

## ***Report to the Cabinet***

***Report reference: C-034-2014/15***  
***Date of meeting: 6 October 2014***



**Portfolio: Housing**

**Subject: Appropriation of land at Burton Road, Loughton**

**Responsible Officer: Paul Pledger (01992 564248)**

**Democratic Services: Gary Woodhall (01992 564470)**

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### **Recommendations/Decisions Required:**

(1) In accordance with the previous decision of the Council House-building Cabinet Committee that the former garage site, and associated amenity land at Burton Road, ('the Land') (as shown edged red on the attached plan) identified for the development of Council House Building, be appropriated for planning purposes under provisions laid out in Section 122 of the Local Government Act 1972 ('the 1972 Act') and Section 226 (1) (a) of the Town and Country Planning Act 1990 ('the 1990 Act') on the grounds that the Land is no longer required for the purposes for which it is currently held (as under-utilised garages and grassed amenity land) in the Housing Revenue Account;

(2) That the Housing Portfolio Holder be delegated authority to sign a memorandum confirming the Cabinet decision that the Land has been appropriated from housing purposes to planning purposes prior to the planning application being submitted;

(3) That the Terms of Reference for the Council House-building Cabinet Committee be amended, delegating authority to the Cabinet Committee to appropriate Council-owned land, held for housing purposes and identified for Council house-building for planning purposes under provisions laid out in Section 122 of the 1972 Act and Section 226 (1) (a) of the 1990 Act on the grounds that the land is no longer required for the purposes for which it is currently held in the Housing Revenue Account; and

(4) That for future development sites where the Secretary of State consent will be required, pursuant to Section 19 of the Housing Act 1985 insofar as required, it is recommended that the Director of Communities be given delegated authority to apply to the Secretary of State for Communities and Local Government for such consent, and subject to receipt of that consent, to advertise the Council's intension to make the appropriation in accordance with the provisions of Section 122(A) of the 1972 Act.

### **Executive Summary:**

At its meeting in April 2014, the Council House-building Cabinet Committee recommended that the land a Burton Road be appropriated under the 1972 Act and the 1990 Act to change the purpose for which the land is held for one statutory purpose to another. However, due to an administrative error that recommendation was not presented to the Cabinet for approval. In the mean-time, further advice from the Council's Solicitor has meant that additional

information must be provided in support of the decision, which is now contained within the report.

### **Reasons for Proposed Decision:**

Appropriation of the land cannot take place after a planning application has been submitted otherwise there is a risk that the proposed re-development scheme may be frustrated by third party rights, which would in turn frustrate the Council's regeneration objectives for the site. By appropriating land, once planning permission is obtained, the rights of affected third parties can be overridden to the extent that they become an entitlement to compensation rather than a right to obtain an injunction to prevent the scheme.

### **Other Options for Action:**

Not to appropriate the land and take the risk that a third party will not try to prevent the development by laying claim to a long established right of access across the land.

### **Report:**

1. The Cabinet Committee, at its meeting in April 2014, considered as part of the feasibility study for Phase 2 of the Council's House-building Programme at Burton Road, Loughton the risks associated with any third party rights and claims over the land identified for redevelopment, and the benefits of appropriation.

2. To summarise, the Council wishes to see the Burton Road site redeveloped for the specific purpose of providing affordable housing for applicants on the Council's Housing Register on a site which previously was used for garages and grassed amenity land, which in the current usage the former are not fit for that purpose as evidenced through their under-utilisation. By appropriating the site for planning purposes, the Council will be able to secure its redevelopment and future use by relying on the statutory provisions relating to the redevelopment and disposal of the land held for planning purposes.

3. To this end, the Council holds property for various statutory purposes in order to provide its various functions. Such land is used only for the purpose of the function for which it was originally acquired, until such time as the land is disposed of or "appropriated" for another use. In this case, for the development of Council housing for applicants on the Council's Housing Register and not for profit.

4. Appropriation is the procedure under the 1972 Act and the 1990 to change the purpose for which the land in the Council's ownership is held from one statutory purpose to another, provided that the land is no longer required for the purpose for which it was held immediately before the appropriation. Where land is appropriated for planning purposes in accordance with Section 122 of the 1990 Act and/or Section 226 (1) (a) of the 1990 Act, the Council has powers to redevelop the land pursuant to Section 235 of the 1990 Act; and by virtue of Section 237 1990 Act, the erection, carrying out, construction, use or maintenance of any building or works on such land is authorised if done in accordance with planning permission, even if it interferes with third party rights such as legal easements (including 'leaseholders' rights).

5. The Council is authorised by Section 227 of the 1990 Act to acquire by agreement any land that it is authorised to compulsorily acquire pursuant to S226 of the 1990 Act. Section 226 of the 1990 Act allows the Council to acquire land compulsorily if it thinks that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land provided that the development will contribute to the achievement of the social, environmental or economic well-being of the area.

6. To the extent that private rights may be held in relation to the Land it is considered that the social, economic and environmental benefits that the proposed housing development will bring are such as to justify the interference with those rights on the basis that the public benefits will outweigh the private loss, if any.

7. Section 237 of the 1990 Act, provides that where land has been appropriated for planning purposes, third party rights over the land which could otherwise prevent development of the land in accordance with planning permission, can effectively be “interfered with”, either by the Council or by anyone deriving title to the land from the Council.

8. The Land needs to be appropriated prior to the planning application being submitted otherwise there is a risk that the proposed re-development scheme may be frustrated by third party rights, which would in turn frustrate the Council’s regeneration objectives for the site. By appropriating land, once planning permission is obtained, it does not extinguish or remove third party rights; rather, it has the effect of authorising interference with those rights, subject to an entitlement to compensation from the Council to those who’s rights are interfered with, rather than a right to obtain an injunction to prevent the scheme. There is no retrospective process for appropriation.

9. When the Cabinet Committee considered the matter of appropriating the Land, it supported the proposal by making a recommendation to the Cabinet. However, an administrative oversight has meant that the recommendation was not put to the Cabinet at that time.

10. It is further recommended that once the Land has been appropriated, then the Housing Portfolio Holder be delegated authority to sign a memorandum stating the Land has been appropriated prior to the planning application being submitted.

11. For all future phases of the Council House-building Programme, it is recommended that the Council House-building Cabinet Committee Terms of Reference be amended, giving authority to appropriate land identified for Council housebuilding for planning purposes under provisions laid out in Section 122 of the Local Government Act 1972 and/or Section 226 (1) (a) of the 1990 Act on the grounds that the land is no longer required for the purposes for which it is currently held in the Housing Revenue Account.

12. Whilst the consent of the Secretary of State for Communities and Local Government is not required in this instance as neither the land nor the garages are connected to the tenancy of a dwelling, there may be circumstances in the future where the Secretary of State consent will be required pursuant to Section 19 of the Housing Act 1985 insofar as required. In such instances, it is recommended that the Director of Communities be delegated authority to apply to the Secretary of State for Communities and Local Government for such consent as mentioned above, and subject to receipt of that consent, to advertise the Council’s intension to make the appropriation in accordance with the provisions of Section 122(A) of the Local Government Act 1972.

### **Resource Implications:**

There are no direct resource implications associated with this report. However, there may be claims from third parties whose rights have been “interfered with” as a result of the appropriation and development, which could entitle them to make a claim for compensation for any loss in market value they have suffered. This would need to be assessed in accordance with the “Compulsory Purchase Code”. Such claims are usually settled between Valuers, by agreement; but there is a right to refer the claim to the Upper Tribunal (Lands Chamber) for determination.

**Legal and Governance Implications:**

Local Government Act 1972, Housing Act 1985 and the Town and Country Planning Act 1990.

**Safer, Cleaner and Greener Implications:**

Not applicable.

**Consultation Undertaken:**

None.

**Background Papers:**

Council House-building Cabinet Committee report and minutes associated with the feasibility study for the Phase 2 development site at Burton Road, dated 14 April 2014.

**Risk Management:**

The risks associated with third party claims are set out within the body of the report, as well as the risk mitigation of appropriating the land.

# Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

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Within the Housing Service Strategy, it has been identified that the target groups that are affected by the Council's house building programme are people in need of:

- affordable housing,
- homelessness assistance,
- supported housing for special needs groups,
- owners and occupiers of poor condition housing
- council and housing association tenants.

From that, it was identified that generally, there is an under provision of suitable accommodation for nearly all target groups. This has been reaffirmed in the most recent Strategic Housing Market Assessment.

Decision making is affected by funding and other factors, such as the availability of building land suitable for particular groups e.g. the elderly or young families.

There is no evidence of unlawful discrimination in relation to the provision of affordable housing.