



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Finance and Council Reform
Date:	May 2023
Classification:	Part Exempt: Appendix C – exempt from publication.
Title:	Balmoral Castle and Darwin House: Appropriation of Land at Balmoral Castle Public House and vacant garages to deliver Phase 2 of the development.
Wards Affected:	Pimlico South
Policy Context	<p>The proposed development will collectively help to contribute to Westminster City Council's (WCC) commitments to a Fairer Westminster, specifically: Fairer Housing (Greener Affordable Housing to support the needs of residents and social care users). Fairer Environment (low energy targets that will help contribute towards Westminster becoming Carbon Neutral by 2030), Fairer Communities (enable all our communities to share in the economic prosperity of the area, through protecting and enhancing the unique heritage of the neighbourhood) and Fairer Council (demonstrated by engaging residents and local stakeholders in a comprehensive consultation process that has provided the community with the opportunity to have a stake in the scenarios considered for the future of the Pub and Darwin House).</p>
Key Decision:	Yes
Cabinet Member	Cabinet Member for Finance and Council Reform
Financial Summary:	Land will be appropriated from the HRA to the General Fund for planning purposes. This will lead to a transfer of assets between funds. The land will then be appropriated back to the HRA for housing purposes once notices of intention have been published.
Report of:	Debbie Jackson – Executive Director of Growth, Planning and Housing

1. Executive Summary

- 1.1. The site comprises the former Balmoral Castle public house, Darwin House and 23 garages (the Site). It is located adjacent to Churchill Gardens Estate and is part of the Churchill Gardens Conservation Area - bordered by Grosvenor Road to the south and Churchill Gardens Road to the north, directly overlooking River Thames. The scheme is being delivered in four phases: Phase 1 comprises demolition of the Balmoral Castle public house and 23 vacant garages, Phase 2 comprises Community supported housing (CSH) (Block A), Phase 3 comprises the demolition of Darwin House and Phase 4 comprises Affordable housing (Block B).
- 1.2. The redevelopment of the site will provide the opportunity to improve the living accommodation for the existing Darwin House residents by offering modern size CSH units whilst also providing much needed Affordable housing in the city. The development will replace the former balmoral public house, Darwin House, and garages with 34 new CSH flats that follow HAPPI (Housing our Aging Population Panel for Innovation) standards and 18 Intermediate Rent homes.
- 1.3. The scheme therefore provides a total of 52 units, which is a net uplift in residential accommodation of 21 units. The proposed scheme is 100% Affordable housing, split into two tenures. The CSH building is social rent, and the Affordable housing building is to provide intermediate rent housing.
- 1.4. To progress the scheme and avoid delays to the program, this report seeks the approval of the Cabinet Member for Finance and Council Reform to appropriate for planning purposes under section 122 of the Local Government Act 1972 the Council's land at the Balmoral Castle Public House and the vacant garages including area of land forming part of an open space (shown hatched blue on the plan attached at Appendix A), to facilitate the delivery of Phase 2 of the scheme for which planning permission has been granted by the Council as local planning authority. There are no dwellings on the land to be appropriated.
- 1.5. If the recommendations in this report are approved, the land appropriated for planning purposes will be accounted for in the General Fund, rather than the Housing Revenue Account ("HRA"). Therefore, this report also seeks a delegated approval to a further appropriation of the land from the General Fund to the HRA because the delivery of Phase 2 is predicated on the development being held for housing purposes, rather than in the General Fund.

2. Recommendations

- 2.1. That the Cabinet Member for Finance and Council Reform following consultation with the Cabinet Member for Climate Action, Regeneration and Renters and the Cabinet Member for Housing Services approves:

- 2.1.1. That Appendix C of this report be exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 2 and 3 (as amended), in that it contains information which is likely to reveal the identity of an individual and information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 2.1.2. To appropriate the Council's land required for Phase 2 of the development comprising the former Balmoral Public House and 23 vacant garages including an area of land measuring 378 sq. metres forming part of an open space (edged red on the plan attached at Appendix A) for planning purposes pursuant to section 122 of the Local Government Act 1972 and subsequent use of the Council's powers under section 203 of the Housing and Planning Act 2016.
- 2.1.3. To the further appropriation of the Phase 2 land from planning purposes to those purposes permitted under section 17 Housing Act 1985 by way of the delegated authority set out in paragraph 2.1.5 of this report.
- 2.1.4. To delegate authority to the Executive Director for Growth Planning and Housing:
 - 2.1.4.1. to deal with any necessary arrangements to record the appropriation of the land required for Phase 2 of the development 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
 - 2.1.4.2. to negotiate and enter into agreements by deed and payment of compensation for the release of third-party rights affected by the development of the Site (including Phases 1, 2, 3 and 4) where this can be achieved on reasonable terms within a reasonable timescale; or
 - 2.1.4.3. to take all necessary steps to settle claims for compensation under section 204 of the Housing and Planning Act 2016.
- 2.1.5. To delegate authority to the Executive Director of Growth Planning and Housing;
 - 2.1.5.1. To appropriate the Council's land required for Phase 2 of the development comprising the land described in paragraph 2.1.2 of this report from planning purposes pursuant to section 232 Town

and Country Planning Act 1990 to those purposes permitted under section 17 Housing Act 1985 including the construction of homes; and

2.1.5.2. To deal with any necessary arrangements to record the appropriation of the land required for Phase 2 of the development for purposes permitted under section 17 Housing Act 1985 including the transfer of the land from the General Fund account to the HRA at the current red book value.

3. Reasons for the Decision

- 3.1. The Council is satisfied that the scheme will contribute towards meeting the Fairer Westminster objectives, specifically Fairer Housing, Environment, communities, and Fairer Council.
- 3.2. The development offers an opportunity to deliver housing that will meet the needs of residents and social care users in Westminster through the provision of housing that is both greener and more genuinely affordable.
- 3.3. The derelict former Balmoral Public House and 23 disused garages within Phase 1 of the Site are considered not fit for purpose and no longer required for the purpose for which they are held by the Council. The appropriation for planning purposes will subsequently allow the Council to use its powers under section 203 of the Housing and Planning Act 2016 to override any easements (including rights of light) and other rights of the affected neighboring properties that are infringed upon.
- 3.4. The proposals for development are in line with both the existing and emerging London Plans and Westminster City Plans. The proposed development will contribute to achieving the promotion or improvement of the Economic, Social, and Environmental well-being of the area in the following ways:

Economic Well-Being

- 3.4.1. Enhancing local employment opportunities i.e., the creation of construction jobs and apprenticeship opportunities.
- 3.4.2. Providing the Council with additional affordable housing - the project will regenerate a site comprising of 52 affordable housing units providing 34 CSH at social rent and 18 intermediate rental opportunity.

Social Well-Being

- 3.4.3. The new development will contribute to much needed housing in Westminster, where there is high demand for affordable housing meeting the needs of residents and social care users.

Environmental Well-Being

- 3.4.4. The development will provide landscaping accessible by the wider estate.
- 3.4.5. The building will be sustainable using renewable energy sources.
- 3.5. To progress the scheme and avoid the risk of delays to the program, a Cabinet Member decision is being sought to appropriate the land required to deliver Phase 2 of the development for planning purposes and authorize 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.
- 3.6. Appropriating the land for planning purposes would enable certain private third-party rights (including rights of light) to be overridden, subject to payment of 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.
- 3.7. There is a pressing need for new homes within Westminster, particularly those of an affordable tenure. The development will deliver much needed affordable housing, which will greatly contribute to improving the economic, social and environmental well-being of the local area.
- 3.8. A specialist Right of Light surveyor has been instructed and a Rights to Light assessment was undertaken during RIBA Stage 3. The Council recognizes 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. A list of the parties identified as potentially having rights which could be affected to some degree and the state of negotiations and levels of estimated maximum compensation can be found in the confidential Appendix C. Compensation will not be paid until the Cabinet Member provides the decision to do so in accordance with this report.
- 3.9. Whilst searches have been undertaken, there is always the possibility that not all third-party rights which could burden the land have been identified and extinguished before development is due to commence. It should be noted that the Council did receive various objections to the scheme prior to Planning Approval, 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, including the area forming part of an open space, 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. Negotiations for the release of rights by agreement are a time-consuming process and do not necessarily ensure that all adverse third-party rights (including unknown rights) which may burden a site, and which might inhibit development have been effectively addressed. To ensure that the delivery of Phase 2 is not prevented or delayed and can be achieved within a reasonable timescale, and to ensure that there is a clear and transparent framework set out in law for settlement of rights of light claims, approval is sought to appropriate the land required to deliver Phase 2 of the development for planning purposes.

- 3.10. 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 outweigh the private loss. The Council will continue with the negotiations after Phase 2 of 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.
- 3.11. After appropriating for planning purposes, the Council will further appropriate the land at Phase 2 for its intended permanent purpose. For the Phase 2 of the Site this will be to construct the Community Supported Housing (Block A).
- 3.12. This report is therefore seeking delegated authority to further appropriate for the intended permanent use of the land.

4. Background to the Proposals

- 4.1. The site comprises the former Balmoral Castle public house, Darwin House and 23 WCC owned garages. It is located adjacent to Churchill Gardens Estate and is part of the Churchill Gardens Conservation Area, bordered by Grosvenor Road to the south and Churchill Gardens Road to the north, directly overlooking the River Thames. The former public house closed to the public around 2006, the land is no longer required for the purpose for which it is held by the council, it has remained vacant since and is now in a very poor state of repair. The land in which the public house occupies sits in the General Fund. The current accommodation in Darwin House comprises small bedsits measuring circa 30m². The dwellings are not sized to allow for an accessible layout and there is no space for a carer or family member to stay overnight. The garages which are now vacant and no longer in use are owned by WCC and were formerly let on weekly licenses. Darwin House and the garages are accounted for in the Housing Revenue Account (HRA).

- 4.2. Following a review of the existing Darwin House accommodation and garages, council officers began reviewing the unique opportunity to improve the living accommodation for the existing Darwin House residents by offering modern size CSH units whilst also providing much needed affordable housing in the City. As part of the scheme, the council is committed to ensuring that Darwin House residents would only be required to move once, therefore the project will be phased to ensure that the first phase of the project will build the new CSH block. This will ensure that Darwin House can remain in operation until the new replacement CSH building is complete. As well as this, the council has committed that for any development on the site:
- There will be a full replacement of all council homes.
 - The council will provide the maximum possible affordable housing.
 - The council will support all residents through any moving process.
 - Works will be phased to minimise disruption to residents.
 - All new homes will be covered by a local lettings plan, meaning local people will benefit from the new homes.
 - Residents will be at the heart of the development and design of the project.
- 4.3. In 2021, the Cabinet Member for Finance, Property and Regeneration approved the Outline Business Case (OBC) for the development. Wates Ltd were appointed in October 2021 through a Pre-Construction Services Agreement which included the completion of the scheme design, additional surveys and agreement of a fixed contract sum for the Main Building Works. Detailed Planning Consent was granted in November 2021. Wates Ltd were also appointed in June 2022 through a Building Contract to demolish the Balmoral Castle Public House and vacant garages.
- 4.4. The Full Business Case and Contract Sum for works was approved by the Cabinet Member for Finance and Council Reform in March 2023.
- 4.5. A site notice has been erected on the Site which has given the opportunity for any party that believes they may have an impacted right (including right to light) to make representations. The site notice also advised that the Council is due to consider a report recommending that the land required for Phase 2 of the development be appropriated for planning purposes. The Council has not received any responses to the site notice, which has now expired.
- 4.6. The Council's intention to appropriate for planning purposes the land required for Phase 2 of the development which includes an area of land forming part of an open space has been advertised for two consecutive weeks in the London Gazette and West London Gazette. There have been no objections to the proposed appropriation.

5. Financial Implications

- 5.1. The report requests approval to appropriate for planning purposes land at Balmoral Castle Public House and vacant garages to facilitate Phase 2 of the planned development.
- 5.2. Once notices of intention have been published, the land will be appropriated back to the HRA to be held for housing purposes.
- 5.3. As the appropriations are taking place in the same financial year, there will be no overall change to the financial statements.

6. Legal Implications

- 6.1. The Council has power under section 122 of the Local Government Act 1972 (LGA 1972) to appropriate land belonging to the Council which is no longer required for the purpose for which it was held immediately before the appropriation, provided that the new purpose is one for which the Council would be empowered to acquire land by agreement.
- 6.2. The new purpose for which Phase 2 of the Site is required is for the redevelopment and improvement of the land in accordance with the planning permission granted. That is a purpose for which the Council has power to acquire land by agreement under section 227 of the Town and Country Planning Act 1990 (T&CPA 1990), if it thinks that the development or redevelopment will contribute to the achievement of the promotion or improvement of the economic, social and/or environmental well-being of its area.
- 6.3. Section 19 of the Housing Act 1985 (HA 1985) deals with appropriation of land held for the purposes of Part II of that Act (housing accommodation). It does not exclude the application of the appropriation power under section 122 of the LGA 1972 referred to above. However, under section 19(2) HA 85, a local housing authority holding land for the purposes of Part II of the HA 85, shall not, without the consent of the Secretary of State, appropriate any part of the land consisting of a house or part of a house for any other purpose. Paragraph 1.4 of this report confirms there are no dwellings on the land to be appropriated.
- 6.4. Before appropriating any land consisting or forming part of an open space the Council is required under section 122(2A) of the Local Government Act 1972 to advertise its intention to appropriate open space land for two consecutive weeks in a newspaper circulating in the local area and consider any objections to the proposed appropriation.
- 6.5. Appropriating land for planning purposes can engage section 203 of the Housing and Planning Act 2016 (HPA 2016) allowing the Council to override private third party rights subject to payment of compensation under section 204 HPA 2016, provided

certain other conditions are met. The application of section 203 of the HPA 2016 is subject to the following additional conditions:

- Planning permission must have been obtained for the building and/or use of the land that causes the infringement of third party rights. Such permission has been granted.
- The Council could (at least in principle) acquire the land compulsorily for the relevant building work and/or use. The Council has such power under section 226 of the T&CPA 1990.
- The building work and/or use is for purposes related to the purposes for which the land was appropriated. It is clear that the development of the Site is related to the purposes of the appropriation recommended in this report.

6.6. Provided all the conditions for the application of s203 are met the affected third party would be entitled to statutory compensation when development takes place, but they would not be entitled to obtain damages or an injunction.

6.7. The kinds of rights that can be overridden under s203 comprise:

- A “relevant right or interest” i.e. “any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support)” and
- A restriction as to the user of land arising by virtue of a contract.

6.8. The first category above would include easements and other rights which burden the development site and benefit other land. The second category would include restrictive covenants.

6.9. Certain third-party rights cannot be overridden under s203, in particular “protected rights” of statutory undertakers and electronic communication code network operators and certain rights, interests and restrictions which benefit the National Trust. In addition, rights and interests which benefit the Crown and its land, or rights enjoyed by the public, could not be overridden under section 203.

6.10. Where it is known that appropriation for planning purposes would affect third party rights the Council must consider that it has sufficient reason in the public interest to interfere with third party rights and that the interference is no more than is necessary.

6.11. The Council must act in accordance with the rights under the European Convention on Human Rights including Article 1 of the First Protocol (right to peaceful enjoyment of possessions) and Article 8 (right to respect for private life, family and home). The Council must strike a fair balance between the public interest and the individual's rights and consider whether the interference is "proportionate". In view of the factors described in section 3 of this report it is considered that it is necessary to appropriate

the land at Phase 1 of the Site for planning purposes and that there is a compelling case in the public interest to support the decision to do so.

6.12. Unless an agreement for the release of rights has been reached with an affected party, sections 203 and 204 HPA 2016 will come into play when the development is carried out. Under section 204 the person who causes the interference with third party's right is liable to pay the compensation. This is normally the person who carries out the development or in default of that person making payment, the Council (with a right of recovery from the developer). Compensation under s204 is calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965. It is generally based on the reduction in the value of the claimant's land (rather than any "ransom value") and is sometimes calculated on a "before and after" assessment of what their land was worth before and after the infringement. If there is a dispute about the amount of compensation which is due, the matter can be referred to the Upper Tribunal (Lands Chamber) for determination.

6.13. Having overridden third party rights (under section 203 of the HPA 2016), section 232(1) and (6) of the T&CPA 1990 permits the Council to further appropriate land held for planning purposes for any purpose for which an enactment permits the Council to acquire land. Where land is held for planning purposes the Council is required under section 232(4) of the T&CPA 1990 to advertise its intention to appropriate open space land for two consecutive weeks in a newspaper circulating in the local area and consider any objections to the proposed appropriation.

6.14. The Council would be entitled to further appropriate the Phase 2 land relying on section 17 of the Housing Act 1985 (HA 85) which empowers the Council to acquire land for the purposes of the construction of homes whether to use such land itself to accommodate people or grant an interest to third parties including a Council subsidiary.

6.15. The Equality Act 2010 (EqA 2010) created a single general public sector equality duty (PSED) under section 149 of that Act. The PSED applies to public authorities exercising public functions. The PSED requires public authorities to have "due regard" to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the section 149(1)(a) EqA 2010.
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1)(b) EqA 2010)

6.16. The duty on public authorities to have "due regard" to the PSED in section 149(1) of the EqA 2010 is more than simply a requirement to have general regard. It is a

continuing duty to which all decision-makers must have regard. Proper consideration must be given to the PSED and its requirements. An Equalities Impact Assessment in respect of the proposed development has been carried out and the key findings are summarised at section 9 of this report.

7. Carbon Impact

- 7.1. Due to the nature of this report dealing with matters of appropriation, negotiations, deeds and compensation payments, there is no carbon impact.

8. Staffing Implications

- 8.1. This project has been and will continue to be managed and delivered by the Development and Regeneration team in Growth, Planning and Housing. Sufficient capacity exists within this team to deliver this project.

9. Consultation

- 9.1. Ahead of site investigation works starting on site a letter was sent out to residents in December 2021 introducing Wates the contractor and highlighting initial on-site activities.
- 9.2. Regular scheduled meetings are now taking place with the Balmoral Darwin Construction Liaison Group (members of local community) and additional meetings with Darwin residents and local schools have also been made.
- 9.3. The Council has worked with Wates to develop a Communications Plan. It is intended that there will be regular meetings with residents and regular newsletters published.
- 9.4. A Ward Councillor Briefing Note was issued on 8 March 2023 setting out the Recommendations referred to in this Paper. A question was raised by Cllr Jason Williams, details of which are included in Appendix B together with our response. No further comments were received from the Ward Councillors.
- 9.5. The Council is required to act in accordance with the public sector equality duty under the Equality Act 2010 and have due regard to this duty when carrying out its functions, which includes making new decisions. An Equalities Impact Assessment carried out to cover the proposed development revealed no impacts on the public sector equality duty arising from this proposal. A copy of the Equalities Impact Assessment is attached as Appendix D.
- 9.6. The Cabinet Member for Climate Action Regeneration and Renters and the Cabinet Member for Housing Services have been consulted on this report and support the recommendations to deliver the scheme.

APPENDICES

Appendix A – Land to be appropriated – Red Line Boundary Plan

Appendix B – Comment and response to Ward Councillor Briefing

Appendix C – Confidential exempt from publication

Appendix D – Equalities Impact Assessment

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact;

Graham Soars, Senior Development Delivery Manager

Email: gsoars@westminster.gov.uk

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

I have no interest to declare in respect of this report

Signed: 

Date: 10/05/2023

NAME: **Councillor David Boothroyd**

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

Balmoral Castle and Darwin House: Appropriation of Land at Balmoral Castle Public House and vacant garages to deliver Phase 2 of the development

Signed 

Cabinet Member for Finance and Council Reform

Date 10/05/2023

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal & Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.