

CABINET

9 March 2016

Title: Delivery of Low Cost Homes for Sale on the Gurdwara Way / Whiting Avenue site - Barking Town Centre Housing Zone

Report of the Cabinet Member for Regeneration

Open Report

For Decision

Wards Affected: Abbey

Key Decision: Yes

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Accountable Divisional Director: Jeremy Grint, Divisional Director of Regeneration

Accountable Director: John East, Strategic Director of Growth and Homes

Summary

This report sets out proposals to secure the delivery of a pilot low cost home ownership scheme under the Government's Starter Home initiative on the Gurdwara Way/Whiting Avenue site within the Barking Town Centre Housing Zone. The initiative aims to secure the delivery of at least 44 new 1-bed flats to be sold to first time buying young (under 40 years old) households at no less than 20% under market value. Restrictions will secure the 20%+ discount on all future re-sales in perpetuity and a restriction on owners letting the properties. It is envisaged that initial sales will be targeted at households who are resident in Barking & Dagenham and, subject to approval of appropriate categories, key workers.

The site, which currently forms part of a wider open space bordering Gurdwara Way, needs significant civil engineering and remediation works to facilitate development. The Council has recently secured up to £854,000 from the GLA in grant funding in 2015/16 to off-set some of these exceptional costs. The report describes the planned activities to maximise application of the grant funding.

The report also examines options for disposal of the site and securing a private development partner whilst meeting the over-riding obligation on the Council, as a public authority, to achieve best value whilst also complying with EU regulations relating to State Aid.

The recommended option is to enter negotiations to transfer the site to Pocket Living, as a specialist provider of Starter Homes with a proven track record. A future report to Cabinet will detail the outcome of a public consultation exercise as required under Section 122 (2A) of the Local Government Act 1972 and the outcome of negotiations with Pocket Living.

Recommendation(s)

The Cabinet is recommended to:

- (i) Authorise the Strategic Director of Growth and Homes, in consultation with the Strategic Director of Finance and Investment, to approve grant funded expenditure for site remediation and facilitation works up to £854,718, which represents the maximum grant funding available for the works under the Grant Funding Agreement with the Greater London Authority;
- (ii) Authorise the Strategic Director of Growth and Homes, in consultation with the Cabinet Member for Regeneration, the Strategic Director of Finance and Investment and the Director of Law and Governance, to enter negotiations with Pocket Living for the potential freehold transfer of the site for the delivery of low cost home ownership with the precise value to be ascertained following the specification of remediation costs, the amount of defrayed eligible expenditure on remediation works under the Funding Agreement with the GLA and the results of an independent valuation; and
- (iii) Note that a further report shall be presented to Cabinet detailing any representations received following the publication of a public notice under Section 122 (2A) of the Local Government Act 1972 on the proposed appropriation of land for planning purposes and future disposal pursuant to Section 233 of the Town and Country Planning Act 1990 of the site shown hatched on the plan at Appendix 1 to the report, the outcome of negotiations with Pocket Living and the proposed residency criteria and key worker categories.

Reason(s)

The initiative will contribute to the Council Priority of 'Growing the Borough'. It is consistent with the specific Objectives of: (i) building new housing and sustainable communities;(ii) working with London partners to deliver housing in our growth hubs and (iii) supporting investment in housing and open spaces to enhance the environment.

1. Introduction and Background

- 1.1 At its meeting held on the 21 July 2015 (Minute 26 refers), Cabinet considered a report on the establishment of the Barking Town Centre Housing Zone and agreed the recommendation to enter into an Overarching Borough Agreement with the Greater London Authority which formed the basis for the Housing Zone arrangements with the Council. Cabinet approved a number of other recommendations, each setting out the in principle development ambitions and delivery routes for initial, key sites within the Zone.
- 1.2 By Minute 26 (x), Cabinet agreed in principle to the Gurdwara Way/Whiting Avenue site being used to provide low cost home ownership or custom (self) build. The approval was subject to a future report to Cabinet setting out further detail on delivery. This report aims to provide this information on the proposed scheme content, site issues and the preferred delivery mechanism with a private sector partner.
- 1.3 The July report set out the socio-economic benefits of revitalising Barking Town Centre through housing growth and its contribution to creating a more sustainable and resilient town centre. As the report noted, key to this aim is the need to diversify the tenure mix of the existing housing stock, provide housing products that

reduce transience together with ensuring that all new developments are built to the highest standards of architectural and urban design.

- 1.4 Low cost home ownership was identified in the report as a comparatively small but important means of enabling existing residents to have a stronger stake in their community and be provided with assistance to get a foot on the housing ladder that they otherwise could not afford.
- 1.5 The Gurdwara Way/Whiting Avenue site was identified as a suitable site to pilot low cost home ownership in Barking given that it is relatively small (1.3 acres) and it is in Council ownership. It is also an 'exception site' or 'white land' under the Local Plan i.e. it has no formal allocation for a new use (residential or other).
- 1.6 The site is currently incidental open space, mainly laid to grass, and lies between the eastern end of the Whiting's Estate and the western edge of Gurdwara Way (formerly known as the Northern Relief Road). The 0.54 hectare (1.33 acre) landscaped area was created as part of the works to build the Northern Relief Road in the 1980's. It is approximately 2m above the adjacent highway and the road and pedestrian network in the neighbouring Whiting's Estate. The topography of the site is due to it being 'made ground' from retained spoil from the construction works of the building of the Northern Relief Road. Previous industrial uses on the land and the route of Relief Road would indicate that within the bunding, below the topsoil and grassed level, there will be a significant amount of 'action-class' contaminated material.
- 1.7 The land needs re-grading to create a level site suitable for residential development. The amount of re-grading means that excavation works are likely to reach layers of contaminated material which will involve the disposal of material to an authorised waste disposal site and the provision of a new capping/sealing layer. These necessary civil engineering and remediation works add significant and exceptional costs to any residential development on the site, regardless of tenure.

2. Proposal and Issues

- 2.1 The overall strategy is retain and improve the landscape and ecological quality of approximately 60% of the existing open space, with the remaining 40% (0.24 hectares – or just over ½ acre) being developed for residential use, specifically for a low cost home ownership scheme.
- 2.2 Ground conditions and associated high development costs would point to three storeys of flatted accommodation being the most cost effective development form for such a compact site.

Starter Homes (Low Cost Home Ownership)

- 2.3 It is proposed that the site is developed to provide at least 44 one bedroom flats as 'Starter Homes'. Members will be aware that the Government has introduced the Help to Buy Scheme aimed at helping people buy new build properties with an initial deposit as low as 5% and a low cost equity loan of up to 40% of the property's value in London (20% elsewhere). This scheme would be eligible for Help to Buy. Unlike the Help to Buy Scheme, the Starter Homes initiative is specifically aimed at

providing additional help for younger (under 40 yrs old), first time buyer households of new build properties.

- 2.4 The broad definition of Starter Homes is included in the Housing and Planning Bill 2015 which reached its Committee Stage in the House of Lords in February 2016. Starter Homes must be new build properties. To qualify purchasers must be first time buyers under the age of 40. Properties must be offered for sale at a discounted rate (see below) with a price cap of £450,000 in Greater London (£250,000 elsewhere). The precise discounted rate, and restrictions on sales and lettings, is not included in the Bill which provides for these to be specified by the Secretary of State in detailed regulations at a future date. However, based on previous Ministerial Statements, the discounted rate is likely to be no less than 20% of similar properties in the area, and purchasers will be prevented from re-selling or letting the properties within five years (private sector schemes) of acquisition at the discounted rate. As explained later in this report (Para. 2.12), as a Council owned site, terms for the proposed scheme on the Gurdwara way site will secure the discounted rate and restriction on lettings in perpetuity.
- 2.5 Not in the Bill, but expected within the forthcoming Regulations from the Secretary of State and consistent with previous Ministerial statements, Starter Homes are likely to be classified as 'Affordable Housing' and LPA's will not be able to seek S106 affordable housing or tariff-style contributions for affordable housing on Starter Homes. It is also possible that the Regulations will exempt Starter Homes from Community Infrastructure Levy (CIL) charges. It is unlikely that the New Homes Bonus (£7,500) that the Council receives on each net new home will be affected. Previous Ministerial Statements have also signalled that the Government will encourage and support Starter Homes schemes on 'exception sites' i.e. sites without a formal designation in Local Plans for residential use.

Grant Funded Remediation Works

- 2.6 Due to the exceptional development costs associated with ground conditions and contamination, the Council has secured up to £854,718 within 2015/16 of grant funding from the GLA for remediation and landscaping works. Under conditions of grant within the Funding Agreement, planning consent for the residential development must be secured, and an unconditional contract entered into by the Council with a developer by no later than the end of March 2017 with the 44 new Starter Homes completed by no later than the end of March 2019.
- 2.7 The grant funding approval was received in December 2015. There is no explicit provision in the Funding Agreement for roll-forward of the grant allocation into 2016-17. Officers' immediate priority is therefore to ensure as much of the grant funding allocation as possible is defrayed within the current financial year. An initial ground investigation and soil analysis has been completed. Consultants are due to be appointed to specify a ground formation works package for tender and to prepare and submit a planning application for the engineering works. Provided that the timing is acceptable to the GLA under its conditions of grant, it is intended that the main ground works and landscaping package will be competitively tendered via the e-Delta Portal.
- 2.8 The value of the remediation and landscaping contract is above the £500,000 limit under the existing Scheme of Delegation. Cabinet is recommended to approve

authorising an extension of this limit up to £854,718 in this instance for approval by the Strategic Director of Growth and Homes, in consultation with the Strategic Director of Finance and Investment.

Delivery Partner

- 2.9 It is proposed to enter negotiations with Pocket Living London for the potential disposal of the housing site and to deliver a low cost home ownership scheme on the site. Pocket Living is a specialist and established low cost home provider, having completed or progressing a number of schemes in the Boroughs of Hackney, Westminster, Hammersmith & Fulham, Lewisham, Waltham Forest and Redbridge.
- 2.10 Its low cost home ownership model is based on sales at 20% below market values. Part of the mechanism to achieve this discount is to build 1-person, 1xbedroom units that meet London Plan space standards (38m²). However, with an emphasis on careful design and layout to maximise efficiency and sense of space, these are not studios. Two person households purchase and occupy many of Pocket Living's completed schemes. The high specification of internal and external construction, finish and fit-out is central to its model. Its schemes provide low cost housing but not of low value.
- 2.11 Pocket Living London is a major player in low cost home ownership and specialise in 1-bed homes. The London Mayor has approved their model of affordable housing on the basis of it providing owner occupied housing at below market price in perpetuity.
- 2.12 All Pocket Living's schemes secure the 20% discount on sales for both initial purchasers and subsequent buyers in perpetuity and place restrictions on owners letting and sub-letting their properties. Other than the key qualification criteria under the Housing and Planning Bill of Starter Homes being only available to young (under 40) first time buyers, officers consider that negotiations with Pocket Living should secure further qualification criteria to maximise local benefit. These include a Borough residency qualification and a key worker qualification. The precise length of residency and key worker classifications have yet to be specified, but will be drafted as part of the negotiation process and reported to a future meeting of Cabinet for approval

Disposal and Land Value

- 2.13 An initial development appraisal of the opportunity in Barking Town Centre Housing Zone would indicate that the 44 1-bedroom flats could be developed on the site. Pocket Living's Red Book Appraisal indicates that, with a discount of 20% and sales values of each unit at approximately £150,000, and taking into account exceptional site development costs, the land would have a nil residual value.
- 2.14 It must be noted that Pocket Living's residual valuation assumes that the full cost all re-grading, remediation and landscaping works will be borne by the developer. Over the coming weeks, the precise value of remediation and landscaping works that can be off-set with GLA grant funding will be finalised. The value of works that can be funded through this mechanism will therefore increase the potential receipt to the Council from its transfer of the site to Pocket Living.

- 2.15 The Council will be commissioning an independent franking valuation to test the income and cost assumptions in Pocket Living's valuation. This will inform negotiations on disposal and help ensure terms to be agreed deliver best value for the Council.
- 2.16 In addition, Pocket Living has agreed to the inclusion of overage clauses in the agreement. This mechanism will ensure that the Council shares in futures sales values should they rise significantly above development costs.
- 2.17 For illustrative purposes, assuming a sale value of £150,000 at the 20% discounted rate, initial purchasers using the Help to Buy scheme with a minimum deposit of 5% and a maximum 40% equity loan would require a gross household income of approximately £27,500 to secure a mortgage on 55% of the property's value (£82,500).
- 2.18 For those not using Help to Buy, and assuming a 15% deposit (the national average for first time buyers is 17%), a gross household income of between £37,000 - £42,500 would be required to take out a 25 year repayment mortgage on 85% of the assumed initial sale value.

3. Options Appraisal

- 3.1 The original recommendation approved by Cabinet at its meeting in July 2015 referred to both low cost home ownership and custom build (self build) as possible low cost home ownership models for the site. Given the costs of remediation and the need for a relatively high density of flatted accommodation on the compact site, it is considered that the site would not be suitable for a custom build scheme. Custom build remains a useful way of assisting households in securing a home of their choice. Officers will therefore continue to investigate alternative opportunities and development sites in the Barking Town Centre Housing Zone (and elsewhere in the Borough) for, at least, a pilot custom build scheme.
- 3.2 The proposed Starter Home scheme for the site will deliver 44 1xbedroom flats at an assumed sales value of approximately £150,000. This represents a 20% (or approximately £37,000) discount on market values for similar properties in the area for initial buyers and all future buyers in perpetuity. The value of the Council's contribution to assisting the initial 44 first time buyers, and all future first buyers getting a foothold on the housing ladder that would otherwise be out of reach to them, is around £1.6m (£37,000 x44). The 20% discount is a fundamental assumption in Pocket Living's residual valuation of the land - as it will be in the Council's yet to be commissioned franking valuation. It should be noted, however, that it is not axiomatic that an unrestricted sale of the land for housing would deliver a £1.6m receipt. The site is not allocated for housing in the Local Plan and the low cost home ownership scheme is considered realistic only due to the previously signalled Government encouragement and support for Starter Home schemes on 'exception sites'. In short, an unrestricted transfer of this particular site for general market housing is not a realistic option.
- 3.3 The proposed strategy is to develop approximately 40% of an existing open space to provide a low cost home ownership scheme. The strategy also involves retaining and improving the residual 60% of open space. An alternative option would be to

develop a higher proportion of the site for housing and reduce the amount of retained open space. The 40/60 balance is considered the most appropriate option for the land for the following reasons. With no grant funding to off-set remediation costs on a larger site, additional units are unlikely to deliver positive land values. The new housing site can only be serviced from an access road off Whiting Avenue. The 44 unit development is considered to be the maximum that can be reasonably serviced from the existing estate network. Development values from a larger scheme would be insufficient to fund a new junction onto Gurdwara Way. Furthermore, such a junction would be unacceptable in highway management terms, not least because it would create a rat-run between North Street, through the Whittings Estate, to Gurdwara Way. Finally, the retained and improved open space is considered of benefit in terms of amenity, ecology and softening what is a major thoroughfare in Barking Town Centre.

- 3.4 The proposed way forward is to seek Cabinet approval for officers to enter negotiations with Pocket Living regarding potential transfer of the land subject to the delivery of the low cost home ownership scheme under terms to be specified in a S106 Agreement. This option is the preferred way forward, rather than going out to the market and seeking a development partner through a competitive tender process for a contract for services, and the award of contract in the form of a Development Agreement. Due to the value of the scheme, the tender process would need to comply with OJEU requirements and timescales. Pocket Living have stated that they will conduct negotiations on an open book basis. A franking valuation will be commissioned by the Council to provide an independent view that eventual terms reflect market value for the scheme. In the circumstances, it is considered that the time and expense of a procurement exercise would not be recouped by the Council and would need to be met from existing budgets..
- 3.5 A Joint Venture delivery model has also been discounted as a suitable option for this particular scheme. Partner selection would have a similar time and administrative burden as the competitive tender route. The Joint Venture route would also involve additional officer time and costs associated with the legal, governance and administrative costs of the joint delivery vehicle. As set out in the July 2015 Report to Cabinet, there are much larger and more complex housing schemes in the Barking Housing Zone that need and justify the allocation of limited staff resources to establish and administer partnering delivery vehicles to accelerate and optimise the regeneration of the Barking Town Centre Housing Zone.

4. Consultation

- 4.1 The proposal involves the potential loss of part of an existing area of land classified as open space. As required under Section 122 (2A) of the Local Government Act 1972 a public notice must be placed in the local press for two consecutive weeks inviting representations from the public. The results of the consultation exercise will be reported to a future meeting of Cabinet for consideration as part of its wider decision to potentially dispose of the site for an alternative use, in this case a scheme for Starter Homes.
- 4.2 Should Cabinet decide to approve the disposal, both the planning application for the initial site remediation and landscape improvement works and the subsequent application for the housing scheme itself will be the subject of statutory public consultation exercises.

5. Financial Implications:

Implications completed by: Richard Tyler, Interim Finance Group Manager

- 5.1 The site in its current use and configuration as a landscaped strip has an annual maintenance revenue cost to the Council. Under the proposed scheme this area will be reduced to 60% of its current size and improved as part of the GLA grant funded works. The aim is to deliver an improved, but reduced area of open space, with an annual maintenance cost of no more than the maintenance cost of the site in its current configuration.
- 5.2 The proposal is to transfer approximately 40% the open space to a developer for the provision of Starter Homes for sale at 20% below market values for new buyers in perpetuity. At this stage it is not possible to provide detailed figures on the potential value to the Council from the disposal. The precise land value will be established as the result of negotiations and, at the time of writing, will be largely determined by the amount of GLA grant funding that can be defrayed in 2015/16 on remediation works. The Council would secure an independent valuation of the site based on the development proposals with proposed draft terms to be reported to Cabinet at a future date for a decision in the context of the results of the public consultation exercise.
- 5.3 There is no indication from previous Ministerial Statements or within the Housing and Planning Bill 2015 currently before Parliament that the Council will not receive New Homes Bonus (£7,500 per unit) on the new properties. The New Homes Bonus on the scheme as currently proposed is estimated to generate £330,000 for the Council.

6. Legal Implications

Implications completed by: Evonne Obasuyi, Senior Lawyer and Angela Willis, Major Projects Solicitor

- 6.1 The report seeks approval for officers to commence negotiations for potential disposal of the Council's freehold interest in the site subject to planning to a special purchaser Pocket Living to facilitate the delivery of low cost home ownership on the terms of the report. It is intended that the decision to sell will be made at a future Cabinet meeting following outcome of negotiations, independent valuation, and public consultation on proposed disposal.
- 6.2 The Council has powers to effect disposal pursuant to section 123 Local Government Act 1972 which enables local authorities to dispose of land held by it in any manner it wishes providing it is not for a consideration less than the best that can reasonably be obtained, unless the Secretary of State consents to the disposal or the transaction is to further local social and economic well-being.
- 6.3 The report indicates the scheme will enable the Council to meet its priority of growing the borough and building new housing and sustainable communities. Initial site appraisal suggests land value likely to be impacted by site remediation and facilitation works required. Council will seek to off-set some of these costs using grant funding. An independent valuation should be obtained to support disposal.

Overage provisions will apply to protect the Council should there be a future uplift in value above build costs.

- 6.4 Furthermore, the report refers to the land being used as open space. In view of the proposed redevelopment for housing, the Council may seek to appropriate the land under section 122 LGA 1972 unless the land is currently held for planning purposes in which case section 233 Town and Country Planning Act 1990 will apply. Both sections 122(2A) LGA 1972 and 233(4) TCPA 1990 require such sites to be advertised for two consecutive weeks in a local newspaper and any objections considered prior to decision to dispose. If the site is designated as open space or considered to have public value the above steps will need to be undertaken to comply with statutory requirements.
- 6.5 The Council's contract rules and UK procurement regime do not apply to disposals of land, and are therefore not relevant to the proposal detailed in the report.
- 6.6 The disposal of land for nil value raises the issue of State Aid, which makes it illegal for the State, which includes public authorities, to give financial aid to an undertaking in a way which could distort fair competition. This would include the sale of Council land and/or buildings at less than market value.
- 6.7 An open and unconditional bidding procedure would ensure sale at market value; however, an authority can sell without a bidding procedure by commissioning an independent valuation, on the basis of generally accepted market indicators and valuation standards. The report states that officers intends to obtain an independent site valuation. This should be done before the sale is concluded, in order to confirm whether the proposed sale is at an undervalue.
- 6.8 Even if the sale takes place at less than market value, it will still comply with State aid rules if the amount of the undervalue is no more than either:
- €500,000, if it falls within the EU's special exemption for services of general economic interest, which includes the provision of social housing or
 - €200,000, if it falls within the EU's general de minimis regulation.
- 6.9 It should be noted that the application of either of these exemptions does not rule out the possibility of a court challenge by a third party.
- 6.10 If these conditions are not met, the Council will need to notify the Commission, for a determination of whether State aid exists, and if so, to assess its compatibility with the common market .

7. Other Implications

- 7.1 **Risk Management** –The proposal will be subject to a public consultation exercise as required under the terms of the Local Government Act (1972). The results of the exercise will be reported to a future meeting of Cabinet.

The Funding Agreement with the GLA for grant assistance for remediation works and delivery of the Starter Homes includes conditions for claw- back of funding for under-performance. The report seeks Cabinet's approval to enter negotiations with Pocket Living for transfer of the site and to act as the Council's delivery partner.

There is a risk that these negotiations may not result in final terms that are acceptable to the Council. In this event, the Council will have no option than to go out to the market to seek a suitable alternative, non-specialist development partner through a competitive tender process.

- 7.2 **Contractual Issues** – The Council will be procuring consultants to specify the remediation and landscape improvement works and submit a planning application for the works. The main remediation and landscape works package will be tendered through the e-Delta Portal.

The form of disposal to Pocket Living is examined in Section 6 (legal Issues) of this report.

- 7.3 **Staffing Issues** - The project will be resourced from a combination of existing internal staff resources and, where necessary, external consultant support. This will be procured due to the specialist and short-term nature of the services required (i.e. the civil engineering design team for the remediation works) or due to the need for a service that provides independent advice to the Council (in this case – Valuers for the independent framing valuation).
- 7.4 **Corporate Policy and Customer Impact** - – The initiative will contribute to the Council Priorities of ‘Encouraging Civic Pride’ and ‘Growing the Borough’. With reference to the latter Priority – the initiative is consistent with the specific Objectives of building new housing and sustainable communities; working with London partners to deliver housing in our growth hubs and supporting investment in housing and open spaces to enhance the environment
- 7.5 **Safeguarding Children** - None specific. However, it should be noted that the scheme will comprise starter home 1-bed flats for one or two person households. The scheme will not therefore place significant extra pressures on school places in Barking.
- 7.6 **Health Issues** - The remediation scheme and works will be specified to minimise any risk to public health. Dust suppression measures during construction will minimise airborne risks. Wheel washing facilities at the construction site exit will minimise transfer of contaminated material off-site from construction vehicles. Method statements will be approved by Environmental Health and enforced through site monitoring and conditions attached to planning consents.
- 7.7 **Crime and Disorder Issues** - The housing scheme will be designed to meet ‘Safer through Design’ guidance and standards.
- 7.8 **Property / Asset Issues** - The proposal will create a new housing development on approximately 40% of an Council owned existing landscaped area, with the landscape and ecological value of the residual 60% improved.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1** - Site Plan