

Item No.	Classification: Open	Date: 3 June 2019	Meeting Name: Strategic Director of Housing & Modernisation
Report title:		91 Newington Causeway	
Ward(s) or groups affected:		Chaucer Ward	
From:		Tim Bostridge, Head of Development	

RECOMMENDATION(S)

That the Strategic Director of Housing and Modernisation;

1. Agrees to the disposal on Shared Ownership Terms of the 11 affordable units to be acquired by the Council at 91 Newington Causeway.

BACKGROUND INFORMATION

2. The council undertook High Court action in order to recover 27 affordable units at two high profile sites in the borough: the Jam Factory in Bermondsey and the Signal Building at 91 Newington Causeway, alleging that the planning obligation requiring them to be used as intermediate (shared ownership) housing was being breached. Those claims were settled in the course of 2017 on terms that the units would be put to use as affordable housing.
3. The units at Jam Factory have been purchased by a Registered Provider. However, there was no interest from Registered Providers to purchase the units at 91 Newington Causeway. Therefore the council has agreed to purchase the units itself
4. The development at 91 Newington Causeway consists on 22 storeys with a café on the ground floor and commercial space of the ground floor and second floors. There are 11 affordable housing units on the floors 4-8 and the mix is as follows;
 - 4 x 3 bed
 - 5 x 2 bed
 - 2 x 1 bed.

Current Status

5. The council now owns flats 1,2, 3,4,5,7,8,9 and 10. The timescale for acquiring flats 6 and 11 is more uncertain and further legal action might be required to enforce the settlement agreements with the owners.
6. The council are getting the owners to clear the arrears on service charges accounts before completion, with any outstanding balance being sought from the housing association.

7. However, the council is now liable for the service charges on those in its ownership and invoices have been submitted for the current period in line with the lease arrangements. These costs will be met from a revenue code for the cost of disposals. The costs are then met from the disposal proceeds, as long as costs of disposal are not more than 4% of the capital.
8. The current condition of the units varies and therefore a survey will need to be undertaken of each flat to identify a package of work to bring the units up to a sellable standard so that the Council can secure the maximum return. These costs will be met from the disposal proceeds.

KEY ISSUES FOR CONSIDERATION

9. The table below shows the net present values (NPV) for a number of options including intermediate rent, market rent and shared ownership. Viability is more or less achieved at 70% of market rent with an income obtained at full market rent or with shared ownership

Option	Weekly Rent 2 Bed (£)	NPV
London Living Rent	244.50	(914,628)
60% Market Rent	268.20	(635,689)
70% Market Rent	312.90	(65,921)
Market Rent	447.00	6,066,360
Shared ownership	140.14	1,369,788

10. The planning permission conditions the units as shared ownership, and it is recommended that the units are offered for sale on this basis.
11. Seeking to amend the permission to allow for a form of intermediate rent, rather than shared ownership, would require a deed of variation to be S106 to be approved. In addition, the council would not be able to offer the units as intermediate rental units on assured shorthold tenancies: tenants would very likely have security of tenure, and the council could only charge rents at social rent levels in accordance with the rent setting requirements contained in the government guidance and legislation. Therefore this is not an option that can be explored. Letting at market rent or disposing of the units as market sale would not be an option.

Next Steps

12. Procure a registered provider partner with experience of selling 'second hand' shared ownership units to carry out the marketing and sales process. The approach of appointing a Registered Provider partner was used for the sales of shared ownership units at Southdown and Salter Road, as the council does not have an in-house team that has the necessary skills and knowledge to carry out this function. The Registered Provider would also need to carry out affordability assessments so the sales adhere to the council's eligibility requirements for intermediate housing.
13. Commission a survey of all the units to scope the works required to bring the homes back to a 'sellable standard'. It is likely that most of the works will be

cosmetic or the replacement of white goods, but in their current state, the flats would not achieve the maximum resale price. The scope of works should also cover health and safety requirements while the properties are vacant.

14. Currently, there are head and sub leases for each flat. In due course it is proposed to merge the sub leases into the head leases (which have also been transferred to the Council).
15. Consideration will need to be given as to the land holdings of the site within the council.
16. As the council's responsibilities for this development will cover the shared ownership units only, it is recommended that responsibility for the management of the units will be the responsibility of the My Southwark Home Owners Agency.

Policy Implications

17. As this is a unique situation involving a small number of units there are no wider policy implications.

Community Impact Statement

18. The recommendation to dispose of the units on shared ownership terms is in line with the original planning approval and therefore there are no wider community impacts.
19. The Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:
 - a) eliminate discrimination;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. Relevant protected characteristics for the purposes of the Equality Act are:
 - Age
 - Civil partnership
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex and sexual orientation.

21. In considering the recommendations herein the decision maker must have due regard to the possible effects them on any groups sharing a protected characteristic in order to discharge its public sector equality duty. This is an ongoing obligation.

Resource Implications

22. Costs incurred in disposing of the properties may be met from the disposal proceeds, provided the costs of disposal do not exceed more than 4% of those proceeds. Any costs exceeding this threshold would need to be met from revenue. It is important, therefore, that the impact of any works undertaken on the on the market value of the properties is carefully considered and that the cost of those works can be fully recovered on disposal and that they remain within the 4% threshold.

Legal Implications

23. See the report of the Director of Law and Democracy.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

24. The report accurately summarises the position if the council was to offer the units for rent. Sections 79 to 82 of the Housing Act 1985 provide that, in cases where a local authority is the landlord, and the tenant occupies the property as their only or principal home, the tenant will have security of tenure. There are certain exceptions in Schedule 1 to that Act but these would be unlikely to apply. Further para 12(1)(a) of Schedule 1, Part 1 to the Housing Act 1988 excludes from the assured tenancy regime any tenancy under which the interest of the landlord belongs to a local authority.
25. The s106 agreement provides for the units to be offered on a shared ownership basis. Offering the units on this basis would avoid the need for an amendment to that agreement, or to the planning permission. It would also secure the outcome which the council sought from the litigation, which offering the units for market sale or rent would not.
26. The Council has powers under section 1 of the Localism Act 2011 whereby a local authority has power to do anything that individuals generally may do (the General Power of Competence). However that power does not enable a local authority to do anything which it is unable to do by virtue of a pre-commencement limitation.
27. Section 32 of the Housing Act 1985 is a pre-commencement statute which imposes limitations on the Council's general power to dispose of land. Pursuant to s32 the consent of the Secretary of State for Housing, Communities and Local Government is required to the disposal of housing land.
28. A number of general consents have been issued in the General Housing Consents 2013. General Consent A3.1.1 provides that a local authority may dispose of land equal to its market value (subject to exceptions for right to buy discounts etc).

General Consent A3.5.1 enables a Council to dispose of shared ownership leases at a discount (although this is not proposed here) and General Consent A7.1 contains provisions whereby the Council may impose restrictions on sub-letting in shared ownership leases.

29. There are therefore adequate provisions in the General Consents to enable the Council to dispose of these units on shared ownership leases without the specific consent of the Secretary of State being required.
30. The report explains at paragraphs 19 – 21 that the Council is required to comply with the public sector equality duty set out in the Equality Act 2010 and that this is a continuing duty that will apply throughout the process of disposing of the flats as recommended by this report.

Strategic Director of Finance and Corporate Services (H&M 18/112)

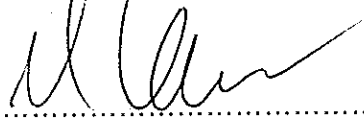
31. This report recommends the disposal on shared ownership terms of the 11 affordable units the Council is in the process of acquiring at 91 Newington Causeway. In seeking to acquire these units, the Council has acted in the public interest to enforce the planning obligation to offer them on shared ownership terms to households in need of affordable housing in Southwark. In disposing of the properties, the Council will aim to ensure there is no loss to the public purse and that the costs of both acquisition and disposal are recovered from the sale proceeds.

FOR DELEGATED APPROVAL

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council's constitution, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).

Signature



Date 2 July 2019

Michael Scorer, Strategic Director of Housing and Modernisation

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

1. DECISION(S)

2. REASONS FOR DECISION

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION (IF APPLICABLE)*

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST

If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.

6. DECLARATION ON CONFLICTS OF INTERESTS

I declare that I was informed of no conflicts of interests.*

or

I declare that I was informed of the conflicts of interests set out in Part B4.*

(* - Please delete as appropriate)

BACKGROUND DOCUMENTS

Background Documents		
None		

APPENDICES

No.	Title
None	

AUDIT TRAIL

Lead Officer	Stuart Davis : Director of Asset Management	
Report Author	Tim Bostridge, Head of Development	
Version	Final	
Dated	3 June 2019	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	n/a	n/a
Date final report sent to Constitutional Team		

