

**To:** Cabinet  
**Date:** 14 June 2023  
**Report of:** Executive Director (Development)  
**Title of Report:** Blackbird Leys Development Project – Land Appropriation

<b>Summary and recommendations</b>	
<b>Purpose of report:</b>	To seek approval to advertise the Council's intention to appropriate land (change the statutory basis on which it is held by the Council) at the Blackbird Leys District Centre and Knights Road to facilitate the Blackbird Leys Development Project. The intent to appropriate relates to land owned by Oxford City Council only.
<b>Key decision:</b>	Yes
<b>Cabinet Members:</b>	Councillor Ed Turner, Deputy Leader (Statutory) - Finance and Asset Management  Councillor Ajaz Rehman, Cabinet Member for Inclusive Communities
<b>Corporate Priority:</b>	Meeting Housing Need; Strong & Active Communities
<b>Policy Framework:</b>	The Oxford Local Plan 2016- 2036, including: <ul style="list-style-type: none"> <li>• A pleasant place to live, delivering housing with a mixed and balanced community (Policy H1 – H16);</li> <li>• Making wise use of our resources and securing a good quality local environment (Policy RE1 – RE9);</li> <li>• Ensuring efficient movement into and around the city (Policy M1 – M5);</li> <li>• Providing communities with facilities and services and ensuring Oxford is a vibrant and enjoyable city to live in and visit (Policy V4 , V6, V7);</li> <li>• Areas of Change and Site Allocations including Policy AOC3, SP4, SP15.</li> </ul>
<b>Recommendations:</b> That Cabinet resolves to:	
1.	<b>Approve</b> the public notification process to consider the proposal to exercise the Council's powers to appropriate land in its ownership at Blackbird Leys

	District Centre and Knights Road (see plan at Appendices 1 & 2) (“the Land”) to planning purposes;
2.	<b>Approve</b> the publishing of a notice in a local newspaper for two weeks consecutively expressing the Council’s intention to appropriate the Land in accordance with section 122 Local Government Act 1972 to planning purposes so as to rely on section 203-205 Housing and Planning Act 2016. This is necessary to facilitate Phase 1 of the Blackbird Leys Development Project.

<b>Appendices</b>	
Appendix 1	Aerial View of Blackbird Leys Masterplan Sites
Appendix 2	Blackbird Leys Masterplan: District Centre
Appendix 3	Blackbird Leys Masterplan: Knights Road
Appendix 4	Risk Register
Appendix 5	Benefits of the Blackbird Leys Regeneration Scheme

## 1. Purpose of Report

- 1.1 This report seeks approval for the commencement of a public notification process to consider using the Council’s powers to appropriate the Land (that is to transfer how the Council holds the land from the function and purpose for which it is currently held to a new function and purpose) to be held for planning purposes because following the grant of planning permission the Council’s intention is (subject to any representations and objections received) that the Land will be developed as part of the Phase 1 Blackbird Leys Development Project.
- 1.2 For the purposes of 1.1 above, approve the publication of a notice in a local newspaper for two weeks consecutively, as required by section 122 Local Government Act 1972. Appropriating the Land to a planning purpose will allow the Council to utilise section 203-205 Housing and Planning Act 2016 which means that any restrictions on the use or development of Land will be overridden. This is necessary so as to facilitate Phase 1 of the Blackbird Leys Development Project which will include the Blackbird Leys District Centre and Knights Road (Appendices 1-3) (the “Land”).

## 2. Introduction and Background

- 2.1 Blackbird Leys District Centre and Knights Road were identified as a comprehensive regeneration sites in the Oxford City Council Sites and Housing Plan (2013) and reaffirmed in the Oxford Local Plan 2036. The District Centre is located at the centre of the 1960s estate with major employment sites to the North, an industrial park to the North East, a science park to the South West and the Kassam Stadium to the South.
- 2.2 The Leys has some of the most deprived areas in the country, with the 2019 Indices of Deprivation (IMD2019), demonstrating that 3 out of the 4 LSOAs

within Blackbird Leys rank amongst the 20% most deprived within England, and amongst the 10% most deprived in terms of Education, Skills, and Training. Furthermore, according to End Child Poverty estimates for 2017/18, Blackbird Leys ranks as the Oxford city ward with the highest incidence of children living in poverty (after housing costs).

- 2.3 OCC and Peabody have been working together to develop the Blackbird Leys masterplan, focusing on layout, housing mix (including tenure and type), phasing and viability. The masterplan concept has included engagement with the community and is subject to change during the detailed design and planning stage and will be informed by further engagement with the local community. The proposed masterplan is included in Appendices 1-3.
- 2.4 The proposals for the District Centre and Knights Road sites are considered as a masterplan, looking to promote a holistic approach to place-making across Blackbird Leys. The proposals seek to integrate a new high-density residential-led mixed use development into a changing context, within an established and engaged local community. The scheme will be delivered in phases, with Phase 1 including the Knights Road site and most of the District Centre, excluding the existing block of retail units and flats above (shown in grey in Appendix 2). Phase 2, which is made up of the District Centre block of retail units and flats above (shown in grey in Appendix 2), will commence upon completion of Phase 1.
- 2.5 The Blackbird Leys mixed use development provides a total of 294 residential units as a mixture of 1, 2 and 3 bedroom apartments and 2 and 3 bedroom houses spread across both sites. This represents a density of circa 95 dwellings per hectare at the District Centre and 38 dwellings per hectare at the Knights Road site. 100% of the homes are affordable, provided as a mixture of 174 (59%) for Social Rented and 120 (41%) for Shared Ownership. As well as housing, the scheme will provide improved public realm focusing on well-being and sustainability with the inclusion of sustainable drainage systems (SuDS), biodiversity-led landscaping and play space, as well as retail space, that allows for the relocation of existing retail units located within the scheme's boundary, and a new community centre.
- 2.6 Oxford City Council (OCC) owns land in the Blackbird Leys District Centre and Knights Road and proposes to redevelop the site as part of the Blackbird Leys Regeneration Masterplan. The residential-led, mixed-use development will provide housing, retail, and community accommodation across two sites.
- 2.7 The Knights Road site has been allocated as a development site in OCC's 2016-2036 Local Plan, which was adopted in 2020.
- 2.8 According to the 2036 Local plan:

'The site comprises some poor quality open space. It is adjacent to Spindleberry Nature Park and the Kassam Stadium. The site was also allocated for development in the Sites and Housing Plan 2011-2026.'

'The site is suitable for residential use. Development should enhance the quality and safety of the area. The relationship between new development and

remaining green areas, particularly Spindleberry Park should be carefully considered. More vulnerable development will be expected to be directed away from Flood Zone 3b. The site does not have any biodiversity protections, but the ecological value of the site must be assessed as part of a planning application and any harm avoided, mitigated or compensated for.'

- 2.9 In October 2017, OCC undertook an OJEU compliant 'Competitive Dialogue' process, which ultimately led to the appointment of Catalyst Housing Limited (CHL) as the development partner for the Blackbird Leys Estate Regeneration project.
- 2.10 Given the relative low land and property values in the area the project has always had significant viability issues. Initial proposals from all bidders were based upon an indicative masterplan produced for the Council by Levitt Bernstein and which the Council's consultants CBRE had assessed as having a deficit or negative land value. Tenders were scored on a 60% Qualitative and 40% Quantitative (financial) basis. The selection of CHL, as the preferred development partner, was recommended after evaluation by Council advisers CBRE and a team of Council Officers.
- 2.11 It was agreed to proceed with CHL on the understanding that the Development Agreement would allow for a stage where proposals would be developed to close the viability gap before moving forward to detailed design and planning.
- 2.12 On 18 September 2018, the then City Executive Board (CEB) delegated authority to the Regeneration and Economy Programme Director and the Head of Law and Governance, to finalise and enter into a Development Agreement with the CHL. It also delegated authority to the Regeneration and Economy Programme Director and the Head of Law and Governance, to agree external grant funding arrangements to support this project. The Development Agreement was agreed in May 2018.
- 2.13 The Development Agreement sets out how the project is to be bought forward through a series of Gateways, where at key stages the schemes' viability is tested and agreed by both parties. In 2022, Peabody Housing Association (PHA) merged with CHL and became Peabody in April 2023, who are continuing the development partnership on the Blackbird Leys regeneration project.
- 2.14 Since signing the Development Agreement in 2018, OCC officers have been working with development partners to achieve scheme efficiencies to close the viability gap, through Stages 1 and 2. The scheme continues to have considerable viability issues, and as such, Stage 2 viability work is ongoing.

### **3. Rationale for Appropriation**

- 3.1 In order to progress the Blackbird Leys development, officers are currently of the view that the appropriation of council-owned land in this area will facilitate the development of the land, and will contribute to the achievement of the economic and social wellbeing of the area, namely in the delivery of affordable housing. Some of the principal benefits of the scheme are outlined in Appendix 5.

- 3.2 The intent is to appropriate all of land required for Phase 1 of the Blackbird Leys development. This will include parts of the District Centre and Knights Road sites, with the exception of what has been shown in grey shading in Appendix 2.
- 3.3 The District Centre site does not have land designated as open space, as is the case in Knights Road. However, it is view of the Council that it should be included in the intent to appropriate as there may be third party rights that need extinguishing to enable the development to proceed. The beneficiaries of any rights that are extinguished as a result of the appropriation will be entitled to make a claim for compensation.
- 3.4 Without the extinguishment of the third party rights the beneficiaries of those rights could potentially seek an injunction preventing the development from being completed. Exercise of the appropriation powers will extinguish all third party rights over the land. These rights may include such things as rights of way that are unrecorded and that OCC may have no knowledge of. It would also include any possible infringements of rights to light that may occur if the new development overshadows neighbouring properties.
- 3.5 Appendix 2 illustrates the extent of land to be included in the intent to appropriate in the District Centre. The area shown in grey is Phase 2 of the development, and is therefore excluded from the intent to appropriate at this stage. Appropriation for Phase 2 will occur at a later date.
- 3.6 Appendix 3 illustrates the extent of land to be included in the intent to appropriate in Knights Road, which includes the entire site.
- 3.7 It is important to note that the intent to appropriate covers only land owned by Oxford City Council.
- 3.8 It is also important to note that it will be necessary to bring forward a further appropriation of the Phase 2 site after vacant possession of the properties within that phase has been obtained.
- 3.9 Officers consider it necessary to appropriate the land at the Blackbird Leys District Centre and Knights Road for development, and believes the benefits of developing these sites outweighs the negative impacts. Appendix 5 outlines some of the main benefits of the scheme.

#### **4. Legal Implications**

- 4.1 The Council holds land for the statutory purposes for which it was acquired or following acquisition, appropriated. Appropriation is the process by which land held by the Council pursuant to one statutory function is transferred to another statutory function.
- 4.2 Section 122 of the Local Government Act 1972 governs the process of appropriation. Section 122 provides that before appropriating any land which is an open space the Council must give notice of its intention to do so and consider any objections made to the proposed appropriation. The notice must be given in a local newspaper over a period of 2 consecutive weeks.

- 4.3 The Land is held by the Council as a pleasure ground under section 164 of the Public Health Act 1875 – this status as a pleasure ground amounts to a public trust over the Land preventing its use for other purposes. Appropriation of the Land to a planning purpose under section 122 of the 1972 Act (see previous paragraph) will have the effect of discharging this public trust.
- 4.4 It should be noted that there may be other trusts over the land which will need to be dealt with appropriately in due course before the development can be undertaken.
- 4.5 The purpose of this report is to authorise the taking of the first step of advertising the intention to appropriate. Any objections received would be considered at a future meeting of Cabinet when the decision would be taken on whether to appropriate the Land to planning purposes.
- 4.6 The appropriation notice will cover both the land subject to the statutory trust and other land (shown in Appendix 2 ('The District Centre')) as it is necessary to appropriate the whole of the Land to a planning purpose before the works can be undertaken. Appropriation has the effect of overriding restrictions and third party rights that may affect the use and further development of the Land in return to a right to compensation. At the time of appropriation the council will need to balance the public benefit of Blackbird Leys Development Project proceeding against the impact that the loss of private rights/restrictions may have on landowners benefiting from those private rights.
- 4.7 Given the nature of the exercise of the powers proposed by the Council it will be necessary for the Council to have regard to its public sector equality duty in reaching a final decision to appropriate the Land to planning purposes.

## **5. Impact Assessment**

- 5.1 The impact of undertaking the notification procedure for the proposed appropriation is minimal as a separate decision on the substantive question as to whether to appropriate the Land for planning purposes will be required to be made at a later date. The impact of the planned advertisement for the proposed appropriation is not expected to be surprising to local residents, as the Council and its development partner have carried out community engagement and consultation regarding the proposed masterplan at Blackbird Leys. It is nonetheless a legal requirement to allow the community at Blackbird Leys to submit their views and comments regarding the proposed appropriation of land for development, and to consider these submissions before making the decision to appropriate.
- 5.2 In terms of appropriating the land for development, one major impact to the local community is the loss of open space used for recreation at Knights Road, which could negatively impact residents' overall health and wellbeing. When assessing this impact and allocating this site for development, the Council considered other surrounding open and green spaces including Blackbird Leys Park, Fry's Hill Park, and the Spindleberry Nature Reserve, which also offer local residents open space for recreation. It was the Council's view that the existing Knight's Road recreation park was of poor quality and therefore the benefit of an additional 84

affordable family homes in the area would outweigh the loss of a large portion of the recreation space.

5.3 Please refer to Appendix 4 for the risk register.

## 6. Stakeholder Engagement

6.1 Prior to appropriating the land at the District Centre and Knight's Road, OCC will advertise the intent to appropriate for a total of 14 consecutive days. This will be advertised in local newspapers as required by law.

6.2 Comments and views received will be reviewed, assessed and incorporated into a report to be presented to Cabinet at a future date.

## 7. Alternative Options

7.1 Please refer to Section 4 Rationale for Appropriation and Appendix 5.

## 8. Financial Implications

8.1 The following activities will require internal resources:

- Officer involvement during the advertisement period to record any comments and views, and to review the responses to summarise in the Cabinet report.
- Compilation of an Equalities Impact Assessment
- Internal legal advice

8.2 There are also external costs which will be funded from the revenue budget for this project:

(i) Advertising the notice of intent to appropriate the land which is estimated to be:

- Full page advertisement in the Oxford Mail: £3,990 + VAT
- Half page advertisement on Oxford Mail: £2,992 + VAT

(ii) External legal advice at an estimated cost of £1820 + VAT

## 9. Next Steps

Cabinet Approval for Intent to appropriate	14 June 2023
Advertisement	15 June 2023 – 29 June 2023
Assessment of responses to advertisement	15/06/23 – 10/07/23
Report writing for cabinet approval	1 month
Cabinet Approval for Appropriation	09/08/2023

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<b>Background Papers:</b> None
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