

Cabinet Member delegated decision: 15 December 2017

Report title: Lollard Street: Approval to dispose of up to 19 homes for sale and project cost review

Wards: Prince's

Portfolio: Councillor Paul McGlone, Deputy Leader (Investment and Partnerships)

Report Authorised by: Sue Foster, Strategic Director Neighbourhoods and Growth

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Report summary

89 new homes are currently under construction on council owned land at the Lollard Street estate; 70 of these homes are to be let out at council rent levels; 19 of these new homes are to be sold in order to refund the build costs of those homes and to generate capital receipts. Any surplus capital receipts are to be made available to fund additional affordable housing in Lambeth.

The Council has established a special purpose vehicle (Homes for Lambeth) to develop and own new housing in Lambeth, as a means to generate additional affordable housing over and above that which might come forwards from the market. The Cabinet decision of October 2015 gave approval to the principle that the new homes at council rent levels at Lollard Street would become the first new homes to be owned by Homes for Lambeth as a means to facilitate the viability of this new company.

This report seeks formal approval to proceed with the disposal of the 70 affordable homes to Homes for Lambeth, the 19 homes for private sale, and a head-lease of the private sale apartments and to delegate authority to enter into a consortium management agreement with Homes for Lambeth for the future management of the Lollard Street estate.

The development is being delivered through a Development Agreement with Braeburn Estates (Lollard Street Limited) and Braeburn Estates Limited Partnership. Under the Development Agreement the council must pay the developer back an agreed sum for the build costs of the private sale homes plus its management fee and interest costs. Project costs are exceeding the original estimate and approval is sought to fund the additional costs from the sales receipts.

Finance Summary

Approval is sought for the Council's total project costs of £2,050,000 to be funded from capital receipts. £600,000 was approved in July 2015, requiring approval to a further £1,450,000 as set out in this report.

The disposal of the 70 homes at council rent levels to Homes for Lambeth has already been approved in principle by Cabinet. This report seeks authority for the council to grant a lease to facilitate this decision.

Recommendations

- (1) To proceed with the disposal of 19 private sale homes in accordance with proposals set out in this report.
- (2) To agree that the total project costs of £2,050,000 be funded by sales receipts.

- (3) To delegate authority to the Strategic Director for Neighbourhoods and Growth to authorise the retention of one or more of the private sale homes if a funding source can be identified.
- (4) To delegate authority to the Director of Strategic Programmes to authorise the council to enter into an Agreement to Lease for the grant of a lease of the 70 homes for council rent to Homes for Lambeth Registered Provider Co Limited (part of the Homes for Lambeth group) on the terms proposed in this report.
- (5) To delegate authority to the Director of Strategic Programmes to authorise the Council to enter into a lease of the 70 homes for council rent to HfL RPCo Limited on the terms proposed in this report when the conditions contained in the Agreement to Lease have been satisfied. It will then for Homes for Lambeth to negotiate the terms with the managing agent they procure.
- (6) To delegate authority to Director of Strategic Programmes enter into a consortium management agreement with Homes for Lambeth Registered Provider Co Limited for the future management of the external spaces within the Ethelred Estate on Lollard Street.
- (7) To delegate authority to Director of Strategic Housing, Regenerations and Communities to have final sign off on the negotiated sales prices for all of the private sale units.

Reasons for Exemption from Disclosure

The accompanying Part II report is exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act 1972:

Paragraph Three: Information relating to the financial or business affairs of a particular person (including the authority holding that information).

1 Context

- 1.1 This report relates to the Future Lambeth: Our Borough Plan 2016-2021 by helping to support the delivery of the following objectives:
- **Creating inclusive growth:** Increase new homes for sale and rent, and use this to cross subsidise affordable housing, ensuring Lambeth is a place for all.
 - **Reducing Inequality:** Build 1,000 high quality new homes available at council rent.
 - **Building strong and sustainable neighbourhoods:** Brought all of Lambeth's council homes up to Lambeth's Housing Standard and ensured they are maintained at that level.
- 1.2 The Lollard Street development is currently on site being delivered by Braeburn Estates Lollard Street Limited and Braeburn Estates Limited Partnership under a Development Agreement. The scheme will deliver 89 homes and the new Ethelred Nursery and Children's Centre. The tenure split for these homes is 70 homes at council rent levels and 19 private sale homes.
- 1.3 The scheme is being delivered as an off site S106 contribution resulting from the redevelopment of the Shell Centre in Waterloo.
- 1.4 Cabinet approval to enter into the Development Agreement was granted in July 2015. In addition approval was granted:
- To use the net capital receipt generated from the homes for sale to fund a future programme of affordable units in the borough
 - For estimated project costs of the value of £600,000 to be funded from the capital receipts
 - To allocate £2,000,000 from the capital pot to the project in the event that the council fails to sell all the private homes within the required timescales to then pay the developer
- 1.5 Under the Development Agreement between Lambeth and Braeburn, Braeburn are committed to construct the 89 homes. Whilst Braeburn are required to fund the delivery of 70 homes at council rent levels through the planning agreement, they are building the additional 19 homes for private sale for the council for an agreed build cost. On the sale of the private homes, the council will retain any profit after meeting the costs of the project including the agreed build costs; any surplus after these costs have been paid will be allocated to the provision of affordable housing.
- 1.6 In October 2015 Cabinet approved in principle that the new homes at council rent levels being constructed at Lollard Street would become the first homes within Homes for Lambeth. To facilitate this decision will require the grant of a lease to Homes for Lambeth. To assist with the orderly management of the new homes, specifically the maintenance of the externals within the estate, it is also proposed that the council enters into a consortium management agreement with Homes for Lambeth.
- 1.7 The Council has committed to existing residents at Lollard Street that they would have an opportunity to bid for the newly constructed homes. More details on this is provided in paragraph 3.5.

2 Proposal and Reasons

- 2.1 **Recommendation (1):** It is proposed that the council proceed with the disposal of the 19 homes constructed for private sale and the head-lease of the private sale apartments. The reason for this is to generate the income required to pay the agreed build costs and associated other costs due to Braeburn under the Development Agreement and to cover the associated project costs.
- 2.2 Enabling the ability to pay Braeburn out of sales receipts is essential as the council has only set aside £2,000,000 of capital receipts on the pipeline as back up in case all of the homes are not sold within the required timescales.

- 2.3 An alternative option is that the council could retain some of the private sale homes as affordable homes and the council will be responsible for the management of them too. Based on current total sales values estimates the project may produce a surplus after costs of £3,590,000. This may allow the council to retain a number of the homes as affordable homes. However the Council can only make this decision once the costs of the project have been covered from initial sales and as a result this means that these homes would have been constructed to private sale specification.
- 2.4 **Recommendation (2):** Since the July 2015 Cabinet report project costs have increased. It is proposed that the project costs are funded from capital receipts, an investment to be recouped from the eventual capital receipt to be generated from the disposal of the 19 homes for private sale and the head-lease of the private sale apartments. This is in line with the original Cabinet approval that project costs would be recouped by the surpluses from the disposal of the private sales homes. An explanation of the increased project costs is detailed in section 3 of this report and the Part II report.
- 2.5 **Recommendation (3):** It is proposed that the council proceeds with entering into an Agreement to Lease for the grant of lease of the 70 affordable homes to HfL RPCo Limited (part of the Homes for Lambeth group). This Agreement to Lease will include a condition that for the Lease to be granted to HfL RPCO Limited has become registered with the HCA as a Registered Provider.
- 2.6 **Recommendation (4):** Subject to the above mentioned condition it is proposed that the council proceeds with the granting of a Lease of the 70 affordable homes to HfL RPCo Limited (part of the Homes for Lambeth group). It is proposed that the council proceeds with the grant of lease of the 70 affordable homes to Homes for Lambeth. The 70 affordable homes will be put into Homes for Lambeth to provide an initial equity investment in the new company and to help ensure the ongoing viability of Homes for Lambeth. External legal and technical advice, from Pinsent Masons and Turnberry Real Estate respectively, has been obtained that the proposed transaction between the Council and Homes for Lambeth is state aid compliant. It will be for Homes for Lambeth to negotiate the terms with the managing agent they procure.
- 2.7 **Recommendation (5):** It is proposed that the Council enter into a consortium management agreement with Homes for Lambeth Registered Provider Co Limited in order to ensure the on-going satisfactory maintenance management of the new homes being provided by Braeburn at the Ethelred Estate on Lollard Street.
- 2.8 **Recommendation (7):** It is recommended that authority is delegated to the Director of Strategic Housing, Regenerations and Communities. There are 19 units in total to be sold, therefore seeking approval on the agreed final sales price for each unit would be very time consuming. The council do not have this time as it is critical they sell all private units within a year of practical completion to avoid interest costs with the developer.

3 Finance

- 3.1 Cabinet approval for this project was granted in July 2015. In principle approval to dispose of the new affordable homes to Homes for Lambeth was granted in October 2015.
- 3.2 Proceeding with the sale of the 19 homes constructed for private sale and the sale of the head-lease for the private apartments to generate a capital receipt will help de-risk the councils contractual commitments and if sales value estimates are achieved the project costs will be covered and a surplus generated for investment in affordable housing. If this decision is rejected, the Council will need to find a way to fund the amount that the Council is contractually bound to pay to Braeburn as only £2m of capital has been allocated to this project in case not all of the units sell on time.
- 3.3 The below table details out the high level project costs that are forecast on Lollard Street.

Item	Amount
Any outstanding amount of Construction Instruction Costs (capital cost)	£237,006.43
Interest Costs and additional development fee	£75,855
Average cost of sales and marketing team (capital cost)	£350,000
Internal Conveyancing Estimated at (capital cost)	£12,350
Remaining Project Costs	£1,375,494
Estimated Project Costs	£2,050,705

3.4 The main reasons for the increase in the project costs are:

- Since Cabinet approval for the project was given the Council has proposed that it takes direct responsibility for the sales and marketing of the homes for private sale as a result the costs of selling the homes becomes a direct responsibility of the council. The council has decided to take responsibility for sales in order to maximise the returns and ensure the timely sale of the homes to reduce the interest and development fee costs that might otherwise be due to Braeburn. As a result there are also associated legal and architect costs arising from the conveyancing plans and legal pack.
- There is a cost for the lobby repairs within the Ethelred Estate towers. This is a compensation cost due to the disruption caused to the local community throughout construction. The Council therefore made a commitment to the TRA that they would carry out repairs as compensation for the disruption. This was originally going to be funded by the Capital Working Group fund, however these funds were time-limited and hence allocated to other projects that could be completed within the required timescales.
- There is an unforeseen cost for security of the nursery and the new houses at the end of the programme. This is because the nursery cannot move until September due to Nursery term times and the Council is not able to accommodate unit viewings for potential tenants/leaseholders until practical completion which is due July 2018 as per the Development Agreement. The council will therefore need to pay for a security guard 24 hours a day 7 days a week to ensure no vandalism or break ins to the premises after the developer has handed the site back to the Council upon completion. We have budgeted for a 2 months void period across the new facilities.
- The costs associated with fitting out the temporary nursery space were more than anticipated due to the condition of the temporary spaces. Elements had to be instructed which were outside of the Development Agreement Specification.
- The cost of moving the nursery and anticipated cost of moving them back was more than originally budgeted for.
- To discharge one of the planning conditions, the scheme needs to achieve SBD (Secure By Design). The Council have had to instruct the developer to add security swipe card systems in the nursery as the fit out of the Nursery was not included in the DA specification.
- The cost to fit out the new nursery has been estimated as more than originally anticipated. Under the DA the Nursery is being handed over to a basic specification. The project team therefore need to instruct works to the kitchen, IT data, small power and Fixtures Furniture and Equipment (FFE).

4 Finance Comments

- 4.1. The net capital receipt generated by the disposal of these homes, less project costs, will be available to support the Council's wider Housing priorities.

- 4.2. The total project building has risen to £2.05m from £600k, for reasons listed in section 3 above. This increase will be funded from capital receipts.
- 4.3. The Council could retain ownership of the homes constructed for private sale for social or affordable housing. However, these homes would need to be held within the Housing Revenue Account (HRA) and at present the HRA does not have sufficient borrowing capacity to enable the retention of these homes.
- 4.4. If sufficient HRA funding was available then the Council would need to consider whether any retention of the homes represents value for money, given that more homes of an equivalent value could be purchased elsewhere in the Borough.

5 Legal and Democracy

- 5.1. All of the land is held within the General Fund.
- 5.2. Section 123 of the Local Government Act 1982 states that a local authority can dispose of any land in any manner it sees fit, however, in the event it seeks to dispose of land at less than the best consideration reasonably obtainable, it must seek Secretary of State consent.
- 5.3. Pursuant to Section 123(2) and 128 of the Local Government Act 1972, the Secretary of State has issued The General Housing Consent for Disposal of non Part II Dwelling-houses 2013. General Consent A 3.1.1 permits a local authority to dispose of land, which can include dwellings, for a consideration equal to its market value. However, this general consent does not apply where the dwellings are subject to an introductory, secure or demoted tenancy or where the purchaser is a body in which the local authority holds an interest save for the first five disposals in a financial year.
- 5.4. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.
- 5.5. Members need to ensure that they act reasonably in making any decision. This would require them to take account of all relevant considerations, disregard irrelevant matters, observe procedural requirements, not act in bad faith, act for proper purposes and not make a decision that is so unreasonable that no reasonable local authority would make it. Members' obligations in this respect would include complying with their fiduciary duty to its Council Tax payers and other funders.
- 5.6. This proposed key decision was entered in the Forward Plan on 8 September 2017 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

6 Consultation and co-production

- 6.1 Officers continue to work closely with the Nursery and Children’s Centre to plan the fitout and the move into the new building.
- 6.2 The Ward member chairs a Community Liaison meeting bimonthly for the Ethelred TRA, WATMOS, Braeburn and officers to discuss progress and any issues that arise.
- 6.3 The council has made a commitment to the existing residents of the Lollard Street estate that, as a consequence of the disruption caused by the construction, they would be able to bid for the new homes. In order to meet this commitment, a Local Lettings Plan would need to be adopted by Homes for Lambeth to enable residents of the adjacent Ethelred Towers to bid for a home at council rent in the new development. In addition to this, under delegate authority, the Strategy Director for Neighbourhoods and Growth would need to agree to a variation in the nominations agreement for the new homes to allow 50% of the new homes to be held available for existing Lollard Street residents. This is currently in circulation for approval.

7 Risk management

- 7.1 With current market uncertainty there is both sales programme and price risk for the 19 homes allocated for private sale. Mitigating this risk is the good location and the high private sale specification of the new homes. The project team has developed an initial sales strategy which has been considered by the Estate Regeneration Board. This strategy will be further developed once a Sales and Marketing agent has been appointed. The aim of the strategy will be to sell as many homes off plan to maximise the return to the council at the point of handover of the new homes.
- 7.2 Other than paragraph 6.1 there are no risks associated with this decision. However if the recommendations are not approved, there is a risk that the council would have to source further funding in order to meet contractual obligations to the developer within the required timescales as only £2m worth of capital receipts has been temporarily allocated to the project in case some of the homes fail to sell within the required time scale.

8 Equalities impact assessment

- 8.1 Following discussions with the Equalities & Diversity Officer about this project, a justification for not producing an EIA has been developed as it is covered by existing policies and guidance.

9 Community safety

- 9.1 This decision does not have an impact on community safety.

10 Organisational implications

None

11 Timetable for implementation

Milestone	Targeted Achievement Date
Final Approval of recommendations	December 2017
Sales period of the private units	December 2017 – June 2018

Audit trail				
Consultation				
Name/Position	Lambeth directorate/department or partner	Date Sent	Date Received	Comments in para:
Sue Foster - Strategic Director, Neighbourhoods and Growth	Neighbourhoods and Growth	22.09.2017	05.12.17	
Councillor McGlone	Deputy Leader Investment and Partnerships	22.09.2017	06.12.17	
Rachel Sharpe - Director of Strategic Projects	Strategic Housing, Regeneration and communities	22.09.2017	26.09.2017	
Finance – Mathew Gaynor	Corporate Resources	16.10.2017	18.10.2017	4
Legal Services – Greg Carson	Corporate Resources	16.10.2017	18.10.2017	5.1 to 5.5
Democratic Services	Corporate Resources	06.12.2017	07.12.17	4

Report history	
Original discussion with Cabinet Member	July 2015
Part II Exempt from Disclosure/confidential accompanying report?	Yes
Key decision report	Yes
Date first appeared on forward plan	08.09.17
Key decision reasons	2. Expenditure, income or savings in excess of £500,000
Background information	Cabinet Delegated Decision Report: Lollard Street Development Agreement 28 July 2015 (reference) Cabinet report 12 October 2015: Homes for Lambeth: A Special Purpose Vehicle for Lambeth
Appendices	None

APPROVAL BY CABINET MEMBER 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 Annabel Gray, Project Manager

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:

Signature _____ **Date** 15 December 2017

Post Councillor Paul McGlone, Deputy Leader (Investment and Partnerships)

Any declarations of interest (or exemptions granted): to date there have been no rejections or alternatives considered for this decision

Any conflicts of interest: none conflicts of interest have been logged

Any dispensations: n/a