

CABINET

19 July 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 Finance, Growth and Investment	
Open Report	For Decision
Wards Affected: Abbey	Key Decision: Yes
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Accountable Divisional Director: Jeremy Grint, Commissioning Director, Growth, Homes & Regeneration	
Accountable Director: John East, Strategic Director of Growth and Homes	
Summary	
<p>At its meeting held on 9 March 2016 Cabinet considered a report which outlined the potential remediation and development of approximately 40% of the existing area of open space adjacent to Gurdwara Way Barking for the construction of 44 Starter Homes by Pocket Living as a specialist provider of this form of affordable housing for sale. The report also emphasised that disposal was contingent on Cabinet considering the results of public consultation as required under Section 122 of the Local Government Act 1972 and Section 233 of the Town and Country Planning Act 1992 which relate to the appropriation and disposal of open spaces by Local Authorities.</p> <p>No objections were received following the publication of the relevant statutory notice in the local press for two consecutive weeks as required under the legislation. On this basis, Cabinet is recommended to resolve that the .24 hectare of land, as indicated hatched in blue on the plan attached as Appendix 1, is appropriated from its existing use as open space and identified for disposal.</p> <p>This report also provides an update on negotiations for disposal to Pocket Living with draft heads of terms confirmed. Independent valuation advice has been received. Taking into account the proposed heads of terms and offer price, in the context of the independent advice, it is recommended that Cabinet agrees to dispose of the site to Pocket Living on this basis and to agree that final terms for disposal of the site and the completion of the necessary legal agreements are approved by Officers under delegated authority.</p> <p>The report also provides an update on the remediation scheme and key stages in the development programme. Furthermore, it identifies eligibility criteria and priority key worker categories aimed at maximising local benefit.</p>	

Recommendation(s)

The Cabinet is recommended to:

- (i) Resolve that, there being no objections registered in response to the statutory notice placed in the local press under Section 122 Local Government Act 1972 and Section 233 the Town and Country Planning Act 1990, the land hatched in blue on the plan at Appendix 1 to the report be appropriated from its existing use as open space for planning purposes and identified for disposal;
- (ii) Agree to the disposal of the freehold interest in the site to Pocket Living on terms detailed in the report;
- (iii) Authorise the Strategic Director of Growth and Homes, in consultation with the Cabinet Member for Finance, Growth and Investment, the Strategic Director of Finance and Investment and the Director of Law and Governance, to approve final terms for the disposal of the site to Pocket Living and complete the necessary legal agreements under delegated authority; and
- (iv) Agree, in principle, the eligibility criteria and the priority categories of key workers identified in Sections 2.17- 2.19 of this report whilst noting that the final criteria and categories will be incorporated into a draft Section 106 Agreement that will accompany the planning application for the residential scheme for consideration and determination by the Development Control Board.

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 9th March 2016 (Minute 108 refers), Cabinet considered a report on the potential development of part (0.24ha or around 40%) of an existing open space on Gurdwara Way, Barking for 44 one bedroom Starter Home flats. As explained in the report, Starter Homes are an affordable form of housing for sale providing initial and subsequent purchasers a 20% discount on the sale value of equivalent properties in a given area. They are specifically aimed at helping young, first time buyers under the age of 40 to get a foot on the property ladder that would otherwise be out of reach to them. The report emphasised that, as a Council site, the discounted rate (and restrictions on lettings) would be secured in perpetuity i.e. for initial and subsequent purchasers under the terms of disposal. The report also stressed that the scheme should be seen in the context of the wider Barking Housing Zone initiative, with its potential for delivering approximately 2,900 new homes in Barking including other forms of affordable housing for owner occupation (e.g. shared equity) and for rent at affordable rental levels.

- 1.2 The March report explained that the existing incidental open space is a grass bank created from spoil from the construction of the Northern Relief Road (Gurdwara Way) in the 1980's. The proposed strategy is to retain 60% of the open space and improve it through additional tree planting whilst remediating and re-grading the .24ha potential housing development site. The remediation and re-grading works represent an exceptional development cost. As noted in the March report, £854,718 has been secured from the GLA to cover these exceptional costs. A condition of grant under the Funding Agreement is that the Council secures the delivery of 44 Starter Homes on the site by no later than the end of March 2019.
- 1.3 The March report identified Pocket Living, subject to contract, as a potential suitable development partner given that it is a specialist provider of 1 bedroom Starter Homes with a successful track record. The report emphasised, however, that Cabinet would be in no position to agree the disposal of the site until it had considered the results of statutory consultation under the terms of the Local Government Act 1972 and the Town and Country Planning Act 1990.

2. Proposal and Issues

Results of Consultation Exercise

- 2.1 In view of the site being part of an existing open space and proposed for disposal, 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 the decision to dispose.
- 2.2 The statutory notice was placed in the Barking & Dagenham Post on the 2nd and 9th March 2016. A copy of the notice was also placed on site.
- 2.3 One response was received from a local resident. However, once provided with answers to his specific queries and also provided with a copy of the March Cabinet Report (by that time available on the public web site); he confirmed in writing that he had no objections to the proposed appropriation and disposal of the site.
- 2.4 Given that no objections were received in response to the statutory notice, it is recommended that Cabinet resolves to appropriate and dispose of that part of the open space on Gurdwara Way, Barking hatched blue on the plan attached as Appendix 1 to this report.

Potential Delivery Partner and Draft Disposal Terms

- 2.5 It is proposed, subject to contract, to dispose of the site to Pocket Living, London to deliver 44 one bedroom Starter Homes. Pocket Living is an established low cost home provider specialising in 1-bed homes. It has completed, or is progressing, a number of schemes in the Boroughs of Hackney, Westminster, Hammersmith & Fulham, Lewisham, Waltham Forest and Redbridge.
- 2.6 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, one bedroom 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.

- 2.7 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. It also has established systems for prioritising sales to Key Workers specified by local planning authorities under Section 106 Agreements attached to planning consents. Proposed priority Key Worker categories are outlined in Sections 2.17-2.19 later in this report.
- 2.8 Draft heads of terms for disposal have been confirmed following lengthy negotiations between Pocket and the Council. Completion of the freehold disposal of the .24 ha site will be subject to key conditions including the Council remediating and re-grading the potential housing site and carrying out the landscaping improvement works to the residual open space with the GLA grant funding. Completion will also be subject to Pocket Living securing full planning consent for the Starter Home residential scheme.
- 2.9 The March report noted that an initial valuation appraisal indicated the site as having a nil value. It was explained that, effectively, the transfer of the Council's land would deliver the bulk of the 20% discount to initial and subsequent buyers. By investing its land in the development, the Council is providing initial and all future buyers assistance to get onto the housing ladder. In this respect, by investing its land into the scheme, the Council is providing a helping hand, not a hand-out, to all buyers into the scheme in perpetuity.
- 2.10 As a result of detailed negotiations since March, Pocket Living has produced an updated appraisal which revises sales values to the projected completion date in 2019 and includes accurate build costs reflecting eight of its recent, similar developments in London. Based on this appraisal, which assumes the full 20% discount on sales values, the disposal of the site will generate a net receipt to the Council of £270,000.
- 2.11 Independent valuation advice has been commissioned by the Council. Although the independent valuers confirm Pocket Living's development value assumptions, they have questioned the relatively high build cost assumptions incorporated into Pocket Living's appraisal. Officers acknowledge this advice. However, the independent valuers' build costs assumptions are considerably lower than build costs on actual schemes recently completed by the Council in Barking. Furthermore, Pocket Living has provided evidence of actual build costs on eight of its recently tendered schemes in the Capital. Pocket Living also note that its higher build cost assumptions reflect the high quality and specification of the company's product which is integral to its business model.
- 2.12 To safeguard the Council's position on this point, Pocket Living has agreed that any savings on actual build costs (which will be monitored by the Council on an open book basis) will be shared on a 70:30 basis in favour of the Council up to a cap of £500,000 over and above the £270,000 land payment.

- 2.13 Officers have also secured Pocket Living's agreement to overage clauses whereby the Council will benefit from a 30% share of any increased sales values to those assumed in the appraisal.

Current Work and Next Steps

- 2.14 Site investigations completed for the site have established the amounts of contaminated material from the excavation and re-grading works that will need to be disposed of at a specialist facility. A remediation strategy has been produced for the site together with a costed scope of works for the tender exercise to appoint a contractor to undertake the remediation works. Officers are working jointly with Pocket Living to prepare the planning application for the remediation and landscape improvement works that, under the terms of the GLA Funding Agreement, must be completed by the end of the current financial year (2016/17). The remediation works contract will be tendered, awarded and managed by the Council. Cabinet agreed at its meeting in March (Minute 108 (i) refers) that approval of the grant funded expenditure for site remediation and facilitation works up to the £854,718 limit under the GLA Funding Agreement, is delegated to the Director of Growth and Homes in consultation with the Strategic Director of Finance and Investment.
- 2.15 In addition to the disposal of the .24 ha, for the duration of the remediation and construction works, part of the residual open space will be required under a temporary licence from the Council as a construction compound and a temporary access point off Gurdwara Way for construction traffic. The aim of the latter is to ensure that, throughout the remediation and building works, the site can only be accessed from Gurdwara Way - thus avoiding any construction traffic through the Whitings Estate. Once the development is completed, the open space required under the temporary licence for the site compound and construction traffic access will be fully re-instated and returned as public open space.
- 2.16 Subject to the relevant approvals of both parties and the exchange of the conditional contract for disposal, Pocket Living will be preparing and submitting a separate full planning application for the main Starter Home development. A maximum period within which this application must be submitted will be specified within the contract.

Eligibility Criteria and Key Worker Priority Categories

- 2.17 To maximise local benefit, all qualifying potential purchasers of properties within the scheme must be resident or working in the Borough. This is in addition to meeting the general Starter Home eligibility criteria of being first time buyers and under 40 years of age.
- 2.18 The Council has no key worker policy. Internal consultations have identified three priority categories of public sector workers - the recruitment or retention of whom is particularly difficult locally with vacancies affecting the delivery of essential public services or adding costs to the delivery of those services through employing staff on temporary contracts as locums or consultants. The priority categories are (descriptors reflect those used in the national Homebuy Service Key Worker Categories):

- **NHS** – all clinical staff working for the NHS (excluding Doctors and Dentists)
- **Education** – qualified Nursery Nurses, Teachers in schools, sixth form colleges, Lecturers in FE colleges and Child Social Workers employed by the LEA
- **Local Authority** - Social Workers and other staff employed in Social Services Departments – including Occupational Therapists, Educational Psychologists, Local Authority Clinical Staff, Speech & Language Therapists. Officers employed by the Local Planning Authority employed in grades L1-L4.

2.19 Two additional priority categories are proposed:

- **Police** – including serving Police Officers, Community Support Officers and British Transport Police
- **Fire Brigade** – uniformed members of staff having successfully completed initial training or training to qualify as Control Officers

2.20 It is proposed that the definitions and qualification criteria employed in national HomeBuy Service Key Worker categories are used. Over the coming months these will be translated, and where necessary qualified and amplified, into a suitable format for inclusion in the Section 106 Agreement as part of the planning application to be submitted by Pocket Living for the main development scheme to be considered and determined by the Council's Development Control Board.

2.21 It should be noted that qualifying and eligible potential purchasers under the above categories will be given priority for sales and re-sales. If there are insufficient qualifying and eligible purchasers under the residency, local working and key worker categories, units will be offered for sale to potential buyers who meet the core Starter Home eligibility criteria (i.e. first time buyers under 40 years of age).

3. Options Appraisal

3.1 The March report to Cabinet contained an options appraisal for the proposed development strategy for the site and the potential disposal to Pocket Living. These are summarised below.

3.2 As an part of an existing open space, and the Government's encouragement for Starter Homes, not least on 'exception sites', the unrestricted transfer of this particular site for general market or affordable housing is not a realistic option. Furthermore, the GLA funding for site remediation and landscaping improvement works is conditional on the Council securing the provision of Starter Homes on the site. Independent valuers have produced an initial appraisal for an alternative scenario with 20% sales discount that could generate a hypothetical land receipt of around £660,000. However, at full London Plan space standards for a mix of flats sizes the site would only, under this scenario, generate 29 housing units. Furthermore, the independent valuers emphasise that such an alternative scheme would be based on the key assumption that the site remediation works would be fully funded by the GLA grant funding. Without the remediation works being funded in this way – they conclude that this alternative scenario would be cash negative and therefore unviable. As noted elsewhere in this report, the GLA grant funding approval is specific and conditional on the Council securing the delivery of 44

Starter Homes on the site. The alternative scenario, therefore, can only be discounted as an unviable option.

- 3.3 Developing a larger proportion than the proposed 40% of the existing open space for Starter Homes was also discounted for a number of reasons. The GLA grant funding for remediation would be insufficient to treat a larger site. A development of 44 units is considered to be the maximum that can be reasonably serviced via the road network on the Whitings Estate. A larger scheme would require a new permanent access onto Gurdwara Way. This would be unacceptable in traffic management terms and would effectively create a rat-run between North Street and Gurdwara Way. Finally, the retained and improved 60% of 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 for the conditional, negotiated transfer of the development site to Pocket Living subject to the delivery of the low cost home ownership scheme under terms to be specified in a S106 Agreement. This is the preferred option to the alternative of 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 has stated that they will conduct negotiations on an open book basis. A franking valuation has been 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. There are much larger and more complex housing development sites 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 As noted in this report, the statutory consultation under the Local Government Act 1972 and the Town and Country Planning Act 1990 has been carried out with no objections received.
- 4.2 There will be two further public consultation rounds specifically related to the two future planning applications. The first will be the planning application for the site remediation and landscape improvement works. The second will be the planning application for the main residential development scheme.

5. Financial Implications:

Implications completed by: Richard Tyler, Interim Finance Group Manager and Phil Horner Senior Accountant Regeneration

- 5.1 The project will result in a reduced area of open space which will reduce the annual maintenance revenue cost to the Council. There will also be the added benefit of the planting of approximately 30 new semi-mature street trees on the retained open space representing an investment of approximately £14,000.
- 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. Based on the latest appraisal, the terms would result in a receipt to the Council of £270,000. Terms would also share any savings on build costs on a 70:30 basis in favour of the Council. Furthermore, the Council will benefit from overage clauses that will secure the Council a 30% share of any increased sales values over those assumed in the current financial model.
- 5.3 Under the New Homes Bonus scheme (£7,500 per unit) it is estimated that the 44 new properties will generate £330,000 for the Council.

6. Legal Implications

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

- 6.1 The report seeks approval for disposal of the Council's freehold interest in the site for the terms set out in Sections 2.10-2.13 of this report subject to planning approval to a special purchaser Pocket Living to facilitate the delivery of low cost home ownership on the terms of the report.
- 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. The Council will seek to off-set some of these costs using grant funding. An independent valuation has been sought 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 details the outcome of the consultation carried out to comply with requirements of sections 122 LGA 1972 and 233 TCPA 1990 and it now seeks site appropriation for planning purposes to enable disposal and facilitate proposed development.
- 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 (or less than market) 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.
- 6.8 The report states that officers have received and taken into account independent valuation advice. This confirms that the disposal of the site will generate a net receipt to the Council, although the exact amount will not be known until completion of the development. In any event, it is clear that the site will not be disposed of for nil (or less than market) value, which removes concerns about potential State Aid issues.

7. Other Implications

- 7.1 **Risk Management** – Under the terms of the Funding Agreement with the GLA, grant funding is conditional on the Council remediating the site, undertaking the landscaping improvement works and securing, by March 2019, the delivery of 44 Starter Homes on the disposal site. There are grant funding claw back conditions within the Funding Agreement for under-performance.

The report seeks Cabinet's approval to dispose of the site on the terms set out in Sections 2.10-2.13. Should terms not be agreed, and in order to avoid claw back by the GLA of grant funding, the Council will need to go out to the market to seek a suitable alternative, non-specialist development partner through a competitive tender process. In the circumstances, this is considered to be a sub-optimal alternative.

- 7.2 **Contractual Issues** – The Council and Pocket Living will be procuring consultants to prepare the planning application for the remediation works package. Procurement and award of the contract will follow the Council's contract rules. The main remediation and landscape works package will be specified by the Council (in consultation with Pocket Living) tendered through the e-Delta Portal and awarded and managed by the Council, again in consultation with Pocket Living.

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 franking 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. The scheme is designed to provide assistance to qualifying and eligible young, first time buyers to gain a foothold on the housing ladder that, due to a combination of high property values and low incomes, would otherwise be out of reach.

- 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. The net residualised land value will need to assume the 20% discount to qualifying first time buyers into the scheme in perpetuity.

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

List of appendices:

- **Appendix 1 - Site Plan**