

REPORT TO: CABINET

DATE: 25 FEBRUARY 2016

TITLE: THE BRIARS, COPSHALL CLOSE AND
AYLETS FIELD (BCA): APPROPRIATION OF
LAND FOR PLANNING PURPOSES

PORTFOLIO HOLDER: COUNCILLOR TONY DURCAN

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This is a Key Decision
It is on the Forward Plan as decision number I005315
Call-in Procedures may apply
This decision will affect Staple Tye Ward.

RECOMMENDED that:

- A** Cabinet agree, in principle, that the Council should exercise its statutory powers to appropriate the Land at The Briars, Copshall Close and Aylets Field (BCA) for planning purposes.
- B** Authority be delegated to the Chief Operating Officer, in consultation with the Portfolio Holders for Housing, and Regeneration and Enterprise, to take all necessary action to effect the appropriation (on a phased approach if considered appropriate).

REASON FOR DECISION

- A** The appropriation of the land for planning purposes is necessary to facilitate the redevelopment of BCA to improve the social, economic and environmental well-being of the area. Without appropriation of the land for planning purposes, there would be a risk that the proposed development would not be delivered.
- B** It is considered that the public benefit of appropriation of the land for planning purposes is likely to outweigh any private rights which might be interfered with as a result of appropriation for planning purposes.

BACKGROUND

1. BCA is being redeveloped under Harlow Council's Priority Estates Programme. In May 2015 the Council entered into a Development Agreement with its preferred partners (Countryside Properties (UK) Ltd and Home Group Developments). Planning consent for the proposed development was granted on 12 August 2015. The existing estate of 218 bungalows is to be replaced with 342 properties that include 200 affordable units.
2. Section 122 of the Local Government Act 1972 states that the Council may appropriate, for any purpose, any land which belongs to the Council which is no longer required for the purpose for which it is held immediately before the appropriation.
3. Section 237 of the Town and Country Planning Act 1990 states that any restrictive covenants and other adverse rights or interests affecting the proposed land to be appropriated for planning purposes can be overridden, thereby releasing the scheme from the risk of a third party beneficiary of such rights from obtaining an injunction to restrain the development and converting their entitlement (if any) to monetary compensation in damages. If a claim were made the remedy of compensation for injurious affection would be available by virtue of a damages claim.
4. The redevelopment of BCA is being undertaken in a phased approach. This will enable the Council and its development partners to deliver the proposed development in a managed way, causing the minimum possible disruption to the surrounding areas and those currently living on the estates. As vacant possession is achieved for each phase, appropriation will be sought as the land will no longer required for housing (Housing Revenue Account) purposes.
5. In order to deliver the proposed development, the development partners have requested that the land is appropriated for planning purposes to ensure that there are no third party rights that could prevent the proposed development from being delivered. The effect of this will be to make any third party interests that might exist subject to compensation only, and will prevent any injunctions being sought that could prevent or cause unnecessary delays in the redevelopment.

ISSUES/PROPOSALS

6. If the Council wishes to appropriate the land (or any parts of it), it will need to be satisfied that the provisions of Section 122 of the Local Government Act 1972, namely that the area of land in question is no longer required for the purposes for which it was held immediately before appropriation. The Council should also be satisfied that the relevant area of land should be appropriated

such that it becomes held for planning purposes by applying the tests 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 purpose 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.
7. It should be noted that:
- a) The land is currently being held for housing purposes, with areas of open space.
 - b) The land is no longer required for this purpose on the basis that the housing and open space that exists is no longer fit for purpose in its current state, and is in need of redevelopment in accordance with the planning consent that has been granted.
 - c) Appropriation will facilitate the development of housing that will meet the needs of the local community and which will contribute to the achievement of the economic, social and environmental well-being of the area.

IMPLICATIONS

Place (includes Sustainability)

Contained within the report.

Author: **Graeme Bloomer, Head of Place**

Finance (Includes ICT)

Formal agreement must be sought for any appropriation of land as set out in the report.

Author: **Simon Freeman, Head of Finance**

Housing

As outlined in the body of the report.

Author: **Andrew Murray, Head of Housing**

Community Wellbeing (includes Equalities and Social Inclusion)

As outlined within the report.

Author: **Jane Greer, Head of Community Wellbeing**

Governance (includes HR)

Under Section 122 of the Local Government Act 1972, 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 objectives of the redevelopment scheme for the purpose of the Human Rights Act 1998.

Section 122 of the Local Government Act 1972 requires that, prior to appropriation, the Council (in relation to the open space areas on the BCA site):

- (a) advertises its intention to do so for two consecutive weeks and
- (b) considers any objections to the proposed appropriation.

Author: **Mark Alexander, Legal Executive on behalf of Brian Keane, Head of Governance.**

Background Papers

[These are papers referred to in the preparation of the report that are not attached as appendices but that are available for public or Councillor study.]

None

Glossary of terms/abbreviations used

BCA - The Briars, Copshall Close and Aylets Field