

Officer Delegated Decision Report, September 2021

Report title: Knights Walk – Phase 1 – Loan Agreement

Wards: Prince's

Portfolio: Councillor Matthew Bennett, Cabinet Member for Planning, Investment and New Homes

Report Authorised by: Strategic Directors of Sustainable Growth and Opportunity: Eleanor Purser/Sara Waller

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Report summary

On 30th March 2020 the Cabinet Member Delegated Decision Report 'HFL Delivery Plan and HFL Corporate Plan' delegated authority to the Strategic Director of Sustainable Growth and Opportunity in consultation with the Director of Legal Services and Governance to agree the terms of Agreements to Lease, Lease and such other legal agreements as are required to undertake the projects included in the HFL Business Plan.

This report seeks approval for the Council to enter into various legal agreements with Homes for Lambeth ('HfL') to enable a loan to be granted to HfL Homes Ltd to enable HfL Homes Ltd to purchase the 16 new homes

Finance summary

Completion of the purchase by HFL Homes of 16 affordable homes from HFL Build will be dependent on:

- a loan facility of £1,750,000 being made available by the Council on the terms stated in the loan agreement to be entered into by Council and HFL Homes; and
- the Council paying over £960,000 in Affordable Housing Grant received by the Council from GLA for this project

Recommendations

- (1) To authorise Council officers to instruct solicitors to complete a loan agreement to lend £1,750,000 to HfL Homes Ltd. This loan will be used by HfL Homes Ltd to fund the purchase of Knights Walk Phase 1 from HfL Build Ltd.
- (2) To authorise Council officers to instruct solicitors to complete a security agreement and any other legal agreement necessary to enable the completion of the loan agreement.
- (3) To note that completion of the purchase by HFL Homes will be dependent on:

- a loan facility of £1,750,000 being made available by the Council, which will be the subject of a separate decision by the s151 officer under delegated authority; and
- payment by the Council to HfL Homes of £960,000 of Affordable Housing Grant received by the Council from GLA for the project

1. CONTEXT

- 1.1 In April 2019 the Council obtained planning consent for the development of 84 homes at Knights Walk. The development is to be completed in two phases. 16 homes are included in Phase 1 and 68 homes are included in Phase 2
- 1.2 In December 2019 the Council granted HfL Build Ltd a Lease of the Phase 1 site to enable HfL Build Ltd to complete the development of Phase 1.
- 1.3 Following grant of the Lease HfL Build Ltd entered into a building contract for the construction of Phase 1.

2. PROPOSAL AND REASONS

- 2.1 Practical completion of Phase 1 is expected during the week commencing 27 September 2021.
- 2.2 On practical completion of Phase 1 HfL Build Ltd are proposing to sell Phase 1 to HfL Homes Ltd.
- 2.3 To fund the purchase of Phase 1 the Council propose to grant a loan for the amount of £1,750,000 to HfL Homes.
- 2.4 On completion of the purchase of the homes, HfL Homes and the Council will work together to move residents from the Phase 2 site into the new homes. The remaining homes will be let via a Local Lettings Policy which will see the residual homes split 50/50 between local residents living in the three adjacent tower blocks (Ebenezer, Hurley and Fairford Houses) and the retained Knights Walk patio houses, and applicants on the council's housing register via the choice based lettings bidding system.

3. FINANCE

- 3.1 An independent 'red book' market valuation of £1,900,000 for the leasehold interest to be granted by HFL Build to HFL Homes has been obtained by HFL Build and Homes Build acting jointly. This valuation report has been shared with and reviewed by the Council.
- 3.2 On the grant of the lease by HFL Build to HFL Homes, a lease premium of £2,710,000 will be payable by HFL Homes to HFL Build. The lease premium is calculated as follows:

	£
Purchase price for affordable homes paid by HFL Homes	1,750,000
Affordable Housing Grant	960,000
Lease premium	2,710,000

- 3.3 The purchase price affordable to HFL Homes has been modelled using the same housing management revenues and costs as used by the valuers. However, some of assumptions used in the modelling – e.g. finance cost rates, internal rate of return, discount rates – will differ between

HFL's modelling for their approved Business Plan and those employed by the independent valuers. It is not unreasonable to have a minor difference between what the valuers assess as affordable to an RSL and what HFL assess as affordable to HFL Homes.

- 3.4 For this project, which is 100% affordable homes, the Council does not expect to receive a land value (from HFL Build) by way of best consideration for its disposal of the site to HFL, so there is no requirement for the Council to mandate that HFL Homes pay HFL Build the full valuation plus grant, in order to maximise land value to the council, as there would be for mixed private and affordable projects. Officers are satisfied that the loss to be made on the project by HFL Build will not be in excess of the loss on the project forecast when the project was approved and as set out in the March 2020 approved Business Plan. Therefore, the Council can accept the HFL proposal to calculate the lease premium using the purchase price affordable to HFL Homes, in order to reduce pressure on HFL Homes ability to finance and repay the debt to the Council.
- 3.5 The HFL Business Plan approved in March 2020, as updated in the Joint Delivery Plan reported to Cabinet in March 2021, is predicated on a blend of profit-making mixed tenure projects and loss-making 100% affordable homes projects, where the former compensate for the latter and also yield a positive land value to the council to offset all council's own costs of the programme. The project referred to in this report - Knight's Walk Phase 1 – is included in the approved Business Plan as a loss-making project with a forecast loss to HFL Build of c.£5.5m. The latest forecast, at completion of the works, taking into account the lease premium of £2.7m stated above, is for a loss of c.£4.5m. Therefore, the project outturn, including the proposed lease premium for the affordable homes, is a favourable variance when compared to the approved Business Plan.
- 3.6 For projects that are a mix of private and affordable homes, the Council will expect, and HFL have acknowledged, that the lease premium payable by HFL Homes to HFL Build will be the full independent valuation plus grant, so that the revenue received by HFL Build will be maximised, which will flow through into the land value payable by HFL Build to the Council.
- 3.7 A loan facility to be made available by the Council on the terms stated in the loan agreement to be entered into by Council and HFL Homes will allow HFL Homes to borrow £1,750,000 from the Council to part-fund the lease premium payable by HFL Homes to HFL Build. The loan facility being made available by the Council will be the subject of a separate decision by the s151 officer under delegated authority.
- 3.8 The other source of funds to HFL Homes to meet the total lease premium is £960,000 in Affordable Housing Grant (AHG), which is receivable by the Council from GLA, to be paid over to HFL Homes in accordance with the terms of the Approved Provider Consortium Grant Agreement entered into by GLA, Council and HFL Homes in December 2017.
- 3.9 The valuation, lease premium, loan value and grant amount meet the following tests, which support the recommendations in this report:
 - The independent valuation of £1,900,000 is in excess of the loan value of £1,750,000, indicating that the value of asset to be purchased with the loan represents adequate security for the loan
 - The lease premium of £2,710,000 is in excess of the independent valuation of £1,900,000, indicating that HFL Build will receive in excess of the market valuation in return for granting the leasehold interest to HFL Homes

- The £960,000 AHG receivable from GLA will be fully utilised to part-fund the purchase of the homes

4. LEGAL AND DEMOCRACY

- 4.1 Subject to Secretary of State consent, Section 24(1) of the Local Government Act 1988 gives the council the power to provide any person with financial assistance (by way of a grant or loan etc.) for the purposes of, or in connection with, the acquisition, construction, conversion, etc. of any property which is or is intended to be privately let as housing accommodation.
- 4.2 The Secretary of State has issued 'The general consents under section 25 of the Local Government Act 1988 (Local Authority assistance for privately let housing) 2010' which at General Consent C consents to a local authority providing any person with any financial assistance (other than the disposal of an interest in land or property) for the purposes of or in connection with the matters mentioned in section 24(1) above.
- 4.3 Section 111 of the Local Government Act 1972 gives the council the power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 4.4 Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals may generally do.
- 4.5 Since 1 January 2021 the UK has followed the commitments on subsidy control set out in its Free Trade Agreements (FTAs) with the EU and other countries and the World Trade Organisation (WTO) rules on subsidies, as well as the relevant provisions relating to Northern Ireland contained in Article 10 of the Withdrawal Agreement with the EU. The Department for Business, Energy and Industrial Strategy have launched a consultation to seek views on the best way to design a subsidy control system that works for the UK economy, in the interim, granting authorities and recipients are still required to comply with their obligations on subsidy control despite a new regime not having been implemented as yet. These controls replace the State Aid Rules the UK was subject to whilst a member of the EU. The key characteristics of a subsidy are:
 1. It must constitute a financial contribution provided by a 'public authority'. The financial contribution could be a grant, loan or loan guarantee or other form of financial assistance, such as forgoing of revenue that is otherwise due.
 2. The award of the subsidy must confer a benefit on persons supplying goods or services in the course of a business, which would not be available under commercial terms.
 3. The subsidy must be specific which means it benefits a particular enterprise, or enterprises in a particular sector, industry, or region.
 4. It has, or could have, a harmful or distortive effect on trade or investment within the UK or internationally.
- 4.6 Officers have obtained independent legal and financial advice that the proposed loan terms do not amount to an unlawful subsidy under any of the international trade agreements.
- 4.7 The Council's Constitution requires that all key decisions, decisions which involve resources between the sums of £100,000 and £500,000, and important or sensitive issues, must be published on the Council's website for five clear days before the decision is approved by the Cabinet Member or Director concerned (Constitution, Part 2, Section 3). Any representations received during this period must be considered by the decision-maker before the decision is taken.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 Public consultations undertaken for the Knights Walk development project included a mix of public meetings, workshops, and drop-in sessions. During construction HfL and their contractors maintained regular contact with residents and updates to neighbours. HfL and the Council will continue to liaise with residents as they are moved from their existing homes into their new homes.

6. RISK MANAGEMENT

The Council will monitor progress of interest and loan repayments on a regular basis.

7. EQUALITIES IMPACT ASSESSMENT

- 7.1 An independent programme level Equalities Impact Assessment has been completed across the six estates.
- 7.2 The findings and action plans resulting from the independent study was considered by the Equalities Panel on 17 March 2020 and reported on as part of the HFL Delivery Plan and HFL Corporate Plan CMDDR, 30 March 2020. An update on Equalities was presented to the Corporate EIA Panel on 23 February as well as being documented in the Council and Homes for Lambeth's Joint Delivery Plan, approved by Cabinet on 15 March 2021.

8. COMMUNITY SAFETY

- 8.1 The building contractors that will be engaged by the developer, HfL Build, to construct the development will be responsible for community safety in accordance with health and safety legislation and provisions in the building contract that include participation in the considerate contractor scheme.

9. ORGANISATIONAL IMPLICATIONS

Environmental

- 9.1 The new housing delivered will be in compliance with permitted building regulations and planning policy.

Staffing and accommodation

- 9.2 None.

Procurement

- 9.3 N/A

10. TIMETABLE FOR IMPLEMENTATION

Completion of Phase 1	w/c 27 September 2021
Grant of Loan	Within 10 days of execution of loan agreements

Audit trail

Consultation				
Name/Position	Lambeth directorate/division or partner	Date Sent	Date Received	Comments in para:
Councillor Matthew Bennett	Cabinet Member for Planning, Investment and New Homes	17/09/21	17/09/21	N/A
Tom Branton	Director of Regeneration & Housing Growth	17/09/21	17/09/21	N/A
Joanna Moriarty	Assistant Director Housing Delivery	17/09/21	17/09/21	3
Gregory Carson Legal Services	Legal & Governance	10/09/21	10/09/21	4.1-4.6
Wayne Chandai Democratic Services	Legal and Governance Democratic Services	21/09/21	22/09/21	
Andrew Forde- Johnson	Finance	10/09/21	20/09/21	Finance sections

Report history

Original discussion with Cabinet Member	Ongoing
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Date first appeared on forward plan	N/A
Key decision reasons	Non Key
Background information	Decision - Council and Homes for Lambeth Joint Delivery Plan Lambeth Council
Appendices	None

APPROVAL BY OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal and Democratic Services and taken account of their advice and comments in completing the report for approval:

Signature _____ **Date** _____

Post Joanna Moriarty, Assistant Director Housing Delivery

I approve the above recommendations:

Signature _____ **Date** _____

Post Eleanor Purser/Sara Waller, Strategic Director of Sustainable Growth and Opportunity

Any declarations of interest or exemptions granted): None

Issue	Interest Declared