

LEADER OF THE COUNCIL	DATE 23 November 2022
TITLE Appropriation of Land: Morris Walk	WARD Woolwich Dockyard
CHIEF OFFICER Director Regeneration Enterprise & Skills	CABINET MEMBER Regeneration
DECISION CLASSIFICATION <ul style="list-style-type: none"> • Key Decision 28-day notice issued: 28th May 2022 • Appendix One • Exempt Appendix Two • Exempt Appendix Three <p>Agree to treat the information contained in the confidential Appendices to this report as exempt from the provisions of paragraph 3 of Schedule 12A to the Local Government Act 1972 (as amended) (Information relating to the financial or business affairs of any particular person including the authority holding that information) and to agree that this exempt information contained in the confidential Appendices shall not be released to the press or public.</p> <p>Subject to call in</p>	IS THE FINAL DECISION ON THE RECOMMENDATIONS IN THIS REPORT TO BE MADE AT THIS MEETING? Yes

I. **Decision required**

This report makes the following recommendations to the decision-maker to:

- I.1 agree to appropriate land at the former Morris North estate, shown edged red on the plan in Appendix One of this report, under Section 122 of the Local Government Act 1972, from housing purposes (HRA) to planning purposes (General Fund) pursuant to Section 226 of the Town and Country Planning Act 1990 and as defined in Section 246(1) (b) of that Act, and to ensure the relevant accounting adjustments are made.

- 1.2 authorise reliance on Section 203 of the Housing and Planning Act 2016 to override any third-party rights or restrictions over the land subject to the payment of compensation in accordance with Section 204 of the that Act.
- 1.3 note the schedule of compensation payments outlined in Appendix Two of this report.
- 1.4 note the 20 July 2022 Cabinet decision approving the Fourth Deed of Variation (DoV) to the Woolwich Estates Development Agreement, which includes agreement that the Council receives 175 new homes from Lovell Partnerships Ltd at Morris North.
- 1.5 note that a further report will be submitted to the Leader to consider the further appropriation of the land at Morris North pursuant to Section 232 of the Town and Country Planning Act 1990 from planning purposes to housing purposes.
- 1.6 agree to treat the information contained in the confidential Appendices to this report as exempt from the provisions of paragraph 3 of Schedule 12A to the Local Government Act 1972 (as amended) (Information relating to the financial or business affairs of any particular person including the authority holding that information) and to agree that this exempt information contained in the confidential Appendices shall not be released to the press or public.

Signed.....
 Councillor Anthony Okereke, Leader of the Council

2. Links to the Royal Greenwich high level objectives

- 2.1 By approving the recommended decisions within this report, the decision makers are facilitating redevelopment of Morris North Estate which in turn will enable the delivery of affordable housing in Morris North, which relates to the Council’s agreed high-level objectives as follows:

- **A Healthier Greenwich** – the provision of high-quality homes with up-to-date environmental standards and specifications which reduce fuel poverty and health conditions associated with poor housing. The homes within the Morris North development will have high quality open spaces and access to play space, reduced traffic in the local neighbourhood and will also contain new landscaped areas with new tree planting.
- **A Safer Greenwich** – the provision of housing which has been designed with the inclusion of Secured By Design standards and principles.
- **A Great Place to Grow Up** – by providing a development with a mix of housing tenures, well designed open spaces, low traffic neighbourhoods and well-designed houses close to the thriving town centre of Woolwich and accessible by public transport.
- **Delivering Homes Through Economic Growth** – by combining public investment in purchasing new homes, this will enable investment confidence to deliver private investment in further development which will create local jobs.
- **A Cleaner, Greener Greenwich** – by providing housing that is better insulated there will be a reduction in the use of energy and carbon emissions. The development will also provide improved open spaces.
- **Economic Prosperity for All** – by reducing the amount of people in housing need with the associated negative consequences of being in poor housing. The improved build specification will reduce heating costs and therefore the risk of fuel poverty. The rents the tenants will pay will be at council rent levels.
- **A Great Place to Be** – a well-designed development of homes set within open spaces.
- **A Strong Vibrant and Well-run Borough** – by taking this decision the Council is accelerating the delivery of housing to meet its core objective of addressing the housing crisis.

- 2.2 The requests for approval in this report also facilitate the following priorities in the 2021- 2026 Housing Strategy:

Strand 1: Ensuring the supply of high-quality homes

Strand 2: Tackling homelessness and ending rough sleeping

Strand 3: Support for specific housing needs

Strand 4: Safe and sustainable homes for all

Strand 5: Building resilient and vibrant communities and neighbourhoods

3. Purpose of Report and Executive Summary

- 3.1 The purpose of this report is to request the appropriation of land at the former Morris North estate, from housing purposes to planning purposes. Appropriating the land for planning purposes will facilitate the carrying out of development, redevelopment and improvement of the land by enabling the Council (or its development partner) to carry out and complete the development of the land notwithstanding the existence of any third-party rights and restrictions as may affect the land at Morris North.
- 3.2 In July 2022 Cabinet agreed the Fourth Deed of Variation to the Woolwich Estates Development Agreement with Lovell Partnerships Ltd, Morgan Sindall Group PLA and Paragon Asra Housing Limited. Under this DoV, the Council will receive 175 new homes from Lovell Partnerships Ltd which will be developed on the land to be appropriated in this report at Morris North.
- 3.3 In 2019 The Royal Borough of Greenwich (Morris Walk Estate and Maryon Road and Grove Estate Woolwich) Compulsory Purchase Order 2019 (“the CPO”) was made under s226(1(a) of the Town and Country Planning Act 1990 authorising the compulsory purchase of the land as described therein for the purposes of facilitating the carrying out of the development, redevelopment and improvement of the Morris Walk Estate and Maryon Grove Estates to provide new residential units, associated access, parking and private and public open spaces.
- 3.4 Since the CPO was made, the Council has acquired all of the third-party interests on the Morris Walk Estate identified in the CPO which is required for the proposed residential development and such land has been vested in the Council. Following the acquisition of the third-party interests, the housing stock previously on the Morris Walk Estate has

been demolished as approved in April 2015 under the planning application reference 14/0127/0 as amended by 20/1755/NM.

- 3.5 Additionally, a further revised planning application was made by the developer and approved in May 2022 under reference 20/3445/R as amended by 20/3440/MA. If the development authorised by the planning permission is carried out and completed, this could potentially interfere with third party rights and restrictions over the Morris North Estate, in particular rights of light, and potentially other unidentified third-party rights. The existence of these potential third-party rights presents a risk of third parties obtaining an injunction to prevent the development being carried out and completed.
- 3.6 The Council has identified that adjoining or nearby landowners may have rights affecting the Morris North development that could potentially prevent the development from being carried out and completed. The developer's rights of light surveyors have assessed and investigated the likely level of compensation payable under Section 204 of the Housing and Planning Act 2016 if third party rights are interfered with in accordance with Section 203 of that Act and the developer has offered an indemnity for any agreed compensation payments together with payment of the affected parties' surveyor and legal costs.
- 3.7 The council has given consideration to scheme amendments to remove the need to interfere with third-party rights, but given that planning permission has been granted, amendments cannot reasonably be accommodated, and scheme variations would impact upon the viability of the scheme as well as the public benefits provided by the scheme.
- 3.8 Notice has been given to the known affected parties of the proposed exercise of Section 203 powers. The known affected parties have been informed of the impact the scheme will have on their property and they have been notified of this Leader's report seeking authority to appropriate the land for planning purposes with the intention of engaging Section 203 of the Housing and Planning Act 2016 in order to override third party rights. Known affected persons have been advised of their right to make representations including objections.
- 3.9 Where land is appropriated for planning purposes and Section 203 of the Housing and Planning Act 2016 is engaged it will mitigate the risk of third parties obtaining injunctions that could prevent the development

form being carried out and completed. If an injunction were to be obtained by third parties, this would delay or disrupt the construction process or could prevent the development from being completed altogether. Appropriating the land for planning purposes and engaging Section 203 of the Housing and Planning Act 2016 removes the risk of injunction and instead, statutory compensation would be payable to third parties whose rights are interfered with. Statutory compensation would be payable to persons whose rights are interfered with, which would be based on the loss in value of the claimant's land as a result of the interference with their rights.

- 3.10 Authorisation to appropriate land for planning purposes and to engage Section 203 of the Housing and Planning Act 2016 should always be taken in the context of having assessed the human rights implications and the public sector equality duty pursuant to Section 149 of the Equality Act 2010, which are summarised in Section 9 of this report along with the other key legal considerations to be taken into account in making a decision.
- 3.11 Since the developer is intending to rely on the benefit of Section 203 to ensure that there is no risk of an injunction to the development, the developer will be able to rely on Section 203 after it acquires the land from the council and has become a successor in title. While it is intended to appropriate all of the land included in the plan in Appendix One of this report, it should be noted that the Council will retain ownership of part of the land within the plan, upon which the new council homes will be constructed. The Fourth Deed of Variation sets out the triggers for the transfer of land to the Developer.
- 3.12 By validly appropriating the land from housing purposes to planning purposes, the developer will be able to carry out and complete the development and rely on Section 203 of the Housing and Planning Act 2016 to override the third party rights enjoyed by adjoining or nearby landowners whose rights may be interfered with by the development and to whom (where third party rights have been identified) offers of compensation have been made as detailed in this report.

4. **Introduction and Background**

- 4.1 The land at Morris North has received planning permission for the construction of 304 new homes and the Council has entered into a

Development Agreement with Lovell Partnerships Ltd who will build the development. A plan of the land at Morris North is contained within Appendix One of this report.

- 4.2 In July 2022 Cabinet approved the Fourth DoV to the Woolwich Estates Development Agreement with Lovell Partnerships Ltd, Morgan Sindall Group PLA and Paragon Asra Housing Limited.
- 4.3 The Development Agreement allows for Lovell Partnership Ltd and the Council to agree to appropriate land at the request of Lovell Partnership Ltd. The Fourth DoV details the steps that will be taken to process the appropriation of the land at Morris North.
- 4.4 As the Council will be receiving 175 new homes within the new development to be constructed by Lovell Partnerships Limited, which will be developed on the land at Morris North, the Council has agreed to appropriate the land at Morris North for Planning purposes.
- 4.5 Section 122 of the Local Government Act (1972) gives Local Authority's the powers to appropriate any land which belongs to the Council that is no longer required for the purpose for which it is held immediately before the appropriation. In this instance the land is no longer required for housing purposes, because the land at Morris North is vacant, as the former housing was no longer suitable for use. The Council had decided that the Morris North Estate requires redevelopment to better meet current and future housing needs and to facilitate social, economic and environmental improvements to the area. It is proposed to appropriate land for planning purposes to enable the continued redevelopment of the Morris Walk estate in line with the existing planning permission, and to enable Section 203 of the Housing and Planning Act 2016 to be engaged. By appropriating the land for planning purposes, the land will be held in the General Fund. The land is currently held in the Housing Revenue Account (HRA).
- 4.6 Carrying out works on land which has been acquired or appropriated by a local authority for planning purposes is authorised if it is done in accordance with the relevant planning permissions, even though it involves interference with a third-party interest, or the breach of a restriction as to the user of land arising by virtue of a contract. The interests and rights to which this applies are any easement, liberty,

privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

- 4.7 By appropriating the land for planning purposes, Section 203 of the Housing and Planning Act 2016 can be engaged which will allow the development to be carried out and completed without the risk of an injunction notwithstanding the existence of third-party rights or restrictions.
- 4.8 Right to Light is a form of easement which gives a long-standing owner of a building with windows a right to maintain an adequate level of illumination. This kind of third-party right is capable of being overridden by engaging Section 203 of the Housing and Planning Act 2016.
- 4.9 A Rights to Light survey has been commissioned which has identified that some neighbouring properties, may experience a loss to their light if the new housing development proceeds to completion. To compensate for this loss, surveyors have written to the affected parties, to offer them compensation. Appendix Two of this report details the affected parties and the amount of compensation offered.
- 4.10 It should be noted that when the land has been appropriated for planning purposes, the amount of compensation offered to the land-owners will be calculated in accordance with Section 7 and 10 of the Compulsory Purchase Act 1965. The liability for payment for compensation is enforceable against the person who interferes with the right (for example the developer) and also against the Council.
- 4.11 Appendix Two contains the potential compensation that would be payable if Section 203 is engaged, and development carried out at land at Morris North in accordance with the planning permission.
- 4.12 After the land has been appropriated for planning purposes, a further report will be written and submitted to the Leader, requesting the appropriation of the land at Morris North, from planning purposes to housing purposes. That report will then allow the land to be held in the HRA, from which the land at Morris North can be transferred to Lovell Partnerships Ltd, under the terms of the Development Agreement.

4.13 The decisions contained within this report are all subject to a three-month Judicial Review period.

5. Available Options

5.1 Option 1: Do nothing.

If this option is chosen, the development at Morris North is at risk of being built without the identified third-party rights having been converted into compensation and therefore subject to challenge in the form of third parties obtaining an injunction preventing development.

5.2 Option 2: Delay the decision

If this option is chosen the development at Morris North is at risk of being built without any third-party rights having been converted into compensation and therefore being subject to challenge, until such time as the decision is taken.

5.3 Option 3: Proceed with the recommendations contained within this report.

By proceeding with the recommendation to appropriate the land at Morris North and authorising engagement of Section 203 of the Housing and Planning Act 2016, the Council has reduced the risk of the development at Morris North being restrained by way of an injunction.

6. Preferred Option

6.1 **Option 3 is recommended**, as this option reduces the risk of the development at Morris North being restrained by way of an injunction.

7. Reasons for Recommendations

7.1 Agreement to the decisions proposed in this report will support the successful delivery of the Council's Housing Strategy 2021-2026. The five key strands set out in the strategy that this report will deliver are:

Strand 1: Ensuring the supply of high-quality homes

Strand 2: Tackling homelessness and ending rough sleeping

Strand 3: Support for specific housing needs

Strand 4: Safe and sustainable homes for all

Strand 5: Building resilient and vibrant communities and neighbourhoods

8. Consultation Results

- 8.1 Residents have not been consulted upon the recommendations contained within this report.
- 8.2 The businesses affected by the appropriation of the land at Morris North, have been contacted as detailed in Appendix Two of this report.

9. Cross-Cutting Issues and Implications

Issue	Implications	Sign-off
Legal including Human Rights Act	<p><u>Law on Decision to Appropriation</u></p> <p>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”.</p> <p>An appropriation of land 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 Town and Country Planning Act 1990 (TCPA). In this case it is necessary to consider whether the land would be capable of being acquired under Section 226 of the TCPA were it not already owned by the Council.</p> <p>The key procedural points are as follows:</p> <ul style="list-style-type: none">a) The land must already belong to the Council (it is so owned by the Council)b) The land must be no longer be required for the purpose for which it is currently held (there is no longer any housing stock on the land); andc) The purpose for which the council is appropriating must be authorised by statute (in this case appropriation for	Jennifer Muller Senior Lawyer 8 November 2022

	<p>planning purposes is authorised under the TCPA).</p> <p>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:</p> <ul style="list-style-type: none"> • 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)). <p>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:</p> <ul style="list-style-type: none"> • 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. <p>It is considered that the land in this case could be acquired compulsorily under Section 226(1)(a) in order to facilitate the</p>	
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	<p>carrying out of redevelopment and that such redevelopment would advance all three objectives identified at Section 226(1A). It is therefore considered that in light of the Council's proposals to develop the land, the land may be appropriated for planning purposes.</p> <p><u>The Law on engaging Section 203 of the Housing and Planning Act 2016</u></p> <p>Section 203 of the Housing and Planning Act 2016 (“Section 203”) provides that building or maintenance work/use which interferes with rights or breaches restrictions as to user is authorised if:</p> <ul style="list-style-type: none">• planning consent exists for the building works or use (planning consent has already been granted in this case);• the work is carried out on land that has been appropriated by the Council for planning purposes after 13th July 2016 (this requirement will be satisfied if the recommendations in this Report are approved);• the land could be compulsorily acquired by the Council for the purposes of the building works or maintenance/use of buildings or works constructed (considered below); and• the building work or maintenance/use is for purposes related to the purposes for which the land was acquired or appropriated (this would be satisfied by carrying out the development).	
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	<p>In practice, the effect of Section 203 is that once it is engaged 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 obtaining an injunction from the courts, and as a result the development proposed can proceed. However, those with the benefit of rights that are interfered with will be entitled to statutory compensation which will be calculated on the basis of the diminution in value of their land.</p> <p>As the effect of appropriation for planning purposes will enable the engagement of Section 203 it is necessary to consider whether it is justified to interfere with the rights of third parties. In making that decision regard should be given to the advice and guidance contained in the current MHCLG Guidance on Compulsory Purchase (July 2019). The decision to appropriate in order to engage Section 203 should only be made where it is necessary and where there is a compelling case in the public interest. The Council should be sure that the purposes for which the powers are being exercised justify interfering with the rights of those whose interests will be affected. The compelling case in the public interest justifying the interference with third party rights is considered below:</p> <p>Planning policy support: The planning policy support for the Development, and the planning merits of the proposals were considered by the Council's planning committee who resolved to grant planning consent.</p>	
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	<p>Public benefits: The Development proposals will result in the regeneration of the land, and the delivery of much needed new homes. The benefits of the proposal are set out in the body of this report.</p> <p>Could the public benefits be achieved in the absence of the interference with rights: 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.</p> <p><u>Human Rights</u> 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.</p> <p>Given the clear public benefit associated with the development proposals referred to in the body of the report, the compelling case in the public interest, and the</p>	
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	<p>availability of compensation to those whose rights are overridden it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate.</p>	
<p>Finance and other resources</p>	<p>The Leader of the Council is requested to agree to appropriate land at the former Morris North estate, under Section 122 of the Local Government Act 1972, from its existing Housing purposes (HRA) to Planning purposes (GF). This will enable the use of Section 203 of the Housing and Planning Act 2016, allowing for the conversion of rights into compensation.</p> <p>Appendix Two sets out the compensation that has been offered to those parties whose rights are potentially impacted by the Development at Morris North, which under the DoV agreed at Cabinet on 20 July 2022, the Council has been indemnified for these amounts by Lovell Partnerships Ltd and thus no financial implications are anticipated.</p> <p>The appropriation of this land will result in a relevant adjustment to the HRA and GF Capital Financing Requirement (CFR), this movement in CFR reflects the transfer of the asset between funds. The amount for which the CFR should be adjusted when appropriating this land, is demonstrated at Appendix Three.</p>	<p>Jason Coniam Accountancy Business Change Manager 08/11/2022</p>
<p>Housing and Safer Communities</p>	<p>The recommended decisions within this report are supported, as they will contribute to the delivery of 175 new council homes for residents of the borough, which will alleviate housing need and provide good quality affordable housing.</p>	<p>Kristian Melgaard, Interim Assistant Director of Housing</p>

		30 th September 2022
Property	<p>The valuation for appropriation purposes, which is not a Red Book valuation, is based on the special assumptions listed below:</p> <ul style="list-style-type: none"> • that a Development Agreement has been entered in to between the Royal Borough of Greenwich and Lovell Partnerships Ltd, which includes for the land to be valued. • the Development Agreement limits the ability of the Council to sell the land on the open market unrestricted. <p>The Development Agreement has been reviewed including the Development Appraisal and the development value of the site is detailed in the exempt Appendix Three to this report.</p>	David England Corporate Acquisitions and Development Surveyor 30 th September 2022
Equalities	<p>Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups.</p> <p>The proposals in this report are intended to facilitate the improvement of housing conditions and support a range of wider outcomes – in particular physical and mental wellbeing, health, and educational attainment</p>	Nick Simons Housing New Supply Manager 1 st September 2022

	<p>This report proposes the appropriation of land which will facilitate the unfettered delivery of 175 new Council homes as set out in Section 4 of the report. Because of this initiative local people will be rehoused in the new stock through the choice-based lettings allocations system. The delivery of the new homes will help the Council meet housing need, address overcrowding and will reduce the amount of homeless families that RBG has in emergency (temporary) accommodation. We know that residents in temporary accommodation receive incomes below the Borough average, and that black and minority ethnic communities are overrepresented in this form of accommodation. By increasing the amount of permanent secure and affordable accommodation for residents, the Borough will be able to reduce inequalities and deprivation for some of the most disadvantaged families within our borough, improving outcomes and life chances for these households.</p> <p>One of the contract requirements that this report will enable, is that Lovell Partnerships Limited work with Greenwich Labour Employment and Skills team to employ local people and apprentices within the work force. There will be equalities monitoring mechanisms included in the build contracts to ensure local people are employed.</p> <p>This report contributes to the Council's Equality and Equity Charter and the Council's Equality Objectives 2020-2024. The Equalities Charter actively promotes equality and works with partners and the community to ensure the Council's services</p>	
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	<p>information and products are more accessible and inclusive. The 175 new council homes will promote social cohesion by increasing the amount of affordable housing which will foster good community relations and making the borough a welcoming place.</p>	
<p>Climate change</p>	<p>The recommendations contained within this report comply with the objectives of the Carbon Neutral Plan as approved by Cabinet in November 2020, as the initiative that the appropriation of the land at Morris Walk will facilitate will ensure that new housing stock that will be added to the boroughs portfolio which can be included in the council's asset management policy to deliver stock that has low energy requirements and low carbon outputs.</p> <p>Within the planning application for these new homes the applicant has demonstrated in their Energy Assessment (August 2021) that the proposed amendments to the approved outline planning permission predict a site wide CO2 reduction of 57% (SAP10) beyond the Building Regulations Part L 2013 baseline with the remaining carbon shortfall to meet the 100% requirement addressed through a carbon offsetting contribution.</p>	<p>Nick Simons Housing New Supply Manager 1st September 2022</p>

10. Report Appendices

10.1 The following documents are to be published with and form part of the report:

Appendix One: Site Plan of land to be Appropriated.

Exempt Appendix Two: Schedule of correspondence and responses with properties identified as suffering an actionable Right to Light injury from the development at Morris North.

Exempt Appendix Three: The financial consideration for the appropriation of the land at Morris North.

II. Background Papers

II.1 Cabinet Report, 20th July 2022: Woolwich Estates Development Agreement: Deed of Variation

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