



<b>Meeting or Decision Maker:</b>	Cabinet Member for Finance and Council Reform
<b>Date:</b>	20 June 2023
<b>Classification:</b>	Part Exempt: Appendices C, D and E are exempt from publication
<b>Title:</b>	Torridon Carpark: Appropriation of Land at Torridon to provide two blocks of three and five storeys providing a total of 21 x Use Class C3 (residential) units and other associated works, including the provision of storage units, car and cycle parking, landscaping, access gates and boundary treatment.
<b>Wards Affected:</b>	Maida Vale
<b>Policy Context</b>	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 Fairer Environment (low energy targets that will help contribute towards Westminster becoming Carbon Neutral by 2030) and Fairer Council (demonstrated by engaging residents and local stakeholders in a comprehensive consultation process)
<b>Financial Summary:</b>	Land will be appropriated from the HRA to the General Fund for planning purposes. This will lead to transfer of assets between funds. The land will then be appropriated back to the HRA for housing purposes.
<b>Report of:</b>	Debbie Jackson – Executive Director of Growth, Planning and Housing

## 1. Executive Summary

- 1.1 The proposal involves redeveloping an existing parking area and storage sheds for residential units, with alterations to the public realm. This scheme forms part of the Council's infill housing programme and is 100% affordable housing.
- 1.2 The new buildings have been set away from the existing school to the north, in the gap between the buildings at ground floor level there are storage lockers which are re-provision for Torridon House and cycle parking facilities for the new units.
- 1.3 The scheme includes four three-storey houses and a five-storey block of seventeen flats. The block of flats is on the eastern part of the site fronting onto Andover Place, and comprises 8 x 1beds, 7 x 2beds and 2 x 4beds. The four townhouses are all 3 beds.
- 1.4 All flats have private outside amenity space in the form of a courtyard or balcony on the west (rear) elevation. At third floor level all of the houses have private terraces/roof gardens to the rear providing outside amenity space. The ground floor flats have private entrances from Andover Place, the upper floors have a shared entrance accessed from the shared amenity space between the flats and houses.
- 1.5 In front of the houses there are eleven parking spaces, to the south of the houses there are four parking spaces, two of which are disabled bays. There are an additional four parallel alongside Torridon House.
- 1.6 All the re-provided parking spaces will be allocated to existing parking permit holders from Torridon House.
- 1.7 The proposed units are all in accordance with the minimum size standards as set out in the London Plan and the Nationally Described Housing Standards.
- 1.8 To progress the scheme and avoid delays to the programme, 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 Torridon Carpark (shown on the plan attached at Appendix A), to facilitate the delivery 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.
- 1.9 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 scheme is predicated on the development being held for housing purposes, rather than in the General Fund.
  - 1.9.1 There are no dwellings on the land to be appropriated.

## **2. Background to the Proposals**

- 2.1 The Infills Programme aims to better utilise the Council's existing land, providing much-needed affordable housing and is being delivered across three phases.
- 2.2 The programme focuses on the refurbishment of vacant spaces such as basements, drying rooms and storage areas; redevelopment of underutilized garages and storage sheds; and development on vacant land adjacent to housing blocks.
- 2.3 The sites are often challenging in nature and require considerable preparation and local consultation to enable delivery. They are however, making a considerable contribution to the Council's affordable housing target and provide affordable housing development across the borough.
- 2.4 The Full Business Case and Contract Sum for works were approved in July 2022 and the main works started on site in January 2023.
- 2.5 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 the development be appropriated for planning purposes. The Council has received responses to the site notice, and these are contained in the exempt Appendix D.
- 2.6 The Council is in the process of collating information to provide a formal response. The responses received to the site notice must be taken into account by the decision maker when making the decision.

## **3. Recommendations**

- 3.1 That the Cabinet Member for Finance and Council Reform in consultation with the Cabinet Member for Climate Action, Regeneration and Renters and the Cabinet Member for Housing Services approves:
  - 3.1.1 That Appendices C, D and E of this report be exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
  - 3.1.2 To appropriate the Council's land required for the development comprising the former Torridon Carpark site (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.
  - 3.1.3 To the further appropriation of the Torridon Car Park site land from planning purposes to those permitted under section 17 of the Housing Act 1985 by way of the delegated authority set out in Paragraph 3.1.5 of this report

- 3.1.4 To delegate authority to the Executive Director for Growth Planning and Housing:
- 3.1.4.1 To deal with any necessary arrangements to record the appropriation of the land required for 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
  - 3.1.4.2 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 where this can be achieved on reasonable terms within a reasonable timescale; or
  - 3.1.4.3 To take all necessary steps to settle claims for compensation under section 204 of the Housing and Planning Act 2016.
- 3.1.5 To delegate authority to the Executive Director for Growth Planning and Housing:
- 3.1.5.1 To appropriate the Council's land required for development of the site comprising the land described in Paragraph 3.1.2 of this report from planning purposes pursuant to section 232 of the Town and Country Planning Act 1990 to those purposes permitted under Section 17 of the Housing Act 1985 including the construction of homes; and
  - 3.1.5.2 To deal with any necessary arrangements to record the appropriation of the land required for development of the site for purposes permitted under Section 17 of the Housing Act 1985 including the transfer of land from the General Fund to the HRA at the current red book value.
- 3.1.6 To delegate authority to the Executive Director of Growth Planning and Housing to deal with all necessary legal arrangements to give effect to the development, including the recommendations in this report and including where deemed necessary seek consent from the Secretary of State.

#### **4. Reasons for the Decision**

- 4.1 The Council is satisfied that the scheme will contribute towards meeting the Fairer Westminster objectives, specifically Fairer Housing, Environment, communities, and Fairer Council.
- 4.2 The development offers an opportunity to deliver housing that will meet the needs of residents in Westminster through the provision of housing that is both greener and genuinely affordable.

4.3 The former carpark is 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 neighbouring properties that are infringed upon.

4.4 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**

4.4.1 Enhancing local employment opportunities i.e. the creation of construction jobs and apprenticeship opportunities.

4.4.2 Providing the Council with additional affordable housing - The project will regenerate this site and create 21 affordable units at social rent (Subject to current NMA Application pending approval)

**Social Well-Being**

4.4.3 The new development will contribute to much needed housing In Westminster, where there is high demand for affordable housing meeting the needs of residents.

**Environmental Well-Being**

4.4.4 The development will improve landscaping accessible by the wider estate; and

4.4.5 The building will be sustainable using renewable energy sources.

4.5 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 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.

4.6 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.

4.7 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.

- 4.8 The development of the Site will create a right to light infringement. A Rights to Light assessment was undertaken during RIBA Stage 3, and it was identified that Rights of Light injuries are anticipated. A specialist Right of Light surveyor has therefore been instructed. 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. The Council's Rights of Light consultant will issue letters to all the potentially affected parties inviting them to commence negotiations with the Council. A list of the parties identified as potentially having rights which could be affected to some degree 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.
- 4.9 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. 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 is not appropriated 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 the development is not prevented or delayed and can be achieved within a reasonable timescale, approval is sought to appropriate the land required to deliver the development for planning purposes.
- 4.10 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 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.

- 4.11 After appropriating for planning purposes the Council will further appropriate the land for its intended permanent purpose to construct housing
- 4.12 This report is further seeking delegated authority to further appropriate for the intended permanent use of the land.

## **5. Financial Implications**

- 5.1. The report requests approval to appropriate the land at Torridon Carpark from the HRA to the General Fund for planning purposes to facilitate the planned development.

The land will be appropriated back to the HRA to be held for housing purposes.

As the appropriation 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 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 1.9.1 of this report confirms there are no dwellings on the land to be appropriated.
- 6.4 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.

6.5 Provided all the conditions for the application of s203 are met it is irrelevant who carries out the development. 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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

6.10 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 4 of this report it is considered that it is necessary to appropriate



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

- 6.11 Unless an agreement for the release of rights has been reached with an affected party, sections 203 and 204 HPA 2016 will apply. 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 for determination.
- 6.12 A Site notice on the proposal to appropriate land to planning purposes was erected on site. Responses received to the Site notice must be taken into consideration by the decision maker when reaching a decision.
- 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.
- 6.14 The Council would be entitled to further appropriate the land relying on Section 17 of the Housing Act 1985 which empowers the Council to acquire land for the purposes of construction of homes whether to use such land itself to accommodate people or grant an interest to third parties.
- 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 8 of this report.

## **7. Staffing Implications**

- 7.1 This project has been and will continue to be managed and delivered by the Development team in Growth, Planning and Housing and the Development department will be delivering the scheme through the Delivery team. Sufficient capacity exists within this team to deliver this project.

## **8. Consultation**

- 8.1 The scheme has been subject to extensive local community consultation and engagement prior to planning submission, which was subsequently achieved. All homes will be offered to local people first through each sites Local Lettings Plan, prioritising those in housing need from the local vicinity.
- 8.2 Ahead of site investigation works starting on site a letter was sent out to residents introducing Osborne as the contractor and highlighting initial on-site activities.
- 8.3 Regular scheduled meetings and community events are now taking place with members of the local community and the Council has worked with Osborne to develop a Communications Plan to ensure that there will be regular meetings with residents and regular newsletters published.
- 8.4 A Ward Councillor Briefing Note was issued on 17 May 2023 setting out the Recommendations referred to in this Paper. Comments were received from Cllr Barraclough, Cllr Less and Cllr Butler-Thalassis, details of which are included in Confidential Appendix E together with our response.
- 8.5 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 is attached as Appendix B.
- 8.6 This EIA has identified potential positive impacts on many protected characteristic groups and how the Torridon Car Park development will contribute to improvements in the area through an increase in affordable housing which meets the needs of local residents. The EIA has identified potential beneficial equality effects of the proposed development.
- 8.7 Table 6-2 of the EIA provides a summary of the potential construction and operational impacts of the proposals. This provides an assessment of groups with protected characteristics who are likely to be disproportionately or differentially affected by each of the impacts. The table also provides a brief overview of planned mitigation to

minimise adverse impacts as well as activities in place to enhance opportunities resulting from beneficial impacts. It is envisaged that this table can be used to monitor equality effects as the development progresses.

- 8.8 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.

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

Joe Smith, Senior Programme Manager, [jsmith1@westminster.gov.uk](mailto:jsmith1@westminster.gov.uk)

## **APPENDICES**

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

**Appendix B** – Equalities Impact Assessment

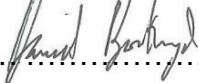
**Appendix C** – Rights of Light Compensation Summary (Exempt from publication)

**Appendix D** – Responses received on the Appropriation Notice (Exempt from publication)

**Appendix E** – Ward Councillor Briefing (Exempt from publication)

**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: ...20 June 2023.....

NAME: Councillor David Boothroyd

State nature of interest if any

.....  
.....  
.....

(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 Appropriation of land for planning purposes at Torridon Carpark, Randolph Gardens, NW6 5HP and reject any alternative options which are referred to but not recommended.

Signed  .....

Councillor David Boothroyd, Cabinet Member for Finance and Council Reform

Date ...20 June 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:

.....  
.....  
.....  
.....

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 and 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.