

Appropriation of Land for Council House Building - Next Steps

Housing Committee Tuesday, 30 November 2021

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

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 sites at Auckland Road, Windmill Close, Hollow Lane and Featherstone 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

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Recommendation to Committee:

- A. That in respect of the proposed development sites at Featherstone Open Space; Hollow Lane; Auckland Road; and Windmill Close (as indicated in the relevant plans at Appendix A) that the land at each site be appropriated for planning purposes to facilitate the redevelopment of the land for the proper planning of the area and contribute to its economic, social and/or environmental wellbeing.

- B. That in respect of the land at Featherstone (as shown in the plan at Appendix A), that the Council proceeds to seek the consent of the Secretary of State for the appropriation of housing land for planning purposes by demonstrating that the land is not required for the purposes for which it is currently held and that the use of the power of appropriation is in the public interest.
- C. That in respect of the land at New Farthingdale (as shown on the plan at Appendix A), the land is appropriated for planning purposes in order to facilitate the redevelopment of the land for the proper planning of the area and contribute to its economic, social and/or environmental wellbeing, following the stopping up of any highway land required as a result of the proposed redevelopment.
- D. That in respect of all of the aforementioned sites that delegated authority be provided to the Executive Head of Communities:
 - i. subject to any necessary statutory consents and procedures in relation to Featherstone and New Farthingdale (outlined in recommendations B and C), to sign a memorandum for: Hollow Lane; New Farthingdale; Auckland Road; Windmill Close; and Featherstone stating in each case that the land is appropriated from housing to planning purposes;
 - ii. to sign a memorandum for Featherstone Open Space stating that the land is appropriated from general fund to planning purposes; and
 - iii. at the appropriate time, to sign a memorandum for each site 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.

Introduction and background

- 1 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 1990. 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.

- 2 The Council's Housing Committee, at its meeting on 28th September 2021 resolved that Officer's commence the process of appropriating land from housing to planning purposes at the proposed development sites of 106-128 (even numbers) Wolfs Wood, 63-78 Featherstone and the garage site at Hollow Lane. It was also resolved that Officers commence the process of appropriating a part of the land known as Featherstone Open Space from general fund to planning purposes.
- 3 The Council's Housing Committee, at its meeting on 19th September 2019 resolved that Officer's initiate the process of appropriation at Auckland Road and Windmill Close. Both these sites have recently gained planning consent.
- 4 Following Full Council on 21st October 2021 the Council commenced a consultation period on the appropriation of housing land to planning purposes in respect of Hollow Lane, Featherstone, Auckland Road and Windmill Close. The consultations closed on 15th November 2021. During the consultation period and in accordance with s122(2A) of the Local Government Act 1972 ("the 1972 Act"), the Council also advertised its intention to appropriate the Open Space land at Featherstone by placing a notice for two consecutive weeks in the local press and on the Council's website. The same process was adopted for the appropriation of a small area of housing land at Windmill Close (shown hatched red on the plan at Appendix A) in so far as the land consists of an open space within the meaning of s122(2A) of the 1972 Act, which includes land used for public recreation. Members of the public who wished to object to the appropriation of land, including the appropriation of Open Space land at Featherstone and Windmill Close were invited to write with their objections by 5pm on 15th November 2021.
- 5 Commencement of the process of appropriating land for planning purposes at Wolfs Wood has been delayed until it can be run concurrently with the public consultation.
- 6 This report considers the outcome of the recent consultations 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 the report also seeks approval for this to be undertaken at the appropriate time.

Consultation Auckland Road

- 7 Letters were sent notifying the following residents of the approval of the planning application and of the Council's intention to appropriate the land at the Auckland Road garage site from housing to planning purposes:

3 – 13 Oak Road (odds)
2 and 2a Auckland Road
11-21 Banstead Road

- 8 There were no responses to the written invitation for representations or objections.
- 9 At the time of inception of the scheme, the garages were only at 50% capacity. Despite having been available to let for many years there was a low take up, reflective of the fact that the garages are not wide enough for most modern cars.
- 10 Consideration of sites such as Auckland Road for development arises out of a significant need for affordable housing locally which the Council has an obligation to address. The Council has a significant waiting list for affordable housing and family sized homes in particular. Appropriation of the site for the economic, social and environmental well-being of the area is justified when set against the very great need for affordable housing in the District.

Consultation Windmill Close

- 11 Letters were sent notifying the following residents of the approval of the planning application and of the Council's intention to appropriate the land at Windmill Close from housing to planning purposes:

1-15 Windmill Close
46 – 56 Cromwell Road (evens)
16 & 29 Cromwell Grove
- 12 There was one response to the written invitation for representations or objections.
- 13 The respondent (the owner of a property in Cromwell Road which backs on to the site) objects to the development going ahead and has asked for the Council to consider the following points:
 - Privacy – the respondent has requested planting along the boundary with their rear fence
 - Access – the respondent objects to the loss of rear access to their garden
- 14 A statutory advertisement in the local newspaper and published on the Council's website resulted in no further responses.
- 15 The provision of open space and play space for local people is undoubtedly important. Section 122(2A) of the 1972 Act allows a council to appropriate open space for an alternate purpose providing that it has advertised its intention for two consecutive weeks in a newspaper circulating in the area and considered any objections to the proposed appropriation. The definition of open space for the purposes of the Act includes land which is used for public recreation and therefore the committee must consider the above representations before making its decision on how to proceed.

- 16 The committee is advised that the land at Windmill Close is not designated Open Space and is held as housing land and not general fund land. Maintenance of the area is paid for from the Housing Revenue Account ("HRA"). Whilst it is a small grassy area, convenient for dog walkers, the area has also attracted anti-social behaviour in the past and has been used by motor vehicles, either to park on or to access the gardens of properties along Cromwell Road.
- 17 There is however no record of the Council ever granting rights of access to the existing properties in Cromwell Road and where gates have been installed to give property owners rear access this has been done without permission. The process of appropriation can override any third-party rights, subject to the payment of compensation. Therefore, the Council may be liable to pay compensation should a third party be able to evidence that they have been granted rights of way over the land or demonstrate that they have acquired prescriptive rights through long usage. It would be for the party claiming any such right to produce the necessary evidence. This should not however be a deterrent to using the site to meet the need for affordable housing in the area.
At the time of inception of the scheme, the garages were only at 50% capacity. Despite having been available to let for many years there was a low take up, reflective of the fact that the garages are not wide enough for most modern cars.
- 18 Consideration of sites such as Windmill Close for development arises out of a significant need for affordable housing locally which the Council has an obligation to address. The Council has a significant waiting list for affordable housing and family sized homes in particular. Those households that are currently being housed from the Housing Register have a Tandridge connection and will already be living within the communities and will be already be accessing local facilities such as schools, roads, shops and doctors.
- 19 As addressed in the Planning Officer's report, the 'window to window' separation between the new homes and the above respondent's property would be over 25 metres and they would be orientated away from each other. During the planning application, additional planting has been agreed for the rear gardens in order to enhance the bio-diversity of the site. This will provide a degree of screening for the properties on Cromwell Road. Committee is advised however that the proposals conform to the provisions of current planning policy and the Planning Officer concluded that the proposed built form would not result in significant amenity impact upon any of the adjacent properties with regards to overbearing or overshadowing impact, overlooking, loss of privacy or noise disturbance.
- 20 In conclusion, appropriation of the site for the economic, social and environmental well-being of the area is considered justified when set against the very great need for affordable housing in the district.

Consultation Featherstone

- 21 Letters were sent to update the following residents on the Council's plans for redevelopment of the blocks of flats at 63-78 Featherstone and of the Council's intention to formally change the use of the housing land and part of the Open Space land (hatched green on the plan at Appendix A) to planning purposes:

1-78 Featherstone
Flats 1-4 Darcy Court
Flat 1 Heath Court
- 22 A letter was also sent to Godstone Parish Council.
- 23 There were no responses to the written invitation for representations or objections.
- 24 A statutory advertisement in the local newspaper in respect of Featherstone Open Space and published on the Council's website resulted in no responses.
- 25 The provision of open space and play space for local people is undoubtedly important. Section 122(2A) of the 1972 Act allows a council to appropriate open space for an alternate purpose providing that it has advertised its intention for two consecutive weeks in a newspaper circulating in the area. The committee must consider the representations that have been made before making its decision on how to proceed. The area of open space proposed to be used for the development at Featherstone is of a negligible size and its loss will not prevent the open space from being used in the same way as it is currently. On balance the loss of the space can be justified due to the above and the significant demand for affordable housing locally.
- 26 The current flats at 63-78 Featherstone comprise of 8 bedsits and 8 one beds. The flats are small and outdated and do not meet the current insulation standards. Having been built in the late 1950's they have suffered from condensation and dampness for many years and due to their design and age they are very expensive to repair. The flats are due to have new roofs and windows in the next few years, meaning significant investment in an otherwise failing building. Replacing the properties with modern and well insulated buildings that are designed to be operationally net zero carbon is a better and more cost-effective approach.

- 27 The redevelopment of 63-78 Featherstone also enables the Council to respond to the significant need for family sized housing in the area. As part of the appropriation process, the consent of the Secretary of State is required, in accordance with s19(2) of the Housing Act 1985, where there is existing housing on the site. The above information will be submitted in the application to demonstrate that the land is no longer required for the purpose for which it is held and that the appropriation of the site for the proposed redevelopment, which will contribute to the economic, social and environmental well-being of the area, is justified in these specific circumstances.
- 28 Transfer of the open space to the HRA will deliver a receipt for the General Fund, the value of which will be established as part of progressing proposals for the site.

Consultation Hollow Lane

- 29 Letters were sent to update the following residents on the Council's plans for redevelopment of the garage site at Hollow Lane and the proposed parking court at New Farthingdale and of the Council's intention to formally change the use of the housing land to planning purposes. Letters included plans and invited comments on the scheme so far:

121-139 Hollow Lane (odds)
1-4 St Clair Cottages
24 – 28 The Meades (evens)
47 – 105a New Farthingdale (odds)
70 – 84 New Farthingdale

A letter was also sent to Dormansland Parish Council.

- 30 The consultation resulted in 13 responses although none were outright objections to the development of affordable housing on the garage site and none related to the appropriation process but rather the current proposed design of the flats and parking court. There were common responses put forward by the respondents and these have been grouped together below:
- Overlooking / Loss of privacy
 - Parking (including loss of parking, not enough disabled parking, displacement parking and concerns over the creation of the new parking court in New Farthingdale)
 - Surface water runoff
 - Safety of school children at school drop off / pick up
 - Increased traffic on Hollow Lane
 - Loss of greenspace at New Farthingdale
 - Height of proposed building out of keeping with the area
 - Boundary treatments (i.e. trees, new and existing, fencing etc)
 - Light pollution

31. Other concerns included the following:

- Position of communal bin store
- Access to garages
- Loss of light
- Landscaping shown in current turning area
- Narrow entrance road
- Would prefer a dropped kerb
- Complaint re the large Ash tree that has not been pollarded
- Obstructing view of North Downs
- Cyclist safety on Hollow Lane

32. The Council must consider whether, in light of the responses it has received, it should appropriate the land for planning purposes. Many of the concerns raised by objectors are ones that would be considered, and have to be addressed, at the planning stage. This feedback is thus incredibly helpful and will be discussed with the architect in order that we can try and design out resident concerns before the next stage. Some residents have requested a site meeting to discuss their issues with the design and this has been agreed and will take place in the coming weeks. Further liaison with residents and the Parish Council will take place as the plans evolve. Appropriating the land for planning purposes does not mean that planning approval will be granted. Any subsequent application will be subject to the same scrutiny as any other planning application and therefore committee should consider whether the above responses should prevent the appropriation process from proceeding. The appropriation of the site for the economic, social and environmental well-being of the area should be considered justified when set against the very great need for affordable housing in the district. As and when a planning application is submitted for the scheme, the land will already be held for the correct purpose and any third party rights will have been identified and considered.

33. The Council is aware that some properties have the benefit of a right of way over the access road through the garage site. If planning approval is granted, the Council will endeavour to minimise any disruption during the development and will keep residents informed throughout the process. Whilst the appropriation would enable the development to proceed if planning permission is granted, without interference from any third party rights, the Council would be required to pay compensation for interference with any valid third party rights.

34. The garages at Hollow Lane are under-used and all are of a concrete structure which means repairs are not possible. The area is used for parking by local residents and by parents/guardians dropping off and collecting children from the local school. However, the area also attracts anti-social behaviour and a number of residents have expressed their keenness at seeing the site developed and used in a different way.

35. The residential development of the garage site would necessitate the provision of alternative parking elsewhere. The proposals include the creation of a parking court in New Farthingdale to compensate for the loss of parking at Hollow Lane garages and help ease the parking issue in New Farthingdale. The parish council has previously expressed a desire to explore the idea of re-designing the central green areas of New Farthingdale to provide additional parking spaces and recognises the need to improve accessibility for vehicles, including the refuse lorries.
36. The entirety of the proposed parking site is publicly maintainable highway land and notwithstanding the concerns raised by local residents above, it is not a village green or open space and cannot be considered as land for public recreation given its status as highway land. Before the Council can appropriate this land to planning purposes, a process must be followed to remove highway rights and extinguish the rights of the public to pass and repass. This process results in the making of a legal order known as 'stopping up the highway'.

Other options considered

37. If the Council decided not to appropriate the land. Then 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

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). 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. 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. The General Fund benefits from a corresponding decrease in its CFR and hence lower capital financing costs. This would be applicable to Featherstone where the small area of open space in the recreation ground is held by the General Fund. 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. 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

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.

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. However, Members will need to be satisfied that there is in fact no need for the land to continue to be used for garages and a small parcel of land as public open space taking into account the responses from the public consultation and that in weighing up competing needs, the balance falls in favour of appropriation and a declaration that the land is indeed surplus to requirements. Any concerns could be easily raised and addressed through the planning process. 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.

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

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)'. 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

Appendix 'A' - plans indicating land subject to the appropriation process outlined in the relevant sections of the report.

Background papers

None

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Appendix A

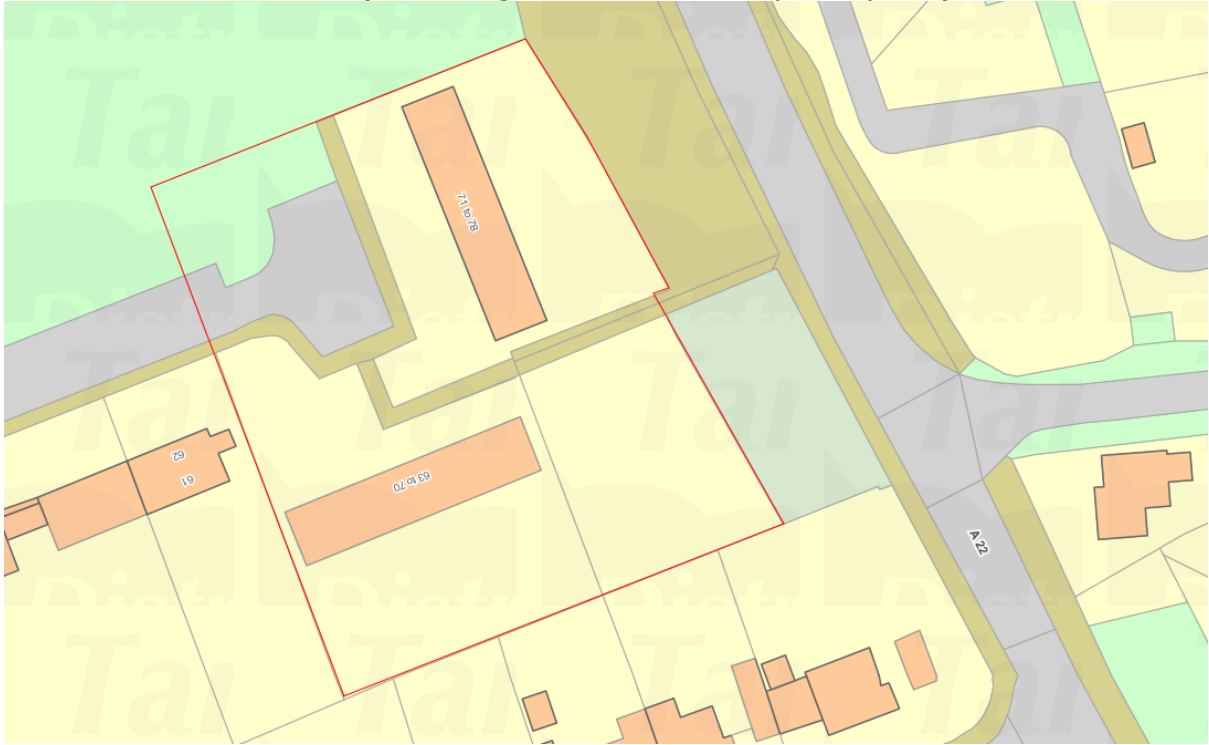
Land at Auckland Road



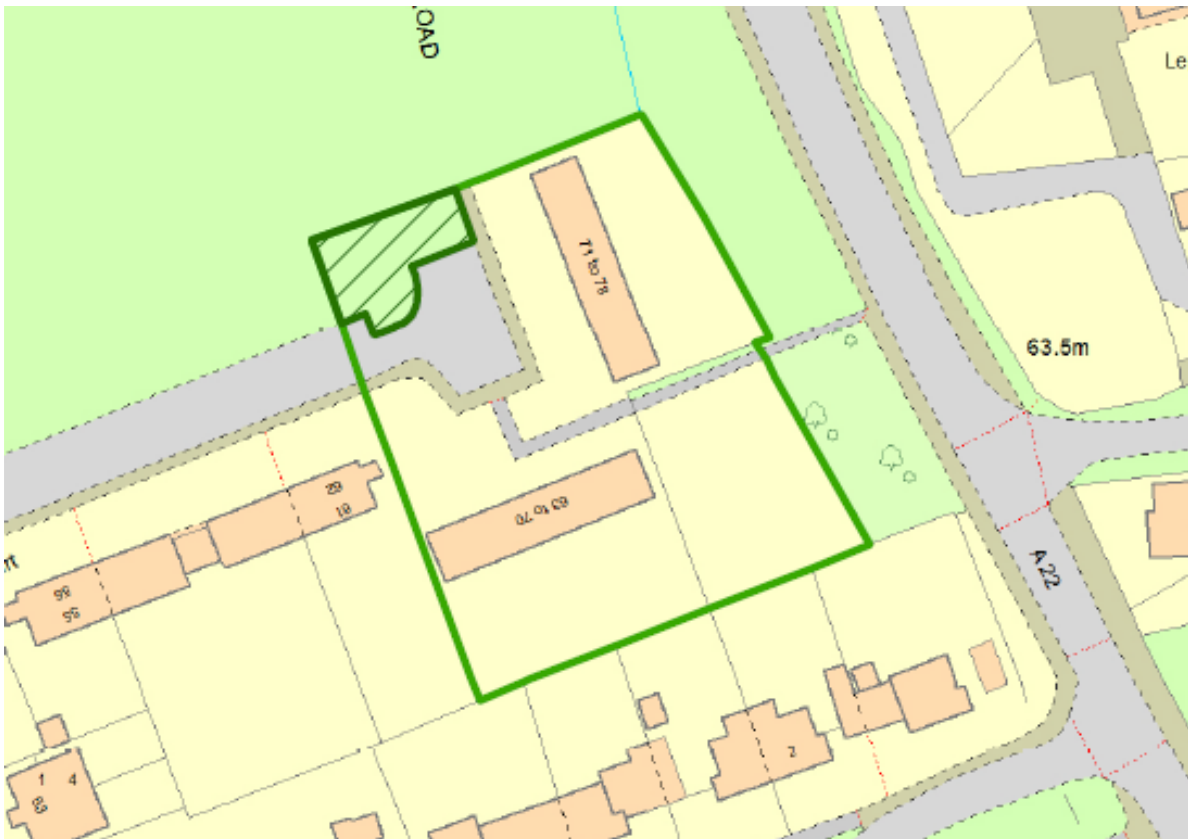
Land at Hollow Lane



Land at Featherstone (including Featherstone Open Space)



Land at Featherstone Open Space (hatched green)



Land at New Farthingdale (Hollow Lane scheme)



Land at Windmill Close



Open space at Windmill Close

