



OFFICER DELEGATED DECISION 10 JANUARY 2022

Report title: Development of the former Patmos Lodge site at 53 Elliott Road, London

Wards: Vassall

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

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

Contact for enquiries: Tom Branton, Director Regeneration and Housing Growth, tbranton@lambeth.gov.uk

Report summary

On 30 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 Build Limited ('HFL') to enable the development of the site at 53 Elliott Road, London, SW9 7BH ('the Site') to deliver 31 new homes.

Finance summary

Implementation of the project by HFL will be dependent on a development loan facility of up to £7.5m being made available by the Council to HFL, which will be the subject of a separate decision by the s151 officer under delegated authority.

A land value of £1.1m will be payable by HFL to the Council on completion of the project, which satisfies the obligation on the Council to ensure 'best value' is obtained for granting the long lease to HFL.

Recommendations

- (1) To authorise officers to instruct solicitors for the Council to enter into an Agreement for Lease with HFL for the Site.
- (2) On satisfaction of the conditions precedent contained in the Agreement to Lease, to authorise the Council to complete the Lease with HFL for the Site, in order for HFL to proceed with demolition and development works at the Site.
- (3) To authorise the Council to enter into such other legal agreements, such as wayleaves and party wall agreements as are required to enable the completion of the development at the Site.

1. CONTEXT

- 1.1 In May 2019 the Council commissioned HFL to prepare planning applications for a number of development sites, including land at the Site.
- 1.2 HFL submitted the planning application for the development of the Site in April 2020.
- 1.3 The Planning Authority granted planning permission for the redevelopment of land at the Site on 21 July 2020 under reference 20/O1265/RG3. The planning permission includes a requirement for HFL to enter into a Section 106 Agreement before they start work on site. The Section 106 Agreement is in an agreed form and will be entered into prior to demolition works starting on site. The consented development will provide 31 new homes and associated works, 13 of these homes will be affordable which is 50% by habitable room.
- 1.4 On 1 December 2020 the Council granted HFL a licence to enter the Site for the purpose of clearing the site, undertaking surveys, and installing hoarding around the Site, all of which have been completed.

2. PROPOSAL AND REASONS

- 2.1 The Council and HFL now wish to commence the development works at the Site, which will deliver the new homes in line with the agreed Business Plan.
- 2.2 The Council owns the freehold interest in the Site. The Council will retain this freehold interest. To enable the development, the Council proposes to enter into an Agreement to Lease with HFL. On completion of the Agreement for Lease, HFL will enter into a s.106 Agreement with the Local Planning Authority (LPA).
- 2.3 On satisfaction of a number of conditions stated in the Agreement to Lease, the Council proposes to grant a Lease to HFL with a term of 250 years. It is intended that the Lease will be contracted out of the Landlord & Tenant Act 1954. If the Lease has not been drawn down within a year of entering into the Agreement to Lease the Agreement to Lease ends.
- 2.4 The Council also proposes to enter into a Loan Agreement with HFL to fund the development.
- 2.5 The Council has received external legal advice from Pinsent Masons in preparing these legal agreements.
- 2.6 The Site has been independently valued by a firm of surveyors. Taking into account the valuation, the lease premium will be £1,051,376.
- 2.7 Council officers have been advised by HFL that HFL's selected contractor has agreed to hold their price until 10 January 2022, beyond which it will be likely subject to cost inflation. As a result, the recommendations in this report need to be urgently implemented in order to mitigate exposure to cost risk and to bring forward the project and deliver much needed new homes in line with the agreed Business Plan.

3. FINANCE

- 3.1 Implementation of the project by HFL will be dependent on a development loan facility of up to £7.5m being made available by the Council to HFL, which will be subject to a separate decision by the s151 officer under delegated authority.
- 3.2 The Council has commissioned a review by Avison Young of project economics and the development loan agreement for consistency with the Market Economy Investor Principle (MEIP) when considering the subsidy implication. The review concludes that the values and costs are reasonable and that the development loan proposed by the Council can be structured in a way which would satisfy the MEIP test.
- 3.3 An independent 'red book' market valuation of £1,119k for the leasehold interest to be granted to HFL permitting development of the consented scheme on the site in its existing condition has been obtained by the Council. Taking into account works undertaken and paid for by HFL to bring the site to its existing condition – including site clearance and hoarding – £68k for the cost of works has been allowed as a deduction against this valuation, yielding a land value of £1,051k payable by HFL to the Council. In doing so, the Council has satisfied its obligation to ensure that 'best value' is obtained in return for granting the lease to HFL.
- 3.4 The land receipt of £1,051k to the Council is higher than the estimate of £780k included in the March 2020 CMDDR 'HFL Delivery Plan and HFL Corporate Plan'. This outturn land receipt will be reported in the forthcoming programme finance updates to the Ownership and Stewardship Panel.

4. LEGAL AND DEMOCRACY

- 4.1 The Council has the power to dispose of land held for the purposes of part 2 of the Housing Act 1985 in any manner it wishes, however such disposal requires the prior consent of the Secretary of State.
- 4.2 The Secretary of State has issued 'The General Housing Consent – Section 32 of the Housing Act 1985'. General Consent A3.1.1 permits the disposal of land for consideration equal to its market value. However, this consent only permits the disposal of land to which the council owns an interest in respect of the first five disposals in any financial year.
- 4.3 General consent A3.2 provides general consent for the disposal of vacant land at a price determined by a local authority.
- 4.4 The EU State aid rules, which were developed and adopted to support the EU 'Single Market', by and large no longer apply to subsidies granted in the UK. This has now been replaced by subsidy rules. A subsidy is a measure which is given by a public body including a local authority, which makes a contribution to and enterprise conferring an advantage that is not available on market terms, which affects international trade. This can be trade with any World Trade Organisation member or, more specifically, between the UK and a country with whom it has a Free Trade Agreement. Advice from independent legal and financial advisors is that as the disposal of the Site is at market value and that any loan to acquire the lease will be in conformity with the MEIP, no subsidy is being given to HFL that is not available on market terms.
- 4.5 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 website. However, in accordance with Paragraph 13 of the Access to Information Procedure Rules (Part 3, Section 2 of the Council Constitution), the Monitoring Officer has given the authority to waive the pre-notification period for reasons of urgency.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 Public consultations undertaken for the Patmos development project included a mix of public meetings, workshops, and drop-in sessions. During construction HFL and their contractors will maintain regular contact with residents and updates to neighbours.

6. RISK MANAGEMENT

- 6.1 There is a risk that the proposed price increases if the contract can not be entered into on 10th January 2022, this can be mitigated by agreeing the decision on an urgent basis.
- 6.2 There is a risk that the Agreement to Lease is entered into and that the Council and HFL are then unable to satisfy the conditions precedent. This risk is managed by both of the parties and the inclusion in the Agreement to the Lease of a termination provision giving one year in which to satisfy the conditions precedent.
- 6.3 Once the Lease has been drawn down there is a risk that the development is not completed. The Council and HFL will work together to ensure that as far possible this does not happen. HFL will be requiring the appointed building contractor to enter into a Performance Bond. They will also hold back a retention amount of 3% of the building contract value. Half of this retention will be released after PC and agreement on the final account with the other half being released a year later.

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 23rd 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 and non-residential development delivered will be in compliance with permitted building regulations and planning policy.

Staffing and accommodation

- 9.2 None.

Procurement

- 9.3 The procurement of both the demolition contractor and the build contractor has been undertaken by HFL Build. HFL Build's procurements are used to contribute towards HFL's Resident Engagement and Social Investment Programme.

10. TIMETABLE FOR IMPLEMENTATION

Commencement of development on site	January 2022
Delivery of development	July 2023

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	15.12.21	15.12.21	2.6
Eleanor Purser/Sara Waller	Strategic Director of Sustainable Growth and Opportunity	15.12.21	15.12.21	throughout
Andrew Forde-Johnston	Finance	14.12.21	15.12.21	3.1 to 3.4
Gregory Carson Legal Services	Legal & Governance	14.12.21	15.12.21	4.1 to 4.4
Wayne Chandai, Democratic Services	Legal and Governance	15.12.21	16.12.21	
Andrew Pavlou, Monitoring Officer	Legal and Governance	16.12.21	16.12.21	

Report history	
Original discussion with Cabinet Member	15.12.21
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Date first appeared on forward plan	N/A
Key decision reasons	N/A
Background information	Decision - Council and Homes for Lambeth Joint Delivery Plan Lambeth Council

APPROVAL BY OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

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

Signature _____ **Date** _____

Post Tom Branton, Director Regeneration and Housing

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):

Issue	Interest Declared