


<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">CABINET</p> <p style="text-align: center;">8 OCTOBER 2018</p>	
<p>APPROPRIATION OF WATERMEADOW COURT AND EDITH SUMMERSKILL HOUSE</p>	
<p>Report of the Cabinet Member for the Economy and the Arts – Councillor Andrew Jones</p>	
<p>Open Report</p>	
<p>Classification - For Decision</p> <p>Key Decision: Yes</p>	
<p>Wards Affected: Fulham Broadway and Sands End</p>	
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1. EXECUTIVE SUMMARY

- 1.1. In order for the redevelopment of Watermeadow Court and Edith Summerskill House to proceed it is necessary to appropriate the two sites from Housing to Planning purposes. This will allow the Council to utilise powers to override third party rights which may prevent the implementation of the proposed development at each site.
- 1.2. The appropriation of these sites will allow the delivery of:
 - 133 new genuinely affordable homes at Edith Summerskill, 80% of which will be social rent with the remainder let as sub-market intermediate rent;
 - 36 new genuinely affordable homes at Watermeadow Court, 27 of which will be social rent with the remainder let as sub-market intermediate rent, or sold as low-cost home ownership.
- 1.3. Cabinet is therefore being requested to approve the appropriation of the sites subject to the Secretary of State granting consent to the appropriation.

2. RECOMMENDATIONS

2.1. It is recommended that Cabinet:

- Resolves that the areas of land at Watermeadow Court and Edith Summerskill House referred to in this report and shown edged red on the plans at appendix 1 are no longer required for the purpose for which they are currently held (housing purposes)
- Approves the appropriation of these areas of land to the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 122 of the Local Government Act 1972
- Authorises the Strategic Director for Growth to apply to the Secretary of State for consent to the appropriation pursuant to Section 19(2) Housing Act 1985
- In the event that the consent of the Secretary of State is given authorises the use of powers to override easements and other rights in respect of the land pursuant to section 203 of the Housing and Planning Act 2016.
- Approves to vire £30,000 to create a specific budget for this work from the unused contingency budget for Edith Summerskill House, approved by amended Cabinet Member Decision in Feb 2017, following original Cabinet approval dated 08/02/16 in relation to the Joint Venture vehicle.
- Approves the movement in the Capital Financing Requirement of up to £3.8m from the Housing Revenue Account to the General Fund for Edith Summerskill House, and to note that this will result in an additional budget requirement in the General Fund from 2019/20 of £123,000 to fund the associated Minimum Revenue Provision.

3. REASONS FOR DECISION

3.1. The key reasons for this decision are:

- There are considerable public benefits associated with the redevelopment of Watermeadow Court and Edith Summerskill House. These include:
 - Increasing the supply of genuinely affordable housing;
 - Providing local economic investment, including job and training opportunities;
 - Improving the public realm; and

- Providing a financial contribution to community infrastructure.
- There is a need to appropriate the two sites from housing to planning purposes in order to engage the provisions of section 203 of the Housing and Planning Act 2016 so as to override third party rights the existence of which would otherwise prevent the implementation of the proposed development at each site.

4. PROPOSAL AND ISSUES

Background and Current Development Proposals

- 4.1. Cabinet on 3 February 2014 resolved to appoint Stanhope as its private sector development partner in respect of the establishment of a Housing and Regeneration Joint Venture (HFS Developments LLP) to develop two Sites known as Watermeadow Court ("**WMC**") and Edith Summerskill House ("**ESH**"). In 2016 the Housing and Regeneration Joint Venture entity was changed to HFS Developments 2 Limited ("**Joint Venture**"). This entity is the applicant for planning permission for both WMC and ESH.
- 4.2. WMC is located in South Fulham in close proximity to the River Thames. The site measures 0.48 hectares (1.20 Acres) and currently comprises 80 vacant residential units in a complex of predominantly 3/4 storey blocks. Prior to achieving vacant possession, the tenure mix was 62 Council tenants and 18 leaseholder occupiers (who had acquired their flats through right to buy). These leasehold interests have all been successfully acquired by private treaty. The buildings were constructed in the 1980s and hold little architectural value or interest. The buildings are not listed but are situated within the Sands End Conservation Area. Cabinet approval was given in 2010 to dispose of the WMC site for residential redevelopment. Consent for demolition of the buildings was granted in June 2017.
- 4.3. ESH is an 18 storey tower block which formerly provided 68 homes as part of a wider housing estate. Prior to achieving vacant possession, the tenure mix was 61 Council tenants and 7 leaseholder occupiers (who had acquired their flats through right to buy). ESH was vacated in 2011 to enable Decent Homes improvements to be made. Due to the anticipated cost and practicality of making these improvements the decision was made in 2011 to dispose of the site. The Council calculated in 2011 that works to ESH under the Decent Homes programme would cost an estimated £6m which equated to £88,235 per dwelling. The approximate site area is circa 0.1 ha which includes part of the land at the side and front elevations of the block. The buildings are not listed and are not within a conservation area.
- 4.4. The Council owns the freehold to both WMC and ESH. The Council and the Joint Venture have entered into separate sale agreements for each of WMC and ESH.

- 4.5. Once the conditions in each land sale agreement have been satisfied then the Council will, at the direction of the Joint Venture, transfer the relevant site to a SPV LLP (“**SPV**”) whose members are the Joint Venture, Stanhope and a third party funder. The SPV will procure the development of the sites (which in the case of ESH may be via a Registered Provider) and on completion will sell the completed homes.
- 4.6. The detailed proposals for the development are as follows:-
- At WMC: Erection of 218 (Class C3) residential units comprising 182 private market units, 9 intermediate rent and 27 social rented across three buildings up to a maximum of approximately 22,661 sqm (GEA). Block A to comprise five storeys plus plant rising to approximately 22.82m AOD; Block B to comprise seven storeys (plus plant) rising to a height of approximately 29.42m AOD; Block C to comprise 9 storeys (plus plant) rising to a height of approximately 36.90 AOD; shared single storey basement with car parking; private open space; hard and soft landscaping; preparatory and associated works. A commuted sum of £6 million towards the delivery of affordable housing at ESH is also offered. (“**the WMC Development**”); and
 - At ESH: Erection of a 20 storey tower (plus plant) with single storey basement and ground floor mezzanine at a maximum height of approximately 80.27m AOD, comprising of 133 residential (Class C3) units all of which are affordable units, 105 social rented and 28 intermediate rent up to a maximum of approximately 16,262 m² (GEA); ancillary community use at ground floor level; hard and soft landscaping and associated works (“**the ESH Development**”).

The Need for Appropriation – Overview

- 4.7. There is a need to appropriate the two sites from housing to planning purposes in order to override third party rights, the existence of which would otherwise prevent the implementation of the proposed development at each site.
- 4.8. Section 122 of the Local Government Act 1972 provides a power to the Council to appropriate land from one purpose to another. This purpose can be any purpose for which the Council is authorised to acquire land by agreement. However, the appropriation of land pursuant to this provision does not result in the overriding of third party rights. This is facilitated by the powers set out in Section 203 of the Housing and Planning Act 2016 (“**section 203**”). This, so far as relevant to the facts of this case, provides that building or maintenance work/use which interferes with rights or breaches restrictions as to user is authorised if:
- planning consent exists for the building works or use;

- the work is carried out on land that has been appropriated by the Council for planning purposes after 13th July 2016
 - the land could be compulsorily acquired by the Council for the purposes of the building works or maintenance/use of buildings or works constructed; and
 - the building work or maintenance/use is for purposes related to the purposes for which the land was acquired or appropriated.
- 4.9. In terms of process, case law has established that appropriation must involve more than a mere decision to hold land for a different purpose. The Council must consider whether the land is no longer needed in the public interest of the locality for the purpose for which it is held. As the purpose of the acquisition is to engage the provisions of section 203 of the 2016 Act the Council should not make the appropriation unless it has good reason to think that that interference with the rights affected is necessary.
- 4.10. Case law has also established that appropriation is the equivalent of compulsory purchase of the Council's own land and the same degree of necessity must apply in each case.
- 4.11. In practice, section 203 means that any beneficiaries of third party rights that are interfered with as a result of the carrying out of the development cannot prevent the development from proceeding by seeking an injunction from the courts, and as a result the development proposed can proceed. However, those with the benefit of the rights that are interfered with will be entitled to compensation which will be calculated on the basis of the diminution in value of their land.
- 4.12. As explained below, third party rights have been identified which, without engaging the provisions of section 203, would prevent the WMC and ESH Developments from proceeding. Accordingly, the purpose of this report is to seek a resolution to appropriate both WMC and ESH to planning purposes so that the third party interests can be overridden, allowing the developments to proceed.

The need for appropriation - WMC

- 4.13. The rights that have been identified in respect of **WMC** which would be interfered with should the development proceed are rights to light and a 1989 restrictive covenant limiting the use of the site to 'local authority community housing'.
- 4.14. In the course of preparation for development certain properties have been identified which are likely to benefit from a right of light over WMC, or which are in the process of acquiring such a right. Analysis by the Joint Venture shows that a number of the properties identified are likely to experience an alteration in light following completion of the WMC Development. Where rights of light currently exist owners of interests in the relevant properties could seek

an injunction restraining the WMC Development to prevent interference with their rights of light.

- 4.15. The Council resolved in November 2008 to declare the WMC site as surplus to the purposes for which the land was being held pursuant to Part II of the Housing Act 1985. Subsequently, on 12 November 2012 the Council resolved pursuant to s122 of the Local Government Act 1972 to appropriate WMC for planning purposes in order to permit section 237 of the Town and Country Planning Act 1990 (the predecessor to section 203) to be relied on so as to override the restrictive covenant. The Secretary of State's consent was also required pursuant to s19 of the Housing Act 1985 to permit an appropriation for planning purposes. The Secretary of State's consent was subsequently given on 18 December 2012. On 31 March 2013, WMC was transferred to the Council's general assets register to be held for planning purposes.
- 4.16. Having sought legal advice, officers of the Council have accepted that the purported appropriation in November 2012 was not effective and does not give the Joint Venture sufficient certainty that section 237 of the Town and Country Planning Act 1990 (and now section 203) can be relied upon to override third party interests that would otherwise prevent the WMC Development from proceeding.
- 4.17. Should Cabinet approve the appropriation, the Secretary of State's consent to the appropriation of WMC will be required pursuant to Section 19(2) of the Housing Act 1985 because the consequence of the ineffective appropriation is that the land continues to be held for housing purposes.

The need for appropriation - ESH

- 4.18. In the case of **ESH**, a deed dating back to 1866 has been identified which imposed restrictions on the development of the estate. The potential beneficiaries of the restrictive covenants are unknown and it is not possible to identify all of those who may be able to enforce the covenants. In addition, there is a risk that private rights of way may have been established over time which could interfere with the proposed ESH Development.
- 4.19. In the course of preparation for development certain properties have been identified which are likely to benefit from a right of light over ESH. Analysis by the Joint Venture shows that a number of the properties identified are likely to experience an alteration in light following completion of the ESH Development. Owners of interests in the relevant properties could seek an injunction restraining the ESH Development to prevent interference with their rights of light.
- 4.20. No appropriation has taken place for **ESH**, but it has been declared by the Council as surplus to requirements.
- 4.21. Should Cabinet approve the appropriation of ESH to planning purposes, the Secretary of State's consent to the appropriation of ESH will be required pursuant to Section 19(2) of the Housing Act 1985.

Why the land is no longer needed for its current purpose – WMC.

- 4.22. To appropriate the land, it must be considered to be “no longer required for the purpose for which it is held immediately before the appropriation”.
- 4.23. In the case of WMC the land is no longer required for its existing social housing purpose
- 4.24. Prior to the purported appropriation of WMC in 2012, the site was held by the Council for housing purposes in accordance with Part II of the Housing Act 1985. There are a number of reasons why the site is no longer considered to be suitable for its existing social housing use. These include the following:-

(a) Poor space standards

- A study was carried out in 2002 which considered the benefits of conversion of the existing housing blocks on the WMC estate as opposed to its demolition and subsequent new build. The conclusions of the study were that the properties had poor space standards including inadequate food preparation areas, circulation space and a lack of storage.
- Room sizes were poor when measured against the development plan policies that were relevant at the time and compared unfavourably in comparison to equivalent housing association accommodation. The table below shows how the existing units compare with the London Design Guide, and with the standards of local registered providers:

Unit size	WATERMEADOW COURT (sqm.)	Peabody Trust (sq.m.)	NHHT (sq.m.)	London Design Guide
4 bed -5/6 person	82.68	92-97	92-97	90
3 bed/5 person	56.74	85	105	86
3 bed/4 person	56.84	73	-	74
2 bed/3 Person	41.34	62	72	61
1 bed/2 person	41.34	48	66	50

- The Council is committed to building new homes that meet the space standards in the London Plan, which reflect the London Design Guide standards referred to above. The existing units at WMC fall well below current standards.

(b) Poor condition of the existing buildings/anti-social behaviour problems

- Following the departure of the authorised occupants of the buildings at WMC, squatters were able to gain access and remained in occupation for some time. Damage was caused and internal walls were knocked down within the largest block in WMC which has affected the structural integrity of the building and created a serious health and safety problem.
- The squatters lit fires on the concrete floors inside the building and as a result it was deemed necessary to remove roof panels from the derelict buildings in order to allow water and the natural elements to penetrate the buildings and mitigate against the risk of the squatters starting more fires.
- Works were also carried out to remove every window, door and glass panel and block openings to prevent entry to the buildings and to remove all sanitary fittings from every property and fill all the drains and pipe work with concrete to ensure that squatters could not reconnect the plumbing and have running water or usable bathrooms.
- The timber structures in the roof of the buildings have subsequently been damaged from rain water over the last 6 years, as have the internal walls.
- With the changes made to the building to deter squatters, the condition of each building is now considered beyond repair and the Council has obtained planning permission to demolish the buildings.
- The cost of refurbishing and remodelling the properties was estimated at £8.5m in 2008. If the properties were refurbished in their current condition, the internal walls would need to be reconfigured as they do not meet the current space standards. In addition, all roof and timber structures would need to be replaced.
- As WMC has been in a poor state of repair since 2008, a number of complaints have been received from local residents about the appearance of the buildings and grounds. The dereliction has resulted in continuing amenity problems and is perceived as a blight on the community. Fly tipping and antisocial activities occur on the estate on a regular basis, which also draws complaints from the community, due to the easy access to large secluded areas at the back of the buildings that are hidden from Townmead Road and Watermeadow Lane.
- The site has also been the subject of unauthorised occupation by travellers which has resulted in further amenity problems including leaving a large amount of refuse and tipped material after they were

moved on. If the site remains undeveloped there is the risk of further unauthorised occupation, fly tipping and antisocial behaviour.

(c) Ineffective use of the site

- The existing site arrangement at WMC does not equate to an effective use of space. The existing density of 166 units per hectare is below the upper limit guideline of the London Plan for an area of this urban context and location which is 170 u/ha. Initial feasibility design and discussions with the local planning authority suggest that the site has the potential to achieve a significant uplift in density if a high quality design approach is adopted. The emerging proposals, at a density of approx. 456 u/ha, far better optimises the potential of the site to deliver much needed housing in London and is more comparable to densities being achieved on other high quality new developments in the area.
- In addition, the current buildings do not make a positive contribution to the character and appearance of Sands End Conservation Area in which the site is situated. The new scheme seeks to address this with a careful and considered urban design approach that seeks to deliver a high quality scheme in terms of the buildings themselves, the open space around them and their integration into the surrounding neighbourhood. The WMC Development proposals seek to enhance the surroundings and deliver an exemplar development.
- The Public Transport Accessibility Level (PTAL) rating for the site is 3 representing a medium public transport accessibility level. The site is able to accommodate a reasonable amount of parking provision, both surface and basement provision. In turn, this will provide a more attractive residential offer to private occupiers, and will increase the choice and quality of accommodation in the borough. In contrast, the Council considers that affordable housing provision is better located at ESH, given its better access to local facilities and public transport.
- The design flexibility that a predominantly market housing scheme offers will allow the WMC site to secure the delivery of a significant number of affordable homes within the Borough through the Council's Joint Venture. The commuted payment will not only enable the Council to provide a greater number of affordable homes overall but also ensure that the type and size of units better address priority needs in the borough and make for a more balanced community.

Why the land is no longer needed for its current purpose – ESH

- 4.25. In the case of ESH the land is also no longer required for its existing social housing purpose because of its poor state of repair and failure to meet modern space and design standards.
- 4.26. A survey was carried out in 2009 to examine the condition of the building. The survey revealed serious structural problems, including extensive water penetration, which would require significant investment to rectify.
- 4.27. A further study undertaken in 2013 identified the presence of asbestos throughout the building. It was recommended that due to the health and safety risk that all the asbestos in the building be removed.
- 4.28. The building is of limited architectural merit.
- 4.29. A viability assessment was undertaken to decide on how best to redevelop ESH for the provision of new housing. The options reviewed were to refurbish the existing building or demolish and redevelop.
- 4.30. The conclusion that the site should be redeveloped was made on the basis that:
 - The existing building is unable to meet modern design standards
 - The existing arrangement doesn't make for best use of the site
 - Redevelopment of the site offers greater financial and socio-economic benefits to the council and has the ability to provide more genuinely affordable homes
- 4.31. The building is currently in the process of being demolished.
- 4.32. For the reasons set out above, it is clear to officers that WMC and ESH are no longer needed for their current purposes pursuant to Part II of the Housing Act 1985.

Planning purposes and public benefits - overview

- 4.33. The next section of the report considers the case for appropriating the WMC and ESH sites to planning purposes.
- 4.34. As indicated above, an appropriation for planning purposes is a reference to the appropriation of it for purposes for which it can be acquired under sections 226 or 227 of the Town and Country Planning Act 1990 (**TCPA**). In this case it is necessary to consider whether the land would be capable of being acquired under section 226 of the TCPA.
- 4.35. Section 226 empowers a local authority, on being authorised to do so by the Secretary of State, to acquire compulsorily land its area,

- If the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land (section 226(1)(a)); or
- which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which that land is situated (Section 226(1)(b)).

4.36. In this case it is appropriate to consider whether the land could be acquired compulsorily under the powers conferred by section 226(1)(a)., Section 226(1A) of the Town and Country Planning Act 1990 provides that a local authority must not exercise its power of compulsory acquisition under section 226(1)(a), unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:

- the promotion or improvement of the economic well-being of the area;
- the promotion or improvement of the social well-being of the area; and
- the promotion or improvement of the environmental well-being of the area.

4.37. It is the view of officers, supported by legal advice, that the WMC and ESH could be acquired compulsorily under section 226(1)(a) in order to facilitate the carrying out of redevelopment and that such redevelopment would advance all three objectives identified at Section 226(1A).

4.38. As, subject to satisfying the relevant requirements, the effect of appropriation would be to engage the override provisions of section 203 of the 2016 Act it is necessary to consider whether the facilitation of the development would justify an interference with the rights of third parties. In making that decision regard should be had to the advice and guidance contained in the current MHCLG Guidance on Compulsory Purchase (October 2015). Fundamentally, the decision to appropriate in order to engage section 203 of the Housing and Planning Act 2016 should only be made where it is necessary, there is a compelling case in the public interest and the Council should be sure that the purposes for which the powers are being exercised justify interfering with the human rights of those whose interests will be affected. Particular consideration should be given to the provisions of Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights and this is considered below.

4.39. Turning to the planning policy support for the WMC and ESH Developments, for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004 the Statutory Development Plan for the area in which both sites are

situated comprises (1) the London Plan 2016 and (2) the Hammersmith and Fulham Local Plan 2018.

- 4.40. Strategic planning guidance within the London Plan sets demanding housing targets for all London Boroughs. The Council is set an annual target of delivering approximately 1,000 new homes every year for the next 10 years.
- 4.41. In terms of affordable housing, London Plan policy identifies a requirement that Boroughs seek to maximise the provision of affordable housing in new developments and that 60% of all affordable housing should be affordable or social rent and 40% intermediate housing. The Local Plan requires that 50% of all new housing, on developments of 11 or more units, is affordable and that 60% of this is affordable/social rent consistent with the London Plan target.
- 4.42. The London Plan is supportive of market housing schemes that generate a combination of a commuted sum as well as on-site affordable housing provision on sites where this secures a higher provision of affordable housing overall for the Borough, better addresses priority needs especially for families and secures a more balanced community.
- 4.43. The Hammersmith and Fulham Local Plan was adopted in February 2018:
- The **WMC** site falls within South Fulham Riverside Regeneration Area. This is one of five regeneration areas across the borough which are identified as the main drivers and providers of much needed new housing and jobs. Strategic Policy SFRRRA sets out the vision for the regeneration of the South Fulham Riverside area. It promotes residential-led redevelopment and the need to optimise all housing sites. It seeks to deliver 4,000 additional dwellings by 2035 and 500 jobs in this part of the borough.
 - Although the **ESH** site is not located in one of the borough's regeneration areas the redevelopment meets the commitment to provide new housing built to meet higher design standards, energy efficiency and accessibility. The proposal better utilises the site for new affordable housing close to Fulham town centre. The proposed improvements to the local amenity space as part of the redevelopment will also have a positive impact on local area.
- 4.44. There is particular policy emphasis in the development plan to bring vacant and underused sites back into use and the Local Plan Strategic Policy SFRRRA continues these themes. This policy, together with Local Plan housing and design policies, also highlights the need for high quality urban design and enhancing the public realm. The highest standards of urban design will be sought which respond to the setting and context of their surroundings while encouraging developers to be imaginative and innovative. The aim is to create a coherent and integrated place with its own character and identity.

- 4.45. The London Strategic Housing Land Availability Assessment identifies the potential of the WMC to accommodate at least 120 units. This is an increase of 40 units compared with the existing development which represents a 50% increase in residential units. The current WMC Development proposals are for 218 units, an additional increase of a further 133 units.
- 4.46. The Council's housing strategy "Delivering the Change We Need in Housing" approved by Cabinet on 11th May 2015 sets out Hammersmith & Fulham's vision for the delivery of new affordable housing in the Borough. The strategy emphasises the Council's desire to deliver an increased number of better, well-managed affordable housing in mixed income, mixed tenure successful places. This Strategy centres on the real contribution that housing can make to deliver that vision, providing the catalyst for the borough's regeneration opportunities. Delivering these opportunities will create better places to live; more housing choice; more local employment and training opportunities; improved transport infrastructure; better education opportunities; and better housing and management services for residents.
- 4.47. It can be seen therefore that there is extensive planning policy support for both of the WMC and ESH Developments. In addition, planning applications have been made in respect of both developments, with the current position as follows:
- **ESH:** The Council's planning committee resolved to grant planning permission (ref: 2017/01849/FU), on 10th October 2017. A separate planning permission (ref: 2017/02100/FUL) for the creation of a parking layby and associated works was granted on 27th September 2017.
 - **WMC:** The Council's planning committee resolved to grant planning permission (ref: 2017/01841/FUL) on 10th October 2017. The subsequent changes proposed to WMC identified above will be presented to the Council's planning committee on 11 September 2018.
- 4.48. Officers have considered whether the WMC and ESH Developments could be blocked by any physical or legal impediments to implementation. Whilst planning permission has yet to be obtained for the WMC and ESH Developments, (and will be subject to separate and distinct consideration by the Council acting as local planning authority), at this stage officers are of the view that there are no obvious reasons why it might be withheld.
- 4.49. Cabinet should note that the Joint Venture is contractually committed to ensuring that the ESH and WMC Developments can be delivered once planning permission has been obtained and the appropriation has taken place.

Public benefits - WMC

4.50. It is expected that the delivery of the redevelopment proposals at WMC will secure social, economic and environmental well-being benefits for the Council's area, including the following:

- improvements to the quality and range of housing available in the area;
- provision of 36 affordable housing units (27 social rented and 9 intermediate rent)
- the replacement of accommodation of sub-standard space standards in WMC with new homes to be constructed to Lifetime Homes standards;
- wheelchair accessible homes;
- the redevelopment of a poor quality building in a conservation area;
- the remediation of a contaminated, brownfield site;
- it will address problems of anti-social behaviour, including the problems associated with squatting;
- high quality design and enhancements to the public realm;
- consequential beneficial impacts for local shops and businesses close to the new developments;
- New construction jobs (164 net jobs per annum over the 42-month construction and demolition period) and 14 apprenticeships, with 15% of the construction workforce to be taken from local residents, and 10% of building contracts to be let to businesses in the borough;
- potential investment in infrastructure and public transport as a result of Community Infrastructure Levy payments in respect of the development.

Public Benefits – ESH

4.51. It is expected that the delivery of the redevelopment proposals at ESH will secure social, economic and environmental well-being benefits for the Council's area, including the following:

- Provision of 133 affordable housing units (80% social rented and 20% intermediate);

- The redevelopment of a vacant site following demolition of the existing building;
- Creating a landmark exemplar scheme that will enhance strategic and local views and the setting of the adjacent conservation area;
- Enhancing the setting of designated heritage assets in the wider area;
- Creation of an ancillary community hall for use by the residents of the building and the wider estate;
- Improved engagement of the building with the public realm;
- Potential significant enhancements to offsite public realm and play-space;
- Off-site high quality landscaping
- Potential investment in infrastructure and public transport as a result of Community Infrastructure Levy payments in respect of the development.

Steps taken to negotiate the release of rights by agreement

4.52. Before making a decision on the appropriation it is necessary to take reasonable steps to ascertain who may have a property right or interest that may be affected by the development proposals. With this in mind, reasonable enquiries were undertaken including land registry title searches, and in respect of Council-owned properties, checking the Council's tenancy details to ascertain those whose rights may be interfered with as a result of the WMC and ESH Developments and any third parties with possible interests affecting the land were contacted to ascertain whether they would agree to their rights being released to allow the WMC and ESH Developments to proceed.

4.53. In relation to WMC:

- Potential beneficiaries of the 1989 restrictive covenant, including lessees, were identified;
- GIA consultants on behalf of the Joint Venture identified parties who may benefit from rights to light that could be infringed by the WMC Development;
- Letters were sent by the Council to over 120 parties on December 8 2016 including the occupiers of residential units within the tower blocks of Ferrymans Quay, Sailmakers Quay and Watermans Court, inviting parties to voluntarily release their rights in respect of the restrictive covenant and/or the rights to light as appropriate;

- Feedback was received only from a limited number of affected parties (8) which raised concerns including: overlooking from the proposed WMC Development and the associated impact on privacy and rights to light. A number of parties expressed their unwillingness to negotiate releases of rights.
- The Council sent further letters to the same 120 parties on 21 April 2017 indicating its intention to appropriate WMC to planning purposes and inviting responses, to which only 5 responses were received, again raising similar concerns.
- In addition, potential beneficiaries have been informed by a press notice dated 11th August 2017. The deadline for responding to this was the 12th September 2017 and no substantive representations were received.
- Where appropriate, (for example where there appears to have been a misunderstanding, where clarification has been sought on the effects on rights to light or where there has been a specific request) the Council and/or the Joint Venture has offered to meet with the parties to discuss the potential impacts and the terms being offered for the release of rights.
- At the date of writing, two parties have indicated a willingness to release the restrictive covenant. One of the potential rights to light beneficiaries has agreed to release their rights.
- GIA are now in correspondence with parties in all affected properties surrounding the WMC site.
- Although negotiations are continuing, given the response to date, it is the view of officers that it is highly unlikely that they will result in all necessary rights and interests being released within a reasonable time or at all.

4.54. In relation to ESH:

- It was not possible to identify potential beneficiaries of the restrictions in the 1866 deed or of private rights of way that may have been established, therefore a notice inviting parties with a potential interest in the land to contact the Council was erected on site in April 2017 giving a deadline of 17 May 2017 for a response.
- GIA consultants on behalf of the Joint Venture identified parties who may benefit from rights to light that could be infringed by the ESH Development;

- Letters were sent by the Council to all 19 identified parties who were identified by GIA as potentially benefiting from rights to light on 13th April 2017 inviting parties to voluntarily release their rights in respect of the rights to light and indicating its intention to appropriate ESH to planning purposes, inviting responses;
- Responses were received from 5 parties, raising concerns including: overlooking from the proposed ESH Development and the associated impact on privacy and rights to light. A number of parties expressly confirmed that they were unwilling to negotiate a release of their rights;
- Where appropriate, (as in the case of WMC, examples include where there appears to have been a misunderstanding, where clarification has been sought on the effects on rights to light or where there has been a specific request) the Council and/or the Joint Venture has offered to meet with the parties to discuss the potential impacts and the terms being offered for the release of rights;
- At the date of writing, one of the individual potential beneficiaries of third party rights has agreed to release their rights. GIA are in contact with four of the five freehold interests affected by the redevelopment of ESH. All of the affected properties have been surveyed, subsequently offers have been made to three parties.
- Although negotiations are continuing, given the response to date, it is the view of officers that it is highly unlikely that they will result in all necessary rights and interests being released within a reasonable time or at all.

4.55. It is therefore clear for both WMC and ESH that it is necessary to appropriate the land to secure the benefits associated with the proposed WMC and ESH Developments. It has not been possible to date to secure the voluntary release of the third party rights and, in the case of ESH, it is simply not possible to ascertain all those who may have the benefit of the 1866 restrictive covenant and/or private rights of way. As a result, officers are of the view that unless the land is appropriated for planning purposes in order to engage the override provisions of section 203 of the 2016 Act the redevelopment proposals of WMC and ESH will not go ahead.

Could the Public Benefits Be Achieved in the Absence of the Interference With the Rights?

4.56. Officers have considered whether the development could proceed without interfering the rights identified. Officers are satisfied that the development could not proceed and the associated benefits could not be achieved without giving rise to all or some of the infringements for which section 203 is being engaged. GIA have undertaken a cut back analysis to WMC to demonstrate how much of the proposed building would have to be removed in order not to cause any interference with the easement of light enjoyed by the surrounding

property owners. This cut back demonstrates that, due to either the proximity of the surrounding properties, or the fact that some of the properties are residential in use (making them more sensitive), only a modest amount of massing would be able to be added to the existing building massing. The resultant building, based upon a cut back scenario, would not achieve the required massing to enable viable redevelopment of WMC. To conclude, any alternative approach to the development which seeks to avoid interference with the rights would prevent a development which brought forward with a significant number of additional housing units and which achieved the public benefits described above from being realised.

Human Rights Issues

- 4.57. As indicated above, consideration must be given to the interference with rights protected by the Human Rights Act 1998. In this case a decision to override easements and other rights represents an interference with rights protected under Article 1 of the Protocol to the European Convention on Human Rights. (the right to peaceful enjoyment of possessions) and Article 8 of the European Convention on Human Rights (right to respect for private and family life, home and correspondence). Any decision to interfere with such rights must strike a fair balance between the public interest associated with the development proposals referred to above and the interference with private rights. Given the clear public benefit associated with the development proposals referred to in the body of the report, the fact that there is no feasible alternative means of achieving that public benefit, and a compelling case in the public interest for the use of the powers to override rights and the availability of compensation to those whose rights are overridden calculated on a diminution in value basis, it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate.

Conclusions

- 4.58. Officers are satisfied that:
- WMC and ESH are no longer needed for their current purpose;
 - There is a compelling case in the public interest to appropriate the sites to planning purposes in order to engage the override provisions of section 203 of the 2016 Act and the necessity test is satisfied.
 - Any interference with the human rights of those who benefit from the rights to be overridden is justified and the use of section 203 represents a proportionate approach.

5. OPTIONS AND ANALYSIS OF OPTIONS

- 5.1. Appropriation is the only viable option that will enable the redevelopment of WMC and ESH.

6. CONSULTATION

6.1. No additional consultation was required.

7. EQUALITY IMPLICATIONS

7.1. In deciding to proceed with the appropriation the Council must pay due regard to its Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010.

7.2. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

7.3. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion/belief (including non-belief)
- Sex
- Sexual orientation

7.4. The table below provides analysis in respect of the key protected characteristics in relation to the development proposals:

Characteristic	Analysis	Impact (Positive, Neutral or Negative)
Age	<p>WMC: The majority of the new market homes will be one and two bedroom aimed at both younger families and single people as well as older people wishing to downsize. This approach compliments the existing profile of the borough and will help service demand.</p> <p>However private market units in a high value area could make it</p>	Positive

	<p>difficult for age groups that have traditionally shown a trend for low income to acquire a property.</p> <p>Having said this, 27 of the new homes are now to be social rent with tenants selected from the Council's housing register. The new homes will be one and two bedroom making them suitable for single people, couples and small families.</p> <p>9 of the new homes are to be for intermediate rent or sale aimed at first time buyers and individuals on low incomes. In general, applicants tend to be younger and one and two bedroom units are in increasing demand.</p> <p>ESH: 80% of the new homes are to be social rent with tenants selected from the Council's housing register. The new homes will be one and two bedroom making them suitable for single people, couples and small families.</p> <p>20% of the new homes are to be for intermediate rent aimed at individuals on low incomes but not on the Council's housing register. In general, applicants tend to be younger and one and two bedroom units are in increasing demand.</p> <p>The location has well established and convenient transport links.</p> <p>The building will have three lifts that will make it accessible to all age groups.</p> <p>The development proposals support the identified demand for affordable one and two bed units in the ward.</p>	<p>Positive</p>
<p>Disability</p>	<p>WMC: 10% of the new homes will be fully wheel chair compliant. The building's design meets all statutory requirements making it accessible</p> <p>ESH: 10% of the new homes will be fully wheel chair compliant. The</p>	<p>Positive</p> <p>Positive</p>

	<p>remaining units will be life time home compliant making them fully adaptable if residents circumstances change. The building will have three lifts that will make it accessible to all age groups.</p>	
Race	<p>WMC: it's not uncommon for ethnic minorities to be over-represented in low income groups and the fact that the majority of the new homes at WMC are private market units may pose a barrier for members of this category to access the new housing.</p> <p>There are however 27 social rent units and 9 intermediate rent units which offer affordable accommodation.</p> <p>The major benefit in this instance is the regeneration of the area removing a major hub for antisocial behaviour and fly-tipping.</p> <p>A payment in lieu is also being paid to the local authority for the provision of affordable housing within the borough which will provide new affordable housing.</p> <p>ESH: As ESH is a 100% affordable scheme affordability will not be a barrier. The size of new homes will be greater than current space standards, built to a modern specification and user friendly.</p> <p>However, as some ethnic minority households have large families the new one and two bedroom homes will not be suitable.</p>	<p>Positive/ Neutral</p> <p>Positive</p>

7.5. The redevelopment of these derelict former housing sites to provide new modern homes will have a positive impact on all groups. The urban environment will be greatly improved strengthening communities and increasing investment in local businesses.

7.6. The construction of ESH and WMC will help create new jobs and investment in local labour and supply chains in line with the Council's procurement, diversity and inclusion policy commitments.

- 7.7. Implications verified by Peter Smith, Head of Policy & Strategy, tel. 020 8753 2206.

8. LEGAL IMPLICATIONS

- 8.1. The legal powers available to the Council to appropriate land and override third party rights are identified and explained in paragraph [4] of the report.
- 8.2. Implications completed by: Michelle Moss, Partner, Eversheds Sutherland 0161 831 8000.
- 8.3. The Director of Law comments that external lawyers have been commissioned to advise on this. The Council is entitled to rely on their advice, in considering how to proceed.
- 8.4. Implications completed by David Walker, Principal Solicitor, tel. 020 7361 2211.

9. FINANCIAL IMPLICATIONS

Costs arising directly from this proposal

- 9.1. The up to £30k of direct costs that are expected to arise from this proposal will be covered by the recommendation in this report to vire £30k to create a specific budget for this expenditure from the existing approved housing capital budgets for Edith Summerskill House, as amended by the February 2017 Cabinet Member Decision, following the Cabinet approval dated 08/02/16 in relation to the Joint Venture vehicle.

The financial impact of appropriation on the Housing and General Fund Capital Financing requirements (CFR)

- 9.2. The recommendations in this report include a resolution that the areas of land at Watermeadow Court and Edith Summerskill House referred to in this report and shown edged red on the plans at appendix 1 are no longer required for the purpose for which they are currently held (housing purposes). This means the land is no longer held as housing land for accounting purposes.
- 9.3. Watermeadow Court is already held in the General Fund¹.
- 9.4. The appropriation of Edith Summerskill House for planning purposes transfers the property from the Housing Revenue Account (HRA) into the General Fund. It means that the General Fund effectively must 'pay' the HRA the certified market value for the site via an adjustment between the outstanding debt of the General Fund (as measured by the Capital Finance Requirement (CFR)) and that of the HRA.

¹ While strictly speaking in some uses the General Fund includes the HRA as a separate ring-fenced account in this report the term is used for items not accounted for within the HRA.

- 9.5. This will result in an increase in the General Fund Capital Financing Requirement (the measure used for debt). No capital receipt is currently anticipated for the disposal of Edith Summerskill as it is being developed as a 100% affordable scheme.
- 9.6. The regulations regarding this transfer are open to interpretation and legal advice has been obtained as a precursor to instructing a valuation. The approach is being confirmed with our auditors. However, based on legal advice to date and on the valuation, the certified market value Edith Summerskill House is £3.8m. So £3.8m would transfer from the HRA CFR to the General Fund CFR as a result of this decision.
- 9.7. This will result in an additional ongoing annual revenue charge and therefore required growth of the general fund budget of £123k per year from 2019/20² onwards. As set out in the February 2016 Cabinet report on the joint venture, additional affordable housing will be provided as a result of these developments. This will result in cost avoidance in the General Fund temporary accommodation budgets of approximately £336k³ each year.
- 9.8. Legal advice has confirmed that no adjustment is needed on the historic valuation used for the Watermeadow Court transfer.

Risks if the project does not happen

- 9.9. In the event of these schemes not moving forward, the some of the capital spend to date⁴ would need to be written off to revenue. Currently these are:
- ESH pre-development: £1.97m
 - WMC Disposal Costs £280k

The ESH costs would be a charge to HRA revenue budgets but could be offset against the earmarked reserve for Regeneration Projects within which £1.97m is specifically allocated for the ESH risk. The WMC risk of £280k would be an additional pressure on General Fund. As set out in the February 2016 Cabinet report if the schemes didn't move forward we would also need to cover the costs incurred by the JV to date taking Watermeadow Court through to planning, these could be up to £4m.

- 9.10. 30% of Edith Summerskill expenditure was funded by Right to Buy (RtB) 1-4-1 receipts, and in the event of write off Council must return RtB funding to the CLG with interest.

² Secretary of State consent will need to be requested after Cabinet approval so any appropriation would not happen until 2018/19. MRP rate for 2018/19 is 3.24%. No capital receipt is expected for Edith Summerskill House so the General Fund CFR adjustment will not reverse when the site is disposed of.

³ Based on the councils 2018/19 budgeted average net cost for temporary accommodation applied to 169 units.

⁴ Spend to date is as at 23rd May 2018, excludes demolition costs which would remain capitalisable

Impact of any further delays on this project and other risks

- 9.11. Delays to the delivery of these projects would put additional pressure on quarterly requirement to using RTB receipts retained by the council and would potentially require repayment of RTB receipts to HMCLG with interest unless alternative.
- 9.12. The current capital programme assumes a capital receipt, in addition to the £6m commuted sum for affordable housing, from the disposal of Watermeadow Court in 2019/20. Further delays, and changes to the scheme, will put the timing and amount of the receipt at risk. This will need to be taken account of within the future Capital Programme and Monitoring Reports.
- 9.13. Implications completed by: Firas Al Sheikh, Head of Housing Investment & Strategy, tel. 0208 753 4790.
Implications were verified by Emily Hill - Assistant Director (Corporate Finance), tel. 020 873 3145.

10. IMPLICATIONS FOR BUSINESS

- 10.1. The recommendations in this report will enable ESH and WMC to be redeveloped.
- 10.2. The associated construction activities we provide training and employment opportunities for local people and investment in local supply chains.
- 10.3. The economic development team is engaged in making sure residents benefit from the employment opportunities
- 10.4. Implications verified by: David Burns, Head of Housing Strategy, tel. 020 8753 6090.

11. COMMERCIAL IMPLICATIONS

- 11.1. It is proposed that the alternate use of the site to provide better housing in the area comprising both private units and social housing which will provide more efficient use of the land.
- 11.2. However, the proposal provides an additional 169 affordable units by appropriating the two sites.
- 11.3. While no capital receipt is anticipated for the affordable scheme resulting from the disposal of Edith Summerskill, the new affordable housing can save the Council money by reducing temporary accommodation costs.
- 11.4. Further public benefits are presented throughout the report.
- 11.5. Implications completed by: Andra Ulianov, Procurement Consultant, tel. 020 8753 2284.

12. IT IMPLICATIONS

12.1 There are no IT implications.

12.2 Implications: Veronica Barella, interim Chief Information Officer, tel. 020 8753 2927.

13. RISK MANAGEMENT

13.1 Officers should ensure that legal advice received in respect of seeking appropriation is followed to mitigate the risk that effective appropriation is not secured and the proposed developments cannot proceed.

13.2 Officers should ensure that the JV confirms the further actions they will put in place to mitigate challenges regarding potential rights (e.g. rights of light) from the owners of affected properties and should quantify the impact and cost of not reaching agreement in all cases.

13.3 The report identifies a number of financial risks relating the project either being delayed or not happening. Officers responsible for the project should continue to liaise closely with finance colleagues to monitor these risks so that appropriate mitigating action is taken in the event of risks materialising.

13.4 In conjunction with their external legal advisers, officers have identified the following risks which they will need to ensure are appropriately mitigated:

- In the event that the Council does approve the appropriation and the overriding of third party rights, the Council has taken Leading Counsel's advice to mitigate so far as possible the risk of any judicial review of the Council's actions
- In the event that the Council does not approve the appropriation, there is a risk that this could lead to a breach of the Council's obligations under the land sale agreements referred to in paragraphs 4.4 and 4.5 above, and it is highly unlikely that the redevelopment of WMC and/or ESH will proceed, therefore prejudicing the Council's ability to meet its planning and housing objectives.

13.1. Implications verified/completed by: David Hughes, Director of Audit, Fraud, Risk and Insurance, tel. 0207 361 2389.

14. BACKGROUND PAPERS USED IN PREPARING THIS REPORT **None**

List of Appendices: Appendix 1 – site plans