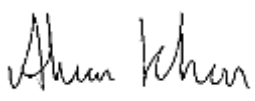


LONDON BOROUGH OF WALTHAM FOREST

Meeting / Date	Cabinet 13th October 2022	
Report Title	APPROPRIATION OF LAND REQUIRED TO DEVELOP LEA BRIDGE STATION SITES FOR NEW HOUSING AND STATION ENTRANCE	
Cabinet Portfolio	Councillor Ahsan Khan, Deputy Leader and Portfolio Lead Member for Housing & Regeneration	
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Wards affected	Lea Bridge	
Public Access	Open except for Appendix B,C and D which are EXEMPT in accordance with Section 100(A-H) of the Local Government Act 1972 and Schedule 12A as amended, on the grounds that it involves the likely disclosure of exempt information as defined in Part 1, paragraph 3, as it contains information relating to the financial or business affairs of any particular person (including the authority holding the information) and disclosure would not be in the public interest.	
Appendices	Appendix A - Plan of land to be appropriated and disposed of Appendix B – Rights to Light Report (EXEMPT) Appendix C – Existing Rights and Restrictions (EXEMPT) Appendix D – Compensation Assessment (EXEMPT) Appendix E – Equality & Diversity Matrix	

1. SUMMARY

- 1.1 Lea Bridge Station Sites is one of the Council's key strategic sites in unlocking much needed housing, including a significant provision of affordable housing. In addition, it will provide a new station entrance and plaza, cultural & community hub and commercial space to create a more welcoming, inclusive environment for the public through public realm improvements.
- 1.2 The Lea Bridge area is also a pilot for the Council's 15-Minute Neighbourhood model. Developing 15-minute neighbourhoods in Waltham Forest will reduce unnecessary travel, provide more public

space, inject life into local high streets, provide improved access to services, strengthen the sense of community and belonging, promote health and wellbeing, and improve sustainability and liveability.

- 1.3 This report updates on progress made on Lea Bridge Station Sites since 15th May 2020 when Cabinet approved the appointment of London Square Developments (hereafter referred to as '**London Square**') as the Development Partner and the Executive Decision dated 15 May 2020 to enter into the Development Agreement. Before development can commence there are a number of conditions within the Development Agreement that must be satisfied, most of which are the responsibility of the Development Partner.
- 1.4 To ensure the development can proceed in a timely manner, under the Development Agreement the Council has the responsibility to address any historic rights and easements that affect the three sites (as shown in the plan at Appendix A, and hereafter referred to as '**the Land**') and would prevent development being advanced. This report seeks approval to appropriate the Land so the Land is held for a planning purpose, thus triggering the protection of s.203 Housing and Planning Act 2016 ('**HPA 2016**').

2. RECOMMENDATIONS

2.1 Cabinet is recommended to:

- 2.1.1 Authorise the Commercial Director of Property and Delivery in consultation with the Director of Governance and Law to appropriate the land outlined in red on the plan attached at Appendix A ("**the Land**") for planning purposes under Section 122 of the Local Government Act 1972 and Section 227 Town and Country Planning Act 1990. The appropriation of the Land will trigger the protection of Section 203 of the Housing and Planning Act (HPA) 2016 which will allow the Council to interfere with third party rights that may affect the Land and convert them into a right to claim compensation. This is subject to:
 - (i) the Land being stopped up as a public highway under s.247 Town and County Planning Act 1990 (as amended)
 - (ii) due consideration being given to any representations that are made in respect of the proposed appropriation and disposal of the open space land that is situated within the Land that has been advertised pursuant to the requirements of Section 122(2A), Section 123 and Section 123 (2A) of the Local Government Act 1972
 - (iii) No material matters arising in the engagement process as set out in Appendix C which substantially alter the Council's factual case as set out in this report so that the Council considers that the criteria for appropriation are no longer met
- 2.1.2 Authorise the Commercial Director of Property and Delivery in consultation with the Director of Governance and Law to take all necessary steps and deal with all necessary legal arrangements, including (but not limited to) entering into an indemnity agreement with

London Square, making compensation payments in line with the statutory framework, responding to any claims and dealing with any disputes. To note that, London Square are responsible for negotiating and settling any compensation associated with Rights to Lights.

3. PROPOSALS

3.1 The Lea Bridge Station Sites comprise of three Council owned sites located along Lea Bridge Road which are mainly open, grass and shrubbed areas covering a total of 1.13 hectares as shown in Appendix A (Site Plan). The Land is located at a prominent location on Lea Bridge Road at the junction with Orient Way and Argall Way. Lea Bridge Railway Station is also located adjacent to one of the sites. Individually the Land comprises:

- (a) Site 1 (Station Site, Argall Way) is an open grassed area broadly triangular in shape. It abuts the bridge over the railway line along its southern boundary and the current entrance to Lea Bridge Station to the north which is at platform level. It is bound by Argall Way to the east and the existing railway to the west.
- (b) Site 2 (Lea Bridge Road) is currently used as an informal open space with footpaths and trees. The site is not designated as a park or protected open space.
- (c) Site 3 (Orient Way) is an open grassed area adjacent to the railway with a significant slope from north to south and east to west of the site. It features a service access to the railway and a sloped cycle path which connects Orient Way to Site 1 underneath the road overbridge.

3.2 On the 15th May 2020, Cabinet agreed to appoint London Square following a competitive procurement process to be its delivery partner for the redevelopment of the Lea Bridge Station Sites under the terms of a Development Agreement signed on 17th March 2021.

("the Proposed Development"):

3.3 The redevelopment of the Land will:

- Deliver 345 new homes, including 50% affordable by habitable room
- Deliver a new and improved station entrance with level access
- Deliver circa 2,430sqm of new cultural and commercial facilities and employment space to serve the new and existing neighbourhood
- Create circa 1,800sqm of residents internal and external play space and amenity space

- Create 750sqm of publicly accessible open green space including an increase in trees and biodiversity
 - Create a high quality and active public realm including the station entrance plaza and surrounding retail
 - Deliver bike storage with an ability to store up to 635 bikes, encouraging more residents to cycle
 - Strengthen the architectural quality of the area through a distinctive but contextual approach that creates a unique character.
 - Deliver a meaningful social value programme that assists local residents with getting into work
- 3.4 Since entering into the Development Agreement, London Square and their design team has progressed the Proposed Development with support from the Council's Capital Delivery team. Detailed engagement with local community groups and residents took place over the Summer and Autumn of 2021 where the proposals were shared to gain feedback on the various aspects of the design. More on the consultation and engagement with local community is detailed in Section 6.
- 3.5 The Council's Planning Committee resolved to grant planning permission on 7th March 2022, subject to referral to the Mayor of London and the signing of a S106 agreement.
- 3.6 As part of the due diligence for delivering the Proposed Development, consideration has been given to whether any rights, easements or restrictions will be interfered with or affect the Land. A key consideration has been the Proposed Development's interference with the right of light of neighbouring properties.
- 3.7 A right of light is an interest in land (an easement) which entitles a neighbouring landowner ("Dominant Owner") to enjoy such rights across neighbouring land ("the Servient Land"), in this case the Land which is proposed to be developed. Any development of the Land which interferes with that right may constitute a breach of that easement which may entitle the Dominant Owner to seek an injunction preventing development or damages in lieu of an injunction. The award of an injunction is at the discretion of the Court.
- 3.8 A Rights of Light assessment has been undertaken by London Square to identify which Dominant Owners might be impacted by the construction of the proposed development, some of whom might suffer sufficient injury to succeed in obtaining an injunction. A Schedule of interests and rights and the engagement strategy for the rights holders is included at Appendix C.

- 3.9 It should be noted that an interference with a right of light does not mean that a property will not receive any light, rather than at a certain time of day the presence of the new buildings will block some of the visible sky and the light that reaches a property. In many cases this interference is not noticeable and the planning process has ensured that the development is acceptable not only in the context of what is being built on the Land but also its relationship and impact on neighbouring properties in respect of daylight and sunlight.
- 3.10 The Council's solicitor and external legal advisors Bevan Brittan have also undertaken a review of the title documents relating to the Land and identified a number of existing rights and restrictions which the Proposed Development would interfere with. A summary of these rights and restrictions that are not held by Secretaries of State or Statutory Undertakers is also provided in Appendix C. There are also potential unknown rights and restrictions which relate to the Land – not all documents referenced in the title register of the Land are available from Land Registry and there may be some rights and restrictions which the Council is not presently aware of which the Proposed Development will interfere with.
- 3.11 In order to provide certainty to the programme, ensure that the Proposed Development can be delivered in full, and remove the risk of a third-party securing an injunction and the associated costs of aborting the delivery of the Proposed Development, it is necessary to appropriate the Land for planning purposes. Whilst parties who have identified legal rights or covenants over the Land which will be interfered with by the development will be engaged with prior to the Land being appropriated for planning purposes, to secure the release required as per the engagement strategy, there is no certainty that agreement will be reached with all parties or that all rights/restrictions over the Land (together with the beneficiaries) will be identified to allow for engagement.
- 3.12 Appropriating the Land for a planning purpose will trigger the protection of s.203 HPA 2016. This legal provision will allow the Council, or any party deriving title under them, to lawfully interfere with third party rights, restrictive covenants and contractual restrictions relating to the Land, providing the development of the Land is delivered in accordance with a planning permission. Parties who have their rights interfered with will be entitled to compensation for the depreciation in the value of their interest in land which benefits from the right/restrictive covenant, assessed in accordance with the statutory provisions. Under the Council's Development Agreement with the Development Partner, the management of addressing third-party rights is split into two categories:
- (d) Rights to Light
 - (e) Any other third party rights affecting the Land

- 3.13 Part of the Land is open space. To comply with Sections 12s2 and s123 of the Local Government Act 1972 and more specifically sections 122 (2A) s123 (2A) Local Government Act 1972 the Council must consider any representations before implementing the decision to appropriate the Land and advertise its intention to appropriate and dispose of the Land. The advertising process must be carried out in accordance with the statutory provisions. However, it was noted at Section 10A of the report to the Council's Planning Committee of 7th March 2022 ("Planning Report") that none of the open space within the Land is protected, and the Land is not in an area identified as deficient in open space. A full assessment of the impact of the loss of the open space and relevant planning considerations are set out in the Planning Report.
- 3.14 The financial case for awarding the Development Agreement to London Square was considered in the Executive Decision dated 15 May 2020 which demonstrated that the proposed disposal of the Land (including the Open Space Land) to London Square met the requirements for s123.
- 3.15 The land edged pink is owned by Network Rail and is currently used as the Lea Bridge Station entrance. The Council is in active discussions with Network Rail and Greater Anglia to procure the closure of that entrance once the new station entrance is completed by London Square. The parties are entering into a 'land swap' arrangement to transfer ownership of the New Station Entrance to Network Rail once it is completed by London Square and subsequently transfer ownership of the Existing Station Entrance land to the Council which will then be demolished and the land utilised as part of the wider mixed-use development. When this swap occurs, the Council will be acquiring the Existing Station Entrance land for a planning purpose and so this land is not required to be appropriated.

Rights to Light

- 3.16 London Square, acting as the Council's Development Partner has commissioned Anstey Horne, a specialist rights to light and neighbourly matters practice, to undertake a preliminary assessment of the potential impacts of the Proposed Development on the Rights to Light of nearby properties. The assessment concluded that the Proposed Development would lead to impacts on 16 properties along Elm Park Road, one property on Lammas Road, Freya Court and the Motion development at 98 Lea Bridge Road.
- 3.17 London Square have engaged with these identified affected parties to try and secure the release of the right over the Land and agree compensation where relevant. The Council has also written to all 19 affected parties to make them aware of this process. Of all those impacted, three resident freeholders made representation to the Council to express concerns with the appropriation and the development itself. In summary, the concerns raised were regarding the impact of the potential loss of light, the height of the development, the loss of trees and the impact on residential parking in the area. The Council has

considered all the points raised and responded to each representation with further clarification on the specific areas of concern, signposting the planning application and supporting documents where relevant.

- 3.18 The Council will continue to monitor the engagement of London Square and their advisors with affected rights-holders in accordance with the engagement strategy in Appendix C. Should this process reveal matters that substantially alter the Council's factual basis for appropriating under s122 LGA 1972 then a further report will be brought back before Cabinet for further consideration by members.

Other rights

- 3.19 The Land is subject to a large number of historic third-party rights that relate to its position next to a railway line. Some of those rights are held by Secretaries of State or Statutory Undertakers, the rights of which cannot be lawfully interfered with under s.203 HPA 2016 but must nevertheless be released in order for the development to be protected from an injunction. In respect of other rights existing, the Council has written to those with the benefit of those rights on at least 3 occasions. Where it has received a response, the Council is seeking to negotiate a release of the rights with those parties
- 3.20 There are additional third party rights which are historic or relate to former land ownership arrangements and some which are either held by beneficiaries who cannot be identified or relate to documents that the Land Registry cannot provide copies of. The Council has written to all identifiable private parties who retain the benefit of the remaining rights that affect the Land, notifying them that the Land is intended to be appropriated and to discuss the release of any rights and the payment of relevant compensation. Those rights will either be released via agreement or, if no agreement can be reached (either because the party benefitting from the right cannot be identified, chooses not to engage, or an agreement cannot be reached), be lawfully interfered with following the appropriation of the Land for planning purposes for the reasons set out in this report.
- 3.21 The proposed use of the Council's statutory powers requires the Council to demonstrate that the relevant criteria have been met. The relevant criteria are set out in Section 8.2 and are considered each in turn.

Use of Powers

s122 Local Government Act (LGA) 1972

- 3.22 To appropriate the Land for planning purposes under s122 LGA 1972, the Council must decide that the land to be appropriated is no longer required for the purpose for which it was held immediately prior to appropriation.

- 3.23 The Land is currently used as public highway, incorporating a cycle path and some cycle storage. Whilst the Land is presently fulfilling its current purpose, this will cease when the Council is obliged to grant the leases over the Land to London Square under the terms of the Development Agreement to achieve its new purposes and deliver the much needed housing, including affordable housing, community and commercial space and step-free station entrance. The cycle path will be retained and a significant uplift in cycle storage will be provided. At this time, the land will need to be held by the Council for a planning purpose. The expectation is that all of the conditions under the Development Agreement will be met by December 2022 and the leases granted thereafter.
- 3.24 London Square have advanced a Stopping Up Order under s.247 Town and Country Planning Act 1996 (as amended) to cease use of the land as a public highway. Should this order be confirmed the Land will no longer be required for its current use.

S203 Housing and Planning Act (HPA) 2016

- 3.25 Section 203 HPA 2016 provides that where land has been appropriated for planning purposes then any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land which could prevent the development of that land from being carried out in accordance with the planning permission, can be overridden providing the development is delivered in accordance with a planning permission. Those parties which suffer an interference which would be actionable in law were it not for the protection of s.203 HPA 2016 are entitled to receive compensation for the diminution in the value of their interest caused as a consequence of the Proposed Development's interference. The benefit of Section 203 HPA 2016 will apply to the Developer. By virtue of appropriating under Section 122 LGA 1972, Section 203 HPA 2016 will be enabled.
- 3.26 Section 203 HPA 2016 does not remove the legitimate rights of those persons taking the benefit of the easements or other rights to compensation arising from the interference with such rights, but it does remove the potential for such persons to frustrate the development by obtaining an injunction to prevent interference with their rights.
- 3.27 The decision to appropriate and thus enjoy the protection provided by s203 is analogous to the application of an Acquiring Authority's compulsory purchase powers. Consideration has therefore been given to the requirements of the CPO guidance titled 'Compulsory purchase process and the Crichel Down Rules' ("Guidance"). This requires the Council to demonstrate that both London Square with regard to Rights of Light and the Council with regard to other third party rights has made 'reasonable attempts' to negotiate the release of the affected rights and agree compensation where relevant. It also requires the Council to give due consideration to a variety of other factors when making this decision. These criteria are considered in detail and in turn below.

a) **Whether the appropriation will facilitate the carrying out of the redevelopment of the land**

- 3.28 By engaging Section 203 HPA 2016, the Council and London Square has sufficient certainty that an injunction cannot prevent the Proposed Development being delivered. If an action is brought against the Development Partner, the remedy will be compensation.
- 3.29 Appropriation is a key tool available to the Council to ensure that the Proposed Development can be brought forward and not be constrained by existing rights, restrictions, covenants, easements or obligations. As a number of legal documents are not available from Land Registry, there is uncertainty as to what easements or restrictions bind the land and whether these could prevent the Proposed Development from coming forward. Appropriating the Land for a planning purpose will ensure that the development can proceed without risk of injunction from a party having the benefit of a right over the site, either known or unknown.
- 3.30 The appropriation of the Land will ensure that a potential barrier to the Proposed Development is overcome. The remaining barriers are the remaining pre-conditions in the Development Agreement with London Square which includes the Stopping Up of the Land and the disposal of the open space as discussed in this report. Council Officers are confident that there are no other impediments to the delivery of the Proposed Scheme and there is a reasonable prospect of it coming forward.

b) **Whether the Proposed Development will contribute to the promotion or improvement of the economic, social or environmental well-being of the area;**

- 3.31 The Lea Bridge Station Sites is a key project in the regeneration of the Lea Bridge Area and its delivery will make a major positive contribution to the economic, social and environmental well-being of the area. The delivery of 345 new homes, of which 50% will be affordable by habitable room, will contribute to meeting the Council's identified housing targets and will ensure the delivery of affordable homes for local residents. The new commercial space will transition the area around the station to a local town centre, catering for local residents' needs whilst delivering high quality buildings which meet current design, building regulation, and environmental requirements. The new station entrance will provide step-free access and incorporate significant cycle storage, alongside the planting of over 500 trees.
- 3.32 These Proposed Development will provide a form of development and mix of units which aligns with the Land's position as an important gateway to the borough. It will also deliver improved flood resilience to the local area by not only managing its own drainage requirements but removing excess, existing floodwater from the surrounding area into its on-site storage. The mixed-use scheme will provide Lea Bridge with a defined Local Centre around the station and will establish a benchmark

for the other allocations within the Council's Local Plan in the area which are expected to come forward for development.

- 3.33 The redevelopment of the Land will also improve the public realm around the busy junction and will incorporate protected on-site play space within the buildings as well as on the ground floor around a sizeable community space. The location of the community space adjacent to the new public open green space and play spaces will provide a safe area for families to play and relax which will add to and improve the daytime economy in the area.

c) Whether the interference with private rights is proportionate and the alternatives that have been considered.

- 3.34 It is recognised that an interference with an individual's private rights must be proportionate and considered against the public benefits that are derived when contrast against an alternative of not interfering with those rights. "Proportionate" in a context means that the interference must be no more than is necessary to achieve the identified legitimate aim. A "fair balance" must be struck between the rights of the individual and the interests of the public. In this regard, the availability of compensation to those who are deprived of their rights is of relevance to the issue of proportionality.

- 3.35 In the present case it is considered that the public interest in facilitating the Proposed Development outweighs the interference with private rights. In respect of Rights to Light, the modelling undertaken shows that the interference caused to [the majority of properties is minor. As part of the determination of the planning permission, the impact on the daylight and sunlight of neighbouring properties was evaluated and considered to be acceptable and not result in an unacceptable impact on nearby properties. Furthermore, the cut-back analysis shows that for actionable injuries to neighbouring properties right to light to be avoided, the Proposed Scheme would have to reduce in volume by circa 70%. This level of reduction would not only significantly reduce the public benefits of the scheme – including the level of much needed affordable housing – but would also make the Proposed Development financially unviable meaning that the redevelopment could not be advanced, meaning that all the benefits of the Proposed Development are eroded.

- 3.36 In respect of other rights existing across the land, a review of these rights has been undertaken and of the known existing rights, in the majority of instances the interference with those rights will not have an impact on the beneficiary of those rights. The rights which exist benefit land which does not directly abut the Land and the nature of those rights (the right to over sail cranes, the right of access to maintain/repair/etc. buildings on neighbouring land) confers no benefit to the neighbouring land owner. The rights exist as a function of the Land previously forming part of a larger land holding but as this land has been divided into parts, the relevance of the right to the Dominant Owner has eroded and is

effectively inconsequential. Similarly, the identified restriction for parts of the Land to only be used as a highway or as landscaping does not benefit other property; the Proposed Development will maintain the public highway network and the access this provides to neighbouring properties.

- 3.37 Whilst London Square and the Council will engage with affected parties to seek to secure the release of rights and restrictions over the Land, officers consider that the appropriation of the Land and the consequential interference with private rights is proportionate given the nature of those rights and the public benefits that are realised from the Proposed Development,

d) Does the Proposed Development accord with the Council's development plan?

- 3.38 The Land is being appropriated to allow the comprehensive redevelopment of the Land as provided for by the planning consent. The redevelopment of the Land will deliver the planning objectives set out in the allocation for the site in the Council's draft Local Plan LP2 and also the thematic policies set out in the LP1 submission document.

8 - Decent Homes for Everyone

9 - Building a Resilient and Creative Economy

10 - Promoting Culture and Creativity

11 - Distinctive Town Centres and High Streets

12 - Social and Community Infrastructure

13 - Promoting Health and Well Being

14 - Creating High Quality Places

15 – Active Travel, Transport and Digital Infrastructure

17 - Protecting and Enhancing the Environment

18 – Addressing the Climate Emergency

- 3.39 19 - Promoting Sustainable Waste Management

e) have reasonable efforts have been made to secure the release of rights and restrictions that burden the Land?

- 3.40 London Square have begun engaging with affected rights-holders and will lead on the next stage of the negotiation process following approval of the recommendations set out in Section 2 of this report. In respect of other rights existing, the Council has written to those with the benefit of those rights on at least 3 occasions. Where it has received a response,

the Council is seeking to negotiate a release of the rights with those parties

Conclusions

- 3.41 It is commonplace for a scheme of the size and scale of the Proposed Development to interfere with Rights to Light of neighbouring properties. The Land also has additional complexities in that there are a number of known and unknown rights and restrictions which (potentially) burden the land.
- 3.42 The Council has considered each of the criteria and considers that the interference with private rights is proportionate in view of the public benefits that are generated by the Proposed Development. The Lea Bridge Station Sites are a key development opportunity within the Borough and is one that has the capacity to deliver significant economic, social and environmental benefits to local residents through their development. The Land could not be developed without interfering with identified rights and restrictions, and reducing or eliminating interferences with Rights to Light would result in a significant reduction in the form of development deliverable which would result in the development of the Land being unviable. London Square and the Council will engage with the relevant parties to secure the release of rights over the land by agreement, but there is a reasonable prospect that agreement with all parties would not be achievable. To wait until all efforts have been exhausted would result in significant delays to the delivery of the Proposed Development. Furthermore, the appropriation of the land for a planning purpose so to invoke the protection of s.203 HPA 2016 is necessary given the identification of unknown rights and restrictions over land. Should the engagement process to be adopted over the next few months reveal facts that materially alter the Council's view on the satisfaction of these criteria so that the Council considers that the criteria for appropriation are no longer met then a further report will be brought to Cabinet to consider.
- 3.43 Due regard has been given to the Council's Equalities Duties, in particular with respect to general duties arising under the Equality Act 2010, Section 149 (see further at Section 8.3). Having regard to the need to advance equality in particular involves the need to remove or minimise disadvantages suffered by persons who share relevant characteristics which are connected with that characteristic. The screening report and approach to managing the negotiations to ensure this duty is complied with is included at Appendix E.

4. OPTIONS & ALTERNATIVES CONSIDERED

- 4.1 The alternative to appropriating the land for planning purposes would be to seek to identify and release all rights and remove all restrictions by private agreement prior to commencement of the development works.
- 4.2 This strategy would put the Council at risk from both delay as it is unlikely that agreement will be reached with all parties within a reasonable

timeframe, not all relevant parties identified given the absence of documentation at Land Registry, and injunctive relief could potentially be sought by relevant interest holders. There is also the potential for a greater financial exposure as parties seek ransom payments reflecting that their lack of agreement is preventing the scheme from progressing. This would result in significant uncertainty as to whether the scheme could be progressed in a timely fashion, causing at best a delay in progressing the scheme and at worst resulting in the scheme not proceeding due to the risk of additional, unreasonable costs and delays.

5. SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)

5.1 Planning policy will guide sustainability proposals. The redevelopment of the Land will specifically contribute to the Council's policies of:

- Creating and establishing a sustainable neighbourhood by providing a range of quality new homes in terms of tenure, size and affordability to meet the housing needs of the local community
- Creating an attractive and distinctive centre with high quality design of buildings, public spaces and conserving and enhancing the centre's historic environment and using it as a catalyst for regeneration

5.2 The redevelopment of these three sites will also contribute to a number of the Council's spatial strategy with Lea Bridge as a strategic location, and the thematic policies as set out in the Draft Local Plan including:

- Decent Homes for Everyone
- Building a Resilient and Creative Economy
- Promoting Culture and Creativity
- Distinctive Town Centres and High Streets
- Social and Community Infrastructure
- Promoting Health and Well Being
- Creating High Quality Places
- Sustainable Transport and Infrastructure
- Protecting and Enhancing the Environment
- Ensuring Climate Change Resilience
- Promoting Sustainable Waste Management

5.3 The Council has set ambitious plans for housing delivery and has demanding housing targets to reach from the Mayor of London. The development of these sites could contribute to meeting these targets by providing 345 new homes.

5.4 This project embraces the vision of the Property Transformation strategy which is: 'delivering economic growth, prosperity and opportunity through the creative use of Council Land, buildings and partnerships'. Through the leverage of the Council's landholding in this area, we are able to regenerate a key gateway into the Borough by working in

partnership with the private sector, delivering genuinely affordable housing for our residents, providing valuable new commercial space in a sustainable location and transforming a key transport hub. There will also be opportunities for construction training, apprenticeships and jobs through this project, these have been secure with the developer through the s106 agreement.

6. CONSULTATION

- 6.1 Consultation on the development of Lea Bridge Station sites date back to 2016. More detailed public consultation and engagement on the proposal took place throughout Summer 2021 to the lead up to planning submission. This included various webinars and zoom meetings (in accordance with COVID-19 government guidelines) and in person engagement events including a Ward Forum.
- 6.2 A further online workshop was organised during Autumn 2021 with invited community organisations and service providers. This was to provide a space to test the Applicant's understanding of what facilities and services currently exist in the Lea Bridge community, and what service providers and active community members think is required from the new community space. The local community will be engaged with further on future use of the cultural / community space.

7. IMPLICATIONS

7.1 Finance, Value for Money and Risk

- 7.1.1 Under the terms of the Development Agreement, in relation to the potential infringement of rights of light, London Square is responsible for all costs, including paying compensation, to those affected.
- 7.1.2 The Council is responsible for costs associated with the extinguishment of other third party rights and compensation. An assessment has been undertaken against the rights to be appropriated and this is included in Appendix D. Based on professional advice, there is minimal risk of such expenditure. However, an allowance has been included in the deliver budget for specialist advice if necessary.

7.2 Legal

- 7.2.1 The Council holds land for various statutory purposes in order to perform its functions. From time to time, the purpose for which the land is held may change. "Appropriation" is the process by which the Council formally changes the purpose for which a piece of land is held, from one purpose to another. Section 122 of the Local Government Act 1972 authorises the Council to appropriate land to a particular purpose, for which it is authorised to acquire land by agreement, where that land is no longer required for another purpose.
- 7.2.2 Section 227 of the Town and Country Planning Act 1990 authorises a local authority to acquire land by agreement for a purpose for which the local authority may be authorised to acquire land under Section 226

Town and Country Planning Act 1990. As a result, the appropriation of the Land to planning purposes must be made pursuant to Section 122 Local Government Act 1972 and Section 227 Town and Country Planning Act 1990.

- 7.2.3 Section 226 Town and Country Planning Act 1990 authorises a local authority to acquire compulsorily any land in their area for planning purposes if the local authority believe the acquisition is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or any part, of the area in the interests of the proper planning of the area.
- 7.2.4 Statutory powers under Section 203 of the Housing and Planning Act 2016 can be used on land appropriated to planning purposes to safeguard development from the threat of injunctions from third parties seeking to protect their rights. The effect of appropriating land to planning purposes under Section 122 of the Local Government Act 1972 and using powers to address third party rights under Section 203 of the Housing and Planning Act 2016 is that such third party rights will be converted to compensation. A prospective claimant will not be able to obstruct the development by obtaining an injunction seeking to stop the development providing that the development is carried out in accordance with the planning permission. The appropriation will affect third party rights such as rights of way or rights of light either derived from a deed or obtained by prescription under usage. The rights of the statutory undertakers and electronic code operators will not be affected and the Council will have to negotiate them separately. The criteria to be satisfied for the powers within Section 203 to apply are that:
- There is a planning consent in place for the works/use of the land that has been acquired or appropriated;
 - The works/use must be intended to be carried out on land that has been appropriated by a local authority for planning purposes;
 - The land is land that the authority could acquire compulsorily for the purposes of the works/use; and
 - The works/use is for the purpose for which the land was vested, acquired or appropriated.
- 7.2.5 All of the above criteria would be satisfied if the Land were appropriated for planning purposes
- 7.2.6 Existing third party legal rights and easements (e.g. rights of way or rights of light) will be converted into compensation under Section 203 powers. The powers under Section 203 to address third party rights are similar to compulsory purchase powers that the Council has to statutorily acquire land for planning purposes under Section 226 of the Town and Country Planning Act 1990. It follows that, in accordance with the Guidance before such powers are used, the Council must show that meaningful attempts to negotiate compensation have been pursued or at least genuinely attempted, save for instances where the identity of

beneficiaries or the rights potentially affected are unknown or in question. This is the approach proposed in this report.

- 7.2.7 The Council is required to act in accordance with the public sector equality duty under Section 149 of 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 to cover the negotiation process is included at Appendix D and the Council will have to ensure that it removes or mitigates any potential factors, which may interfere with its public sector equality duty.
- 7.2.8 The Human Rights Act 1998 incorporated into domestic law the European Convention of Human Rights (“the Convention”). Specific rights protected by the Convention include, amongst others:
- (a) The right of everyone to the peaceful enjoyment of their possessions, which can only be impinged upon in the public interest and subject to relevant national and international laws, and
 - (b) The right to a private and family life, home and correspondence, which can only be impinged upon in accordance with the law and where such encroachment is necessary in the interest of national security, public safety or the economic wellbeing of the country.
 - (c) The above Convention rights should be considered by the Council before using the power to appropriate for planning purposes. European jurisprudence has recognised that “regard must be had to the fair balance that has to be struck between competing interests of the individual and of the community as a whole”. Any interference with a Convention right must therefore be necessary and proportionate.
- 7.2.9 Any disposal of Council land must be in accordance with the best consideration provisions contained within Section 123 of the Local Government Act 1972 (and this has been confirmed within the report).
- 7.2.10 The proposed land is outlined in red in Appendix A.
- 7.2.11 In considering the appropriation of the Land for planning purposes, the Council will need to carefully consider the factors above and the balance to be struck between individual rights and the wider public interest and whether the significant public benefits to be derived from the Proposed Development are of sufficient magnitude to justify the appropriation of the Land for planning purposes.

7.3 Equalities and Diversity

- 7.3.1 The Equality Act 2010 requires public authorities to have due regard to the need to eliminate discrimination and advance equality of opportunity. The Council must further take into account its wider Public Sector Equality Duty (PSED) under s.149 of the Equality Act 2010 when making its’ decisions. The public sector equality duty (s.149, Equality Act 2010) requires the Council, when exercising its functions, to have “due regard” to the need to: eliminate unlawful discrimination, harassment and

victimisation and other conduct prohibited under the Act, advance equality of opportunity between those who share “protected characteristic” and those who do not share that protected characteristic and foster good relations between persons who share a relevant protected characteristic and persons who do not share it (this involves having due regard, in particular, to the need to (a) tackle prejudice, and (b) promote understanding)

7.3.2 A preliminary Equality and Diversity assessment has been undertaken and attached at Appendix E.

7.3.3 Within the process of contacting affected third parties and negotiating compensation, allowances will be made to account for vulnerable parties in accordance with the public sector equality duty.

7.4 Sustainability (including climate change, health, crime and disorder)

7.4.1 Planning policy will guide sustainability proposals. A sustainability and climate change matrix was issued as part of the December 2019 Cabinet Report. As the scope of the scheme is unchanged and the focus of this report is related to Appropriation, there are no direct sustainability implications as a result of this report.

7.5 Council Infrastructure

7.5.1 The appropriation and delivery of the wider project will be undertaken within existing resources.

BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)

None