



Report of: **Executive Member for Housing and Development**

Meeting of:	Date	Ward
Executive	14 June 2018	Bunhill

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SUBJECT: BUILDING GENUINELY AFFORDABLE HOUSING IN EC1 - USE OF RIGHT TO BUY RECEIPTS

1. Synopsis

- 1.1 This report provides an update on the proposed partnership development with the City of London Corporation (CoLC) to provide additional primary school places to meet the respective local authority's statutory duties and to build social rented homes as part of the development.
- 1.2 The council owns the site of the former Richard Cloudesley School (RCS) and the CoLC owns the adjacent garages and Adult Education Centre (AEC) that forms part of the Golden Lane Estate. It is intended that the former RCS site is transferred to the CoLC on commencement of the development.
- 1.3 Until the summer of 2017, the former RCS site was temporarily occupied by the New River College whilst its Dowrey Street site was re-built. Since then the building has been secured whilst design and construction proposals were developed.
- 1.4 The development has now been approved by both the Islington and the CoLC Planning Committees subject to GLA referral, planning conditions being met and Section 106 agreement signed. The scheme was presented to the GLA on 16th April 2018. The GLA report is drafted for approval by the Mayor and due for sign off on 15th May 2018. The planning permission will be issued on receipt of a Directors undertaking that the CoLC enter into the S106 agreement immediately following the transfer of the RCS site to the CoLC. It is anticipated that the Section 106 agreement will be in place by or shortly after the date of the Executive meeting.
- 1.5 The council, as local planning authority, required substantial changes to the residential development which has significantly increased its cost. This report seeks approval to the Council making of a contribution to the cost of the residential development from its Right to Buy (RTB) receipts.

2. Recommendations

- 2.1 To agree to make up to a £7.0m contribution from the RTB receipts to the CoLC contributing towards the cost of the housing element of the development. In doing so the council will be entitled to:
- Nominate in perpetuity to 50% of the total number of homes in the development (33 out of 66 homes as set out in the Head of Terms agreement).
 - Receive a 50% share of the income from the office space provided in the new development. Commercial revenue.
- 2.2 To authorise the Director of Housing and Adult Social Services in consultation with the Director of Law and Governance and Corporate Director of Resources to negotiate and agree the terms of the grant agreement for the contribution from RTB receipts with the CoLC.
- 2.3 To note that, subject to the approval of the GLA, the CoLC will be required to use the GLA grant of £3.96m previously allocated to the housing element of the development to fund a new social housing scheme(s) within Islington to which the council will have a minimum of 50% of nomination rights based on habitable rooms
- 2.4 To agree the proposal to provide a license to the CoLC to enable asbestos removal, soft strip and demolition of the existing buildings on the site.

3. Background

- 3.1 In November 2013, the Executive agreed the principle of a joint development of the RCS site and adjoining AEC site with the CoLC to provide additional nursery and 1 Form Entry (FE) primary school and social housing.
- 3.2 Through the Joint Project Board (established in November 2013 and comprising officers from both authorities), and following detailed negotiations, Heads of Terms for the development and Heads of Terms for the lease to the academy body were produced. They included the requirements imposed by the Education Funding Agency (EFA) as a condition of providing funding to meet the cost of construction of the 1 FE primary school and nursery. In November 2014, the Executive agreed to proceed with transfer of the RCS site to the CoLC and authorised relevant officers to negotiate and agree the final terms for the disposal and development of the site in accordance with the principles set out in the Heads of Terms.
- 3.3 Subsequently, in March 2015 the EFA indicated that it would only approve the CoLC's application for funding for the school if its capacity was increased to 2 forms of entry. The previously agreed Heads of Terms were revised to reflect this change and in January 2017 the Executive approved the revised development.
- 3.4 The development process is being managed by the CoLC. In order to satisfy planning requirements for active street frontage and commercial units, the CoLC has had to make significant design changes to the residential element of the development. Those required changes, together with the delay in construction, has considerably increased the estimated construction cost of the housing element. This has meant that there is a significant shortfall in the available funding for the housing element. In order that the housing development may proceed, it is proposed that the council agree to make a financial contribution from its RTB receipts to the CoLC towards the cost of the housing element. The contribution would be capped at £7m and, in any event, would not exceed 30% of the cost of the construction of the social rented units as per RTB funding requirements. Originally the funding for the housing element included a GLA grant of £3.96m. However, the council is precluded from making a contribution from its RTB receipts where the new social rented housing is also being funded by a GLA grant. Accordingly, the council's financial contribution would replace the GLA grant which, subject to GLA approval, the CoLC would use to fund a social housing scheme(s) in Islington to which the council would have a minimum of 50% nomination rights.

- 3.5 The social housing element will be owned and managed by the CoLC and the homes will be initially let on introductory tenancies which are then either terminated, extended or become secure tenancies at the end of the introductory period. The council has negotiated nomination rights in perpetuity to 50% of the new homes. The entire development will be for social rented housing whereas most residential development is a mix of private, shared ownership and social rented housing. Planning would require the maximum reasonable amount of affordable housing on a development which would lead to anything from 10-50% affordable housing. Of that maximum reasonable amount, 70% would be for social rented housing. Through this agreement with the CoLC the council will secure a greater number of homes for social rent. The CoLC has also agreed that 70% of the council's nomination rights will be to family sized accommodation (2 bedrooms plus).
- 3.6 On 1st March and 26th March 2018 respectively, the Council's and the CoLC's Planning Committees resolved to grant planning permission for the development including 66 new homes for social rent and the 2FE primary school and nursery. Planning permission will be issued to the CoLC once the Corporate Director has provided a letter of undertaking stating that the CoLC will enter into the section 106 planning agreement.
- 3.7 Transfer of the RCS site to the CoLC will only take place once the CoLC confirms to the Council that it has necessary funding in place to undertake the development. The CoLC has procured a main contractor for the development but the contractor's firm price for carrying out the development will not be known until end of June 2018. Furthermore, the Education Funding and Skills Agency (EFRSA) (formerly EFA), is unlikely to make a final decision on the level of funding it will provide for the school development until mid-September 2018.
- 3.8 Given the delay in securing planning permission, it is proposed that the Council grants a licence to the CoLC in order to allow asbestos removal, soft strip and demolition of the existing buildings on the site in advance of the site being transferred to the CoLC. This will enable construction works to start and finish earlier, which is particularly important in relation to the school part of the development which is required to be completed no later than summer 2020.

4. Implications

4.1 Legal

- 4.1.1 The Council's agreement dated 29 May 2012 (amended on 23 May 2013) with the Secretary of State for CLG made under s11 (6) of the Local Government Act 2003, permits the council to use retained RTB receipts for the provision of social housing, that is low cost rental accommodation as defined in s68 (1) (A) of the Housing and Regeneration Act 2008. If a retained receipt is not used within 3 years it has to be paid to the Government together with interest.
- 4.1.2 The agreement permits the council to pay retained RTB receipts to another body to provide the social housing provided that the council does not hold a controlling interest in that body and the social housing provided by that body is for the benefit of the council. Social housing will be for the benefit of the council if either it is situated in Islington or, if not, the council has nomination rights. The proposed housing development is wholly within Islington. Accordingly, the council may make a financial contribution of up to 30% of the build cost of social rented units from its retained RTB receipts to the CoLC (section 1 Localism Act 2011).
- 4.1.3 The council is precluded from spending RTB retained receipts on new social housing where the cost of that housing is funded wholly or partly by grant from the Home and Communities Agency or the Greater London Authority. In this regard, it is noted that the CoLC will apply the GLA grant by to another of its social housing schemes within Islington to which the council will have nomination rights subject to receiving consent from the GLA.
- 4.1.4 In deciding whether to make a financial contribution from its retained RTB receipts to the CoLC towards the cost of the social housing element of the development, the Executive must comply with the principles of administrative law. This means that the Executive must reach a reasonable decision after taking into account all relevant considerations and disregarding irrelevant considerations.

4.1.5 Relevant considerations include:

- (1) The information set out in this report;
- (2) If the making of the contribution is not agreed, then there is a very significant risk that the social housing element of the development would not proceed as it would not be financially viable through not being fully funded. In this regard, it should be noted that the housing development comprises 66 units, all of which will be let on local authority tenancies at a social rent with no cross subsidy from market sales;
- (3) The council will lose nomination rights to 33 new build units if the housing development does not proceed and income (£75k pa (estimate)) from the commercial units;
- (4) If the housing development is unable to proceed, it changes the basis on which the council agreed to transfer the RCS site to the CoLC for nil monetary consideration. The non-monetary consideration comprised a new primary in an area where there is projected need for additional places, nurse class and 8 two-year-old places plus the housing nomination rights;
- (5) If the social housing development were not to be built through lack of funding, and therefore the land transfer does not proceed, there is risk that the Secretary of State may nevertheless seek to use his powers in the Academies Act 2010 to acquire the site from the council for nil consideration for the purposes of an academy;
- (6) The financial advice is that it is highly unlikely that the council will be able to fully utilise its RTB 141 receipts on new build housing and as such there is no opportunity cost arising from making a contribution of up to £7m from those receipts to the CoLC.

4.2 Financial

4.2.1 The current estimated cost of the building (located within Islington) that will accommodate 66 social residential units (providing the Council with 50% nomination rights in perpetuity), a basement and commercial space totals £25m.

4.2.2 This scheme was originally deemed financially viable by the CoLC when it was supported by £3.960m GLA grant (a maximum of £60k per residential unit) and costs were estimated at £21m.

4.2.3 However, the £4m increase in costs (arising in large part as a result of complying with Islington Council Planning requirements) now renders the financial viability, using GLA grant, untenable.

4.2.4 In order to secure the delivery of this 100% social rented build project, the report recommends using the Council's retained RTB 141 receipts to support the funding of this scheme.

4.2.5 It should be noted that the Government restrictions on the use of these RTB receipts means that;

- They can only be used to fund up to 30% of the costs directly associated with social rented builds (i.e. not commercial build costs), on the other hand the use of the basement is linked to providing facilities for the residential units and as such should satisfy the rules on eligibility;
- They cannot be used in conjunction with other sources of public funds such as GLA grant.

4.2.6 It is estimated that the commercial build costs will total around £1m, hence the remaining £24m would attract RTB receipt funding, up to a maximum of 30%, in order to protect the Council from escalating costs this RTB receipt contribution has been capped at a maximum of £7m.

4.2.7 Under our current New Build programme & with existing HRA debt cap/borrowing restrictions it is highly unlikely that we will be able to fully utilise our RTB receipts and as such there is no opportunity cost arising from passing these receipts on to the CoLC.

4.2.8 In addition it is estimated that the commercial space will generate income of around £150k per annum. Under the agreement 50% (around £75k per annum) is payable to the Council (to the General Fund).

4.2.9 Finally, the intention is to try and recycle the GLA grant foregone within other CoLC schemes in Islington.

4.3 Environmental

4.3.1 There are no environmental implications arising from the recommendations in this report. Any capital development would need to be in accordance with the council's relevant environmental policies.

4.4 Resident Impact Assessment

4.4.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

4.4.2 A Resident Impact Assessment has been carried out and indicates no potential differential impact through the implementation of this proposal. New social housing and admission to school places would be in accordance with relevant council policies. There will continue to be a series of public meetings held throughout the development period.

5. Reason for recommendations

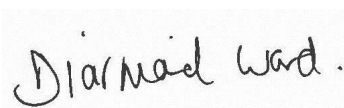
5.1 The recommendations provide a unique opportunity for the council to address two of its key priorities, namely, additional, good quality homes for social rent and the provision of good quality school places to meet basic need. The majority of homes allocated to the council will be 2 bedrooms or more, therefore, the development will be meeting the boroughs priority need for family sized homes. The license for early works mitigates the risk of the school not being finished on time and the development will provide an ongoing income stream through the rental income from commercial space.

Appendices: None

Background Papers: None

Final report clearance:

Signed by:



Executive Member for Housing and Development

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