

# **COUNCIL HOUSE BUILDING PROGRAMME - APPROPRIATION OF LAND FOR PLANNING PURPOSES**

## **Housing Committee Tuesday, 28 September 2021**

Report of: Alison Boote, Executive Head of Communities  
Purpose: For Decision  
Publication status: Unrestricted  
Wards affected: Dormansland & Felcourt; Godstone, Queens Park and Westway

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### **Executive summary:**

At the 11<sup>th</sup> March 2021 Housing Committee, Members resolved that Officers proceed to prepare detailed proposals for potential residential development schemes at Wolfs Wood, Hollow Lane and at Featherstone.

Prior to commencing building works the Council must demonstrate that any of the land in question is not required for the purposes for which it is currently held.

Appropriation is a means of transferring the use of the land from one purpose to another to allow the Council to perform its functions in accordance with its statutory powers. This report is seeking approval to commence the appropriation process.

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

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## **Recommendations to Committee:**

That it be recommended to Council that:

- A. in respect of the following sites, Officers commence the process of appropriating the land from housing to planning purposes:
  - 106-128 (even numbers) Wolfs Wood, Hurst Green
  - Garage site at Hollow Lane, Dormansland
  - 63 – 78 Featherstone, Blindley Heath
  
- B. in respect of the following site, Officers commence the process of appropriating a part of the land known as Featherstone Open Space from general fund to planning purposes:
  - 63-78 Featherstone, Blindley Heath
  
- C. the Housing Committee's terms of reference be amended to include the appropriation of land (subject to any statutory consents and procedures) identified for Council housebuilding for planning purposes and the Committee be empowered to approve the appropriation process in connection with future schemes within the Council house-building programme .

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## **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.

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## **Introduction and background**

1. The Council's Housing Committee, at its meeting on 11<sup>th</sup> March 2021 resolved that Officers prepare detailed proposals for the development of 63-78 Featherstone, Blindley Heath, 106 – 128 (even numbers) Wolfs Wood, Hurst Green and a garage site at Hollow Lane, Dormansland.
2. The Council acquires and holds property for various statutory purposes to perform its functions. The process of changing that purpose without changing the ownership is described as appropriation. The Council is authorised by section 122 of the Local Government Act 1972 to appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement. The provision allows "a principal Council to appropriate land which belongs to the Council and is no longer required for the purpose for which it was held immediately before the appropriation....". The appropriation must be a formal resolution of the Council.

4. Property and land that is already held for housing purposes 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. The practical consequence (by virtue of Section 237 of the Town and Country Planning Act 1990, as amended by Schedule 9 of the Planning Act 2008) 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. On completion of any development the land would need to be appropriated back to housing land. This process applies to all of the aforementioned development sites with the exception of 63-78 Featherstone, Blindley Heath, where the Council must also advertise its intention to appropriate part of the land adjoining the site known as Featherstone Open Space.
5. In the case of 63-78 Featherstone, Blindley Heath, the development provides an opportunity to improve the turning head at Featherstone, which is currently not fit for purpose, by utilising an area of open land adjacent to the current car park. Please see Figure 1. below where open space land is outlined in blue:



Figure 1.

6. Before appropriating open space land, the Council must advertise its intention to appropriate for two consecutive weeks in a newspaper circulating in the local area. If representations are made to the Council in response to the adverts, it is necessary for the Council to consider these representations and to take them into account in deciding whether to proceed with the appropriation of the open land.
7. Subject to the necessary approvals, consultation with affected residents will commence following Full Council in October 2021 and Officers will report the results of the consultation and any representations received in response to the newspaper advert for Featherstone Open Space at the next Housing Committee.
8. This process is part of the Council House Building Programme and any associated costs or compensation claims will be met from the approved budget extension.

#### **Other options considered**

9. If the Council decided not to appropriate the land. Then there is the potential that third parties could bring injunction proceedings 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 parties rights would be extinguished. Affected parties would still receive compensation but they will not be able to delay or stop the development.

#### **Consultation**

10. In accordance with para 46(i) of the Standing Orders and Part E of the Constitution, approval has been obtained from group leaders to deal exclusively with this matter in respect of Featherstone Open Space and on this basis the Housing Committee has the authority to make recommendations to Full Council.

#### **Key implications**

##### **Comments of the Chief Finance Officer**

11. Section 19(1) of the Housing Act 1985 (the **1985 Act**) allows local authorities to appropriate any land vested in them or at their disposal to the Housing Revenue Account (**HRA**)
12. If a Council wishes to include in the HRA property which is ancillary to Part II housing accommodation but not, up to now, provided under Part II, it is necessary to obtain the Secretary of State's consent under Section 12 of the 1985 Act. Such applications are considered on their individual merits.
13. The HRA 'pays' for the land through an increase in the HRA Capital Financing Requirement (CFR) – thus increasing the contribution towards the council's capital financing costs made from the HRA.

14. The General Fund benefits from a corresponding decrease in its CFR and hence lower capital financing costs. This would be applicable to the Featherstone where the small area of open space in the recreation ground is held by the General Fund.
15. The CFR adjustments should be based on the market value for the land – but taking account of the intended use for social or other sub market housing
16. The Council has discretion whether to appropriate land on this basis or sell it on the open market, in which case the council would need to consider alternative sites for the delivery of new housing

### **Comments of the Head of Legal Services**

17. The Council is seeking to appropriate land for planning purposes under section 122 of the Local Government Act 1972. Section 122 of the Local Government Act 1972 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. The Committee 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 for planning purposes.
18. 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”.
19. 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, redevelopment 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.

20. 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.
21. 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 Council 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.
22. Section 122(2A) of the Local Government Act requires that before appropriating and disposing of any land consisting of or forming part of open space the Council must advertise the proposed appropriation in two consecutive editions of a local newspaper and consider any objections received in response.
23. It is considered reasonable for the Council to use its powers in this case to appropriate for planning purposes as the appropriation will facilitate the carrying out of development and improvement to the various sites and contribute to the promotion of the economic, environmental or social wellbeing of the District.

### **Equality**

24. 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.
25. There is no evidence to suggest that the appropriation of any of the identified land will have a disproportionate adverse impact on those with protected characteristics. Indeed, the anticipated impact on affected parties is expected to be minimal as property owners and occupiers will continue to be able to enjoy their property in the same manner as they do at present: all properties will continue to be accessible throughout the works and thereafter upon their completion. The Council is satisfied that the each proposed development would strengthen the vitality and viability of the area and the appropriation of the Council's land would not have any negative impacts on equality and diversity.

## **Climate change**

26. At its meeting on 17<sup>th</sup> 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)'. The new standards are to be piloted at the new homes at Auckland Road and Windmill Close with a view to rolling them out to all new Council homes for construction, including new homes at Featherstone, Wolfs Wood and Hollow Lane.

## **Appendices**

None

## **Background papers**

None

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