

Committee: Cabinet

Date: 19 September 2011

Agenda item: 8

Wards: Abbey

Subject: 165 – 169 Merton Road, London SW19 1EE

Lead officer: Chris Lee – Director of Environment & Regeneration.

Lead member: Councillor Andrew Judge – Cabinet Member for Environmental Sustainability and Regeneration.

Forward Plan reference number:

Contact officer: Howard Joy, Property Management and Review Manager.

Recommendations:

- A. That 165 – 169 Merton Road, London SW19 1EE be appropriated for Planning Purposes pursuant to section 122 of the Local Government Act 1972.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of the Report is to seek authority for the appropriation for planning purposes of 165-9 Merton Road SW19 1EE ('the Property').
- 1.2. The Property is held by Environment and Regeneration and owned by the Council under section 122 of the Local Government Act 1972. The appropriation is required in order to enable the powers in Section 237 of the Town and Country Planning Act 1990 to facilitate the redevelopment of the Property.

2. DETAILS

- 2.1 165-169 Merton Road (Appendix 1) comprises a site of approximately 0.19 hectares (0.46 acres) which is occupied by a block of flats in semi derelict condition. It is within the portfolio of Environment and Regeneration Department and used on a temporary basis at a rent of £400 per month by British Gas as a depot while they renew the main in Kingston Road.
- 2.2 On 15th November 2004 Cabinet declared the property surplus to Council requirements.
- 2.3 On 14th February 2011 Cabinet authorised the Director of Environment and Regeneration to agree terms for the disposal of this property in consultation with the Cabinet Member for Environmental Sustainability and Regeneration and the Cabinet Member for Community and Community and Culture under the authority provided by the Scheme of Management.
- 2.4 The responsibility for the social care of people with learning disabilities transferred from the NHS to the Local Authority in April 2010. This responsibility for commissioning and managing services included

accommodation and so the intention is that the property be sold to and redeveloped by a housing association to provide supported living flats for people with learning disabilities.

- 2.5 A scheme for the redevelopment has been agreed and was approved by Planning Applications Committee on 8th September 2011. The Scheme should provide 17 units. Nine units being for shared ownership and the remaining eight flats for supported living. The Council will obtain 100% nomination rights in perpetuity.
- 2.6 Terms for the disposal of the property have been agreed subject to authority. A report to the Director of Environment and Regeneration as authorised by Cabinet (paragraph 2.3 above) seeking his authority to dispose of the property is being completed.
- 2.7 The contract with the Council and grant to the Housing Association requires completion of the proposed redevelopment by October 2012. It is therefore critical that the risk of delay is minimised. Some risks, such as periods of inclement weather cannot be managed but the risk from an action seeking an injunction for the preservation of "rights of light" can be greatly reduced.
- 2.8 In addition to compensation, an adjoining owner or occupier who considers that their right to light will be impacted by the redevelopment can seek an injunction from the Courts to stop the development until the matter is resolved. In addition to delay this could result in the scheme being amended, for example reduced in scale to preserve the right to light.
- 2.9 There is no ability, wish or intention to remove the right to compensation but the risk of delay, or a revised scheme and increased costs should be minimised if the current scheme is to have the best chance of being completed on schedule.
- 2.10 The purchaser asked the Council in August to appropriate the land for planning purposes as this will remove the ability of the adjoining owners and occupiers to obtain an injunction and thereby delay or amend the development.
- 2.11 The purchaser has confirmed that the appropriation is critical as without it the risk of an injunction is too great to allow them to proceed with the scheme.
- 2.11 The appropriation will not remove the legitimate rights of owners or occupiers of adjoining property to compensation but will remove the potential for excessive claims.
- 2.12 Appropriation of a property for planning purposes is not unique .The Council have in the past appropriated property for this purpose the most recent case being in 2008/9.

3. ALTERNATIVE OPTIONS

- 3.1 The Council or the purchaser could take out indemnity insurance but this would not prevent excessive claims and for the owners or occupiers of adjoining property to frustrate the development by obtaining an injunction to prevent their rights from being interfered with.

4. CONSULTATION UNDERTAKEN OR PROPOSED

4.1 Departments of the Council and Cabinet Members.

5. TIMETABLE

5.1 Disposal of the freehold to be completed by 30th September 2011.

6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1 The proceeds from the sale of this property will be added to the Authority's pool of Usable Capital Receipts.

6.2 Property implications are contained within the body of the report.

7. LEGAL AND STATUTORY IMPLICATIONS

7.1 The Council holds property for various statutory purposes in order to perform its functions .The process of changing its purpose is described as appropriation. Section 122 of the Local Government Act 1972 authorises a local authority to appropriate land within its ownership. The appropriation must be a formal resolution of the Council.

7.2 Where land is appropriated for planning purposes it is held by the Council under Part 9 of the Town and Country Planning Act 1990 .The practical consequence of this is that 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 provided the works are carried out in accordance with planning permission even if they interfere with third party rights.

7.3 The purpose of Section 237 of the Town and Country Planning Act 1990 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 planning permission can be overridden. The rights are overridden whether the Local Authority or a person deriving title from them undertakes the development .

7.4 The power contained in Section 237 of the 1990 Act does not remove the legitimate rights of owners or occupiers to compensation which may arise from interference with such rights but it does remove the potential for excessive claims and it also removes the potential for such occupiers to frustrate the development by obtaining an injunction to prevent the interference with their rights

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1 Human rights and equalities are significant components of the Council's duties in enabling the provision of housing and avoiding homelessness across a range of needs, backgrounds and cultures.

8.2 The Equality Act 2010 introduced a new Public Sector Equality Duty which came into effect in April 2011.This covers eight 'protected characteristics' (age, disability, gender, reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation).It establishes a general duty on

public bodies to have 'due regard' in carrying out its functions to the need to:

- a. eliminate unlawful discrimination ,harassment and victimisation;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and:
- c. foster good relations between people who share a protected characteristic and those who do not .

In making any decisions members should have regard to the above duty.

9. CRIME AND DISORDER IMPLICATIONS

9.1 There are no specific crime and disorder implications arising directly out of this initiative.

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1 The notion of risk in a financial context is embedded in this report.

11. APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Site Plan.

12. BACKGROUND PAPERS

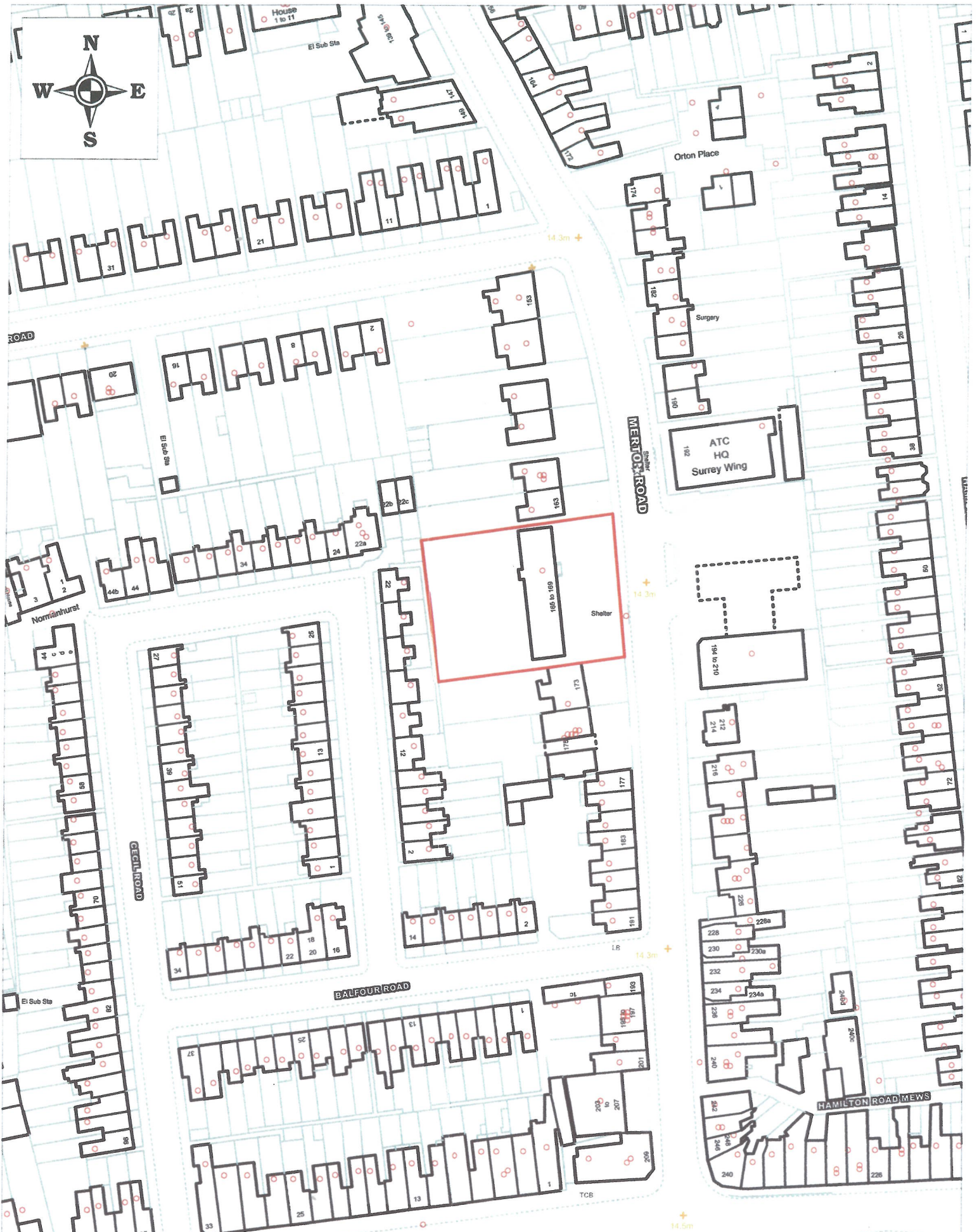
Report to Cabinet 15 November 2004, Housing Revenue Account Land and Property Review 165-169 Merton Road, Ravensbury Garages and Birnam House.

Report to Cabinet 18 December 2006, Council Housing Land Decisions.

Report to Cabinet 18 December 2007, Council Housing Land Decisions.

Report to Cabinet 14 February 2011, Council Housing Land Decisions.

Report to Sustainable Communities Overview and Scrutiny Panel (Call-in Meeting).



165-169 Merton Road

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