

CABINET

13 November 2012

Title: Land Appropriation at Goresbrook Village, Dagenham

Joint Report of the Cabinet Members for Regeneration and Housing

Open Report

For Decision

Wards Affected: Thames

Key Decision: No

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Summary:

Goresbrook Village ("the Site") forms part of the Estate Renewal Programme and is shown edged red on plan attached to this report ("the Plan" - Appendix 1). A master plan is currently being drawn up with plans for 149 new residential units, a new street network, a linear park and a shop ("the Scheme"). Part of the land is affected by restrictive covenant ("the Covenant") and possibly private rights of way that could impact on the proposed development. The Covenant restricts that the part of land affected should only be used as a public park and recreation ground pursuant to the provisions of the Public Health Acts 1875 to 1925 or any statutory amendments or re-enactment thereof from time to time in force and shall be used for no other purposes whatsoever.

The area of land that is the subject of the Covenant is primarily the area covered by the car park and vehicle access into Goresbrook Village and shown edged yellow on the Plan (Appendix 1). It is believed the car park was constructed in or around 1960 as part of the housing development. The Covenant is arguably obsolete as the land has ceased to be used for such purposes for many years. The Scheme will provide the new housing units private open space, and the Site is adjacent to Castle Green which is an area of open space land.

The majority of the Site was acquired from London County Council in 1936 for use as a Public Parks and Recreation Grounds. The Site was developed in the 1960's for housing. We have been unable to confirm if the Site or part of it was appropriated for planning purposes to housing land. The site is currently partly within the ownership of the HRA and partly within the General Fund. Through appropriation, the entire site will be transferred to the General Fund.

The Site also includes a publicly accessible footpath along the western boundary of the Site and is shown hatched blue on the Plan (Appendix 1). It is not a public footpath. However,

there is a risk that local residents may have acquired rights of way over the footpath from long use. It will be necessary to close the footpath and extinguish any existing private rights of way, subject to payment of compensation.

The purpose of the report is to seek appropriation of the Site from the statutory purpose of acquisition as a public park and recreation ground to planning purposes for housing re-development.

Recommendations

Cabinet is recommended to:

- (i) Agree the commencement of the land appropriation process of Goresbrook Village to planning purposes for housing redevelopment; and
- (ii) Authorise the placement of public advertisements to seek public opinion and responses to the proposed appropriation of the land edged red on the attached Plan at Appendix 1 to the report which is currently used for housing, footpath, car park and vehicle access.

Reason

To assist the Council in achieving its Community Outcome of more houses which are affordable for local people.

1. Introduction and Background

- 1.1 Goresbrook Village is one of three estates included in the Council's Estate Renewal Programme. Goresbrook Village currently consists of three 16 storey tower blocks with 276 flats that are being decanted and bought back as part of this programme.
- 1.2 In June 2012 the Council, through the HCA Delivery Development Framework, selected Countryside Properties as the preferred developer for the Goresbrook Village. Countryside Properties have done a Master plan for the site, with a plan for 149 new residential units and a replacement shop on the Goresbrook Village site. A total of 98 of the units will be affordable units and will be sold or given back to the Council to manage. Planning permission for the development is due to be submitted by Countryside Properties on 28 September.
- 1.3 The existing development consists of three tall buildings and a small shop unit, with large amounts of open space that is not used to its full potential. There is a large existing car park on the eastern side of the site and a footpath located along the western boundary of the site.
- 1.4 Part of the site shown edged yellow on the attached plan is affected by a restriction on title which states:

'A Deed affecting the land edged yellow on the filed plan dated 9 July 1936 made between 1) The London County Council and 2) The Mayor Alderman and Burgesses of the Borough of Barking contains the following covenants:-

.....That the said land hereby conveyed shall at all times hereafter be maintained by the Corporation as a Public Park and Recreation Ground under the provisions of the Public Health Acts 1875 to 1925 or in any statutory amendments or re-enactment thereof from time to time in force and shall be used for no other purposes whatsoever.'

- 1.5 This area of land affected by the Covenant includes the vehicle entrance into Goresbrook Village, and the majority of the car park as well as a portion of green space along the northern and eastern edges.
- 1.6 The master plan shows the construction of approximately 50 of the 149 units within the area affected by the Covenant. In order for the development to proceed and houses to be sold and occupied, the Council is seeking to appropriate this land for planning purposes to housing land.
- 1.7 Furthermore, the Council intends to close the footpath shown hatched blue on the Plan and is seeking to extinguish any private rights of way that may exist over the footpath resulting from long use by appropriating the site for planning purposes.

2. Proposal and Issues

- 2.1 The Covenant affects land which is no longer used as a public park and recreation ground. The land within the Covenant is currently used as vehicle access, vehicle car parking, a public path and a large earth bund used for security and noise control purposes.
- 2.2 The Covenant is believed to have been imposed on the land at the time when Castle Green had a number of pre-fabricated houses along the edges of the park, placed to house people during and after World War II and ensure there was a public space for these houses.
- 2.3 It is believed the car park was constructed when Goresbrook Village was redeveloped in the 1960s into the three existing tower blocks.
- 2.4 The proposed development will provide a higher standard of living for the residents, providing private open space, safer walking routes and play for all 149 units, whereas the current 276 units do not have any private open space. The proposed development will provide dwellings of a scale and type that is sympathetic to the surrounding area and will provide more family sized units for the residents of the Borough. The new development will also meet the Secured by Design standard and the design team has been working with the Borough's Secure by Design officer on these points
- 2.5 Castle Green, to the immediate east of the development is not being built on, nor is it being diminished in size through this development.
- 2.6 S122 of the LGA 1972 empowers a local authority to appropriate land from one statutory purpose to another. While the Covenant was imposed to retain the area of land for recreation and leisure purposes, the land is in fact currently already used for housing purposes.

- 2.7 The footpath on the western side of the development will be closed to provide land for housing. While not an adopted footpath, there may be prescriptive rights from long use. It is the Council's intention to also appropriate the footpath for planning purposes to override any prescriptive rights that may exist over the footpath and the covenant (pursuant to s237 of the Town and Country Planning Act 1990) subject to payment of compensation to affected persons.
- 2.8 The Cabinet is requested to approve the commencement of the land appropriation process to allow the Council officers to undertake the necessary steps. These include public advertisements for a specified amount of time (two weeks) and the consideration of any objections. A further report to Cabinet will follow to seek formal consent to appropriate the land with details of the outcome of the public consultation.

3. Options Appraisal

- 3.1 The first option considered was not to take any action. This is not a viable option, as the Council is aware of the Covenant and must take appropriate steps to reduce the risk of any objections and to ensure that the development can proceed and new houses can be sold and occupied in the future.
- 3.2 A second option is to seek to override the Covenant and any prescriptive rights. The Council can seek to appropriate the land for planning purposes to override the restriction as it appears to be obsolete / secures no practical benefit and interferes with reasonable use of the land. Although unlikely, financial compensation might be due to anyone entitled to benefit and able to prove loss. An indemnity insurance can be considered to mitigate such risks.
- 3.3 A third option is to seek removal or modification of the restrictive covenant through the Lands Tribunal. This is likely to be a lengthy process; and costly if objections are received. This option has not been pursued.

4. Consultation

- 4.1 Consultation has taken place internally within the Council in the following departments:
- Regeneration and Economic Development
 - Legal
 - Financial

No external consultation has taken place.

5. Financial Implications

Implications completed by: Jo Moore, Group Finance Manager

- 5.1 The main costs to be incurred in the appropriation of this land relate to incidental expenditure such as the placing of the statutory notices in the press. These costs are expected to be less than £5k and will be contained within existing revenue budgets.

- 5.2 Although in the theory the process could generate compensation claims in relation to the extinguishing of prescriptive or private rights, it is not anticipated in this particular case that these will arise. Should any claims be forthcoming these would also need to be contained within existing budgets.

6. Legal Implications

Implications completed by: Eldred Taylor-Camara, Legal Group Manager

- 6.1 The report seeks approval to commence land appropriation process to enable the site to be redeveloped. The site was acquired as public parks and recreations grounds. The conveyance contains a restriction which restricts part of the site to use as a public park and recreation ground. It is proposed to now develop the part of land into housing. Most parts of the site have been developed for housing purposes since 1960s.
- 6.2 A local authority can appropriate land held for one statutory purpose to another pursuant to Section 122 of the Local Government Act 1972 if the land is deemed to be surplus to its requirements or to facilitate development of its area.
- 6.3 The site has not been used as a public park and recreation ground since approximately 1960. The part of land affected by the covenant is currently used for car parking and access. The covenant is arguably obsolete, secures no practical benefit and interferes with reasonable use of the land. The proposed development will improve the social, economic and environmental well-being of the area.
- 6.4 The proposed development will also require the closure of footpath falling within the site. The footpath is not adopted or known to be a public footpath. However, it may be affected by prescriptive rights acquired by residents from long use. It will be necessary to extinguish these rights that may exist to ensure the proposed development can proceed.
- 6.5 Section 237 of the Town and Country Planning Act 1990 provides power to override easements and other rights affecting land. Paragraph 4(1) schedule 9 of the Planning Act 2008 extends the power to override third party rights to restrictive covenants. Provided that land is validly appropriated for planning purposes, the erection, construction or carrying out of the development (by the Council or a person deriving title from the Council) will be authorised if it is done in accordance with planning permission, notwithstanding that it interferes with restrictive covenants and easements. Private rights affected will be overridden and converted into a claim for compensation.

7. Other Implications

- 7.1 **Risk Management** - There is a risk to the Council that if the land is not appropriated for planning purposes, nor removed or modified through the Land Tribunal process, that the development would not be able to proceed. It is felt that the Land Appropriation process is the most cost and time effective for the Council.

The Covenant no longer serves any purpose, as the land that it was protecting has been

an area of hard standing and car park for a number of years. The current residential properties at Goresbrook Village are of poor quality and do not have any private open space, whereas the proposed development provides new family sized units, all with their own private open space.

There is a risk that through the Land Appropriation, there will be objections to the process. However, only objections by people or bodies that can claim to have benefit or can prove loss from the change of use of the land affected by the Covenant are considered, and bearing in mind the area of land that is within the Covenant is not used currently for its stated purpose, the risk of this is small.

There is a further risk that after the Land Appropriation process the Council will be required to take out indemnity insurance to cover any compensation claims. This insurance could be costly. This is not an avenue the Council would wish to consider unless absolutely necessary.

There is a small risk to the appropriation of the footpath on the western side of the site. While the footpath will be closed, the links through the site will be retained. Pedestrians will have a safer and more pleasant walk through the site to their destination; therefore it is unlikely that any person will come forward to object.

Overall, the risk to the Council is least if the Council appropriates the land for planning purposes, provided the correct procedures are followed and any objections dealt with in the correct manner.

7.2 Contractual Issues - If the Council does not appropriate the land for planning purposes to housing use, there could be an impact on the development and delay entering into a Development Agreement with the selected bidder Countryside Properties. There is a tight time frame on this development as many affordable houses as possible need to be built before March 2015 in order for the Council to draw down funding, so any delay will have a knock-on effect on the development.

7.3 Customer Impact - Throughout the master plan process, the Council has been keen to improve the amount of private open space for the residents at Goresbrook Village. A consultation event was held in November 2011 to gauge local residents' view points on the area for development, with strong opposition towards building on Castle Green. The Council has ensured that the proposed development is wholly within the Goresbrook Village site and not on Castle Green. Whilst there will be a significantly larger footprint than the existing three tower blocks, the quality of building, size of units and provision of private open space outweighs the loss of the open space on the site.

It is important to note that the area within the Covenant is not currently used for its stated purpose, being recreation and leisure. The area is mostly occupied by a large car park, vehicle entrance and a public footpath. There is an area of green space in the northern part of the space, however the location of Castle Green immediately adjacent makes this space redundant.

The location and route of the existing footpath on the western side of the site is not ideal, as it winds behind houses and gardens, is poorly overlooked and also not the most direct

route from Maplestead Road to the A13. The removal of the pathway will improve the safety and amenity of the area for local and new residents by creating a link through the site, along streets that are well over-looked.

Instead of one central park for the development, the design has focussed more on links and ways to encourage activity for residents and passers-by. The green link along Goresbrook Road will help to improve pedestrians walking route past the site, and there are now a number of different options for pedestrians through the site down to the A13, rather than the existing path.

There will be two new links into Castle Green from the development, these will be along streets that are fronted by houses and overlooked. Street lighting will be installed to the required standard, which will help to improve safety for residents and visitors who are passing through the development. The development will then link up with existing pathways in Castle Green.

It is not considered that there will be any negative customer impact from the appropriation of land from the existing use to housing use. The land appropriation will free up land that is not currently used for recreation or leisure for family sized units, the majority of which will be affordable, all with private open space.

- 7.4 **Safeguarding Children** - The proposed master plan is a traditional street pattern, with all houses fronting on to the street and private back gardens behind. There are two blocks of apartments, each with their own balcony. The proposal improves pedestrian links through the site towards the A13 and bus stops that are located to the south of the site. The proposal also improves links through to Castle Green. The master plan will improve the lives of children living at the new houses at Goresbrook Village and has created a development where all the streets are overlooked by residents.
- 7.5 **Health Issues** - The purpose of the Covenant was surely to maintain a pleasant level of open space for residents in the pre-fabricated housing that was along the edges of Castle Green in 1938. While it is clear that the existing Goresbrook Village development also required substantial public outdoor space for recreation and leisure, the proposed development has created a lot more private open space, which all residents of Goresbrook Village will have. It is also important to note that while the Covenant has existed for some time, for a considerable amount of that time, the land has been used as a car park and vehicle entrance, and not for the intended use. The master plan has created a new community that will provide safe, healthy streets and houses for residents, immediately adjacent to a large public park, Castle Green.
- 7.6 **Crime and Disorder Issues** - One of the main reasons for the demolition of Goresbrook Village is the anti-social behaviour issues often associated with tower blocks. The proposed development creates safer streets with houses that suit the residential area and provide family sized units. The streets are designed to provide safe links through the site towards the A13 or Castle Green.

The area of land within the Covenant is currently a large car park, and an inaccessible bund that creates a barrier between Goresbrook Village and Castle Green. It is considered that by developing on the area of land within the Covenant, Crime and

Disorder issues will be reduced and accessible links through to Castle Green will be created.

Currently Castle Green is separated from Goresbrook Village by a fence, cutting off the two sites and making it difficult for residents to walk between the two. By removing this fence and bund, and creating street links into Castle Green, there will be more opportunities for residents and visitors to walk into and through Castle Green. These links will be well lit, with houses overlooking the streets, helping to improve safety for pedestrians. The design facilitates more interaction between Goresbrook Village and Castle Green.

7.7 Property / Asset Issues - If the land within the area of the Covenant remains for recreation and leisure use, it may prove difficult for Countryside Properties Limited, or any future developer, build, sell and allow any units to be occupied. Land appropriation should have taken place at the time of the previous Goresbrook Village development, but may have been overlooked.

It is not considered that this Covenant serves any purpose any longer, given that the area of land has not been protected since the car park at Goresbrook Village was built. The site is immediately adjacent to a large area of open space at Castle Green that provides a range of recreation activities. By not going through a land appropriation process, the project may be subject to delays and will interrupt the Estate Renewal Programme.

Background Papers Used in the Preparation of the Report:

- Estate Renewal Programme – Delivery and Disposal Options for Goresbrook Village and The Leys, 23 August 2011.

List of Appendices:

Appendix 1: Certificate of Title, with map attached.