works Loan Board, at what are still historically low rates of interest, enabling the expansion of the new build programme in a sustainable and affordable way.

Land purchases / appropriations are in line with Red Book valuations to ensure value for money.

6 Legal Implications

Pursuant to section 120 of the Local Government Act 1972 ("LGA"), the Council has the power to acquire land for the purposes of (a) any of the Council's functions under the Local Government Act

or (b) for the benefit, improvement or development of the area. The report sets out how these requirements are met.

In addition to the above power, further to section 9 of the Housing Act 1985, a local authority may provide housing accommodation by erecting houses or converting buildings into houses on land acquired by them.

Pursuant to section 122 of the LGA, a local authority may appropriate land for any purpose for which it is authorised to acquire land, when the land is no longer required for the purposes for which it is held. In reaching this decision, the Council must consider the public need within the area for the existing use. The proposed scheme of 46 new units will provide much needed social housing which would outweigh the public need for the current use of the Site.

The purpose for which the local authority is appropriating the land must be authorised by statute. Further to section 17(1) (a) of the Housing Act 1985, a local housing authority may acquire land for housing purposes. Section 19 of the Housing Act 1985 prevents a local authority from appropriating land held in the Housing Revenue Account consisting of a house or part of a house without the consent of the Secretary of State for Levelling Up, Housing and Communities.

Section 227 of the Town and Country Planning Act 1990 authorises a local authority to acquire land by agreement for a purpose for which the local authority may be authorised to acquire land under section 226 Town and Country Planning Act 1990. As a result, the appropriation of the Site to planning purposes must be made pursuant to section 122 Local Government Act 1972 and section 227 Town and Country Planning Act 1990.

Section 226 of the Town and Country Planning Act 1990 ("1990 Act") provides authorisation for the appropriation of land for planning purposes. Section 226 states that that a local authority (subject to the authorisation of the Secretary of State) has the power to compulsorily acquire any land in their area, if it considers that this will facilitate the carrying out of a development, redevelopment, or improvement on or in relation to the land, or is required for a purpose which is necessary to achieve in the interests of the proper planning of an area.

Under Section 226(1A) of the 1990 Act, a local authority may not acquire land compulsorily, for the purpose facilitating the carrying out of development, unless they consider that the development is likely to contribute to the achievement of one or more of the following objectives:

- a) the promotion or improvement of the economic well-being of their area;
- b) the promotion or improvement of the social well-being of their area;
- c) the promotion or improvement of the environmental well-being of their area.

A resolution to grant planning permission has been secured for the redevelopment of the Site (with planning reference 21/03089/MFA). It is considered that the redevelopment would result in the improvement of the economic, social and environmental well-being of the area, by sustainably providing a significant number and mix of high quality Council-built homes, which would contribute to the Council's identified affordable housing need. The redevelopment of the Site will provide local people with high-quality, affordable accommodation, improvements to local infrastructure and potential employment opportunities from the construction process. Accordingly in the Council's view, the redevelopment would contribute to the economic and social well-being of the area, fulfilling the requirements of section 226(1A) of the 1990 Act.

Section 203 of the Housing and Planning Act 2016 ("2016 Act") provides that where land has been appropriated for planning purposes then existing rights, which could prevent the development of that land from being carried out in accordance with the planning permission can be overridden, subject to payment of compensation to the affected parties.

For section 203 to be utilised or relied upon, the development must receive planning permission and the Council must hold an appropriate interest in the land. The Council will also need to be

satisfied that the requirements set out in section 226(1A) of the 1990 Act are met, and would need to consider whether an interference with the rights of third parties would be justified.

The use of section 203 powers would have the effect of ensuring that previously unknown interests do not frustrate the process of development, and is considered necessary in order to facilitate the proposed scheme of development.

The Council has carried out a report on title that has not identified specific private rights or any beneficiaries of private rights that affect the Site, but given the previous use of the Site it is considered prudent to appropriate the Site for planning purposes to engage the powers within Section 203 to override any third rights and convert them into a right to claim compensation.

As set out above, the Council considers that the redevelopment would result in the improvement of the economic, social and environmental well-being of the area. There may be a minor impact or infringement of the rights of as-yet-unknown persons, but the Council considers that on balance, an interference with those rights would be in the public interest and would be justified in the context of the benefits of the proposed redevelopment.

The Site will not be appropriated for planning purposes until

- i. the outcome of the advertisement process required by section 122(2A) of the Local Government Act has been completed and any representations received have been properly considered; and
- ii. Consent from the Secretary of State to appropriate the HRA Land for planning purposes pursuant to Section 19 Housing Act 1985 has been granted.

7 Risk implications:

Risk Assessments are completed, reviewed and updated on a monthly basis.

8 Equalities, Community Impact and Human Rights:

A Community Impact assessment not required. There are no Human Rights Implications arising from this report.

9 Sustainability implications (including climate change, health and wellbeing, community safety)

The new housing scheme will consider sustainability implications.

10 Council infrastructure (including Health and Safety, HR/OD, assets and other resources)

Each new build scheme has in place a Principal Designer and Construction Design and Management Regulations (CDM) Advisor. Contractors are required to comply with the Council's Health and Safety (H&S) policy along with Considerate Constructors requirements. Health & Safety is identified as a key risk of the Housing Service and is reported to the Council's Housing and Communities Overview and Scrutiny Committee on a quarterly basis. To ensure compliance monthly site checks carried out on behalf of DBC as the client to ensure adherence to H&S procedures.

11. Statutory Comments

Deputy Monitoring Officer:

The appropriation powers have been set out in the body of the report. The use of appropriation power 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.

Prior to appropriating the flats above the garage site which are currently held in the HRA, Secretary of State Consent will be required under section 19 of the Housing Act 1985.

Where land consisting or forming part of an open space is proposed to be appropriated, the Council cannot do so unless it has advertised its intention to do so for two consecutive weeks in a local newspaper and specifically considered any objections received under section 122(2A) of the Local Government Act 1972.

The definition of open space is “any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground”. The amenity land at St Margaret’s Way shown edged in green on the Plan comes within this definition and therefore the open space rules apply.

Deputy S151 Officer:

The appropriation of General Fund property and land to the HRA requires a technical to reduce the Capital Financing Requirement (CFR) of the General Fund and adjustment increase the CFR of the HRA by the market value of the transfer. The CFR is an indication of the Council’s underlying need to borrow as a result of capital investment.

12 Conclusions:

In order to support the delivery of the St Margaret’s Way project this report seeks approval to consider the appropriation of General Fund Land and HRA properties for planning purposes and subsequently to the Housing Revenue Account for Housing Development purposes.