

WESTMINSTER CITY COUNCIL

STATEMENT OF DECISION

**SUBJECT: LUXBOROUGH STREET DEVELOPMENT, LONDON, W1U -
APPROPRIATION FOR PLANNING PURPOSES**

Notice is hereby given that Councillor Paul Swaddle OBE, Cabinet Member for Finance and Smart City, has made the following executive decision on the above mentioned subject for the reasons set out below.

Decision

The Cabinet Member for Finance and Smart City has approved:

1. To appropriate the land (edged red in the plan attached at Appendix A) for planning purposes pursuant to section 122 of the Local Government Act 1972 as it is no longer required for the purpose for which it is currently held, and the Council believes that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land pursuant to section 226(1)(a) of the Town and Country Planning Act 1990). The appropriation will subsequently allow the Council to use its powers under section 203 of the Housing and Planning Act 2016 in consultation with the Director of Law to override any easements and other rights of the affected neighbouring properties that are infringed upon.
2. To delegate authority to the Executive Director for Growth Planning and Housing in consultation with the Director of Law:
 - a. to deal with any necessary arrangements to record the appropriation of the Site for planning purposes including the transfer of the land from the Housing Revenue Account (HRA) to the General Fund account (GF) at the current red book value; and
 - b. to negotiate and enter into agreements by deed and payment of compensation for the release of third-party rights where this can be achieved on reasonable terms within a reasonable timescale; or
 - c. to take all necessary steps to settle claims for compensation under section 204 of the Housing and Planning Act 2016.

Reasons for the Decision

1. The Council is satisfied that the scheme will contribute towards meeting the City for All objectives, in particular Greener and Cleaner, Vibrant Communities and Civic Leadership and Responsibility.
2. The Council's City for All objectives set a commitment to deliver 1,850 affordable homes by 2023.

3. The Site is no longer required for the purpose for which it is held by the Council, which is vacant land previously used as a kick about site as advised at paragraph 2.1 of the Cabinet Member report. The proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or any part, of the area (section 226(1)(a) and (1A), TCPA 1990) in the following ways:

a. *Economic Well-Being of the area*

- i. Enhancing local employment opportunities i.e. the creation of construction jobs and apprenticeship opportunities;
- ii. Providing the Council with additional affordable housing; and
- iii. The project will regenerate a site comprising of 14 affordable housing units as well as a nursery (commercial D1 space) on the ground floor.

b. *Social Well-Being of the area*

- i. The new development will contribute to much needed housing in Westminster, where there is high demand for affordable housing. The nursery will also address the need of one in the area as advised by the local community through consultation.

c. *Environmental Well-Being of the area*

- i. The development will provide landscaping to the Luxborough Tower residents; and
- ii. The building will be sustainable using renewable energy sources.

4. In order to progress the scheme and avoid delays to the programme, the officers are seeking Cabinet Member authority to be able to appropriate the Site and authorise the use of any necessary powers under section 203 Housing and Planning Act 2016 if required. By exercising its powers, the Council will ensure that its development of the land proceeds in accordance with the planning permission already granted.

5. Appropriating the land for planning purposes would enable certain private third-party rights to be overridden, subject to payment of statutory compensation to those affected. This will help to ensure that development of the Site can proceed in accordance with the planning permission granted, and meet the scheduled completion date.

6. There is a pressing need for new homes within Westminster, particularly those of an affordable tenure. The development will deliver much needed affordable housing and a new D1 commercial space, which will greatly contribute to improving the economic, social and environmental well-being of the local area as described in point 3 in the reasons for decision stated above.

7. The development of the Site will create a right to light infringement. A Rights to Light assessment was undertaken during RIBA Stage 2, and it was identified that Rights of Light injuries are anticipated. A specialist Right of Light surveyor has therefore been instructed.

8. The Council has instructed the Rights of Light surveyor to also undertake due diligence on where negotiations were left with various residents on the 2014 scheme in addition to any new negotiations. The Council recognises that in respect of third-party rights of light which exist and to which an entitlement is proved, the Council will be liable to pay compensation (whether statutory or non-statutory) and will pursue a settlement strategy to ensure that any claimants receive adequate compensation.
9. The Council's Rights of Light consultant has issued letters to all the potentially affected parties inviting them to commence negotiations with the Council. Negotiations with the affected third parties have commenced, but will not be formalised and compensation will not be paid until the Cabinet Member provides the decision to do so in accordance with this report.
10. Whilst investigations are continuing, it is highly unlikely that it would be possible to identify and extinguish all third-party rights which burden the land by private agreement before development is due to commence in January 2022. It should be noted that the Council has received various strong objections to the scheme to date, the Council may never actually hear from some of the affected third-parties, and some may refuse to co-operate on a reasonable basis and within a reasonable time. If the land is not appropriated before the development is commenced and any infringement of a third-party right occurs, the primary remedy for the affected party would be to seek an injunction preventing the development. The court can award damages where it considers this an adequate remedy. The consequences of such proceedings for the Council, if successful, could be to prevent delivery of the development or even if unsuccessful, would risk causing delay.
11. In balancing the benefits of the development and the concerns of those whose rights it is proposed to override, there is clear evidence that the public benefit, in the form of the provision of new homes to meet local needs and a new commercial D1 space outweigh the private loss. The Council will continue with the negotiations after the Site has been appropriated, and compensation will be payable to those who suffer a relevant loss. The Council intends to only rely upon its entitlement to pay statutory compensation if negotiations are unsuccessful. Overall, it is considered that there is a compelling case in the public interest to facilitate this development and that appropriation of the land is necessary.

Stuart Love, Chief Executive
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