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| Item No. 19. | Classification: Open | Date: 13 March 2018 | Meeting Name: Cabinet |
| Report title: | | Joseph Lancaster Estate, Deverell Street, SE1 – Grant of Long Lease and Housing Funding Agreement | |
| Ward(s) or groups affected: | | Chaucer Ward | |
| Cabinet Members: | | Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing; and Councillor Mark Williams, Regeneration and New Homes | |

FOREWORD - COUNCILLOR STEPHANIE CRYAN, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING AND COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION AND NEW HOMES

Our commitment to build 11,000 new council homes by 2043 is a bold and ambitious plan and we are delivering on this commitment. We are already seeing the benefits our new council homes are having on local communities and this development proposal by Leathermarket CBS is their second proposed development to build homes at council rents. Their first development, Marklake Court, on the site of the former Kipling Street garages has delivered 27 new homes at council rents.

As a council we are committed to providing good quality social housing across the borough and this report seeks to cement our partnership working with Leathermarket JMB by working on the delivery of a second resident led and genuinely affordable housing development project on the Joseph Lancaster nursery site on the Lawson Estate. This partnership provides a great opportunity for residents to have a greater stake in the delivery of new homes at council rents and to help shape that delivery.

This report asks for cabinet to authorise officers to negotiate agreements with Leathermarket CBS on funding and the lease of the land to enable them to deliver high quality new homes.

RECOMMENDATIONS

That the Cabinet:

1. Notes that officers have carried out a due diligence exercise on the Leathermarket Community Benefit Society in connection with the application for funding of a development of 40 new council funded homes at council rents on the former Joseph Lancaster Nursery Site and that this has informed the officer recommendations to cabinet.
2. Notes the Leathermarket CBS business plan (at Appendix 2) and that this shows a viable position over 30 years based on the council's financial support.
3. Agrees to authorise the strategic director of housing and modernisation to enter into negotiation on an Agreement for Lease and grant of a long leasehold interest of the Land on the Joseph Lancaster Estate, Deverell Street, London SE1 ("the

Property”), as shown edged blue on the plan attached at Appendix 1, with the Leathermarket Community Benefits Society (CBS) on the same basis as agreed for the first development site: undertaken by the CBS at Kipling Garages. Any variations to be delegated to the Strategic Director of Housing & Modernisation to agree and subject to reaching agreement on the conditional matters set out in recommendation 6 below.

4. Agrees to authorise the strategic director of housing and modernisation and strategic director of finance and governance to enter into negotiation on a funding agreement through either a loan or a Housing Grant Agreement to a maximum sum of £12,163,234, to enable the development of land on the Joseph Lancaster Estate, Deverell Street, London SE1 (“the Property”) by the Leathermarket Community Benefit Society Limited (CBS). Any variations to be delegated to the Strategic Director of Housing & Modernisation to agree.
5. Notes that final agreement will be subject to reaching agreement on a number of conditional matters which need to be fulfilled before the lease can be granted and the Funding Agreement signed by officers. These include:
 - Satisfactory preliminary site investigations.
 - Grant of satisfactory building consents/planning permission secured.
 - Agreement on the mechanism for project delivery finance secured through the council’s Housing Investment Programme.
 - Officers’ agreement on the detailed final cost plans for the Scheme including professional fees and the CBS client fee.
 - Agreement on any outstanding legal issues.
 - The inclusion of clauses on letting the new homes at council rents, the council’s normal policies on London Living Wage and social value through for example apprenticeships and requirements relating to the practice of blacklisting’ as set out in the council’s Fairer Future Procurement Strategy.
 - Agreement to authorise that the land on the Joseph Lancaster Estate, Deverell Street, London SE1 (“the Property”), as shown edged blue on the plan attached at Appendix 1 is appropriated for planning purposes to be held pursuant to the provisions of Section 237 of Town and Country Planning Act 1990 for planning purposes in accordance with the Power of appropriation: Section 122 of the Local Government Act 1972. This appropriation will be subject to receipt of planning permission.
 - Completion of a property due diligence exercise on the site which will include ensuring that there are no other rights or interests in any of the land.
6. Notes that a planning application for the scheme (17/AP/4661) has been submitted by the CBS and will be considered by the planning committee in due course.
7. Instructs officers to develop a policy that sets out the council’s criteria for the agreement of requests of this type for land and funding.

BACKGROUND INFORMATION

8. In 1996 Southwark Council outsourced the management of around 1500 homes in North Bermondsey to the Leathermarket JMB. This decision proved successful, as the Leathermarket JMB has had four successful continuation ballots. The most recent continuation ballot was completed in October 2016, which achieved 94% support on a 76% tenant turnout for the JMB to continue

management of their homes. In 2013 the council made the JMB the country's first self-financing tenant management organisation.

9. The JMB is building on the confidence of the council and its residents to support Southwark to deliver 11,000 new genuinely affordable homes.
10. In response to requests from a number of Leathermarket residents for additional affordable homes to be delivered on the Leathermarket JMB estates (referred to throughout the report as Leathermarket estates), Leathermarket CBS was established as a development vehicle to take forward the delivery of new build housing schemes on the Leathermarket estates. Establishing a separate organisation to drive forward the delivery of new homes on the Leathermarket estates enables the JMB to continue focusing on its core activities of managing and maintaining its existing housing stock. The CBS is the first of its kind to be established in the country and is governed by a board of directors – made up of Leathermarket residents and co-opted directors (providing supplementary skills).
11. The CBS has identified that by working with local residents, designing homes that meet local needs in a way that is sympathetic to the immediate neighbours and in line with council policy allocating a proportion of these to residents on the estate, they can achieve much greater levels of local support than an outside developer would achieve. This enables the CBS to unlock contentious sites and hidden homes.
12. Through a process of analysis of the Leathermarket estate, in conjunction with professional advisors, a number of potential development sites have been identified which include the former Kipling Garages and Joseph Lancaster Nursery site at Deverell Street, London SE1.
13. The Council has already transferred the long leasehold interest of the Kipling Garages site to CBS, and a scheme of 27 homes was designed in partnership with local residents and the Council. These homes, which will be let in line with Council rents, are currently being built and are due for completion in Summer 2018.
14. In July 2016 the cabinet agreed to enter into a Housing Grant Agreement with the Leathermarket CBS for £9,661,815 (Nine million, six hundred and sixty one thousand eight hundred and fifteen pounds). This was funded from a combination of commuted S106 monies (£6,280,182) held by the council and money from the council's Housing Investment Programme (£3,381,633). The proportions were 65% and 35% respectively and approval was given by the Council's Planning Committee.
15. At this time officers agreed to provide ongoing support to Leathermarket CBS to continue to develop their financial modeling and business planning capacities and this arrangement continues with this scheme.
16. The due diligence exercise undertaken on the Kipling Garages proposal identified a number of areas relating to governance for future action by the Leathermarket CBS and following a meeting with CBS board members and officers an action plan was agreed to put in place the necessary actions by December 2016. The CBS confirmed that all actions were completed.
17. DCLG funding of £427,000 was secured by the council to progress the initial feasibility of the Joseph Lancaster Nursery site up to planning submission (RIBA

Stage 3). Further DCLG funding was also secured for the consultation and completion of an Estates Improvement Plan on the Leathermarket estates.

KEY ISSUES FOR CONSIDERATION

Joseph Lancaster site

18. The Joseph Lancaster site is located in the London Borough of Southwark in the Chaucer Ward, on the Lawson Estate, which is managed by the JMB. The Lawson estate is held within the Council's housing revenue account.
19. The proposed development site consists of the former Joseph Lancaster Nursery site, which lies within the post-war Lawson Estate located north of New Kent Road and east of Elephant and Castle. The site is surrounded on three sides by the existing residential buildings of Lawson Estate; Munday House, Beeston House, Nashe House and Middleton House, which consists of high and medium rise buildings constructed in the mid to late 1950's Deverell Street runs along the southwest side of the site.
20. Adjacent to the nursery site is a 14 space car park and 9 'lock up' single domestic garages (which are currently let on license agreements and subject to the completion of the property due diligence exercise may be able to be terminated at any time). These two separate areas are included within the development site to explore the potential relocation of the car park to improve the main communal area.
21. Beyond the development site boundary (demarked by the blue line on the OS site map at Appendix 1) is a wider boundary for the estate improvement works to be undertaken as part of the wider development.
22. The total size of the proposed development site is 4,132.6 m²; this includes the proposed estate improvement works boundary.

Proposed scheme

23. The proposed development comprises 40 homes, consisting of a new staggered multi-storey building of 34 flats, with the highest part being 8 storeys; and six 2-storey mews houses. The proposed buildings form an L-shape, with a proposed communal open space in the centre, incorporating landscaping, a re-provision of car parking and children's play space, and four car parking spaces for disabled residents. The unit breakdown comprises:
 - 6 x 3 bed mews houses
 - 7 x 1 bed flats
 - 24 x 2 bed flats
 - 3 x 3 bed flats
24. The scheme has been designed by Bell Phillips Architects in conjunction with the residents of the Joseph Lancaster estate. The scheme development has been through a rigorous design process with each stage the subject of consultation with the residents of the estate.
25. The proposed scheme does not entail the demolition of existing estate homes but does involve the further densification of the estate. The new scheme will be car free except for four spaces provided for the wheelchair accessible units.

Delivery cost estimates and financing

26. The early feasibility to progress the Joseph Lancaster scheme to the planning application stage totals £427,000. This was covered by DCLG funding (including £60,000 from Southwark's Community Housing Fund).
27. The estimated construction delivery funding required totals £12,163,234. Officers have run the scheme through the council's Appraisal model, which is the model used to appraise our own internal direct delivery programme of new council homes. The Appraisal analysis reports that the cost to value ratio is positive as would be expected given the property values in this part of the borough.
28. The base construction costs are £2,644.50 psm, which demonstrates value for money when compared to other similar new build schemes. This increases to £2,710.40 psm with the inclusion of the external works. When considering these external works are more extensive than would normally be associated with housing schemes of this size, these costs demonstrate value for money. As this is a community led housing scheme on an infill site, surrounded by 1950s council tenanted blocks, it is a priority for the CBS to deliver wider regenerative benefits for the whole community. These improvements will benefit existing residents as well as the new residents, and an improved parking area for existing residents that meets current space and secure by design standards.
29. Design and developers contingencies to the combined sum of £1.5m are included in the costs. At this stage there is still a significant amount of untested risk - as the ground beneath the existing nursery and garages has not been tested, planning permission is not yet secured, and the quantity surveyors cost estimates are yet to be tested through a contractor. This contingency will only be drawn down if Leathermarket CBS demonstrate the requirement for its use and are not part of the funding request to the council. .
30. The council's Appraisal also reviews CBS' on-costs and compares these to the council's costs on similar schemes. The costs reflect the fact that the CBS is a relatively new community led organisation, building its capacity and expertise. Officers will be working with officers of the CBS to ensure it delivers as efficiently and effectively as possible.
31. The council provides this grant to the CBS for the development of the site for high quality, genuinely affordable residential accommodation pursuant to Section 24 of the Local Government Act 1988.
32. The Leathermarket CBS has explored a number of funding options. Through a series of discussions, negotiations and a careful appraisal of the scheme costs it has been considered appropriate that the Council 'gap fund' the remaining finance necessary to complete the proposed development via a Housing Grant Agreement. However, further DCLG/GLA bidding opportunities for community led organisations are imminent, and we will support the CBS to seek funding from these sources if the bidding criteria can be met. Any match funding secured through other sources will reduce the gap funding required.
33. Leathermarket CBS will be able to generate finance to part fund future schemes from the net rental income from the completed schemes at Marklake Court (formally Kipling Garages) and Joseph Lancaster scheme. As detailed in CBS' business plan £900,000 can be borrowed against the rental income from

Marklake Court and £2,250,000 against the Joseph Lancaster income stream. The CBS is able to borrow more against Joseph Lancaster as the projected rent income is higher for the bigger scheme and significant elements of CBS core running costs are covered using the Marklake Court (formally Kipling Garages) rental income stream.

Grant Agreement

34. Should the appropriate mechanism for funding be a grant agreement this will set out the conditions upon which funding is provided from the council to the grant recipient. The agreement specifies the purpose for which grant is to be provided, the reporting arrangements, monitoring and evaluation, liaison and communication between the parties, and the funding provided to the grant recipient.
35. The Grant Agreement is to be supplemental to and co-terminus with the Agreement for Lease.
36. The total sum payable under the Grant Agreement would be a maximum of £12,163,234 (twelve million, one hundred and sixty three thousand, two hundred and thirty four pounds). It is suggested that this will be funded from a combination of commuted S106 monies held by the council (subject to approval from the Council's Planning Committee) and from the council's Right to Buy Receipts. The intention is that the proportions will cover 70% and 30% of the construction delivery costs respectively.
37. The main heads of terms of the Grant Agreement, and measures to ensure the council's exposure to risk is minimized will reflect the Grant Agreement entered into in October 2016 for Marklake Court (former Kipling Garages) which was the Leathermarket CBS, first new homes delivery site and subject to extensive legal advice.
38. As with the earlier agreement the amount of the Grant shall not be increased above the maximum sum in the event of any overspend by the CBS in its delivery of the project and any such overspend will be the recipients' liability. In the event that the amount spent is less than the maximum sum agreed amount this amount will be recovered or withheld by the council.
39. The Grant Agreement will continue from the date at the head of the agreement to the end of 10 years and 6 months following the final Practical Completion ("the Grant Period") unless it is brought to an end in any of the ways described in the Agreement or in the event that the Agreement for Lease or Lease is terminated
40. The Grant Agreement was drafted to ensure that the council's exposure to risk is minimized as much as is possible in particular it ensured that the Grant Recipient shall:
 - i. Use the Grant only for the delivery of the Project;
 - ii. Not change the Project without the written consent of the council;
 - iii. Use the Grant in accordance with the purposes set out in the Grant Agreement;

- iv. Maintain proper paper and electronic records of evidence of spend and evidence of outputs achieved and provide these to the council when requested;
 - v. Permit the council and/or its appointed representative(s) to review the performance and compliance of the Grant Recipient in relation to the Grant Agreement, provided that reasonable notice has been given and at any time during normal working hours;
 - vi. Ensure that value for money and sound procurement practices are applied to all contracts entered into in relation to the Project;
 - vii. Ensure that the tenancies arising from the development of the Property are for affordable housing within the council's understanding of the term.
 - viii. Ensure that the development of the Property follows the London Housing Design Guide.
41. If this option is pursued the council's intention is that the Grant will be paid to the Grant Recipient in full. However, without prejudice to the council's other rights and remedies, the council may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:
- i. The Grant Recipient uses the Grant for purposes other than those for which they have been awarded;
 - ii. The delivery of the Project does not start within 12 months of the Commencement Date and the Grant Recipient has failed to provide the council with a reasonable explanation for the delay;
 - iii. The council acting reasonably considers that the Grant Recipient has not made satisfactory progress with the delivery of the Project;
 - iv. The Grant Recipient is, in the reasonable opinion of the council, delivering the Project in a negligent manner;
 - v. The Grant Recipient obtains duplicate funding from a third party for the Project;
 - vi. The Grant Recipient obtains funding from a third party which, in the reasonable opinion of the council, undertakes activities that are likely to bring the reputation of the project or the council into disrepute;
 - vii. The Grant Recipient provides the council with any materially misleading or inaccurate information;
 - viii. Any member of the governing body, employee or volunteer of the Grant Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the project or (b) taken any actions which, in the reasonable opinion of the council, bring or are likely to bring the council's name or reputation into disrepute;
 - ix. The Grant Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be

wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);

- x. The Grant Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- xi. The Grant Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure; or
- xii. In the event of a material breach of the Agreement for Lease by the Grant Recipient leading to the Termination of the Agreement for Lease.

Loans by local authorities

42. There are a growing number of local authorities in England and Wales that have provided loans for developments and regeneration projects including for housing developed by Community Land Trusts (CLTs). In some cases this uses borrowing from the Public Works Loan Board to on lend to the CLT.
43. Local authorities have investment powers under section 12 of the Local Government Act 2003 which states “a local authority may invest - (a) for any purpose relevant to its functions under any enactment, or (b) for the purposes of the prudent management of its financial affairs”, provided when exercising the power they comply with current secretary of state guidance and stay within their prudential indicators.

Policy on future funding/lease requests

44. Kipling Garages and Joseph Lancaster Nursery are the first two housing schemes of this kind that the council has supported. Given the learning from these two proposed developments and the likelihood of future requests coming forward officers will now develop a policy/set of criteria for the council in assessing whether to support these.
45. This policy will include the following elements:
 - Eligibility criteria – outlining who can apply and for what purposes.
 - Standard conditions of funding and the obligations/rights of both parties to the agreement including conformance with all relevant council policies.
 - Reporting, monitoring and audit requirements.
 - Governance issues and transparency.
 - Procurement requirements.
 - Arrangements under which funding can be recovered in the case of a default.
 - Arrangements for variations to agreed funding allocations.
 - Tenancy arrangements that the provider is required to operate.
 - Payment arrangements.
 - How funding requests will be prioritised for example schemes that:
 - Deliver best value for money for the council.
 - Are fundamentally viable.
 - Demonstrate strong local community support and engagement.

- Demonstrate strong partnership with the council.
- Deliver well-designed homes and neighbourhoods.
- Deliver a net increase of social housing.

Tenancy and rent levels

46. The properties will be let on assured tenancies at council rent levels. The CBS' intention is that any 'Right to Buy' provisions will be excluded therefore protecting these assets for future generations.
47. The proposed rents are the same as they would be if the council had built the homes at council rents i.e. at council target or the indicative rent cap whichever is lower. Rents will reduce by 1% until 2019/20. Thereafter it is assumed that rents will increase by CPI plus 1% for the next five years and CPI thereafter.
48. The proposed rents (as at March 2018) are as follows:
 - 1 bed £125.63 per week
 - 2 bed £136.94 per week
 - 3 bed £155.48 per week
49. The Council and CBS have agreed that 50% local lettings criteria will be applied across three schemes, the Council's Long Lane development, the CBS Marklake Court (formally Kipling Garages) project and the Joseph Lancaster development. The Leathermarket CBS local lettings policy sets out the eligibility criteria for the allocation of the CBS new build homes to existing JMB tenants and the policy for determining priority for an allocation. The CBS has adopted Southwark Council's approach to re-housing tenants as set out in the Housing Allocations Scheme November 2013.

CBS business plan

50. As part of the due diligence undertaken by LBS, the CBS's Business Plan updated February 2018 was scrutinised. The conclusion of this exercise showed a viable position with on-going rental income exceeding costs over the term of the plan, which is based on reasonable assumptions. The CBS Business Plan November 2017 is provided at Appendix 2.

The assumptions in the CBS business plan are

- The new homes at Marklake Court are finished in summer 2018. The new homes at Joseph Lancaster Nursery site are completed in Summer 2020 and that a third scheme will follow (but its costs and income are not yet included in the 30-year plan);
- All properties are being let in line with council rents. The rents assumed are based Southwark Council's current target rents i.e. 1-bed £125.63, 2-bed £136.94 and 3-bed £155.48 (inclusive of service charge) as at March 2018.
- Based on government statements we apply -1% up to 2019/20 and then CPI+1% from 2020/21 to 2024/25 and then we assume CPI for the remainder of the Business plan.
- Tenants will pay their fuel and water charges directly and not as part of their rent;
- Voids & Bad debts – 3%;

- The homes will be managed by the JMB under a service level agreement, which is now agreed. Further work is required on the VAT implications of the CBS buying a management service from the JMB;
- The management and maintenance requirement is £2,450 per unit per annum increasing with CPI. This is based on the JMB's actual spend in 2015/16;
- - Capital works (such as boiler, kitchen and bathroom replacements) required over the 30-year business plan are budgeted at £800 per property per annum increasing by CPI, starting in year 8. In the financial forecast, the CBS have calculated the total cost per property over the 30 years;
- The first call on the client fee will be staffing, legal and administrative costs;
- The CBS aims to build up reserves to £250,000 (increasing annually by CPI) for future emergencies, any further surpluses will be recycled into future schemes;
- The maximum borrowing capacity is calculated based on an affordability basis – i.e. what repayments can be made from the net rents. For the purposes of these calculations the CBS have assumed an annual management overhead cost of £100k (if no further projects came forward);
- Amortising Debt - Interest rate of 4% has been assumed (this has not yet been ratified with lenders and is considered to be a cautious estimate), and is modelled with repayment over 25 years. It is assumed that borrowing will be capped by either income cover ratio of 1.25 or 70% LTV.
- The Marklake Court (formally Kipling Garages) construction cost is from the fixed price tender from Buxton Building Contractors, fixed professional fees and contingencies; and
- Joseph Lancaster construction cost is based on the Stage 3 Cost Plan prepared by Measur (quantity surveyors), with external works forecast at £250,000.

Joseph Lancaster lease terms

51. The terms of the agreement for lease and grant of a long leasehold interest in the Joseph Lancaster site "the property" to the CBS will be on the terms outlined below;
 - Lessee: Leathermarket CBS
 - The Term: 125 years
 - The Reserved Rent: One pound peppercorn
 - Permitted Use: Residential Social Rent
52. These are the same terms by which the long leasehold interest in Kipling Garages was granted to CBS, as authorised by Cabinet at its meeting on 16 September 2014.
53. The parties will enter into an Agreement For Lease following which a lease will be completed once certain conditional matters have been fulfilled. The conditional matters are:
 - Satisfactory preliminary site investigations.
 - Grant of satisfactory building consents/planning permission secured.
 - Agreement on the mechanism for project delivery finance secured through the council's Housing Investment Programme.

- Officers' agreement on the detailed final cost plans for the Scheme including professional fees and the CBS client fee.
- Agreement on any outstanding legal issues.
- The inclusion of clauses on letting the new homes at council rents, the council's normal policies on London Living Wage and social value through for example apprenticeships and requirements relating to the practice of blacklisting' as set out in the council's Fairer Future Procurement Strategy.
- Agreement to authorise that the land on the Joseph Lancaster Estate, Deverell Street, London SE1 ("the Property"), as shown edged blue on the plan attached at Appendix 1 is appropriated for planning purposes to be held pursuant to the provisions of Section 237 of Town and Country Planning Act 1990 for planning purposes in accordance with the Power of appropriation: Section 122 of the Local Government Act 1972. This appropriation will be subject to receipt of planning permission.
- Completion of a property due diligence exercise on the site which will include ensuring that there are no other rights or interests in any of the land.

54. The grant of this long lease is subject to a declaration of surplus being obtained from the director of regeneration.

55. The 125-year lease will contain an obligation on the tenant to implement the planning permission and to complete the development within 5 years from the date of the lease.

Land appropriation

56. It is currently proposed that the Land on the Joseph Lancaster estate, Deverell Street, London SE1 ("the Property"), as shown edged blue on the plan attached at Appendix 1 is appropriated from housing purposed for planning purposes and to be held pursuant to the provisions of Section 237 of Town and Country Planning Act 1990 for planning purposes in accordance with the Power of appropriation: Section 122 of the Local Government Act 1972. This is subject to the granting of planning permission for the scheme.

Indicative delivery programme

57. The indicative delivery programme for the Joseph Lancaster scheme is set out in the below table.

| Deliverables | Delivery dates |
|---|-----------------------|
| Feasibility/Design Development with local residents and pre-application process | Completed |
| Planning application submission | Completed |
| PQQ process | Completed |
| Prepare, issue & evaluation of tender documents for stage 1 | March/April 2018 |
| Planning consent granted | March 2018 |
| Enter into Agreement for Lease | June 2018 |
| Enter into Funding Agreement | June 2018 |
| Selection of preferred contractor – enter into Pre-construction Services | January – May 2018 |

| | |
|---------------------------------------|---------------|
| Agreement | |
| Enter into main construction contract | November 2018 |
| Start on site | December 2018 |
| Completion | July 2020 |

Kipling development progress

58. The 27 homes currently being built by the CBS on the former Kipling Garages site are progressing well. The scheme, now known as Marklake Court, is on programme to complete in summer 2018 within budget

Master planning across JMB estates

59. The CBS business plan includes reference to a further five-year programme of 116 new homes. This funding request and lease arrangement is only for the Joseph Lancaster proposal and the council is not currently being asked to support the other potential developments outlined in the plan.
60. The Council and CBS successfully bid for a total of £18,000 of DCLG funding in order to complete an Estate Improvement Plan across the JMB estates. This is enabling comprehensive consultation to be undertaken to establish opportunities across the JMB estates for the delivery of additional affordable housing and identify priorities for improving the estate – including existing homes and communal areas.
61. A report will be brought back to Cabinet to report on the key findings of the Estate Improvement Plan.

CBS capacity building – governance, finance and procurement

62. In 2016 Council reviewed CBS's governance, finance and procurement arrangements, as part of the due diligence undertaken before agreeing Council funding towards the delivery of Marklake Court housing scheme (former Kipling Garages). As a result of this exercise officers identified a number of areas for action by the Leathermarket CBS and following a meeting with CBS board members and officers an action plan was agreed to put in place the necessary actions.
63. All of the key actions are complete and the council are satisfied that the implementation of these actions has led to a clear separation between the Leathermarket JMB and Leathermarket CBS, robust governance, and increased capacity and expertise within the CBS client team.
64. The CBS client team now consists of a CBS Programme Director, with substantial experience and expertise with delivery affordable homes within the local authority and RSL sectors; and two community and communication officers who have substantial experience of working with communities.
65. The CBS secured through the council £50,000 of DCLG funding to support capacity building within the CBS. This contributes to covering the costs of strengthening the client team and provides funding to support the development of the Leathermarket CBS Board.

Consultation

66. Given the scale and significance of the proposals, the Leathermarket CBS made substantial efforts to engage the community around the site in the formulation of the scheme and also engaged with a number of other stakeholders throughout the preparation of the planning application including local residents, councillors and council officers.
67. This exercise resulted in a number of amendments to the proposal that are outlined in the statement of community involvement and design and access statement submitted with the planning application.
68. A summary of community consultation events carried out by the CBS is as follows:

| Month | Activity |
|----------------|------------------------------------|
| January 2017 | Resident Consultation Workshop 1 |
| February 2017 | Resident Consultation Workshop 2 |
| June 2017 | Resident Consultation Workshop 3 |
| July 2017 | Pre-application discussion |
| August 2017 | Resident Consultation Workshop 4 |
| September 2017 | Pre-application meeting |
| September 2017 | Resident Consultation Workshop 5 |
| September 2017 | Follow up pre-application meeting |
| October 2017 | Meeting with Southwark Council |
| November 2017 | Final pre-application meeting |
| November 2017 | Resident Consultation Workshop 6 |
| December 2017 | Submission of planning application |

Policy implications

69. The development of this site will provide much needed genuinely affordable housing built to the highest of standards in terms of both design and energy efficiency.
70. The proposed scheme will be built in accordance with the London Plan, the London Housing Design Guide, and Planning regulations. The homes will also be built in accordance with Lifetime Homes and will reduce carbon emissions and conserve fuel and energy as set out in building regulations (Part L) Value the Environment.

Community impact statement

71. An equality analysis has been conducted on this proposal and this is attached at Appendix 3. The analysis is currently positive and suggests that the development of this site, on what currently contains a derelict nursery building will have wider benefits for the local community.
72. The new homes created as part of this resident led scheme will enable some households to move from over crowded conditions whilst others will be downsizing allowing the release of a range of different sized units to be relet for others in housing need. Once the residents have been identified CBS will carry out a further equalities impact assessment to assess the implications of the proposed scheme.

73. The development of this site will have wider regenerative benefits for the local community.
74. Wheelchair homes will be provided in line with planning policy.
75. No residents will be displaced as result of this scheme.
76. The Council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. It is expected that the Leathermarket CBS and its contractors and subcontractors pay LLW and that this will result in quality improvements for the Council and provide best value for the Council. It is considered appropriate for the payment of LLW to be required as part of the grant agreement. Anticipated benefits include a more incentivised workforce and improved staff retention. Following award, these quality improvements and any cost implications will be monitored.
77. Under the Public Sector Equality Duty General Duty public authorities must have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.
78. The protected groups covered by the equality duty are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination.
79. The council's "Approach to Equality", which was agreed by cabinet in December 2011, outlines the council's legal duties under the PSED General Duty and its obligations under the Human Rights Act 1998. It also sets out the council's commitment to embedding equality and human rights within the day-to-day responsibilities of all members, officers and contractors, as a part of day to day business.
80. It is essential that when decisions are made they take into account the public sector equality duty's general duty (PSED General Duty) as set out in section 149 of the Equality Act 2010. Officers will undertake further equality analysis as the service works through implementation of the changes.

Resource implications

81. The grant of the lease will be at a nominal consideration. There will be no capital receipts. Officer time and costs needed to complete the grant of this lease will be met from existing service and budget provision.
82. The total sum payable under the Funding Agreement will be a maximum of £12,163,037 (twelve million, one hundred and sixty three thousand and thirty seven pounds). If a Grant Agreement is the mechanism identified then it is suggested that this will be funded from a combination of commuted S106 monies held by the council (subject to approval from the Council's Planning Committee) and from the council's Right to Buy Receipts. The intention is that the proportions will cover 70% and 30% of the construction delivery costs respectively.

83. The council has approximately 8,000 single garages and parking spaces and so the impact of changing usage of 9 garages is immaterial to the council's asset register.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

84. Cabinet is being asked in this report to note the due diligence exercise conducted by officers in relation to the proposed development for 40 homes at the former Joseph Lancaster Nursery and also that the Leathermarket CBS business plan shows a viable position over 30 years assuming financial support from the Council. The report also authorises the Strategic Director of Housing and Modernisation to finalise terms for a lease taking into account the conditions set out in paragraph 6 of the report. The report also authorises entering into a loan or housing grant agreement up to a maximum amount of £12,163,234.00 on the same basis as the previous agreement entered into for the Kipling Garages site but taking into account the requirements as set out in the "Grant Agreement" section of this report and allowing for any further variations from the Kipling Garages template to be approved by the Strategic Director.
85. Cabinet members are responsible in accordance with paragraph 12, Part 3 of the Council's Constitution for the strategic management of the council's resources and is able to authorise the use from the Housing Revenue Account subject to the requirements as set out in paragraph 13 of the Constitution.
86. The use of any section 106 monies needs to be authorised by the council's planning committee and their decision will be taken having taken into account the precise terms of the individual agreements which have been identified as being appropriate and also the tests which are set out in Regulations 122 (2) a – c, the Community Infrastructure Levy Regulations 2010.
87. The power to provide this housing grant is contained within section 24, Local Government Act 1988. This allows the council to provide financial assistance to any person for the purposes of, or in connection with (among other things) the acquisition, construction, maintenance and management of any property which is intended to be privately let as housing accommodation. This therefore extends to a lease, tenancy, or statutory tenancy where the immediate landlord is someone other than a local authority. However, by section 25, Local Government Act, the consent of the Secretary of State would be required for the provision of this financial assistance.
88. In accordance with the General Consent C (2010) issued by the Secretary of State, the consent from the Secretary of state is conferred for the provision of financial assistance in the circumstances outlined in the preceding paragraph.
89. The report confirms the housing provided under the terms of the agreement will be provided by the CBS. The units will be allocated by the CBS under the terms of their lettings policy as explained at paragraph 49 of the report which may be varied by the CBS in the future as they consider appropriate. Tenants of the new housing will be CBS tenants and therefore hold assured tenancies as explained in paragraph 47 of the report. There are material differences between council tenancies and standard assured tenancies.

90. The report confirms that the grant agreement is supplemental to and co-terminus with the agreement for lease. It is not proposed to make provision for Council nomination rights in the agreement. This is a departure from the council's usual practice to enter into an agreement with the recipient of council grant funding and/or land to make available properties for nomination by the council ('nomination agreement'). Cabinet members must be satisfied that there is justification for this departure from usual practice.
91. Cabinet members, when making a decision on the recommendations in this report are also required to have due regard to the public sector equality duty (PSED) in section 149 of the Equality Act 2010.
92. This duty, which is non delegable and continuing, requires the council to consider all individuals when carrying out its functions. Specifically, to have due regard to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The PSED also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct.
93. An equality impact assessment has been undertaken and this is annexed to this report. The results of the Assessment are summarised but the impacts appear slight. Cabinet members should carefully consider the equality analysis which is provided with this report.

Strategic Director of Finance and Governance (H&M17/118)

94. The Strategic Director of Finance and Governance notes the proposals to transfer land at nil value and the provision of financial assistance either by way of loan or grant funding to a maximum value of £12,163,234 to the Leathermarket Community Benefit Society Limited (CBS) for the development of 40 affordable homes on the site of the former Joseph Lancaster nursery at Deverell Street SE1.
95. Resourcing for the scheme will come from the council's Housing Investment Programme (HIP), funded either directly via commuted S106 monies and Right to Buy receipts, or through long-term loan funding to the CBS, which counts against the Council's HRA borrowing headroom. These options will be considered as part of the final scheme appraisal.
96. Cabinet will be aware that the HIP is not currently fully resourced over the life of the programme and there is an expectation that external borrowing will be required in the short-term, and potentially as soon as the current year, given the ambitious new build programme and as yet undetermined fire safety commitments arising from the Grenfell tragedy. It is imperative that the programme is actively managed and conflicting commitments prioritised within the prevailing resource constraints that currently exist.

BACKGROUND DOCUMENTS

| Background Documents | Held At | Contact |
|---|--|-----------------------------------|
| Cabinet Report 16 September 2014 - Kipling Garages, Weston Street, Bermondsey, SE1 – Grant of Long Lease | Housing and Modernisation 160 Tooley Street London SE1 2QH | Stephen Douglass 020 7255 0886 |
| Link: http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=4825 | | |
| Cabinet Report 19 July 2016 Kipling Garages, Weston Street, Bermondsey, SE1 – Housing Grant Agreement | Housing and Modernisation 160 Tooley Street London SE1 2QH | Stephen Douglass 020 7255 0886 |
| Link: http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=5887 | | |

APPENDICES

| No. | Title |
|------------|--|
| Appendix 1 | OS plans, indicating the site boundary line – edged blue – circulated separately |
| Appendix 2 | Leathermarket CBS Business Plan 2017-2022 – circulated separately |
| Appendix 3 | Equality Analysis – circulated separately |

AUDIT TRAIL

| | | |
|---|--|--------------------------|
| Cabinet Member | Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing; and Councillor Mark Williams, Regeneration and New Homes | |
| Lead Officer | Michael Scorer, Strategic Director of Housing and Modernisation | |
| Report Author | Stephen Douglass, Director of Communities | |
| Version | Final | |
| Dated | 2 March 2018 | |
| Key Decision? | Yes | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments Sought | Comments Included |
| Director of Law and Democracy | Yes | Yes |
| Strategic Director of Finance and Governance | Yes | Yes |
| Cabinet Member | Yes | Yes |
| Date final report sent to Constitutional Team | | 2 March 2018 |