

Appropriation of land for Affordable and Social Housing Developments from the General Fund, into the Housing Revenue Account



Report to:	Cabinet
Date:	12 September 2024
Portfolio Holder:	Councillor Dan Swords, Leader of The Council
Lead Officer:	James Gardner, Assistant Director - Regeneration and Commercial Development (01279) 446449
Key Decision:	Yes
Forward Plan:	Forward Plan number is I017323
Call In:	Call-in procedures apply
Corporate Missions:	Transform Harlow Housing Rebuild our town
Wards Affected:	Bush Fair Church Langley South and Potter Street Summers and Kingsmoor

Executive Summary

- A** The Council House Building Programme Cabinet Report – March 2022, set out the ambition to deliver a variety of Council owned and operated accommodation for Harlow Residents.
- B** As part of delivery processes, some sites currently held as assets within the General Fund require appropriation to the Housing Revenue Account to ensure that the new homes are for the benefit of the Housing Revenue Account and that appropriate funding of delivery is utilised.

Recommended that:

- A** Cabinet agrees to appropriate the land at the sites 96 Potter Street (Former Neighbourhood Office), Elm Hatch & Former Staple Tye Depot Site on Perry Road to the Housing Revenue Account, for the purpose of Part II of the Housing Act 1985.
- B** Cabinet delegates authority to the Leader of the Council and Chief Executive to approve the appropriation of the individual sites identified subject to the receipt of an officer report with individual site valuations to affect the appropriation under section 122 of the Local Government Act 1972.

Reason for decision

- A** The Housing Revenue Account (HRA) is a ring-fenced fund. Whilst the Council is generally able to transfer property assets in its holdings, between uses, without specific resolution, property assets cannot be moved in or out of the HRA except through appropriation by way of Cabinet resolution.

Other Options

- A** By not appropriating the land, the developments would not come forward in the way planned and the additional council homes and renewal schemes would not be delivered.

Background

1. The Council House Building Programme is delivering high quality and energy efficient social-rent homes across a variety of sites in Harlow. It is also delivering significant neighbourhood renewal in line with the council's corporate missions.
2. The sites currently being developed include parcels of land that have been held within Council ownership for significant periods, as well as the Parnall Road land parcel that was purchased from open market to contribute to increased housing delivery.
3. The Council holds property assets and land parcels for several purposes. A significant number of assets are held in the General Fund (GF) but housing is predominantly held in the Council's HRA.
4. Whilst the Council is generally able to transfer property assets in its holdings, between uses, without specific resolution, property assets cannot be moved in or out of the HRA except through appropriation by way of Cabinet resolution. This is because the HRA is a ring-fenced fund.

5. As part of the delivery of 22 new homes which form part of the Council House Building Programme, it is necessary to seek authorisation to appropriate the land owned by the Council referred to in the report as:
 - a) 96 Potter Street (Former Neighbourhood Office) (5 flats)
 - b) Elm Hatch (6 flats & 1 House)
 - c) Former Staple Tye Depot Site on Perry Road. (10 houses)
6. Valuations of the properties to be appropriated will be carried out prior to process finalisation.

Issues/Proposals

7. Section 122 of the Local Government Act 1972 states that:
 - a) *“...[the] council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation...”*
8. It is established that sites (or parts thereof) identified in this report are not currently held as housing land.
9. To appropriate the land to the HRA (or any parts of it), the provisions of the Section 122 of the local Government Act 1972 will need to be satisfied, namely that the area of land in question is no longer required for the purposes for which it was held immediately before appropriation.
10. It should be established that the relevant area of land should be appropriated such that it becomes held for housing purposes by applying the test set out in Section 226 (1) and (1A) of the Town and Country Planning Act 1990. The Council will need to consider the following factors:
 - a) Identification of the purposes for which the land is currently held;
 - b) Whether the land is no longer required for that purpose;
 - c) Whether the appropriation will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land and whether this is likely to contribute to the achievement of the economic, social or environmental well-being of the area.
11. It should be noted that:

- a) The land at 96 Potter Street is currently held for Community Uses and was formerly the site of the Potter Street Neighbourhood Offices.
- b) The land is no longer required for this purpose as the Neighbourhood Office.
- c) The land at Elm Hatch is currently held for Commercial Purposes. Part was formerly occupied by a Public House, which has subsequently been demolished, and the remainder is currently occupied by the Elm Hatch retail facility.
- d) The existing retail space is being re-provided as part of the approved development and the land occupied by that part of the development will remain within the GF.
- e) The land at the Staple Tye Depot in Perry Road was held for Operational Purposes and was formerly an operational depot for HTS.
- f) The depot site is no longer required for operational purposes.
- g) The site was allocated, within the Adopted Local Plan, for housing development.
- h) All sites are being delivered in line with relevant planning approvals.

Implications

Equalities and Diversity

This proposal does not have any implications for equalities and diversity on the basis that it is procedural only.

Climate Change

This proposal does not have any implications for climate change on the basis that it is procedural only.

Finance

Assets will be reclassified on the councils balance sheet as Housing Revenue Account Assets following the appropriation transfer from the General Fund. Any costs associated to the assets will be the responsibility of the HRA.

Author: Jacqueline Van Mellaerts, Assistant Director – Finance (Deputy Section 151 Officer)

Governance

The general power of appropriation is set out under section 122 of the Local Government Act 1972. Under this section appropriation may be made where the land is no longer needed in the public interest of the locality for the purpose for which it is held immediately before appropriation. In this regard, a broad view of local need (taking account of the interests of all residents in the locality) has to be taken and officers consider that this test has been met. Officers are also satisfied that the use of appropriation would be in the public interest and

proportionate to the objects of the redevelopment scheme for the purposes of the Human Rights Act 1998.

Appropriation to the HRA (as is proposed here) is specifically dealt with under Section 19 (1) of the Housing Act 1985, and gives the Council power to appropriate for housing purposes only any land for the time being vested in them or at their disposal. The Council minutes should show that the land is not currently held for housing purposes and that the Council intends to formally appropriate the land in accordance with section 19 (1) Housing Act 1985.

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Appendices

None

Background Papers

Cabinet Report dated 23 March 2023

<https://modern.gov.harlow.gov.uk/ieListDocuments.aspx?CId=121&MId=1489&Ver=4>

Glossary of terms/abbreviations used

GF – General Fund

HRA – Housing Revenue Account