

Report for: Cabinet Member for Corporate Resources

Item number: 4

Title: The appropriation of land in Monument Way, N17 for Planning Purposes

Report authorised by : Lyn Garner, Strategic Director for Regeneration Planning and Development

Lead Officer: Steve Carr, Interim Assistant Director Economic Development and Growth

Ward(s) affected: Tottenham Hale

**Report for Key/
Non Key Decision:** Key Decision

1. Describe the issue under consideration

- 1.1 On the 15th March 2016, Cabinet approved the the disposal of Council land north of Monument Way and south of Fairbanks Road, N17, edged red on the attached Plan (“Monument Way Site”) to Newlon Housing Trust (“Newlon”) for the sum of £1.00 on a long lease for 250 years to to build a minimum of 44 affordable rented units within the Chesnut Estate on the basis of providing 100% Nomination rights to the Council (“the Monument Way Development”).
- 1.2 Newlon was granted outline planning permission for the Monument Way Development on 21st December 2017. The act of appropriation the land for planning purposes can engage Section 203 of the Housing and Planning Act 2016 (Section 203 HPA). In order to engage Section 203 HPA, the Council must exercise its powers under Section 122 of the Local Government Act 1972 (“Section 122 LGA 1972”) to appropriate the land for planning purposes. The Council has the power under Section 122 LGA 1972 to transfer the allocation of land from one purpose to another.
- 1.3 Once the land is appropriated for planning purposes, the effect of triggering Section 203 HPA is that private rights of interests and restrictive covenants affecting the proposed development

are overridden and converted into a claim for damages. As a result of this, Newlon has requested that the Council exercises its statutory powers to override easements and other rights under Section 203 HPA in carrying out the Development to overcome potential injunctable third party rights that may present in the construction of the Monument Way Development.

Types of Rights that can be overridden

1.4 Section 203 HPA can be used to override any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land. An easement is a right of light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the adjoining site. Any development which interferes with that right may entitle the owner of that right to claim an injunction preventing the development going ahead or damages for the effect on value of the right lost because of the interference.

2. Recommendations

2.1 It is recommended that the Cabinet Member for Corporate Resources agrees to the following:-

- (i) To appropriate the Monument Way site (outlined red in the plan attached as Appendix A) for planning purposes pursuant to Section 122 of the Local Government Act 1972 ("Section 122 LGA 1972") as it is no longer required for the purpose which it is currently held.
- (ii) And subsequently use the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other rights of neighbouring properties infringed upon by the Monument Way Development, under planning permission Ref: HGY/2016/2184.

3. Reasons for decision

3.1 The Monument Way Site sits within the Tottenham Housing Zone. In the context of the Housing Zone Portfolio Approach to sites, and following consultation with the local community, the Monument Way Site was considered a suitable site for affordable rent housing and for larger units. The Council have been discussing with Newlon Housing Trust, as a preferred partner, the opportunity to take forward the development. The site can be delivered relatively quickly and independently of other sites in the Housing Zone and is a priority since there is an urgent demand for affordable rent homes.

3.2 This first scheme, along with other landscape projects progressed by the Council around the Chesnut Estate will result in a much improved environment for existing residents of the Chesnut Estate.

4. Alternative options considered

4.1 The alternative option to consider would be not to appropriate the Monument Way site for planning purposes. This would put the site at risk of being injuncted and therefore put the development at risk.

4.2 The preferred option, as recommended in this report, is to appropriate the land in question for planning purposes to ensure the smooth delivery of this important regeneration and housing scheme.

5. Background information

Strategic context

5.1 Tottenham is a major regeneration area for Haringey and London. The Tottenham Strategic Regeneration Framework (SRF), approved by Cabinet on 18th March 2014, identifies Tottenham Hale as being London's next great neighbourhood and sets out an ambitious vision for the transformation of this area.

5.2 The Haringey Local Plan: Strategic Policies and emerging Tottenham Area Action Plan (AAP) (approved at Full Council on 23 November 2015 to be submitted for Examination in Public consequent to Regulation 19 in 2016) include ambitious targets of 5,000 homes and 4,000 jobs to be delivered in Tottenham Hale across a number of specific development sites.

5.3 The Monument Way Site is part of site TH 10: Welbourne Centre & Monument Way in the AAP and has been identified as being suitable for housing and other uses. This report relates to the Monument Way site and not the Welbourne Centre site. The AAP Design Guidelines state the development along Monument Way should be more in keeping with the surrounding context.

Monument Way site

5.4 The Monument Way site comprises Fairbanks Road, a linear strip of grass and small car park with a brick wall on the southern boundary, shown edged red on the site plan in Appendix A. Fairbanks Road provides access into Chesnut

Estate, which comprises two and three storey terraced housing managed by Homes for Haringey.

5.5 The proposal from Newlon Housing Trust will provide 54 affordable rent units on the site, this is much needed social housing for the Borough which will help to address the borough's housing need. This supports the Council's priorities as set out in the Corporate Plan.

5.6 Newlon Housing Trust are a strong local partner with their headquarters located at Hale Village N17. Newlon has a strong track record of providing housing in Tottenham.

5.7 The proposals for the the Monument Way/Fairbanks Road site have been the subject of significant engagement with residents of the Chesnut Estate A number of key priorities for residents were identified:

- **Affordability:** Residents would support a development providing affordable rent units
- **Density and building height:** Residents were concerned with building heights along Monument Way and as a result the designs were changed substantially to reduce the height and form of the proposed new buildings
- **Green Space:** Residents were concerned with the loss of green space within the estate. The extent of developed land was subsequently reduced from four plots to three, with the excluded plot being retained as green space. The loss of green space is also being addressed through the project of greening Chesnut Road, which will create a pocket park and a greener environment.

Brick Wall: Residents living in Chesnut Estate value the brick wall and the protection it gives from the noise of vehicles on Monument Way. The council has worked with Newlon Housing Trust to identify a suitable landscaping approach that retains significant stretches of wall, while providing for better access to the new housing units. Sound/Noise mitigation has been a significant feature of the design discussions between Newlon Housing Trust and the Planning Authority.

- **Parking:** Residents have expressed concern with potential loss of parking.

Following consultation with residents and the parking officer from Homes for Haringey, the Newlon scheme will remain car free and the estate won't lose any of its current available parking spaces. However the parking spaces located along the wall and currently unavailable won't be reprovided in the new arrangement. 6 new disabled access spaces will however be provided as part of the proposed new development.

5.8 As part of the regeneration of Tottenham Hale, wider improvements to the estate have been identified and will help to

improve the wider environment of the estate. As mentioned above, a proposal to transform Chesnut Road into a cycle and pedestrian route along with a pocket park providing leisure facilities is currently being progressed by the council and residents have been engaged in the design process.

Section 122 of the Local Government Act 1972

5.9 In order for the Council to appropriate the Monument Way Site for planning purposes, the key procedural points under Section 122 of the Local Government Act 1972 are as follows:-

- (a) The land must already belong to the council
- (b) The land must be no longer required for the purpose for which it is currently appropriated; and
- (c) The purpose for which the council is appropriating must be authorised by statute

5.10 The Monument Way Site referred to on the Plan appended to this report comprises three areas of land. An examination of each area of land is required to see if it meets the requirements of (a) (b) and (c) above.

- **Blue shaded land within the Monument Way Site**

This land is held for housing purposes forming part of the Chesnut Estate.

This land is owned by the Council. The Council has entered into an Agreement for Lease with Newlon in respect of the whole of the Monument Way Site, but disposal to Newlon by lease will take place once the conditions precedent of (1) Newlon obtaining detailed planning permission, (2) the Council exercises its powers under Section 203 of the HPA to override third party rights, and (3) the parties enter into the funding agreements. Once these condition precedents are met, then the Council will dispose the Monument Way Site by way of a long lease. The land is owned by the Council for the purpose of this section.

The Cabinet report of the 15 March 2016 approved that the Monument Way Site be declared surplus to requirements therefore it is no longer required for housing purposes

The Council is seeking to appropriate the land for planning which is for a purpose authorised by statute.

- **Green shaded land within the Monument Way Site**

This land was acquired from Holy Trinity School for general purposes. The land is owned by the Council, was declared surplus in the Cabinet Report of 15 March 2016 and the Council

seeks to appropriate for planning purposes which is a purpose authorised by statute.

- **Orange shaded land within the Monument Way Site**

This land forms part of Monument Way and was acquired recently from the Transport for London for general purposes. As above the Monument Way Site, the land was declared requirements in the Cabinet report of 15 March 2016 and the planning purpose is authorised by statute.

Section 203 of the Housing and Planning Act 2016

5.11 Newlon Housing Trust will provide an indemnity to the Council in respect of any residual liability that may fall to the Council as a result of Newlon Housing Trust relying on Section 203 to override third party interests during the development.

Rights of Light

5.12 A right of light is an easement which allows owners of properties which allows owners of properties who have had access to light the ability to protect that level of light. This is based on the ancient light laws and is usually via prescription (20 years continuous use) Through consultation on Newlon Housing Trust's application for Outline Planning Permission, daylight/sunlight considerations emerged as a key concern. As such it can reasonably be assumed that parties with the right to seek injunctionable compensation would do so. 4 properties in all are affected by Rights of Light considerations, 3 of which are owned by the Council, with secure tenants in place.

5.13 Newlon Housing Trust have progressed design proposals for the site, from a starting point of a minimum of 44 affordable rent units. A variety of solutions were explored, including variations on unit positioning, orientation and heights. Particular regard was given to impacts on neighbouring residents' Rights of Light, as the Development introduces units directly adjacent to those present currently. It was determined that the current solution was optimal in terms of achieving the least possibly negative infringements on neighbouring properties, while also increasing the new homes to be delivered to 54. Delivering less units was not found to materially reduce Rights of Light impacts on affected properties, but did impact significantly on the affordable rent outputs from the scheme with the resulting social benefits that flow from that. The current design for 54 units was granted Outline Planning Permission by Planning committee on 13th February 2017.

Right of Access

- 5.14 There are 5 properties affected by the delivery of the Monument Way scheme with regards to Rights of Access through the site. Consultation and engagement demonstrated this to be uncontentious as the proposed scheme reintroduces access to properties in a like-for-like manner, through a realigned Fairbanks Road.

Approach to Compensation

- 5.15 With regards to Rights of Light, it is expected that one freehold landowner has an injunctable right and will be entitled to compensation. The rights of light affects 3 other properties occupied by secure tenants so the Council holds the rights to light. However, it is proposed that a discretionary goodwill payment be made to the 3 secure tenants. The cost of this compensation would be met by Newlon Housing Trust. It is proposed that the Council takes all reasonable measures to facilitate this approach in partnership.
- 5.16 It is also proposed that the incoming tenants of the new units to be delivered are given the same rights to access to and enjoyment of common areas of the estate.

6. Contribution to strategic outcomes

The recommendations in this report are related to a number of Council wide corporate policies and priorities and will help deliver the Council's priorities as set out in the Corporate Plan 2015-2018: building a stronger Haringey together and in the council's Housing Strategy. In particular, the affordable rented homes in this proposed development will support delivery of the Council's target for affordable housing in the Borough.

7. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

- 7.1 There are no budgetary requirements for this appropriation report and I can confirm that there are no forecast budget overruns.
- 7.2 Please also note that Newlon provide a full indemnity against any costs that may be incurred.
- 7.3 The Corporate Procurement Unit notes the recommendations in this report and that there is no input from procurement required.

Legal

Appropriation under Section 122 of the Local Government Act 1972

- 7.4 In order to engage Section 203 HPA, the Council must exercise its powers under Section 122 of the Local Government Act 1972 ("Section 122 LGA 1972") to appropriate the land for planning purposes. The Council has the

power under Section 122 LGA 1972 to transfer the allocation of land from one purpose to another. Section 122 LGA 1972 provides that:

“The council may appropriate for any purpose for which the council is authorised by statute to acquire land by agreement any land which belongs to it and is longer required for the purpose for which it is held immediately before the appropriation”

The key procedural points are as follows:

- (a) The land must already belong to the council
- (b) The land must be no longer be required for the purpose for which it is currently appropriated; and
- (c) The purpose for which the council is appropriating must be authorised by statute.

Section 122 LGA 1972 provides that the Council may not appropriate land constituting or forming part of an ‘open space’ or land forming part of a common (unless it is a common or fuel or field garden allotment of less than 250 square yards unless they comply with advertising their intention to do so under the section.

- 7.5 With reference to the plan of the Monument Way Site, the part of the land shaded blue is housing land forming part of the Chesnut Estate. The part of the land shaded green was acquired from the Holy Trinity School for general purposes, and the land shaded orange forming being part of Monument Way is due to be acquired from the Transport for London also for general purposes. However, the acquisition of the orange land has not taken place therefore this would need to take place before the land can be appropriated for planning purposes.

Section 203 of the Housing and Planning Act 2016

- 7.6 By appropriating the land for planning purposes under Section 122 of the LGA 1972, the Council is therefore able to engage the powers contained in Section 203 of the HPA.
- 7.7 Section 203 states a person may carry out building or manintance work even it involves (a) Interfering with a relevant right or interest or (b) breaching a restriction as to use of land. This applies to building work where:-

- (a) there is a planning consent,
- (b) the work is on land for the purpose for which the land was vested, acquired or appropriated for planning purposes under Section s.246(1) of the Town and Country Act 1990;
- (c) the authority could acquire the land compulsorily for the purpose of the building work.

- 7.8 Looking at the requirements of Section 203 above,
- (a) it is understood that outline planning permission has not been granted for the Development;
 - (b) it is recommended in 3.1 (i) of this report that the land be appropriated for planning purposes under the Section 122 of the Local Government Act 1972;
 - (c) This requires that the Council could acquire the land compulsorily for the purpose of the building work. Section 226(1) of the Town and Country Planning Act 1990 contains the compulsory purchase powers of the Council which 'the authority think that the acquisition will facilitate the carrying out the development, re-development on or in relation to the land' or 'required for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated. This requirement is satisfied as the Council considers that the development will lead to an improvement in the economic, social or environmental well-being of the area as outlined in this report.
- 7.9 It is important that Newlon provides an indemnity in respect of all costs and expenses incurred by the Council in connection with any third party claims made in relation to the exercise of these powers. Newlon will be seeking to obtain indemnity insurance to cover the risks in providing such indemnity to the Council.

Equality

- 7.10 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:

- a) Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;

b) Advance equality of opportunity between people who share those protected characteristics and people who do not;

c) Foster good relations between people who share those characteristics and people who do not

- 7.11 The Equality Impact Assessment concludes that the impact of the disposal of the Monument Way site and development for a scheme which delivered a level of affordable rent units which is considerably higher than current policy requirements is generally considered to be positive as it delivers much needed affordable rent homes in Tottenham Hale as well as provides an opportunity to improve the amenity along Monument Way.
- 7.12 There should be positive outcomes for groups sharing the protected characteristics, in particular younger residents, disabled residents and BME residents, whose need for affordable housing is proportionally higher. Residents with the protected characteristics will also benefit from the improved amenity, including through increased accessibility for disabled residents and parents/carers with buggies. Within the overall Tottenham Hale Development Framework, a robust process for monitoring and evaluating development will be used to ensure that the intended benefits for all groups of residents, including those from the protected groups, are felt.
- 7.13 The EqIA also notes that there is potential for disruption arising from the proposed development that will require mitigation. Disruption is likely to impact in particular on residents of the Chesnut Estate.
- 7.14 The overall Tottenham Hale Delivery Framework recognises the need for engagement with residents and service users likely to be impacted by development proposals, including the need to engage with groups that share the protected characteristics and may be harder to engage. Delivery partners are expected to engage positively and proactively with the community and to support the community throughout the period of development including minimising the impact of disruption from construction works wherever possible.
- 7.15 The Regeneration Team is working with Homes for Haringey and the Chesnut estate Resident Association to engage with the residents of the estate through engagement events and in attending AGMs to inform residents and respond to their queries in relation to projects on the Chesnut estate and the surrounding areas. A number of priorities have been identified in consultation with the residents in Chesnut Estate which have already influenced the emerging design and which has also identified some mitigating actions specific to this scheme:
- The target of delivering affordable rent homes
 - The delivery of a scheme whose massing respects the building height of the existing estate

- The retention of one of the possible four development plots for open space and inclusion of new play spaces in the refurbishment of Chesnut Road
- The decision on whether to retain the brick wall or not will be made in consultation with residents
- Parking capacity will be part of a separate study and tested through the planning process
- Monitoring and oversight arrangements will be ongoing as part of the DCF communication strategy
- Residents in Chesnut Estate and surrounding areas will continue to be engaged through the pre application stage and detailed design stage
- The construction method statement will be developed in consultation with residents and will aim to minimise disruption caused by the development

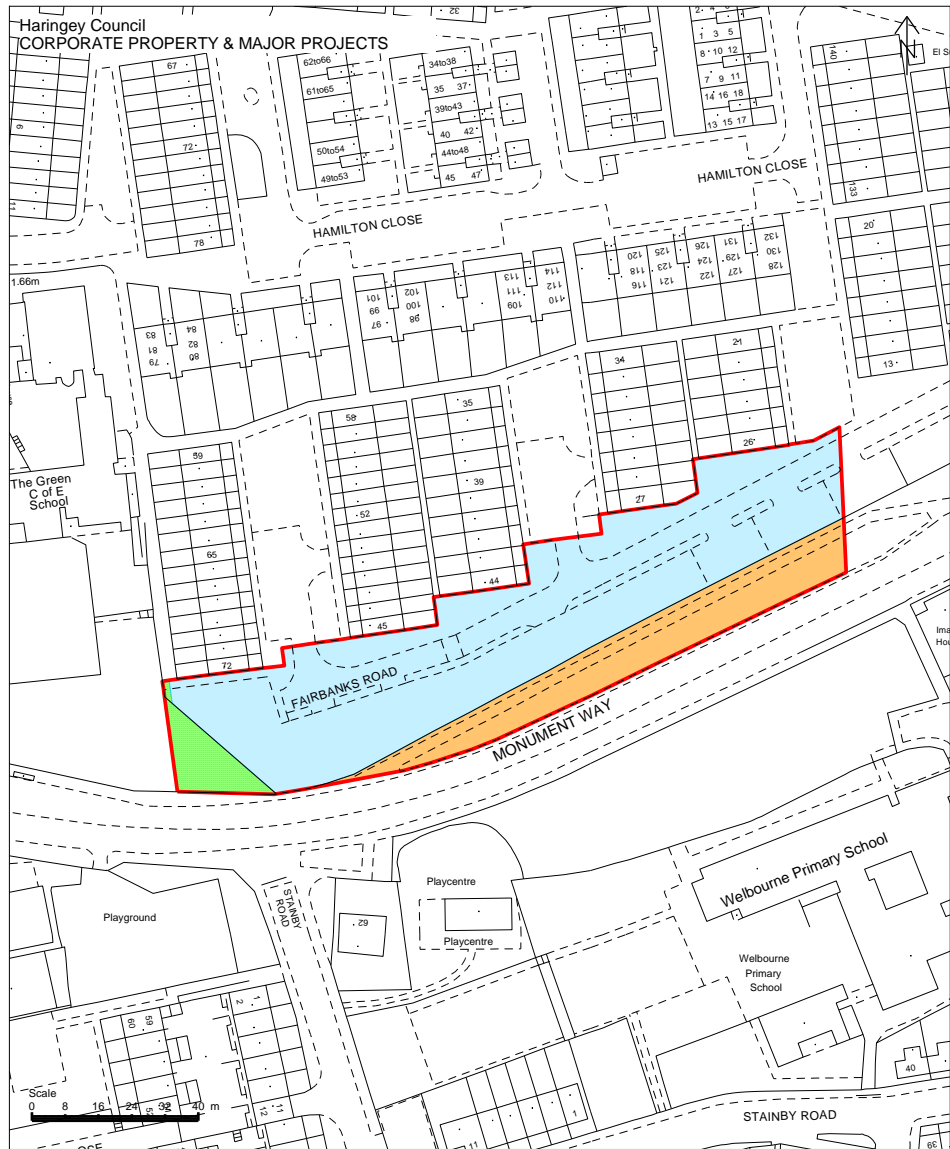
8. Use of Appendices

Appendix A – Site Plan

9. Local Government (Access to Information) Act 1985

- a)Tottenham Strategic Regeneration Framework (SRF), approved by Cabinet on 18th March 2014
- b)Haringey Local Plan: Strategic Policies
- c)Tottenham Area Action Plan (Pre submission version January 2016)
- d) Hale District Centre Framework and supporting strategies, adopted by Cabinet 9 February 2016
- e)Cabinet report 15th March 2016

Appendix A – Site Plan



Development Site
Fairbanks Road
Tottenham
LONDON
N17

Red verging - Development site
Blue shading - Haringey Council ownership
Green shading - Holy Trinity School ownership
Orange shading - TfL ownership

Site Area : 0.5849 hectare

Overlay : HSS - misc.

Scale 1:1250

Plan produced by Janice Dabinett on 18/02/2016

Drawing No. BVES A4 2778b