



City of Westminster

Meeting or Decision Maker:	Cabinet Member for Finance and Council Reform Cabinet Member for Climate Action, Regeneration and Renters
Date:	19 July 2023
Classification:	General Release except Appendix B
Title:	The Appropriation of land for planning purposes at Westmead site, 4 Tavistock Rd, London W11 1BA
Wards Affected:	Westbourne
Policy Context:	The proposed development will collectively help to contribute to the Fairer Westminster ambitions including fairer housing by providing 100% affordable scheme, fairer economy by enabling all our communities to share in the economic prosperity of the area, through protecting and enhancing the unique heritage of the neighbourhood.
Key Decision:	Yes
Financial Summary:	A fully affordable scheme with a total approved expenditure in the current capital programme of £41.424m. No direct financial implications within this report as land will remain in the General Fund.
Report of:	Debbie Jackson – Executive Director of Growth, Planning and Housing

1. Executive Summary

- 1.1. Westmead Care Home was a General Fund asset held for the purposes of providing care home accommodation and is located on the western edge of the borough at 4 Tavistock Rd, London W11 1BA (the Site). Previous residents of Westmead Care Home were offered new homes in 2020 within the new Beachcroft development in Maida Vale offering 84 bed care home. The redevelopment of the Westmead care home received planning permission for a residential scheme providing 65 new homes. These homes will provide affordable housing, of which 70% are social and 30% intermediate rent.
- 1.2. This report seeks the approval to appropriate for planning purposes under section 122 of the Local Government Act 1972 the Council's property at Westmead to facilitate the delivery of the scheme for which planning permission has been granted by the Council as local planning authority.
- 1.3. If the recommendations in this report are approved, the land appropriated for planning purposes will continue to be accounted for in the general fund. The delivery of the project is predicated on the development being held for housing purposes, rather than for general fund purposes, therefore this report also seeks a delegated approval to a further appropriation of the land for housing purposes and transfer from the general fund to the Housing Revenue Account (HRA).

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 approves:
 - That Appendix B 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 contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
 - To appropriate the Council's land at the former Westmead Care Home 4 Tavistock Road, London W11 1BA shown edged red in the plan attached at Appendix A (the Site) 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.
 - To the further appropriation of the Site from planning purposes to those purposes permitted under section 17 Housing Act 1985 by way of the delegated authority set out in paragraph 2.3 of this report.
- 2.2. To delegate authority to the Executive Director for Growth Planning and Housing:
 - To deal with any necessary arrangements to record the appropriation of the Site for planning purposes;

- To negotiate and enter into agreements by deed and payment of compensation for the release of third-party rights where this can be achieved on reasonable terms within a reasonable timescale; or
- To take all necessary steps to settle claims for compensation under section 204 of the Housing and Planning Act 2016.

2.3 To delegate authority to the Executive Director of Growth Planning and Housing;

2.3.1 to appropriate the Council's land at the Site 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

2.3.2 to deal with any necessary arrangements to record the appropriation of the land at the Site 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 Decision

3.1. The former Westmead care home no longer met the modern standards for a care facility and was no longer fit for purpose. The care home was closed in 2020 and is now vacant. Therefore, the site is no longer required for the purpose for which it is held by the Council. The proposed redevelopment will contribute to the Fairer Westminster ambitions in the following ways:

- Fairer Economy: enhancing local employment opportunities i.e., the creation of construction jobs and apprenticeship opportunities.
- Fairer Housing: Providing the Council with additional affordable housing. The project will regenerate a site comprising of 65 affordable homes providing both social housing and intermediate tenures contributing to much needed housing in Westminster.
- Fairer Environment: The development will provide landscaping accessible by the wider estate and the building will be sustainable using renewable energy sources.

3.2. The proposed development will also contribute the well-being of the Council's area in the following ways:

- Economic Well-Being of the area demonstrated by engaging residents, commercial occupiers and local stakeholders in a comprehensive consultation process that has provided the community with the opportunity to have a stake in the scenarios being considered for the future of Westmead.
- Social Well-Being of the area by promote opportunity and fairness providing more affordable homes to create a vibrant community through the creation of high-quality homes and landscaping.
- Environmental Well-Being of the area through the creation of a healthier, greener environment that connects better to surrounding communities. This scheme will enable all our communities to share in the economic prosperity of the area, through protecting and enhancing the unique heritage of the neighbourhood. This will ensure the site will fit well into the surrounding neighbourhood and remains a great place to live, work and visit both now and in the future.

- 3.3. To progress the scheme and avoid delays to the programme, the officers are seeking Cabinet Member authority to be able to appropriate the Site and authorise 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.
- 3.4. Appropriating the land for planning purposes would enable certain private third-party rights to be overridden, subject to payment of statutory 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.
- 3.5. 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.
- 3.6. The Council has appointed advisers to actively investigate the effect that the Council's proposed development will have on neighbouring owners and has established that there are a limited number of parties which may have the benefit of rights over the Site including rights of light which may be affected by the new development. The Land Registry title document for the Site registered with title number NGL231650 shows that part of the Site is subject to such restrictive covenants as may have been imposed thereon before 18 May 1979 and are still subsisting and capable of being enforced. The Land Registry has no further details of the covenants and it has not been possible to identify the restrictions or the extent to which the covenants (if any exist) remain enforceable.
- 3.7. Parts of the Site remain subject to drainage rights reserved by a number of conveyances which are believed to relate to the sale in 1953 of dwellings on the Site that were demolished prior to the construction of the Westmead Care Home. The 1953 conveyancing deeds are not available from the Land Registry and it has not been possible to identify the land which could benefit from such rights.
- 3.8. The Council has written to each of the parties who have been identified as potentially affected by the development to some degree to commence negotiations for release of any such rights where appropriate. Of those who have responded, where relevant, discussions are being undertaken with each party based on accepted compensation principles. 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 Part B.
- 3.9. 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. In order to ensure that the delivery of the scheme is not prevented or delayed and can be achieved within a reasonable timescale, approval is sought to appropriate the Site for planning purposes. Negotiations will, however continue, with the identified third parties if the recommendations in this report are approved. The Council recognises 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.

- 3.10. Whilst investigations are continuing, it is highly unlikely that it would be possible to identify and extinguish all third-party rights which burden the land by private agreement before development is due to commence in March 2023. It should be noted that the Council has received various objections to the scheme to date, 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 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.
- 3.11. 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 outweighs the potential impacts on third party rights. 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.

- 3.12. After appropriating for planning purposes the Council will need to further appropriate the land at the Site for its intended permanent purpose. This will be to provide affordable housing, of which 70% are social and 30% intermediate rent. This report is therefore seeking delegated authority to further appropriate for the intended permanent use of the land.

4. Background, including Policy Context

- 4.1. Westmead is located on the western edge of the borough, at 4 Tavistock Rd, Notting Hill, London W11 1BA. The site is close to Westbourne Park underground station and is not situated near any listed buildings, although it borders Aldridge Road Villas and Leamington Road Villas Conservation Areas. The conservation area to the south of the site consists of desirable 19th century terraces (4 storey). To the north and west are largely 4 storey developments of similar age to Westmead. St. Andrew's House: Home of the Secretariat of the Anglican Communion Office is adjacent to the site, offering various facilities (including overnight accommodation).
- 4.2. The existing development is of very low density in the context of the surrounding area and has great potential to deliver new homes. The proposed development accords with the highlighted objectives of the development plan and although the site does not sit within the conservation areas, the proposed development will be considered in the context of the conservation areas. The design reflects the architectural significance of Aldridge Road and Leamington Road Villas conservation areas, the units are designed to include a range of flats and maisonettes to suit various types of households and contain family sized homes. As well as this, the proposal will be set back on the northern part of the site and therefore will not encroach on surrounding buildings.

- 4.3. In 2020, the Cabinet Member for Finance, Property and Regeneration approved the development of the Westmead care home for a mixed tenure scheme providing 65 new homes. An Outline Business Case (OBC) was approved by the Cabinet Member in October 2019. Planning Permission was granted for the development in November 2020. Contractor procurement is currently being progressed, with a view to appoint a contractor early 2023 which includes the completion of the scheme design, additional surveys, services diversions, and agreement of a fixed contract sum for the scheme.

5. Financial Implications

- 5.1. There are no direct financial implications as the land is not moving between Funds within the Council, therefore no transfer of assets or debt is necessary. However, appropriating the land will enable the development to proceed in line with planned timelines and reduce the risk of delay, which could incur additional costs.

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 Westmead 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. 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.
- 6.4. 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.

- 6.5. The kinds of rights that can be overridden under s203 comprise;
 - a. 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
 - b. a restriction as to the user of land arising by virtue of a contract.
- 6.6. 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.
- 6.7. 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.
- 6.8. 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.
- 6.9. 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 Westmead for planning purposes and that there is a compelling case in the public interest to support the decision to do so.
- 6.10. 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. 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.
- 6.11. Having overridden third party rights (under section 203 of the HPA 2016), section 232(1) and (6) of the Town and Country Planning Act 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.
- 6.12. The Council would be entitled to further appropriate the Site 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.

6.13. 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)

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. Carbon Impact

7.1. The scheme needs to comply with the Zero Carbon Homes requirement, as defined by the current London Plan. The remaining regulated carbon emissions associated with the site’s residential element (approximately 17 tonnes) are therefore offset through a carbon offsetting contribution. Further details have been submitted to the Planning Authority as part of the Energy and Sustainability Statement.

8. Equalities Impact

8.1. The Equalities Impact Assessment has identified potential positive impacts on many protected characteristic groups and how the Westmead development will contribute to improvements in the area through a new increase in affordable housing which meets the needs of residents. The EIA has identified potential beneficial equality effects of the proposed development as follows:

- A new increase of 65 residential properties on-site. These include:
 - 31 intermediate rent units. The net increase in intermediate rent should benefit people with priority for affordable housing and who struggle to afford market rent. Affordability barriers may make it harder for certain groups, including ethnic minority groups to access the intermediate rent units.
 - 34 social rent units. The net increase in social rent should target protected characteristic groups and key groups identified through projected lettings for social housing in 2022/23.
- The Council has committed to a Local Lettings Plan to prioritise the provision of affordable homes to local residents in the most need;
- A net increase of seven wheelchair accessible households enabling those with limited mobility to remain ‘at home’ living independently and maintain positive mental and physical wellbeing;
- An indirect impact of improved living conditions for the previous residents of Westmead Care Home. These residents were relocated to a brand-new care facility called Beachcroft House in Maida Vale in late 2019/ early 2020. Westmead no longer met modern design standards, while Beachcroft House offers additional facilities such as shared community space; and

- Construction could provide direct employment opportunities which can be shared by groups with protected characteristics.

8.2. A copy of the Equalities Impact Assessment is attached as Appendix C.

9. Consultation

- 9.1. The consultation period for the appropriation at Westmead ran from development proposals on the Westmead site ran from September 2022 to October 2022 and consisted of site notices on the hoarding notifying residents of the intent to appropriate as well as approaching residents whose properties' Rights of Light will be impacted by the new development.
- 9.2. A Ward Councillor Cllr briefing note was issued on 08 November setting out the Recommendations referred to in this Paper and no comments have been received.
- 9.3. The Council's Rights of Light surveyor has written to each of the parties who have been identified as potentially affected by the development to some degree to commence negotiations for release of any such rights where appropriate. Of those who have responded, where relevant, discussions are being undertaken with each party based on accepted compensation principles. 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 Part B.
- 9.4. 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 Site be appropriated for planning purposes. The Council has not received any responses to the site notice.

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

APPENDICES


Appendix A – Equalities Impact Assessment

Appendix B – confidential exempt from publication

Appendix C – Red Line Boundary

For completion by the **Cabinet Member for Climate Action, Regeneration and Renters**
Declaration of Interest

I have no interest to declare in respect of this report

Signed:  Date: 19 July 2023

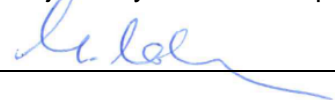
NAME: **Councillor Matt Noble**

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

The Appropriation of land for planning purposes at Westmead site, 4 Tavistock Rd, London W11 1BA and reject any alternative options which are referred to but not recommended.

Signed: 

Cabinet Member for Climate Action, Regeneration and Renters Councillor Matt Noble

Date: 19 July 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.

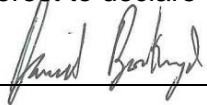
Additional comment:

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 Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (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.

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: 19 July 2023

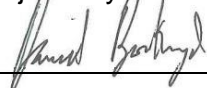
NAME: **Councillor David Boothroyd**

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

The Appropriation of land for planning purposes at Westmead site, 4 Tavistock Rd, London W11 1BA and reject any alternative options which are referred to but not recommended.

Signed: 

Cabinet Member for Finance and Council Reform Councillor David Boothroyd

Date: 19 July 2023

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