

London Borough of Hammersmith & Fulham

Report to: Cabinet

Date: 04/05/2021

Subject: Education City – Land Appropriation

Report of: Cabinet Member for the Economy - Councillor Andrew Jones

Report author: Matt Rumble, Strategic Head of Regeneration & Development

Responsible Director: Tony Clements, Strategic Director for the Economy

Summary

In order for the redevelopment of the **Education City** development in White City to proceed it is necessary to appropriate the site for Planning purposes. This will allow the Council to utilise powers to override third party rights that may otherwise prevent the implementation of the proposed development. The purpose of this report is to provide an update to members on the consultation work undertaken to complete the appropriation process to implement the Council's S203 regulatory powers.

The **Education City** development will bring significant benefits to the local economy, including 132 new homes, which will be 100% affordable and to create a new mixed used education hub to include a high quality primary school, new and expanded nursery for 75 children, new adult education facilities, new youth facilities and an office for educational charities.

Recommendations

It is recommended that Cabinet:

1. Notes that Appendix 2 is exempt from disclosure on the grounds that it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
2. Resolves that the areas of land at the Education City development referred to in this **report and shown edged red on the plans at Appendix 1** ("the Land") are no longer required for the mixed education and health purposes for which they are currently held.
3. Approves the appropriation of the Land pursuant to section 122 of the Local Government Act 1972 for the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 226 of the Town and Country Planning Act 1990.

4. Approves 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.

Wards Affected: White City and Wormholt

H&F Priorities

Our Priorities	Summary of how this report aligns to the H&F Priorities
<ul style="list-style-type: none"> • Building shared prosperity 	<p>The programme represents a significant opportunity for the Council to improve the use of its public assets, drive efficiency of operation and enhancement to public services whilst simultaneously creating social and economic value through development of a new cinema and much needed affordable housing.</p>
<ul style="list-style-type: none"> • Creating a compassionate council 	<p>The programme will further the Council's ability to provide compassionate, high-quality services that residents can rely on.</p>
<ul style="list-style-type: none"> • Doing things with local residents, not to them 	<p>Through the bottom up approach taken at numerous public consultations and feedback sessions, as well as, the co-production of design with the Disabled People's Commission.</p>
<ul style="list-style-type: none"> • Being ruthlessly financially efficient 	<p>The investment in the programme will generate a significant return, both financially and socially for local residents.</p>

Financial Impact

The Financial Impact of the wider Education City scheme have been set out in various decision reports, this report focuses on the need to appropriate the land to enable the scheme to progress and the Financial Impact is limited to the recommendations in this report.

The appropriation of land for planning purposes does not involve any significant external cost, with costs relating to officer time relating to the decision.

As set out in the report, beneficiaries of right to light that are interfered with as a result of the carrying out of the development will be entitled to compensation which will be calculated on the basis of the diminution in value of their land. The conditional agreement for lease includes an indemnity in respect of these costs and to ensure that any costs arising are picked up by the developer rather than the council.

Legal Implications

The legal powers available to the Council to appropriate land and override third party rights are identified and explained in this report. Cabinet approved a report in April 2019 which approved the principle of appropriating the Education City site for planning purposes, subject to consideration of a detailed report justifying the specific use. This justification is set out in this report.

As explained in the body of this report as a local authority, the Council has the power under section 203 of the Housing and Planning Act 2016 (the 2016 Act) to carry out a development on land even though the development would interfere with the rights of adjacent land owners, if it has appropriated the said land for planning purposes. These rights include rights of light and easements. But for this provision the adjacent landowner could apply for an injunction to stop the development.

However, the 2016 Act further provides that the Local Authority must compensate those affected by the exercise of the Section 203 power. Under Section 204 of the 2016 Act there is a liability to pay compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by Section 203 of the 2016 Act. The compensation is calculated on the same basis as compensation payable under the Compulsory Purchase Act 1965 i.e. based on the diminution of the value of the affected property because of the interference with the right. In the use of the power it is considered that it should be consistent with the Ministry of Housing Communities and Local Government's Guidance on Compulsory Purchase and Criche Down Rules (July 2019).

The appropriation is made pursuant to section 122 of the Local Government Act 1972 to allow the Council to rely on section 203 of the 2016 Act. Under section 122 land belonging to a Council may be appropriated from one purpose to another, where it is no longer required for the purpose for which it is held immediately before the appropriation.

Before exercising its statutory powers to appropriate the land to planning purposes the Council must be satisfied that it will facilitate the carrying out of development, redevelopment or improvement on or in relation to land and that it is likely to contribute to the achievement of namely the promotion or improvement of the economic, social or environmental well-being of the whole part of its area and that there is a compelling case in the public interest for doing so. This report sets out how the development meets these criteria and proves there is a compelling case in the public interest for the Council to appropriate the land to facilitate the development.

Trowers & Hamblins Solicitors (Douglas Rhodes – (*email DRhodes@trowers.com*)) provided legal comments on this report and the use of legal powers set out in this report.

The Council is entitled to rely on their advice in considering how to proceed. The legal comments have been verified by Afshan Ali-Syed, Senior Solicitor (Property and Planning).

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Background Papers Used in Preparing This Report

Cabinet Report 29th April 2019 – *PUBLISHED*
Cabinet Report 12th October 2020 – *PUBLISHED*

DETAILED ANALYSIS –

Proposals and Analysis of Options

Background and Current Development Proposals

1. The Education City development (formerly ARK Swift Academy Primary school) is a major mixed used development for the Council.
2. The overall objective of the Education City development is to provide a state of art educational hub within the borough. The development will offer transformational public education services within a quality environment with exceptional building designs and a landscaped boulevard. Bringing further improvement to the White City Estate.
3. It will transform the current site of the former ARK Swift Academy Primary into an education hub, delivering 132 new homes, of which 100% will be affordable and to create a new mixed used education hub to include a high quality primary school, new and expanded nursery for 75 children, new adult education facilities, new youth facilities and an office for educational charities. It will transform the use of the site and the opportunity to deliver educational services in modern facilities to residents.

4. Cabinet approved the delivery of the Education City development on 29th April 2019, concluding that:

'The Education City development was an excellent scheme that would deliver on several key Council strategies & priorities and would bring numerous benefits to the borough'.

5. The Education City Development delivers on several key Council strategies and priorities. The current facilities at the ARK Swift Primary School, the Adult Education teaching spaces, and the Harmony Nursery, have reached the end of their life and need either renewal or replacement.
6. The development will contribute to the borough's housing ambitions by building 132 new homes, of which 100% will be affordable. The borough's Local Plan, adopted in 2018 outlines the plans to deliver a considerable number of new homes for the borough, of which a substantial portion will be affordable housing opportunities. The 2018-2022 Business Plan sets out clear priorities around delivering 1,500 new affordable homes, including 500 for affordable home ownership and to review all sites including smaller areas to use every available piece of land for housing. The Council also has London Plan commitments to deliver new housing.
7. The development will contribute to the borough's ambitions to maintain, improve and further accelerate standards for education in the borough, both at community schools and Academy schools like ARK Swift. The 2018-2022 Business Plan sets out clear priorities around improving and supporting schools in the face of ongoing funding reductions. This requires creative approaches to bridge the gap. The Industrial Strategy aims to promote a model of inclusive growth which recognises the key role of schools in equipping residents with the skills and capability to benefit from the dynamism of our local economy. Learning spaces that facilitate the borough's children acquiring the skills necessary to compete successfully in the future knowledge economy will be critical.
8. The mixed-use development will be delivered by the Council entering into a Master Development Agreement, a Deed of Cooperation and other legal agreements with ARK (Absolute Return for Kids) and EDCL (EdCity Development Company Limited) to facilitate the delivery of Education City.
9. In April 2019, Cabinet agreed in principle to the appropriation of the area of land edged red in Appendix 1 for to the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 122 of the Local Government Act 1972. This was needed to override easements covenants and other third-party rights in respect of the land pursuant to section 203 of the 2016 Act subject to the requirements set out in the legal implications section of the report having been satisfied and a further report for approval being made to Cabinet.

The Need for Appropriation

10. There is a need to appropriate the site from mixed education and health uses to planning purposes in order to override third party rights, the existence of which would otherwise prevent the implementation of the proposed development.
11. Section 122 of the Local Government Act 1972 provides a power to the Council to appropriate land from one purpose to another where the land “is no longer required for the purpose for which it is held immediately before the appropriation”. The key procedural points are as follows:
 - a) The land must already belong to the Council
 - b) The land must no longer be required for the purpose for which it is currently appropriated; and
 - c) The purpose for which the council is appropriating must be authorised by statute.
12. By sections 226 and 227 of the Town and Country Planning Act 1990 (“TCPA”) the Council is authorised to acquire by agreement any land which they require to facilitate the carrying out of development, re-development or improvement on or in relation to the land, where they think that this will contribute towards the promotion or improvement of the economic, social or environmental well-being of their area.
13. 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 2016 Act (**“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.
14. 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 appropriation is to engage the provisions of section 203 the Council should not make the appropriation unless it has good reason to think that that interference with the rights affected is necessary.
15. 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.

16. 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.
17. Certain properties have been identified which may benefit from a right to light over the Education City site. Analysis shows that a number of properties identified are likely to experience an alteration in light following completion of the development. The existence of these rights means that unless the provisions of section 203 are engaged the development could be prevented from proceeding by the owners of the affected properties. Accordingly, the purpose of this report is to seek a resolution to appropriate the site to planning purposes so that the third-party interests can be overridden, allowing the development to proceed.

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

18. The area of land at Australia Road referred to in this report and shown edged red on the plan at Appendix 1 is no longer required for the purpose for which it is currently held. There are currently a number of redundant buildings on the site that are no longer in use. And as such, the site lends itself to be fully redeveloped with the opportunity to provide much needed affordable homes and improved educational facilities within the borough. The area of land at Australia Road referred to in this report and shown edged red on the plan at Appendix 1 is no longer required for the purpose for which it is currently held. The Education City Development delivers on several key Council strategies and priorities. The current facilities at the ARK Swift Primary School, the Adult Education teaching spaces, and the Harmony Nursery, have reached the end of their life and need either renewal or replacement and it is not cost effective to repurpose the buildings.
19. The existing ARK Swift primary school underutilises the use of the site and is in need of reinvestment and refurbishment to improve the efficiency and use of the building. The existing caretakers house on the site which was vacated several years ago remains void.
20. The existing Adult Education Centre comprised of temporary portacabins and were no longer adequate as a long-term solution to providing an ambitious adult education service in the borough. Therefore, this represents an opportunity for the re-provision of a new good quality purpose built Adult Education Centre to be developed on the site.
21. The existing purpose-built Nursery building was recently vacated and will no longer be in use.

Planning purposes and public benefits

22. 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 TCPA. In this case it is necessary to consider whether the land would be capable of being acquired under section 226 of the TCPA.
23. Section 226 of the TCPA 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)).
24. In this case it is appropriate to consider whether the land could be acquired compulsorily under the powers conferred by section 226(1)(a) of the TCPA. Section 226(1A) of the TCPA provides that a local authority must not exercise its power of compulsory acquisition under section 226(1)(a) of the TCPA, 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.
25. It is the view of officers, supported by legal advice, that the Education City site 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). The benefits of the Education City development that fulfil those objectives are detailed later in this report.
26. 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 has been given to the advice and guidance contained in the current MHCLG Guidance on Compulsory Purchase (July 2019).

27. 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.
28. Turning to the planning policy support for the Education City redevelopment, for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004 the Statutory Development Plan for the area in which the site is situated comprises (1) the London Plan and (2) the Hammersmith and Fulham Local Plan 2018. The planning policy support for the scheme was discussed in detail in the associated planning report to Planning Committee dated 6 March 2018. The recommendation of the planning officer was that any harm to the amenity of neighbouring occupiers (including on issues of light and overshadowing) is not adverse and in any case is outweighed by the benefits of the development. These benefits are set out in this report and the appendices attached. Members of the Planning Committee agreed with this assessment and granted planning permission accordingly. The following is a summary of key planning policy requirements.
29. The NPPF (paragraph 94) states that weight should be given to the need to create, expand, or alter schools and London Plan Policy 3.18 supports development that would enhance education and skills provision, including the new build and expansion of existing education uses.
30. Local Plan Policy CF1 specifically supports the improvement and/or expansion of community and services, including the improvement and expansion of primary schools, provision of childcare nurseries, and seeking new facilities where appropriate and viable as part of major development proposals, including leisure, recreation, and sports facilities.
 31. The statutory development plan for the borough comprises the London Plan (2016) and the Local Plan (2018). A number of strategic and local supplementary planning guidance and other documents are also of material consideration in the determination of planning applications.
 32. The Council adopted the Local Plan on 28 February 2018. The policies in the Local Plan together with the Planning Guidance Supplementary Planning Document (SPD) (February 2018) is a material consideration in determining planning applications.
 33. The London Plan was published in July 2016. It sets out the overall strategic plan for London and forms part of the development plan for Hammersmith and Fulham.
 34. The draft London Plan was published on 29 November 2017. The Plan's consultation ended on 2 March 2018. The Examination in Public (EiP) on the London Plan was held between 15th January and

22nd May 2019. The Panel of Inspectors appointed by the Secretary of State issued their report and recommendations to the Mayor on 8th October 2019. The Mayor has considered the Inspectors' recommendations and, on the 9th December 2019, issued to the Secretary of State his intention to publish the London Plan. On 13th March 2020, the Secretary of State wrote to the Mayor to make specified changes to Intend to Publish London Plan, following the conclusion of the plan's examination. The Mayor cannot publish the plan until he has incorporated these changes, or the Secretary of State has withdrawn the Direction following further negotiation. The regional component of the Development Plan therefore remains the London Plan.

35. Local Plan Strategic Policy WCRA states the Council will support major regeneration and growth in the White City Regeneration Area, in terms of the delivery of mixed-use development, including new housing, jobs, community, and leisure facilities. Policy WCRA sets an indicative housing capacity of 6,000 new homes and 10,000 new jobs for the regeneration area. The policy however recognises the importance of White City West in meeting the wider objectives, together with phased renewal of the estates and improved connections to existing communities. Policy WCRA2 relates to the White City West area which includes the application site and the borough's largest housing estates. Policy WCRA2 specifically identifies development should include future education, community, leisure, and public and private spaces within new schemes.
36. Local Plan Policy HO3 (Affordable Housing) provides detailed guidance on the level of affordable housing, stating that housing schemes should increase the supply and improve the mix of affordable housing to help achieve more sustainable communities. The policy states that at least 50% of housing units should be affordable, of which 60% should be social or affordable rent and 40% should be for intermediate housing and affordable housing should be located throughout a development and not concentrated on one part of the site.
37. London Plan Policies 4.2 and 4.3 support the delivery of mixed-use development to support the provision, environment, and enhancement of the boroughs office stock. The provision of retail development as part of mixed-use developments is also supported.
38. London Plan Policy 2.7 seeks to improve the competitiveness of outer London by supporting both viable local activities and those operating within the broader sub-regional market. This includes developing the outer London office market through the delivery of mixed-use redevelopments. To achieve this, strategic support is provided through the designation of opportunity areas such as White City, as set identified in London Plan Policy 2.13.
39. London Plan Policy 2.13 seeks to optimise non-residential out-put and densities and contribute to, and where possible, exceed indicative estimate's employment capacity within Opportunity Areas, such as White City.

40. Local Plan Policy E1 supports new business proposals including mixed use schemes for new employment uses and seeks to support the retention and intensification of existing employment uses for businesses of all sizes.
41. The officer report to Planning Committee on 6 March 2018 concluded the proposal brings about a holistic redevelopment of the site, introducing a campus style education hub along with residential and office uses that complement each other to deliver a high-quality scheme. In summary it found:
 - The development provides new state of the art education facilities. Both the school and nursery would have expanded facilities and an increase capacity with improved external play facilities.
 - The new Youth Zone would provide affordable activities in sports, arts, music, and employment training and mentoring for young people.
 - The new office would accommodate Ark's headquarters and provide affordable modern workspace for other mission aligned charities and social enterprises focused on education and include conference and training space.
 - The non-residential provisions are for the benefit of the local area and wider economy and would deliver a wide range of benefits including the creation of new jobs on the site.
 - The proposed development would contribute significantly to providing new housing in the Borough, including 100% affordable housing thereby achieving the London Plan and Council's strategic objectives.
 - The redevelopment would also contribute by creating a high-quality built environment and include the provision of a substantial area of public realm in the centre of the site with the Boulevard and square and improved permeability through the White City area
42. Overall the officer report to Planning Committee on 6th March 2018 stated the proposal accorded with the Development Plan and other material considerations including NPPF policies.
43. There is therefore extensive planning policy support for the development proposals and planning permission was granted on 13 February 2019 (reference 2017/04800/FUL). This is key to demonstrating the compelling case in the public interest, justifying the appropriation.
44. An application to vary the planning permission was granted on 30 June 2020. (the changes include the repositioning of approved building footprints, alterations to the parapet heights, elevational design amendments, reconfiguration of the roof, removal of the internal servicing yard and landscaping changes. The Planning Officer report to Planning Committee considering these variations dated 4 June 2020 concluded that the "current proposal is considered to accord with both the London Plan and Local Plan and other material considerations including NPPF policies achieving a sustainable development".
45. Officers have considered whether the Education City redevelopment could be blocked by any physical or legal impediments to implementation. The

existence of 3rd party rights is a potential legal impediment, which can be overcome via appropriation.

46. Public Benefits

- The project will create a distinctive high quality, mixed-use development to include:
- 132 homes with 100% affordable housing for local residents;
- A high-quality primary school
- New youth zone facilities
- A new and expanded nursery for 75 children
- New adult education facilities
- New office for educational charities

Steps taken to negotiate the release of rights by agreement –

47. 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 leasehold and tenancy details to ascertain those whose rights may be interfered with as a result of the Education City programme.

48. Delva Patman Redler 's specialist rights of light consultants on behalf of the developer previously identified parties to whom the passage of light may be reduced by the Education City programme. These affected parties included the following:

- Units within Hastings House
- Units within Wolfe House
- Units within Baird House
- Units within Durban House
- Units within Grey House
- Units within Lawson House
- 201 Wood Lane
- The Parachute Regiment

- St. Michael and St. George Church

49. Trowers & Delva Patman Radler have since given this further consideration as to who should be consulted and, in order to maintain consistency with the approach taken on other LBHF schemes where s.203 has been relied upon. The Council consulted neighbouring owners who will suffer actionable losses, rather than all properties outlined above (and as outlined in the November Cabinet report) that the Council does not consider has rights of light as a result of either reserved redevelopment rights contained in the long residential leases or secure tenants not having lived at the property for long enough to have acquired prescriptive rights.
50. During week commencing 12th January 2021, the Council sent letters to the parties with long term property interests that was identified as being actionably interfered with, indicating its intention to appropriate the Education City site for planning purposes and inviting comments: -
- Flat 7 Hastings House
 - Flat 13 Wolfe House
 - Territorial Army Centre White City
 - 201 Wood Lane
51. Consultees were given the opportunity to contact – Stuart Gray of Delva Patman Redler (Rights of Light consultant) or to make their own independent enquires and to return any postal enquires to the Council (in a prepaid envelope\ by 15th February 2021. Officers can confirm at the time of writing this report that no formal contact or any postal replies was received.
52. It is clear that for the Education City redevelopment to proceed within a reasonable timescale that it is necessary to appropriate the land to secure the benefits associated with the proposed scheme. 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 for the Education City will not go ahead at all or could be substantially delayed.

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

53. Officers have considered whether the development could proceed without interfering with 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. A cut back analysis to the Education City Development scheme has been undertaken by Delva Patman Redler 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 their residential use, the proposed development would be significantly reduced in scale and massing. This would then have a consequent impact on scheme viability and deliverability.

54. To conclude, any alternative approach to the development which seeks to avoid interference with the rights would reduce the deliverability or even prevent a development which will bring forward this new mixed used education hub

Human Rights Issues

55. 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.
56. 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.

OPTIONS AND ANALYSIS OF OPTIONS

Appropriation is the only viable option that will enable the redevelopment of The Education City development.

The alternative course of action is to pursue the re-development of Education City without appropriation. This alternative approach would place the development at risk of injunction by affected parties who's rights may be impacted. Therefore, there is a risk of the development being blocked by these affected parties.

It is recommended that the Council proceeds with the decision to appropriate. This is a key shovel ready project, that will contribute to economic recovery in the borough, while providing vital affordable homes and educational services

Reasons for Decision

57. The key reasons for this decision are:
- The ARK Swift Primary school site (the area of land at Australia Road referred to in this report and shown edged red on the plan at (Appendix 1) is no longer needed for its current purpose;
 - There will a significant public benefit of the new development (see paragraph 46

- The new development will increase the supply of genuinely affordable housing;
- Providing local economic investment, including job and training opportunities;
- 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.

Conclusion

58. Officers are satisfied that:

- The former ARK Swift Primary School site (the area of land at Australia Road referred to in this report and shown edged red on the plan at (Appendix 1) is no longer needed for its 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 as a result of the appropriation is justified and they will be compensated accordingly. Therefore, the use of section 203 represents a proportionate approach.

Equality Implications

59. In deciding to proceed with the appropriation of land for planning purposes, the Council must pay due regard to its Public-Sector Equality Duty (PSED), as set out in Section 149 of the Equalities Act 2010 (the 2010 Act). The PSED provides that a public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

60. Consideration must also be given to whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on an protracted group, or to take steps to promote equality of opportunity by, for example, treating an affected group more favourably.

61. Officers have previously taken this into account in the assessment and is mindful of this duty in making the recommendations in this Report. Generally,

it is considered that the impacts of the Development are positive. The proposals comprise measures to ensure that the residential units are accessible and adaptable, with 10% of units having a layout and size specifically enabling use by a wheelchair users. The development as a whole has embraced the principles of accessible and inclusive design within the Education City and commercial office being fully accessible. This is considered to be a significant improvement on the current offer.

Risk Management Implications

62. As part of the Education City development, officers have considered the risks associated with the various stages of this programme and sought to put in place appropriate mitigations. Specifically, for this report, officers have sought appropriate external technical advice in respect of matters relating to appropriation, right to light and rights of access. Officers also need to confirm in the report that the financial risks, including potential compensation, will be managed by the Council and are incorporated in the Council's financial model.
63. It is recommended that officers continue to review, monitor, and escalate as appropriate until the programme objectives have been delivered and ensure that new risks identified are assigned to risk owners. The implications sections in this report identifies a number of legal and financial risks which will need to be closely monitored and managed and subject to regular reporting to Members.
64. Given the significance, value and complexity of the proposed programme, officers should, as advised in previous reports, set out the officer and member governance arrangements which will provide programme oversight and assurance and ensure that costs are appropriately controlled, and key actions taken once appropriate consents and approvals have been confirmed.

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

Property Implications

65. The Council's site assembly for the Education City development has been previously outlined in previous Cabinet reports and this included setting out the reasons using powers under s203 Housing Act 2016. The Council has employed specialists in rights of light to undertake a strategy and outline next steps.

Implications verified/completed by: Nigel Brown, Head of asset strategy and portfolio management, tel: 07773 281039.

Climate and Ecological Emergency Implications

These implications must be drafted by the report author and approved with Hinesh Mehta. Guidance can be found on the [Governance site](#).

Implications verified by: Hinesh Mehta (title and telephone of officer)
Not applicable

ICT (required for any changes to IT systems) – *Not applicable*

Information Management – *Not applicable*

Local Economy and Social Value – *Not applicable*

Commercial – *Not applicable*

Business Intelligence – *Not applicable*

Personnel – *Not applicable*

Consultation

66. Affected properties specifically consulted.

List of Appendices:

Appendix 1 – Red line plan of the site

Exempt Appendix 2 – Options appraisal