

**Report title:** Westbury s106 – Development Agreement

**Wards:** Clapham Town

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

**Report Authorised by:** Alison McKane, Director of Legal Services

**Contact for enquiries:** Jed Young, Assistant Director Housing Regeneration [jyoung1@lambeth.gov.uk](mailto:jyoung1@lambeth.gov.uk)

### **Report summary**

The Council wishes to enter into a Development Agreement to enable the delivery of 64 new homes by the St James Group on Council owned land which forms part of the councils Housing Revenue Account (HRA) land.

The intention is that these homes will be leased to Homes for Lambeth (HfL) on completion. The proposals for leasing to HfL will be dealt with in a separate report.

Included within the Development Agreement is a requirement to grant a Building Licence to St James to give them access to the site in order to construct the 64 homes.

### **Finance summary**

The expenditure detailed in this report is required as part of the S106 agreement with St James in order to progress the first phase of the redevelopment of the Westbury Estate.

### **Recommendations**

1. To authorise officers to arrange for the completion of the Development Agreement for Westbury s106 (land on the Westbury Estate) between the Council and St James Group Ltd on behalf of the Council.
2. To authorise officers to arrange for the completion of the Building Licence and such other legal agreements as a required to enable the completion of the construction of the 64 homes for Westbury s106 (land on the Westbury Estate) on behalf of the Council.
3. To authorise capital budget for £2,141,404.39 to be included in the capital programme.

### **Reason 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 A decision was taken by Cabinet in November 2015 to redevelop the low-rise parts of the Westbury Estate. It is anticipated that HfL will enable the Council to deliver the wider redevelopment of the estate.
- 1.2 In September 2015 the Council, in their capacity as the Planning Authority, entered into a s106 agreement with St James Group which included an obligation to deliver 64 homes as part of off-site provision associated with St James' Albert Embankment development. This s106 agreement specifies that these 64 homes should be delivered on vacant land that sits within the existing Westbury estate. These 64 homes will therefore form the first phase of the redevelopment of the estate, creating new homes into which existing residents can move to enable redevelopment of the wider estate.
- 1.3 The land is presently held within the Housing Revenue Account and is to be appropriated for planning purposes. Authorisation for this appropriation is the subject of a separate report.
- 1.4 To enable the completion of the 64 homes and associated works the Council needs to enter into a Development Agreement that will provide the legal framework for St James Group to construct on Council owned land which forms part of the councils Housing Revenue Account land.

## **2. Proposal and Reasons**

- 2.1 It is proposed that the Council now enters into a Development Agreement (Housing Supply Agreement) with St James Group Limited Ltd. Upon meeting certain conditions precedent, this will then commit St James Group to construct 64 new homes, a structure that would house an energy centre that will have the capacity, when fitted out, to provide heating and hot-water to the proposed future new homes, and a small commercial unit for the Council on the land as identified in the attached red-line plan (see Appendix A).
- 2.2 The Council will also need to grant a Building Licence to St James to enable St James to enter on to the land to construct the 64 homes and other works. In addition a number of other legal agreements such as wayleaves for utility services will need to be entered into.
- 2.3 The Development Agreement requires payments to St James Limited for works, including the construction of the energy centre and commercial unit that are in excess of their Section 106 obligations. The Development Agreement details the arrangement for these payments and controlling and monitoring the costs that the Council is meeting.

## **3. Finance**

- 3.1 The Council intends to lease this land to Homes for Lambeth to enable the wider development of the estate and at that point the land would need to be valued, it would be expected that at this point Homes for Lambeth would reimburse the Council for the costs incurred in enabling the Development Agreement to be signed and the first phase of the development to occur.
- 3.2 If the Council decided not to dispose of the land to Homes for Lambeth, the finished properties would remain in the HRA and thus the cost of the development agreement could be met by the HRA as the completed housing units would generate a rental income in excess of the ongoing management and maintenance costs.

- 3.3 Until the ultimate ownership of the relevant land and housing units is confirmed, it would be appropriate to fund the required expenditure of £2,141,404 via internal borrowing.
- 3.4 The exempt section of the report contains more details of the exact nature of the expenditure required as a result of the Planning agreement with St James. In addition to allowing 64 new homes to be built, the expenditure will also facilitate the wider development of the estate by providing the energy centre and commercial unit that would otherwise have needed to be provided in the HfL led development.
- 3.5 Additionally irrespective of the ultimate ownership of the housing units there would be an expected benefit to the Council of around £300,000 per annum in avoided cost of providing temporary accommodation to households who would be expected to occupy the new housing provided.

#### **4. Legal and Democracy**

- 4.1 Section 9 of the Housing Act 1985 empowers the council to provide housing accommodation by erecting housing and this power can equally be exercised in relation to land acquired for the purpose of disposing of houses provided, or to be provided, on the land or disposing of the land to a person who intends to provide housing accommodation on it.
- 4.2 The granting of a lease (if any) over HRA land will be subject to approval for the disposal from the Secretary of State pursuant to section 32 of the Housing Act 1985.
- 4.3 The Secretary of State has issued 'The General Housing Consents 2013'. General Housing Consent A3.1.1 permits the Council to dispose of land for a consideration equal to its market value. This does not apply to a disposal to a company the Council owns an interest in save for the first five disposals in a financial year.
- 4.4 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.
- 4.5 Section 1 of the Localism Act gives the Council the power to do anything individuals generally may do.
- 4.6 When considering whether to adopt the recommendations of this report, the decision maker will be exercising discretion within the constraints of the duties referred to above and should therefore have in mind the following principles of administrative law:
- the decision must be within the Council's powers;
  - all relevant information and consideration, including the Council's fiduciary duty to the Council Tax payer, must be taken into account; and
  - all irrelevant considerations, including unauthorised purposes, must be ignored.
- 4.7 This proposed key decision was entered in the Forward Plan on 02 March 2018 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.

## 5. Consultation and co-production

5.1 Extensive consultation has taken place across the Westbury Estate and in the local area since December 2014, when it was first suggested that the Westbury Estate may be considered for redevelopment. The residents on the estate have been extensively involved in the redevelopment proposals across the whole range of issues associated with redevelopment, including masterplanning of the estate and design of the new homes to be built by St James, development of the Key Guarantees to residents to enable the community to remain living on the estate and other considerations relevant to residents. An independent adviser has been retained by the Council to provide advice to residents on the regeneration proposals since early 2015.

5.2 Planning applications for both the 64 homes to be built by St James and the wider masterplan of the estate were submitted and considered during late 2017 and into 2018. This involved consultation with the wider community around the Westbury Estate.

## 6. Risk management

6.1 The key risks are identified in the table below:

Risk	Risk Description	Mitigation(s)	Status (RAG)
Construction Delays	Delays in construction cause delays in the delivery of the completed new homes.	For the Council to work closely with St James and its contractors to help mitigate any construction delays.	Green, risk being managed.

## 7. Equalities impact assessment

7.1 A detailed Equalities Impact Assessment was undertaken during Summer 2017. The report for this EqIA was considered by the Council's Equalities Panel. This report is currently published in draft and will be refreshed prior to being submitted to Council Cabinet in the near future as part of the CPO process for the wider masterplan.

## 8. Community safety

8.1 Design and masterplanning of the future redeveloped estate has taken consideration of both accessibility and secured by design issues.

8.2 New-build homes on the site will need to take into account *Secured by Design* Standard and the Police Design Out Crime officer will be consulted through the design and planning process. There will be regular contact with the Community Safety Service throughout the construction programme in order to address any further design issues which arise in construction.

**9. Organisational implications**

9.1 Environmental

The Council will enter into a Development Agreement with St James.

9.2 Staffing and accommodation

The Council will retain professional advisers to oversee the Development Agreement with St James to ensure that the new homes are built to a high quality.

9.3 Procurement

None

9.4 Health

See paragraph 9.1.

**10. Timetable for implementation**

10.1 St James is looking to commence building on the site before the end of 2018.

<b>Audit Trail</b>				
<b>Consultation</b>				
<b>Name/Position</b>	<b>Lambeth directorate / department or partner</b>	<b>Date Sent</b>	<b>Date Received</b>	<b>Comments in paragraph:</b>
Councillor Matthew Bennett	Cabinet Member for Planning, Investment and New Homes	01/11/18	01/11/18	
Councillor Andy Wilson	Cabinet Member for Finance	01/11/18	01/11/18	
Rachel Sharpe, Director	Director Strategic Programmes	02/11/18	05/11/18	
Sue Foster	Strategic Director, Neighbourhoods and Growth	02/11/18	05/11/18	
Matthew Gaynor, Finance	Assistant Director, Finance	30/10/18	30/10/18	Section 3
Greg Carson, Legal Services	Corporate Resources	30/10/18	31/10/18	4.1 to 4.6
Henry Langford, Democratic Services	Corporate Resources	02/11/18	05/11/18	4.7

<b>Report History</b>	
<b>Original discussion with Cabinet Member</b>	
<b>Part II Exempt from Disclosure/confidential accompanying report?</b>	Yes
<b>Key decision report</b>	Yes
<b>Date first appeared on forward plan</b>	02.03.18
<b>Key decision reasons</b>	2. Expenditure, income or savings in excess of £500,000
<b>Background information</b>	Investing in better neighbourhoods and building the homes we need to house the people of Lambeth – Westbury Estate (November 2015)  <a href="https://moderngov.lambeth.gov.uk/documents/s77890/Westbury%20Cabinet%20Report.pdf">https://moderngov.lambeth.gov.uk/documents/s77890/Westbury%20Cabinet%20Report.pdf</a>
<b>Appendices</b>	None

**APPROVAL BY CABINET MEMBER OR 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:** 13 November 2018

**Post:** Jed Young, Assistant Director Housing Regeneration

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

**Signature:** \_\_\_\_\_ **Date:** 13 November 2018

**Post:** Cabinet Member for Planning, Investment and New Homes - Councillor Matthew Bennett

**Any declarations of interest (or exemptions granted):**

**Any conflicts of interest:**

**Any dispensations:**