

Appropriation of Land for Council House Building

Housing Committee Tuesday, 19 March 2024

Report of: Director of Resources (S151)

Purpose: For decision

Publication status: Unrestricted

Wards affected: Oxted South

Executive summary:

The Council acquires and holds land for various statutory purposes to perform its functions. It can use statutory powers of appropriation to transfer the use of land from one purpose to another.

Prior to appropriating any land, the Council must demonstrate that the land in question is not required for the purposes for which it is currently held. Appropriating land for planning purposes allows the Council to engage statutory powers to override any third-party rights (subject to the payment of compensation) enabling development to proceed if planning permission is granted.

This report updates Members on the recent consultation for the appropriation of land at the proposed development site at the Warren Lane depot and seeks approval to continue with and ultimately conclude the appropriation process.

This report supports the Council's priority of: Creating the homes, infrastructure and environment we need

Contact officers Carol Snowden & Nicola Cresswell, Housing Development
NCresswell@tandridge.gov.uk, csnowden@tandridge.gov.uk

Recommendation to Committee:

- A. Having considered the consultation responses, approves the appropriation of the site at the Warren Lane depot and at 122 Mill Lane (as indicated in the relevant plan at Appendix A) (subject to compliance

with all necessary legal requirements) in exercise of statutory powers to appropriate for planning purposes, exercising powers under S122 of the Local Government Act for the planning purposes of facilitating redevelopment having regard to the Equalities Impact Assessment, for residential uses pursuant to section 226 of the Town and Country Planning Act 1990

- B. Resolve that delegated authority be provided to the Director of Resources:
- i. subject to any necessary statutory consents and procedures, to sign a memorandum stating that the land is appropriated for planning purposes;
 - ii. at the appropriate time, to sign a memorandum stating that the land is appropriated from planning purposes to housing.

Reason for recommendation:

To facilitate the carrying out of development within the Council's house building programme by ensuring that the land and property in question is appropriated for the correct statutory purpose under Section 122 (1) of the Local Government Act 1972. It is considered that the public benefit of appropriation of the sites for planning purposes is likely to outweigh any private rights which might be interfered with as a result of appropriation for planning purposes.

Introduction and background

- 1 Property and land that is held for housing purposes or held by the General Fund must be appropriated for planning purposes and then held by the Council under the statutory provisions of Part 9 of the Town and Country Planning Act 1990. Planning purposes in this context therefore means appropriation which will facilitate the carrying out of development, redevelopment or improvement of land which is 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.
- 2 The practical consequence (by virtue of sections 203-205 of the Housing and Planning Act 2016) is that the demolition, erection, construction or carrying out of any maintenance of 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. It should be noted that beneficiaries of any rights that have been interfered with may be able to claim compensation.
- 3 The Council's Housing Committee, at its meeting on 21st June 2022 resolved that Officers commence a) the process of appropriating the land from the General Fund for planning purposes b) appropriating the land at the Council's adjacent property of 122 Mill Lane from housing to planning purposes (the land already being held in the HRA).
- 4 The Council commenced a consultation period on the development of the Warren Lane depot site and the appropriation of the land on 5th

December 2023. Members of the public who wished to comment on the application or object to the appropriation of land were invited to write with their objections by 27th December 2024.

- 5 A public consultation event was held at the Hurst Green Community Centre on 19th December 2023.
- 6 This report considers the outcome of the consultation and seeks approval to proceed to the next and final stages of the appropriation process. On completion of any development, the land would need to be appropriated back to housing land from planning purposes and this report also seeks approval for this to be undertaken at the appropriate time.

Consultation

- 7 Letters were sent notifying the following residents of the forthcoming planning application, the associated public consultation event and online public consultation together with the Council's intention to appropriate the land for planning purposes:
 - 181– 233 (odds), 92-128, 234 (evens) Mill Lane
 - 35 – 79 (odds) 30, 46, 48 Warren Lane
 - 1-12 Benn Close
 - 1-6 Greenwood Gardens
 - 82-90 (evens) Coltsfoot Lane
- 8 There were 7 written responses to the Council's consultation and 22 residents attended the public event.
- 9 The following issues were raised by respondents:
 - Long term ownership of houses and roads
 - Concerns over biodiversity loss
 - Concerns about contamination of site
 - Concerns about condition of roads in the area
 - Concerns about congestion on roads in the area
 - Concerns regarding noise from the depot and odour from the wastewater treatment works.
 - Concerns about noise from the new development to existing residents.
 - Concerns about displaced parking from access road
 - Concerns about materials, positioning and distance of proposed buildings
 - Timescales of development
 - Alternatives to the proposed access road
 - Restrictive covenant on the land at 122 Mill Lane

Officers have considered all the consultation responses carefully to ensure that any issues relevant to the appropriation of the Site have been considered and specifically that the correct statutory process has been followed.

Other options considered

- 10 The alternative option is not to proceed with the appropriation of the land. This option is rejected as there is the potential that third

parties could bring injunction proceedings at a later date which could stop the construction of the project or delay its delivery. By exercising appropriation powers, the threat of injunction proceedings for the infringement of third party rights would be extinguished. Affected parties would still receive compensation but they will not be able to delay or stop the development.

Key implications

Comments of the Chief Finance Officer

The recommendations in this report, regarding the appropriation of the land at the Warren Lane depot site and 122 Mill Lane, have no direct financial implications. The scheme budget was approved by Committee on the 14th September 2023 and this activity forms part of the overall programme for the project.

Comments of the Head of Legal Services

The Council holds the statutory powers of appropriation under Section 122 of the Local Government Act 1972 and section 203 of the Housing and Planning Act 2016. By Section 204 of the Housing and Planning Act 2016 the Council is liable to pay compensation, in accordance with the statutory provisions, in respect of the interference of rights affected by the carrying out of building works. It is accepted that appropriating the land for planning purposes may infringe private rights. However, this infringement must be considered in the context of the current use of the site which demonstrates that the likely benefits of the proposed development will significantly outweigh any harm as a result of infringement of any private rights.

Case law has established that in determining whether land is required for a particular purpose, it is legitimate to weigh up the relative importance of different needs and to exercise judgment in the public interest. As stated in this report and previous reports related to this matter, the areas of land in question are deemed by the Officer to be surplus to requirement. It is considered by Officers that the exercise by the Council of its statutory powers of appropriation in the circumstances referred to in this report is reasonable and proportionate.

Equality

The Council's House Building Programme aims to contribute significantly to making decent and affordable homes accessible to all our residents and are designed to mitigate against fuel poverty, be mobility friendly and be of sufficient size to promote working from home.

As such an Equality Impact Assessments (EqIA) has been undertaken in respect of the impact of the appropriation and development proposals. This EqIA is attached as Appendix B to this report. The EqIA sets out a number of positive impacts that the scheme will deliver including more affordable homes of a higher

quality, that are safer, more accessible and more fuel efficient and sustainable, and therefore have the potential to improve the quality of life for people of all ages and backgrounds.

Climate change

At its meeting on 17th September 2020, Housing Committee resolved to adopt new standards of construction in the Council's House Building Programme so as to deliver Council homes that are 'net zero carbon (operational)'

Appendices

Appendix A – Plan

Appendix B – Equality Impact Assessment

Background papers

None

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