

**For:** (x)

Executive	<input checked="" type="checkbox"/>
CLMT	<input type="checkbox"/>

**Meeting Date:** 25<sup>th</sup> March 2013

**Report of:** Corporate Director  
Housing & Community Living

**Report author:** Mo Harkin

## Agenda Item Number: 19

**Subject:** Approval for the Appropriation for Planning and Disposal of a site at Ickley Close/Burely Road as part of the New Homes for Luton Project  
(For Executive Only)

**Lead Executive Member(s):** Cllr Shaw, Cllr Simmons

**Wards Affected:** Leagrave

### Consultations:

Councillors

(x)



Scrutiny



Stakeholders



Others



### Recommendations

#### 1. Executive is recommended to:

- (a) approve the appropriation of land at Ickley Close/Butely Road (as shown on the indicative plan in Appendix A of the report) for planning purposes under section 122 of the Local Government Act 1972 subject to the consideration of any objections received in response to advertisement in respect of open space land under the Act.
- (b) approve the disposal of the land at Ickley Close/Butely Road under section 233 of the Town and Country Planning Act 1990, subject to the Secretary of State's consent for disposal if it is at less than best consideration and the consideration of any objections received in response to advertisement in respect of open space land under the Act, to Catalyst Housing at nil consideration to enable affordable housing provision.
- (c) delegate to the Head of Fixed Assets in consultation with the Portfolio Holder for Housing and the Executive Leader consideration of any objections received in response to advertisement in respect of open space land under section 122 Local Government Act 1972 or section 233 of the Town and Country Act 1990 and the taking of such action in response to such objections on behalf of the Council as they consider reasonable in the circumstances.

### Background

- 2. In August 2009 the Executive authorised the creation of the Housing Joint Venture, New Homes for Luton, with Luton Learning & Community Partnership (The LEP), Wates Living Space and Catalyst Housing. The purpose of the joint venture was to deliver affordable homes by utilising sites in Council ownership that have not previously been considered developable or have presented significant challenges.
- 3. Phase 1 has now been completed delivering 152 new homes, including 92 affordable homes, across three sites at Hart Hill, Wigmore Lane and Falconers Road. There was also the added value programme that delivered training, apprenticeships, work experience and funding for local community projects.

### The current position

- 4. The second phase of the project is well underway. It includes three sites: Roebuck Close/Cades Close; Bradley Road; Ickley Close/Butely Road which will deliver 209 homes, 110 of

which will be affordable. Development Control Committee approved resolutions to grant planning permission for all three sites on 25<sup>th</sup> July 2012 and work is progressing to allow the formal planning permissions to be issued.

5. Approval for the appropriation for planning purposes and disposal of the Roebuck Close/Cades Close and Bradley Road sites was given by the Executive under decision EX/163/12. Both sites have been leased to Catalyst Housing for development. Work is expected to start on site within 3 months.
6. An application to register the site as a town or village green was received by the Council on 12<sup>th</sup> April 2012. The Council acts as the registration authority for these applications and on 3<sup>rd</sup> September 2012 the Regulation Committee decided to hold a non-statutory public inquiry into the application because of the Council's conflict of interests acting as both landowner and registration authority. The Inquiry was held from 21<sup>st</sup> – 23<sup>rd</sup> January 2013. The Inspector's recommendation will be reported to the Regulation Committee meeting on 14<sup>th</sup> March 2013. This is after the agenda for this Executive Meeting is published so the Portfolio Holder for Housing will update the Executive on the outcome.
7. If the decision is taken to register the site as a town or village green it would prevent any development of the site. There would, therefore, be no point in appropriating the site for planning purposes and no need to dispose of it.
8. The Executive has previously approved the site for disposal under different legislation, section 123, of the Local Government act (decision no EX/95/11). Accordingly, the appropriation of the site for planning means that it is necessary to comply with the requirements of the Town and Country Planning Act.
9. Development of the site will entail a loss of some public open space, an issue that was extensively discussed during the consideration of the planning applications. The site is in an area identified by the draft Luton And South Bedfordshire Green Space Strategy as having a deficit of public open space. The development will provide an improved, high quality, freely accessible public open recreation area. There will also be better natural surveillance of the site providing greater security for users.
10. There have been extensive consultations with the Parks team and the Natural and Built Environment team in addition to the pre-planning and statutory planning consultations over the planned developments which have been positively resolved.

### **Goals and Objectives**

11. The objective of the New Homes for Luton project is to deliver the maximum number of high quality, affordable homes for the people of Luton by developing sites partially or wholly owned by the Council. Through the partnership with the LEP, Wates Living Space and Catalyst, the project will also deliver significant benefits for communities in Luton including training, apprenticeships, regeneration and funding of community projects.
12. The site is bordered by the back gardens of some adjacent properties. The development will infill some of the open space that some neighbours unlawfully access currently via a back gate or other back entrance arrangement. The development has the effect of blocking this means of access as the construction fence will form the boundary for the garden within the new development. It is intended via appropriation, that to the extent that these rights may be shown to exist, the developer will make compensation (having first appropriated the rights from the Council)

13. If the Council determined not to appropriate the rights to the developer, then each property would individually negotiate its position with the Council where a right was claimed and no development could begin to take place until this had been completed. This delay would be substantial and very detrimental.

### **Proposal**

14. The Council is responsible for ensuring clean title for the site before transfer under the terms of Housing Contract between the Joint Venture Partners.
15. One of the measures needed to provide clean title for the site is to appropriate it for planning purposes before it is transferred. Appropriation is a power available to the Council under the section 122 of the Local Government Act 1972. By doing this the land owner is given protection under section 237 of the Town and Country Planning Act 1990. This overrides easements and other rights that affect the land, which could have prevented development, and replaces them with a right to compensation. The Council is required to publish a public notice in a local newspaper for two consecutive weeks and to consider any objections received before a decision to appropriate can be made.
16. Legal searches have not identified any specific easements or rights that would require the powers to be used on the site. However the site has a number of unauthorised accesses (via back gates etc.) from neighbouring properties which may possibly give rise to a claim. If the site is appropriated, then those making the claim would do so to the developer rather than the Council. . These rights do not in any way prevent the Council from denying any claims made by adjoining owners that they have prescribed rights and as a matter of policy the Council will seek to deny any unauthorised trespasser has any legal right to access public open space from privately owned land. Appropriation merely allows for financial recompense in lieu of a legal right of way.
17. The transfer of the land to Catalyst Housing would be made under section 233 of the Town and Country Act 1990 because the site has been appropriated for planning. Previous disposals to Housing Associations were made under section 123 of the Local Government Act 1972. Other than which act it is made under, the disposal process is the same in either case. The Council is required to publish a public notice in a local newspaper for two consecutive weeks and to consider any objections received. The Secretary of State's approval may be required if a decision to dispose is made and it is determined that it is disposed of at less than best consideration.
18. When the site is transferred to Catalyst Housing, it will take on the liability to pay any compensation once the construction work has begun. An allowance for the possible cost has been made within the Joint Venture's project budget based on experience from similar developments. Catalyst Housing has agreed to take the risk of any over-spends and if the amount is not used in full the remainder will stay within the project budget.
19. Catalyst Housing are responsible under the act for dealing with claims and paying compensation arising from any claims but, if they fail to discharge the liability, the Authority would become liable. The Housing Contract specifically makes Catalyst Housing liable for any costs associated with providing clean title so the Authority would be able to reclaim any costs from it. A risk only arises to the Council should a successful claim be made by an adjoining owner (which we strongly deny) and Catalyst ceases to exist (which is highly unlikely).
20. In addition to the statutory requirement for public notices all households adjacent to the site will be informed of the process.

### **Key Risks**

<ul style="list-style-type: none"> <li>• Catalyst Housing doesn't meet the costs of any compensation claims arising so that the Authority has to meet them and recover the cost directly from Catalyst Housing.</li> <li>• Any of the decisions are subject to Judicial Review delaying the project, increasing project costs and impacting on the financial viability</li> <li>• Failing to pro-actively manage the community impact and message arising out of the decision to appropriate.</li> </ul>
<b>Consultations</b>
Executive Portfolio Holder for Housing Executive Leader
<b>Appendices and additional background papers attached:</b>
Appendix A – Plan of the site Appendix B – Processes for public notices and decision making

## IMPLICATIONS

### For Executive reports

- grey boxes must be completed
- all statements must be cleared by an appropriate officer

### For CLMT Reports

Clearance is not required

		<b>Clearance – agreed by:</b>
<b>Legal</b>	<p>“Appropriation” is a term given in local government legislation to an internal process of a council designed to allow that council flexibility in its use of land. It allows a council to use land that has been acquired for one purpose for a different purpose. Under local government legislation, a council must acquire land under statutory powers. Under section 122 of the Local Government Act 1972, the Council can appropriate land for any statutory purpose for which we are authorised to acquire land. Under section 226 of the Town and Country Planning Act 1990, the Council is authorised to acquire land if the Council thinks that either the acquisition of the land will facilitate the development, redevelopment or improvement of the land or the land is needed for some other reason that is necessary to the proper planning of the area.</p> <p>Where land is appropriated for planning purposes, it will then be held by the Council under the statutory provisions within Part 9 of the Town and Country Planning Act 1990. The practical consequence of this (by virtue of Section 237 of the Town and Country Planning Act 1990, as amended) is that the erection, construction or carrying out of any maintenance of any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are done in accordance with planning permission, even if they interfere with third party rights.</p>	As agreed by Principal Solicitor Peter Geach 7 <sup>th</sup> March 2013

	<p>The purpose of Section 237 of the Town and Country Planning Act 1990 (as amended) is to ensure that where land has been appropriated for planning purposes, then existing rights, which could prevent the development of that land from proceeding in accordance with the planning permission, can be overridden. The rights will be overridden whether the Council or a party deriving title from us undertakes the development.</p> <p>The power contained in Section 237 of the Town and Country Planning Act 1990 (as amended) does not remove the legitimate rights of parties to compensation, which may arise from the interference with their rights, but it does remove the potential for excessive claims and it also removes the potential for such parties to frustrate the development by obtaining an injunction to prevent the interference with their rights.</p> <p>If any affected parties claim compensation, then Catalyst Housing will be liable to pay such compensation.</p> <p>Once the land has been appropriated for planning purposes, the Council will need to use an appropriate power to dispose of the land, when required. Section 233 of the 1990 Act authorises the disposal of land that is held by the Council for planning purposes, subject to the Secretary of State's consent for any disposal at less than the best consideration that could reasonably be achieved.</p> <p>Any decision of the Council can be judicially reviewed. Any judicial review must be lodged as soon as possible after the decision is made and, in any event, not later than three months after the date of the decision.</p>	
<b>Finance</b>	<p>Under the Housing Contract, the Council's financial exposure to the project is capped. This cap will not be affected by the appropriation of the site. The development costs for each site are funded by Catalyst.</p> <p>The Council will be liable to meet any costs for compensation if Catalyst Housing fail to pay them but these costs are recoverable under the Housing Contract. There is a small risk to the council if Catalyst were unable to meet their obligations.</p>	<p>Ceri Davies Interim Finance Manager Housing &amp; Community Living 6 March 2013</p>
<b>Equalities</b>	<p>The development will provide an improved, high quality, freely accessible public open recreation area.</p> <p>The project will also deliver significant benefits for communities in Luton including training, apprenticeships, regeneration and funding of community projects.</p>	<p>Agreed Sandra Legate Equality and Diversity Policy Manager 11<sup>th</sup> March 2013</p>

	No IIA required.	
<b>Environment</b>	There are no direct environmental implications to the recommendations of this report. The housing development was assessed for its impact on the environment as part of the planning process, paying particular attention to issues such as flooding, noise/ air pollution and protecting natural habitats.	Strategy and Sustainability Officer, 7 <sup>th</sup> March 2013
<b>Public Health</b>		
<b>Community Safety</b>		
<b>Staffing</b>	None	
<b>Other</b>		

**FOR EXECUTIVE ONLY - Options:**

- (a) To approve the recommendations.
- (b) To approve appropriation but not disposal of the site.
- (c) To approve disposal but not appropriation of the site.
- (d) To reject all the recommendations.

## Appendix A – Site plan



Notes: •  
Do not scale from drawings unless by agreement with HTA.  
Use figured dimensions only.  
Check all dimensions on site prior to commencing the works.  
Drawing to be read in conjunction with other relevant consultant information  
This drawing is the copyright of HTA Architects Ltd, and must not be copied or reproduced in part, or in whole, without the express permission of HTA Architects Ltd.  
Drawing to be read in conjunction with outline specification.

Drawing Notes: •

key plan



drawing north point

revision	date	drawn	description
•	01.03.11	ELS	Initial Issue

## FOR INFORMATION

**WATES**  
**New Homes for Luton**

client / job name

## Luton Phase 2

drawing title **Ickley Close Location Plan**

**LUT AL (0) 002**

drawing number	revision

job reference	scale	drawn
<b>WAT-LUT-200</b>	<b>1:1250 @ A3</b>	<b>ELS</b>

0m 25m 50m 75m 100m 125m

**HTA** 106-110 Kentish Town Road London UK NW5 2NU  
P (020) 7485 8555 F (020) 7485 1232 hta@hta-arch.co.uk



## **Appendix B – Appropriation and disposal processes**

### **Appropriation**

- 1) Executive approval for the process and delegation of the powers to the Executive Leader and the Portfolio Holder for Housing
- 2) Public notice in local newspapers for two consecutive weeks
- 3) If no objections are received, the Executive Leader and Portfolio Holder may approve the appropriation and the decision is recorded
- 4) If objections are received, the Executive Leader and Portfolio Holder should consider them in camera without officers and inform them of their decision. Officers will record the decision and inform objectors of the decision.

### **Disposal to Catalyst Housing**

- 1) Executive approval for the process and delegation of the powers to the Executive Leader and the Portfolio Holder for Housing
- 2) Public notice in local newspapers for two consecutive weeks
- 3) If no objections are received, the Executive Leader and Portfolio Holder may approve the disposal and the decision is recorded
- 4) If objections are received, the Executive Leader and Portfolio Holder should consider them in camera without officers and inform them of their decision. Officers will record the decision and inform objectors of the decision.
- 5) If a decision is made to dispose of the site to Catalyst Housing, the Secretary of State's approval will be sought.