

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet

Date: 12/05/2025

Subject: Appropriation of Land at the Hartopp & Lannoy Site

Report of: Councillor Umeh – Cabinet Member for Housing and Homelessness
and Councillor Andrew Jones – Cabinet Member for the Economy

Report author: William Noton, Head of Development

Responsible Director: Bram Kainth, Executive Director – Place

SUMMARY

On 29th April 2019 Cabinet approved the demolition of the two housing blocks known as Hartopp and Lannoy Points after extensive structural surveys identified serious structural defects and fire risks. The 2019 Report also set out the responses to the extensive consultation carried out at that time. The blocks were demolished in 2020/21.

Planning Permission was granted on 9/2/22 and the budget for the Development was approved by Full Council on 13/7/22.

The former Hartopp and Lannoy site (“the Site”) is being redeveloped to provide 134 new homes of which at least 85% are affordable. To deliver the new housing it is necessary to appropriate the site. This will allow the Council to utilise powers to override any third-party rights such as easements, and covenants in respect of the land which may delay or prevent the implementation of the development.

This report seeks approval to appropriate the Site from housing use, where it is considered to be no longer necessary and the buildings demolished, to the General Fund for planning purposes. This appropriation is pursuant to section 122 of the Local Government Act 1972 and the subsequent use of powers under Section 203 of the Housing and Planning Act 2016 (Section 203) to provide the much-needed housing in the Borough without further delay.

The Land edged red in Appendix 1 will be held in the General Fund and the related accounting adjustments will be made to the HRA and General Fund. The delivery of the Development will eventually be used for new housing, therefore, the Site will then be required to be appropriated back to the HRA housing purposes. This report also seeks authority for the appropriation back for housing purposes and for an accounting adjustment to be made from the General Fund to the Housing and Revenue Account.

RECOMMENDATIONS

That Cabinet:

1. Resolves that the land edged red in Appendix 1 is no longer required for the housing purposes for which it is currently held as the buildings have been demolished for safety reasons following the Cabinet decision in 2019 and the Development pursuant to the Permission has commenced after extensive consultation.
2. Notes the responses to consultations undertaken by the Council in relation to the proposed appropriation and Development detailed in Exempt Appendix 3.
3. Notes the steps taken by the Council to identify all rights affected by the proposed appropriation and the reasons specified in paragraphs 7.46-7.51 (inclusive) of the 'Detailed Analysis' section of this report.
4. Authorises the application to the Secretary of State pursuant to section 19(2) of the Housing Act 1985 for consent to the appropriation.
5. Subject to obtaining Secretary of State consent to the section 19(2) application in 2.4 above approves the appropriation of the land edged red, in Appendix 1 ("the Land"), from housing purposes, in which it is currently held, for planning purposes, pursuant to section 122 of the Local Government Act 1972; as it will facilitate the carrying out of the Development of the Land edged red being a purpose in respect of which land could have been acquired by agreement pursuant to section 227 and compulsorily under section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA 1990"), subject to the Secretary of State's consent being granted pursuant to the application under section 19 of the Housing Act 1985;
6. Authorises the accounting adjustments that need to be made to the Housing and Revenue Account and the General Fund account to record the appropriation to planning purposes referred to above.
7. Approves and authorises the use of the Council's powers under section 203 of the Housing and Planning Act 2016 ("HPA 2016") following the appropriation of the Land for planning purposes to override any easement, covenants, and other rights in respect of the Land edged red and authorises the taking of all necessary steps required in relation to any associated claims, settlements relating to compensation under section 204 of the HPA 2016.
8. Following the appropriation of the Land for planning purposes (2.5 above) and the Council engaging section 203 of the Housing and Planning Act 2016 (2.7 above) approves the appropriation of the Land, within which will be located the new residential units including the affordable housing, from planning purposes to housing purposes pursuant to section 232 of the TCPA 1990.
9. Authorises the accounting adjustments that need to be made to the Housing and Revenue Account and the General Fund account to record the appropriation from planning purposes to housing purposes.
10. Approves that Appendices 2 & 3, are not for publication on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in

paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).

Wards Affected: Munster

Our Values	Summary of how this report aligns to the H&F Corporate Plan and the H&F Values
Building shared prosperity	The redevelopment of the land will bring about measurable local benefits including transforming a currently hoarded site into a well-designed residential development that incorporates inclusive and accessible amenities.
Creating a compassionate council	The redevelopment will help meet the acute need for affordable housing in the locality as well as the wider borough.
Doing things with local residents, not to them	The design for the redevelopment was coproduced with residents who continue to be involved throughout the construction stage and to completion.
Being ruthlessly financially efficient	The use of appropriation powers will enable the council to deal swiftly and efficiently with easements and third-party rights (including rights of light).
Taking pride in H&F	The aim of the redevelopment is to create a lasting and positive legacy through well-designed blocks and estate amenities while meeting both the climate challenge and the acute need for affordable housing in the borough.
Rising to the challenge of the climate and ecological emergency	The redevelopment will deliver highly sustainable homes that are operationally net-zero carbon and so help create and sustain a low carbon community and neighbourhood.

Financial Impact

Recommendation 2.5 seeks approval from Cabinet to appropriate the land at the Hartopp & Lannoy site for planning purposes from the Housing Revenue Account (HRA) to the General Fund.

Recommendation 2.8 subsequently approves the appropriation of the land from planning back to housing purposes once section 203 of the Housing and Planning Act 2016 has been engaged. Consequently, the General Fund must compensate the HRA (and vice-versa) for the site's certified market value through an adjustment between their respective Capital Finance Requirements (CFR).

This transfer would result in an increase the General Fund's CFR whilst held for planning purposes, and a decrease once it is transferred back to the HRA. No capital receipt is expected from the disposal of Hartopp & Lannoy, as it is being developed as a 100% affordable housing scheme.

The regulations governing this transfer are subject to interpretation. Legal advice has been obtained, and based on current legal advice and valuation, the certified market value will be based on the value of the site (including work done to date) at the point of appropriation (estimated at between £23m and £29m). At appropriation this value then will transfer from the HRA to the General Fund CFR. Once the land is transferred back, it will be subject to the certified market value at that point.

It is not expected that the land will remain the General Fund, and as such, there should be nil impact to the General Fund in terms of ongoing revenue costs.

Should the land remain in the General Fund, this decision will result in an additional annual revenue charge, necessitating an increase in the General Fund budget of between £0.6m and £0.8m per year (2.65% MRP) once the development has been completed. This increase would need to be accommodated and considered within the Council's Medium Term Financial Strategy.

Andre Mark, Head of Finance (Strategic Planning and Investment), 10th March 2025

Legal Implications

A local authority who has acquired land for a statutory purpose must hold the land for that purpose. An authority can only change the purpose for which they hold land by using statutory powers of appropriation.

The Council has power under Section 122 of the Local Government Act 1972 ("LGA 1972") to appropriate land belonging to the Council which is no longer required for the purpose for which it is held immediately before the appropriation, provided that the new purpose is one for which the Council would be empowered to acquire land by agreement.

Section 227(1) TCPA 1990 provides a Council can acquire by agreement any land that it could acquire under section 226 of the TCPA 1990

Section 226(1) of the TCPA 1990 authorises a local authority to acquire compulsorily any land in their area for planning purposes. This acquisition can take place in one of the following two circumstances if the local authority thinks:

- a) the acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to the land (section 226(1)(a), TCPA 1990); or;
- b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated (section 226(1)(b) TCPA 1990);

Section 226(1) (1A) TCPA 1990 provides that a local authority must not exercise the power under Section 226(1)(a) unless they think that the development, re-

development, or improvement is likely to contribute to the achievement of any one or more of the following objects:

- a) the promotion or improvement of the economic well-being of their area;
- b) the promotion or improvement of the social well-being of their area;
- c) the promotion or improvement of the environmental well-being of their area.

Appropriation of land for planning purposes made under Section 122 of the LGA 1972 will result in the Council accounting for that land in the General Fund. The Site is currently held in the Housing and Revenue Account. Therefore, an accounting adjustment will need to be made to the Housing and Revenue Account and the General Fund account. "Planning purposes" means that the appropriation will facilitate the carrying out of development, redevelopment or improvement of land which is likely to contribute to the economic, social, or environmental wellbeing of the area, or which is required in the interests of the proper planning of the area in which the land is situated.

Section 19 of the Housing Act 1985 ("HA 1985") deals with appropriation of land held for the purposes of Part II of HA 1985 (i.e. housing accommodation). It does not exclude the application of the appropriation under Section 122 of the LGA 1972. Under Section 19(2) of the HA 1985, a local housing authority holding land for the purposes of Part II of the HA 1985, shall not, without the consent of the Secretary of State, appropriate any part of the land consisting of a house or part of a house for any other purpose. As construction has commenced and progressed to a stage where it could be said there is 'part of a house' Secretary of State's consent will need to be obtained.

Section 203 of the HPA 2016 provides that building or maintenance work or use which interferes with rights or breaches restrictions as to user is authorised if:

- planning permission exists for the building works or use;
- the work is carried out on land 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 or use of buildings or works constructed; and
- the building work maintenance or use is for the purposes related to the purposes for which the land was acquired or appropriated.
- Appropriation for planning purposes and engaging section 203 is the equivalent of compulsory purchase and the same degree of necessity and justification for the interference is required. The public benefits should outweigh the interference with third party rights. This test has been set out in detail in the report.

Section 204 of the HPA 2016 provides for compensation to be paid to those parties whose rights are affected. Compensation under section 204 of the HPA 2016 is calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965. It is generally based on the reduction in the value of the claimant's land rather than any ransom value. If there is a dispute about the amount of compensation which is due, the matter can be referred to the Upper Tribunal for determination.

Section 232(1) and (6) of the Town and Country Planning Act 1990 permits the Council to further appropriate land held for planning purposes for any purpose for which an enactment permits the Council to acquire land. One such enactment is the Housing Act 1985 (HA 1985). Section 17 under Part II of the HA 1985 empowers the Council to acquire land for housing purposes including the construction of homes whether to use such land itself to accommodate people or grant an interest to third parties including a Council subsidiary. Recommendation 2.8 is to appropriate the Land for housing purposes pursuant to Section 232 of the TCPA 1990 once section 203 of the Housing and Planning Act 2016 has been engaged.

Under section 74(1) of the Local Government and Housing Act 1989 income and expenditure relating to land and buildings held for the purposes of Part II of the Housing Act 1985 (housing purposes) must be accounted for in the Council's Housing Revenue Account.

Mrinalini Rajaratnam – Chief Solicitor Planning and Property 14 March 2025

Background Papers Used in Preparing This Report

None.

DETAILED ANALYSIS

Proposals and Analysis of Options

Background

1. Hartopp Point and Lannoy Point were two 14 storey Tower Blocks that were built in the early 1970s, using a construction method called a Large Panel System (or LPS).
2. In April 2019, and following consultation with residents, Cabinet took the decision to demolish the two blocks, acquire vacant possession by way of a Compulsory Purchase Order and offer residents a compensation package.
3. The decision to demolish followed extensive surveys of the blocks which identified serious structural defects linked directly to the construction system used which gave rise to health and safety issues.
4. The Compulsory Purchase Order which was granted in December 2019 and the blocks were demolished in 2020/21. The CPO required quantitative and qualitative enhancement of housing provision within 10 years.
5. Plans for redevelopment of the Land which were coproduced with residents of Aintree Estate only commenced once the demolition had reached a safe level.
6. On the 6/6/22 cabinet delegated authority to the Strategic Director for the Economy, in consultation with the Director of Resources, to progress the appropriation of the Site for planning purposes and the use of powers under

Section 203 of the Housing and Planning Act 2016 in order to authorise any interference with easements, covenants and other rights in respect of the Site including authorisation to take all necessary steps required in relation to any associated claims, settlements and legal agreements so as to enable the Development of the Site. .

7. On the 21/2/23 the Cabinet Member for the Economy approved the contract of £49,142,058 with Higgins Partnership PLC for the design and construction of the Hartopp and Lannoy development site through to practical completion due in 2026.
8. In March 2023 the Council entered into a building contract with Higgin's partnership for the redevelopment of the site for housing and associated external amenities. The construction work is ongoing and due for completion in March 2026.

The Redevelopment

9. The redevelopment of the Land as approved by the Permission (ref: 2022/01346/FR3) will see 134 new homes of which at least 112 are affordable. This number and type of homes represent both a quantitative and a qualitative enhancement of housing provision in the borough in comparison to the former use of the site.
10. Further, the redevelopment will make a better and more effective use of the site which will include a new play area and improved public realm.
11. As per the Permission the redevelopment would be in accordance with the Local Plan, the London Plan, the National Planning Policy Framework and offers the opportunity for the delivery of a substantial number of affordable homes which would represent "a meaningful contribution towards the Borough's housing need and housing choice" by delivering 134 new homes, at least 85% of which will be affordable homes in compliance with 60%:40% tenure split (social rent: intermediate). Further and as set out in the Planning Committee report, which recommended approval of the application, the redevelopment will make a better and more effective use of what is currently a brownfield land through the creation of homes that directly support the economic growth and competitiveness of the locality, in particular, and inner London generally.

The public interest benefit from the redevelopment

12. There are clear public interest benefits to be realised from the redevelopment proceeding which are set out in broad term in this report.
13. The redevelopment's aim is to create a lasting and positive legacy of a well-designed inclusive, accessible residential development with energy efficient buildings, to transform the locality into one that caters for the safety and wellbeing of local residents as well as offering social and economic benefits including employment and training during the construction stage.
14. These clear public interest benefits to be realised from the redevelopment proceeding including:

- The creation of a new public realm/estate amenities and open space with children's play-space and landscaping features serving the needs and wellbeing of existing and future residents;
 - The incorporation of Secure by Design principle to mitigate against and design out Anti-Social Behaviour so as to eliminate where possible the issues experienced by residents of the estates that were attributable to the 1960s design of the demolished blocks and their underground garages and hidden walkways.
 - Making tangible improvements to local biodiversity and support sustainable environmental objectives through high energy efficiency, reduction of water usage, reduce car use and the incorporation of electric vehicle charging points,
 - A significant contribution to the council's commitment to net zero carbon future as well as the delivery of genuinely affordable accessible and inclusive homes,
 - The creation of a positive social and economic legacy during its whole lifecycle starting with the construction stage which will create direct and measurable benefits to the locality by way of training, apprenticeship, and employment to residents as well as the planned incorporation of local small and medium-sized enterprises (SMEs) into the construction supply chain. The social and economic benefit of the sustainable homes which will be enjoyed by residents not only in terms of low-cost energy but also their impact and carbon footprint in perpetuity,
15. In summary, the redevelopment would assist with achieving the regeneration aspirations of the locality and the wider area, stimulating economic growth, resulting in significant public benefits in accordance with the Local Plan 2018 and in line with the core planning principles in National Planning Policy Framework December 2023 and Policies H01, H03, DC1, DC2 and DC3 of the Local Plan 2018.
16. It must be noted that the redevelopment is realisable and achievable having already received planning consent under the Permission in March 2023 and the site having already been handed over to the construction contractor with work having commenced late 2023.

The Need for Appropriation

17. The need to appropriate the Land for planning purposes is to realise the public interest by overriding of third-party rights that would otherwise delay or prevent the redevelopment and realisation of the public benefit.
18. Section 122 of the Local Government Act 1972 provides a power to the Council to appropriate any land which is no longer required for the purpose for which it is currently held to any other purpose for which the Council is authorised to acquire land by agreement.

19. Where land has been appropriated for planning purposes, the powers set out in Section 203 of the Housing and Planning Act 2016 ("**section 203**") can be engaged to override third party rights if:
 - planning consent exists for the redevelopment,
 - the redevelopment 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 redevelopment; and
 - the appropriation was for the purpose of enabling the redevelopment.
20. 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 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.
21. 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.
22. In practice, section 203 means that any beneficiaries of third-party rights that are interfered with, because of the carrying out of the development, cannot prevent the redevelopment from proceeding by seeking an injunction from the courts, and as a result the redevelopment proposed can proceed. However, those with benefit of the rights that are interfered with will be entitled to compensation which will be calculated based on the diminution in value of their land.
23. Certain properties have been identified which are likely to benefit from a right to light over the Land to be redeveloped. Analysis shows that several 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 redevelopment could be prevented from proceeding.
24. Accordingly, the purpose of this report is to approve the appropriation of the Land for planning purposes and the engagement of section 203 of the HPA 2016 so that the third-party interests can be overridden, allowing the redevelopment to proceed to realisation of the public benefit interest.

Appropriation

25. An appropriation for planning purposes is a reference to an appropriation of a land for a purpose (or purposes) for which it can be acquired compulsorily or by agreement under sections 226 or 227 of the Town and Country Planning Act 1990 (TCPA).

26. Section 226 of the TCPA provides that a local authority (subject to the authorisation of the Secretary of State) has the power to acquire compulsorily any land in their area, if it considers that this will facilitate the carrying out of a development, redevelopment, or improvement on or in relation to the land; or is required for a purpose which is necessary to achieve in the interests of the proper planning of an area.
27. Under Section 226(1A), a local authority may not acquire land compulsorily, for the purpose facilitating the carrying out of development, unless they consider that the development is likely to contribute to the achievement of one or more of the following objectives:
 - the promotion or improvement of the economic well-being of their area,
 - the promotion or improvement of the social well-being of their area,
 - the promotion or improvement of the environmental well-being of their area.
28. Under Section 203 the Council has powers, in relation to land it acquires or appropriates for planning purposes, that would allow a development to proceed, notwithstanding that it would interfere with the rights to light of neighbouring affected properties; provided it is carried out in accordance with granted planning permission.
29. Section 203 operates by translating the right of an owner of an affected property or interest from one that can be enforced by way of an injunction to an entitlement to compensation only. The compensation is assessed against compulsory purchase compensation principles based on the diminution of the value of the affected property because of the interference with the right or in other words, compensation is calculated on the same basis as a compensation payable under the Compulsory Purchase Act 1965.
30. The protection provided by Section 203 applies both to the Council, were it to undertake a development, and to any third-party deriving title from the Council.
31. For Section 203 of the 2016 Act to be utilised and come into effect, the redevelopment would need to have received a planning permission and the Council must hold an appropriate interest in the land, the freehold in this case which could have acquired, under Section 227 of the 1990 Act, as such acquisition would satisfied the requirement in Section 226(1A) of the 1990 Act as it would facilitate the redevelopment and would contribute to the economic, social, or environmental well-being of the area.
32. However, it is necessary to consider whether the facilitation of a redevelopment would justify an interference with private rights of third parties. In considering this, regard should be had to the advice and guidance contained in the current Ministry of Housing, Communities & local Government Guidance on Compulsory Purchase (October 2015).
33. Fundamentally, the decision to interfere with third party rights should only be made where it is necessary, where there is a compelling case in the public interest and the Council should be certain that the use of these powers is necessary, proportionate, and justified to interfere with human rights of those to

be affected. Consideration has been given to the provisions of Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights.

34. The explanatory note relating to the 2016 Act is helpful in indicating the underlying objective of the provisions. Regarding section 203 powers it provides guidance that the requirement (section 203(2)(c)) that the authority 'could' acquire the land compulsorily for the purposes of the redevelopment was intended only to require that the authority had the relevant enabling powers, not that the land was acquired under a Compulsory Purchase Order.
35. The return of the appropriated land from being held for planning purposes to be held for housing purposes is permitted under section 19(1) of the Housing Act 1985 and section 232 of the 1990 Act.
36. The appropriation of this Land would require consent of the Secretary of State under Section 232(2) of the 1990 Act due to construction having begun on site.
37. Right of light negotiations with those third parties identified by the Council as impacted by the development commenced in August 2024. Further details can be found in exempt Appendix 3.

Use of Section 203 – Considerations

38. The effect of Section 203 is to allow beneficial regeneration to take place without the risk of injunction being granted to prevent the development from being carried out. However, it is recognised that this can involve the interference with human rights – in particular, the right to peaceful enjoyment of possession and the right to respect for private and family life and home.
39. This report sets out the consideration that demonstrate why the proposed use of the council's statutory powers to override easements and rights is appropriate, reasonable, and necessary.
40. These considerations are set out below:

a. Consideration 1: The use of statutory powers is required in that:

- I. The infringements cannot reasonably be avoided,
- II. The easements to be interfered with cannot reasonably be released by agreement with affected owners,
- III. The redevelopment is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks.

b. Consideration 2: The use of statutory powers will facilitate the carrying out of the redevelopment.

c. Consideration 3: The redevelopment will contribute to the promotion and improvement of the economic, social, or environmental well-being of the area and therefore be in the public interest.

d. Consideration 4: The benefits of the redevelopment could not be achieved without giving rise to the infringements of the identified rights.

- e. **Consideration 5:** Is it in the public interest that the redevelopment is carried out?
- f. **Consideration 6:** Is the public benefit to be achieved proportionate to the private rights being infringed by the action of Section 203?

Application of criteria for application of a successful Section 203

- 41. The following criteria apply in relation to the application of Section 203 powers:

Considerations 1 and 2:

- 42. The development of the Land, in line with a granted planning permission, would result in an infringement of, or interference in, one or more rights or interests as defined in Section 205(1) of the 2016 Act or breach of a restriction or covenant on or affecting the land which cannot be reasonably released or resolved. While voluntary agreements with those whose rights are affected will be sought, without certainty of extinguishment of such rights within reasonable time, the redevelopment might not proceed, and its benefits realised.
- 43. The engagement of Section 203, at the appropriate time, will facilitate the redevelopment which may not proceed without the engagement of Section 203. Without this the redevelopment will be at risk of claims for injunctive relief from rights holders relating to actual or anticipated interference with easement rights or covenants.
- 44. Lengthy legal proceedings initiated by any affected party may severely affect the viability and deliverability of the redevelopment especially as part of the funding for the redevelopment is time critical.

Considerations 3 to 6:

- 45. The successful application of Section 203 requires the establishment of a compelling public interest or benefit. This Development will bring about a material improvement of the social, environmental, and economic wellbeing of the area while at the same time mitigating the impact of the additional homes on surrounding streets through the Development being car-free zone.
- 46. Importantly, officers have considered and balanced the significant public benefit to be gained from the redevelopment against the interference with the private rights of the landowners affected. It is believed that the use of the powers under section 203 would be proportionate and justified as a result of a public benefit identified in this report that significantly outweighs potential interference in the individual's rights including human rights and in particular Articles 1 and 8 of the ECHR. Affected landowners will be compensated properly and on a timely basis, in line with statutory guidance.

Third-Party Rights

47. A third-party right is a right enjoyed by a third party over land owned by another party, one type of such third-party right, being a right of light. A right of light is a long-established legal right which can be acquired by a property having access to, and use of, light crossing another property, for 20 years or more, after which the right is “deemed absolute and indefeasible... unless it... was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing”¹. It is anticipated that the redevelopment will infringe the rights of light of several neighbouring properties in varying degrees of magnitude.
48. Any interference with a property’s right of light may be prevented by an injunction granted by the Courts. Typically, developers will seek to avoid this risk by reaching private settlements with those whose properties are affected so as to release rights of light and permit interference with the rights, subject to payment of compensation. If an agreement cannot be reached, affected parties might be able to delay or prevent a development from proceeding by threatening, or seeking, an injunction.
49. Appropriation of land for planning purposes and engaging the powers of section 203 of the HPA 2016 translates the right of an owner of an affected property or interest from once enforceable by an injunctionable right to an entitlement to compensation only. The compensation is based on the diminution of the value of the affected property because of the interference with the right of light.
50. The redevelopment will deliver substantial public benefits that far outweigh any potential interference in any third-party rights. Public benefits can be summarised into three distinctive categories:

Economic Wellbeing Benefits

51. The Economic Wellbeing Benefits of the appropriation include:
- 134 new homes of which at least 85% (112) will be affordable,
 - Training, apprenticeships, and employment during construction; and
 - Local SMEs within construction supply chain.

Social Wellbeing Benefits

52. The Social Wellbeing Benefits of the appropriation include:
- 134 new affordable homes within a well-designed and inclusive development; and
 - New energy efficient, accessible, and secure by design homes for residents, designing out anti-social behaviour.

Environmental Wellbeing Benefits

53. The Environmental Wellbeing Benefits of the appropriation include:

¹ The Prescription Act 1832, section 3; Claim to the use of light enjoyed for 20 years

- A significant contribution to the council's commitment to net zero carbon future,
- Tangible improvements to local biodiversity and reduction of water usage,
- 134 energy efficient new homes,
- Reduction in car usage (the scheme has been designed as a car free development) and incorporates electrical vehicle charging points for the remodelled parking spaces for existing residents; and
- New public realm, landscaping, and children's play areas.

Steps taken to negotiate the release of rights by agreement

- 7.46 Before deciding 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. Reasonable enquiries were undertaken including land registry title searches, and in respect of council-owned properties, checking report on title for the Site and the council's leasehold and tenancy details to ascertain those whose rights may be interfered with because of the redevelopment.
- 7.47 To assist with such analysis, the council engaged specialist rights of light consultants to identify parties potentially benefiting from rights to light that could be infringed by the redevelopment. The technical analysis of the potential impact of the redevelopment indicated that 18 out of 41 buildings assessed may be impacted to a degree that is actionable and potentially compensatable.
- 7.48 In August 2024 letters were sent to all identified potentially affected parties with long term property interests indicating the council's intention to appropriate the Land to planning purposes and inviting comments – see exempt Appendix 2.
- 7.49 The Council will engage with all parties raising concerns over the impact on the redevelopment and seek voluntary surrender where possible. However, it is the view of officers that it is highly unlikely that it will be possible to reach agreement with all affected parties to release all necessary rights within a reasonable time or at all.
- 7.50** It is therefore clear that for the redevelopment to proceed within a reasonable timescale and without the risk of injunction, it is necessary for the council to appropriate the land to secure the benefits associated with the redevelopment. As a result, officers are of the view that unless the land is appropriated for planning purposes to engage the override provisions of section 203 of the 2016 Act the redevelopment proposals for the Land occupied by the former Hartopp and Lannoy site could be substantially delayed.
- 7.51 On identification of the degree and extent of the impact on third parties, the council will seek voluntary settlements by agreement. However, it is anticipated that in most instances the level of interference may be negligible and not noticeable and, in some instances, may have a noticeable positive impact.

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

- 7.52 Considerations were made to whether the redevelopment could proceed and achieve the public benefit but without interference with the third-party rights and the outcome was that the redevelopment could not proceed and realise the associated benefits identified without giving rise to all or some of the infringements for which section 203 is being engaged.
- 7.53 Reducing the extent of the redevelopment to a point where no rights are interfered with, would result in a fundamentally different redevelopment which will not allow the realisation of the public benefit of the current proposal, either in part or in full.
- 7.54 Importantly, reduction of the redevelopment to a level that would not interfere with third party rights would result in a redevelopment that would not deliver the qualitative and quantitative housing gain in line with previous Council and Cabinet approvals and under which the council committed to delivering both qualitative and quantitative housing gain.
- 7.55 And so, any reduction of the redevelopment to such a level would defeat the public interest benefit from the redevelopment.
- 7.56 In addition, restricting the footprint and height of the new development to that of the scheme that was demolished, to not interfere with third party rights would not be a feasible option as it would not provide the additional affordable housing, public benefits, or funding for the redevelopment.
- 7.57 Should any third parties seek judicial review before third party rights are extinguished the delivery of the scheme will be adversely affected both in terms of additional construction costs and delays to the programme for the delivery.

Human Rights Issues

As indicated above, consideration must be given to any 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 as set out in this report and the planning decision referenced earlier, the fact that:

- There is no feasible alternative means of achieving that public benefit,
- There is a compelling case in the public interest for the use of the powers to override rights,

- Compensations are available to those whose rights are overridden and are calculated on a diminution in value basis as a compensation payable under the Compulsory Purchase Act 1965,
- And that the interference with the private rights of those affected would be lawful, justified, and proportionate.

Conclusion

54. It is the conclusion of this report that:

- The Land (currently occupied by the former Hartopp and Lannoy site) and edged red in Appendix 1 is no longer needed for its current purpose,
- There is a compelling case in the public interest to appropriate the Land for planning purposes 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,
- Those impacted would be entitled to compensation to be assessed against compulsory purchase compensation principles based on diminution of the value of their property because of the interference with rights or easements,
- Authority is required to further appropriate parts of the Land for the intended permanent use.

Analysis of Options

Option 1: Do nothing (not recommended)

- The “do nothing” option would mean not proceeding with this decision as Cabinet has already approved proceeding with the redevelopment.
- Not proceeding with this decision but proceeding with the redevelopment would prejudice the redevelopment due to the very real risk of injunction and the lengthy and protracted process voluntary release process that would either significantly delay the redevelopment or ultimately result in its cancellation.
- The delay to be caused by not proceeding with this decision may put at risk the council's commitment under the Compulsory Purchase Order granted in December 2019 to delivering a quantitative and qualitative housing gain on Land within 10 years of The Compulsory Purchase Order granted in December 2019 and would be at odds with the 2022 Cabinet and Council approvals.
- Ultimately not proceeding with this decision would postpone the delivery of much needed genuinely affordable housing in the Borough and realisation of the public interest benefit.

Option 2: Approve this report's recommendations (recommended)

- This is the recommended option as it will allow the redevelopment to proceed to through construction stage; safe of injunction so as to realise the public benefit, increase provision of genuinely affordable homes in the borough; safeguard the council's investment so far; and redevelop the Land in line with the design that were co-produced with residents.

Reasons for Decision

55. The use of the council's powers to appropriate the Land and engage Section 203 will ensure that the redevelopment plans can proceed, in accordance with the planning permission already granted, to provide 134 homes of which at least 112 (84%) will be affordable.
56. The appropriation of the Land for planning purposes is in recognition of it not being needed for the purpose it is currently held following the demolition of the Hartopp Point and Lannoy Point blocks on health and safety ground.
57. This decision, if approved, will be in recognition of the compelling public interest case to facilitate the redevelopment through the use of the council's statutory powers.
58. This report sets out why, on balance, the unavoidable interference with private rights of affected landowners to facilitate the redevelopment and achieve the public interest case was deemed to proportionate and justified due to the public benefit significantly outweighing the potential interference in individual landowners' rights including human rights and in particular Articles 1 and 8 of the ECHR.
59. The council having entered into an unconditional contract with a construction contractor and having handed the Land over to that contractor to commence construction demonstrate that the public benefit is reasonably realisable and achievable.
60. This decision, if approved, also recognises the right of affected landowners to be compensated properly and on a timely basis, in line with statutory guidance.

Equality Implications

61. 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:
- eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act;

- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

62. Consideration has been made, in anticipation of this decision, to whether it was possible, at this stage, to ascertain and mitigate against any negative impact this decision may have on persons with “protected characteristics” (in this context the most obvious group being visually impaired disabled persons).

63. The Council being minded of its duty, under the Act, to make “reasonable adjustments” to assist persons with protected characteristics, will consider the impact of this decision on a case-by-case basis, seek to inspect properties, carry out measurements and understand impact before seeking to agree reasonable adjustment with affected any individual.

64. An Equalities Impact Assessment for the redevelopment was carried out and incorporated into the Cabinet decision dated 6/6/22 authorising the development to proceed. The assessment evidenced the Council’s compliance with its statutory duties prescribed in the Act. An updated Equalities Impact Assessment has been completed (see appendix 4) relating to the impact of the proposed appropriation.

65. See Appendix 4 for the completed Equality Impact Assessment.

Risk Management Implications

66. The report recommends steps to be taken by the Council to progress the development of 134 homes on the site, making appropriate use of powers (including s203), following consultation and negotiations with parties whose rights would be affected by the development. The approach taken is intended to mitigate the risks of legal challenge and delay so that the benefits, as set out in the paper, can be delivered, in line with the Council’s objectives.

67. The report sets out the need for appropriation along with the clear public interest benefits for appropriation, through the use of the powers available to the Council to appropriate the land for planning purposes. The report sets out how those whose rights would be impacted would be entitled to compensation.

68. The delegations being sought in the report will help to ensure that the Council complies with all relevant requirements in taking the decisions needed and using the powers identified to progress the scheme.

David Hughes, Director of Audit, Fraud, Risk and Insurance, 5 March 2025

Climate and Ecological Emergency Implications

69. The proposals for the Hartopp and Lannoy site will target operational net zero for the new development and will aim to promote the climate emergency via a variety of different methods measured using the council’s sustainability tool

kit. The proposal includes for the installation of solar panels and communal air source heat pumps.

70. The design has considered multiple factors to promote ecological benefits of the project, which include avoiding converting green space to hard surfacing and use underutilised space for planting, such as green/blue roofs. The design will also look to provide a SUDS drainage system and ensure all new building models and mitigates future overheating risk, with adequate ventilation (through MVHRs) and shading. The Development will also convert hard surfacing to green and permeable surfacing where possible and install sustainable drainage systems. This scheme will be built to full passivhaus standard.

Hinesh Mehta, Assistant Director of Climate Change, 10th March 2025

LIST OF APPENDICES

Appendix 1 – Plan of the land to be appropriated

Exempt Appendix 2 – List of properties affected by the appropriation

Exempt Appendix 3 – consultation with affected residents

Appendix 4 – Equalities Impact Assessment