

Item No. 22.	Classification: Open	Date: 19 July 2016	Meeting Name: Cabinet
Report title:		Kipling Garages, Weston Street, Bermondsey, SE1 – Housing Grant Agreement	
Ward(s) or groups affected:		Grange	
Cabinet Members:		Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing Councillor Mark Williams, Cabinet Member for Regeneration & New Homes	

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

We are committed to providing good quality social housing across the borough and this report seeks to cement our partnership working with the Leathermarket JMB by enabling them to deliver a ground breaking resident led, genuinely affordable housing development project on the Kipling Estate. The partnership provides a great opportunity for residents to have a greater stake in the delivery of new homes which will be at council rents.

The Leathermarket Community Benefit Society (CBS) business plan underpins how they will deliver the project and is an exciting and innovative solution to help meet our commitment to build more genuinely affordable homes in the borough, whilst also enabling council tenants and homeowners to take greater control over their homes and local area.

RECOMMENDATIONS

That the Cabinet:

1. Note 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 27 new council funded homes at council rents on the Kipling Garages site and that this has informed the officer recommendation to cabinet.
2. Notes the Leathermarket CBS business plan and that this shows a viable position over 30 years.
3. Agrees the attached draft grant agreement to enable the development of land on the Kipling estate, Weston Street, London SE1 (“the Property”), as shown edged in black on the plan attached at Appendix 1 of the report, by the Leathermarket Community Benefit Society Limited (CBS) to a maximum sum of £9,252,000.
4. Authorises the Director of Regeneration to finalise the detail and enter into the housing grant agreement covering the development of the Property. This is to include the insertion 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.

5. Notes that an interim payment of £347,997.60 was made to Leathermarket CBS in December 2015 to allow the development of the scheme to continue. This takes the total council funding (including S106) to £9,661,815.
6. Authorises the release of £3,033,635.40 from the Council's Housing Investment Programme (HIP) as part funding of the scheme.
7. Notes that it is intended that the council's planning committee will receive a report requesting the release of Section 106 monies to part fund 65 % of the scheme.

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 three successful continuation ballots with the latest seeing a 76% turnout and a 93% approval of secure tenants. Subsequently the council agreed to make the JMB the country's first self financing Tenant Management Organisation.
9. The JMB is seeking to build on the confidence of the council and its residents and support Southwark to deliver 11,000 new genuinely affordable homes. They propose a development of up to 27 units all of which will be let at council rents.
10. The JMB 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 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 JMB to unlock contentious sites and hidden homes.
11. Following the last continuation ballot and concerns expressed at that time, the JMB undertook a detailed housing needs survey of the entire JMB estate. This housing needs survey identified a significant number of LMB tenants (30%+) who wish to move to larger or smaller properties. If the JMB can enable under occupying tenants to downsize, this will release larger properties, which will in turn meet the needs of tenants who are overcrowded.
12. Through a process of analysis of the JMB estate, in conjunction with professional advisors, a number of potential development sites have been identified which include the Kipling Garages Property at Weston Street.
13. The establishment of the Leathermarket CBS 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.
14. A professional team has been appointed by the Leathermarket CBS and includes Igloo Regeneration as development managers and Southwark based Bell Phillips as architects.
15. The council's cabinet on 16 September 2014 authorised the cabinet member for finance, strategy and performance to agree the heads of terms and likewise the

head of property to be authorised to both enter into an agreement for lease and grant a long leasehold interest in the Property, to the (CBS) on the terms outlined below;

Lessee: Leathermarket CBS

The Term: 125 years

The Reserved Rent: One peppercorn

Permitted Use: Residential Social Rent

16. The agreement for lease contains certain conditional matters which need to be fulfilled before the lease can be granted. The conditional matters are
 - Satisfactory preliminary site investigations
 - Grant of satisfactory building consents
 - The CBS having sufficient funding in place.
17. All site investigations were successfully carried out completed some time ago. The planning application 15/AP/2703 was submitted on the 01 July 2015 after being presented to the Council's design review panel in May 2015. It is understood that this application will be determined shortly by planning officers after completion of the negotiations for a new Section 106 planning agreement.
18. 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.
19. The council provides this Grant to the CBS for the development of the Property for high quality, genuinely affordable residential accommodation pursuant to Section 24 of the Local Government Act 1988.
20. The Grant agreement sets 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.
21. The Grant Agreement is supplemental to and co-terminus with the Agreement for lease.
22. The total sum payable under the Grant Agreement will be £9,661,815 (Nine million, six hundred and sixty one thousand eight hundred and fifteen pounds). It is hoped that this will be funded from a combination of commuted S106 monies (£6,280,182) held by the council and money from the council's HIP (£3,381,633). The proportions will be 65% and 35% respectively but approval will be required from the Council's Planning Committee.

23. The main heads of terms of the Grant Agreement are;

Recipient: Leathermarket CBS

Purpose: Provision of genuinely affordable high quality affordable housing

Maximum Sum: £9,661,815

Period of the Agreement: 10 years and 6 months following the date at the head of the agreement to the end of 10 years and 6 months following the final Practical Completion

24. The proposed development will comprise 27 units of accommodation arranged over a part three, part five and part seven storey building together with three car parking spaces for disabled residents. The unit breakdown is as follows;

Bedroom Size	Number of Units
One bed	4
Two bed	13
Three bed	10

25. The scheme has been designed by Southwark based Bell Phillips architects in conjunction with the residents of the Kipling estate. The scheme development has been through a rigorous design process with each stage the subject of consultation with the residents of the estate.

26. The properties will be let on assured tenancies at target rents as determined by the national rent regime and as defined in the Grant agreement. Any 'right to buy' provisions will be excluded therefore protecting these assets for future generations.

27. 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 as follows:

- 1 bed £127.18 per week
- 2 bed £145.80 per week
- 3 bed £153.90 per week

28. The assumptions in the CBS business plan include the following:

- All properties are being let at council rents. The amount is based on the amount that Southwark Council is charging residents moving into its development at Long Lane i.e. 1 bed- £127.18, 2 bed £145.80 and 3 bed £153.90. These figures were taken from appendix 4 of the LBS report 'Update on the Proposed Pipeline for the Delivery of 1,500 New Council Homes by 2018' presented to Cabinet on 9th December 2014.
- The starting point is the rents set by Southwark Council for its own new homes in the area. Rents will reduce by 1% until 2019/20. Thereafter it

is assumed that rents will increase by CPI plus 1%, based on a statement by the Housing Minister in December 2015.

29. The CBS have previously received an interim payment of £290,000 from the council plus VAT (making £347,997.60 in total) for the purpose of paying various professional and consultant's fees pertinent to the preparation of the planning application. The maximum sum will be reduced to £9,252,000 to reflect this earlier payment.
30. Initial funding was obtained from a number of sources including the Greater London Authority (GLA) Community Right to Build Fund (CRTB) fund, United Saint Saviour's charity and the National Community Land Trust (CLT) Network in the sum of £408,795.00. This has been utilised to establish the Leathermarket CBS, for the appointment of professional advisers and for community engagement material and events, professional fees and design development.

KEY ISSUES FOR CONSIDERATION

31. The homes provided through this development will contribute to the council's commitment to deliver 11,000 new homes by 2043 and to deliver 1,500 of those new homes by 2018.
32. In January 2016 Officers asked officers of the Leathermarket CBS to submit a grant application setting out details of the purpose of the grant and other supporting information including financial and governance details to be submitted by 12 February 2016. This was consistent with the council's procedures for grant making and to allow officers to undertake a due diligence exercise to inform this funding recommendation to Cabinet in July 2016.
33. The initial information and application was received on Friday 12 February 2016. The due diligence exercise included reviewing governance, finance and procurement arrangements at the CBS.
34. As a result of this exercise officers identified a number of areas 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 action plan is attached as Appendix 1 to the CBS business plan attached as Appendix 2 to this report.
35. At the same time officers asked the Leathermarket CBS to submit a detailed business plan including detailed financial forecasts for the CBS. The final version of this was received on 07 July 2016. A copy is attached as Appendix 2 to this report and has allowed officers to undertake a check on the viability of the CBS.
36. The conclusion of this exercise is that the business plan provided by the CBS shows a viable position with on-going rental income exceeding costs over the term of the plan. The assumptions contained within the plan appear reasonable and they have taken on board all of the issues that council officers have raised with them in discussions on the plan.
37. The opening rents are consistent with rent levels had the council built the scheme. These will be homes at genuine council rents and this is reflected over the thirty year life of the plan. The assumption is that rents will be reduced by 1% for four years and then increase by CPI +1%.

38. Ongoing management & maintenance costs are low compared to council ones reflecting the current costs that the Leathermarket JMB is achieving.
39. In the business plan the Leathermarket CBS say that they will comply with the council's local lettings policy of 50% local lettings on all new Council funded schemes. This applies across the whole JMB area and this will actually be varied in this specific instance to allow for 100% local lettings on this particular scheme given the level of resident involvement in design. Future schemes delivered by the CBS will counterbalance this variation by delivering less than 50% with the remainder being open to council nominations ensuring that overall the policy requirement will be complied with. The scheme will also release 27 existing units for council nominations.
40. Officers have also 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. The Appraisal analysis also identifies that construction costs are high but consistent with those on recent council schemes.
41. The Appraisal also reviews Leathermarket on-costs and compares these to the council's costs on similar schemes. The costs reflect the fact that the CBS is a new organisation building its capacity to deliver the Scheme. Officers will be working with officers of the Leathermarket CBS to ensure it delivers as efficiently and effectively as possible.
42. As noted above officers have agreed to provide ongoing support to Leathermarket CBS to continue to develop their financial modeling and business planning capacities.
43. 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.
44. 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
45. The Grant Agreement has been drafted to ensure that the council's exposure to risk is minimized as much as is possible in particular it ensures 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.
46. 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.
47. The proposed scheme does not entail the demolition of existing estate homes but does involve the further densification of the estate, together with the loss of car parking provision. The new scheme will be car free except for three spaces provided for the wheelchair accessible units.
48. The council's planning committee will receive a report requesting the release of S106 monies to part fund the scheme. The sum of £6,280,182 will need to be applied for the purposes of the provision of affordable housing in accordance with the regulations from relevant S106 agreements.
49. The Grant Agreement provides for the appointment of a representative of the council as an observer to the board of the CBS to ensure increased oversight and transparent governance whilst providing a useful conduit between the CBS and the council. The Strategic Director of Housing and Modernisation will be responsible for making this appointment.

Policy implications

50. 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. In particular the architects have been careful to adhere to the council's own planning policies as well as the London Housing Design Guide.
51. The properties will be built to code level 4 of the code for sustainable homes and therefore will have to reduce carbon emissions, conserve fuel and energy as set out in building regulations (Part L) Value the Environment.

Community impact statement

52. 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. The CBS has carried out an equalities impact assessment to assess the implications of the proposed scheme. Council officers have also undertaken equality analysis of the proposal.
53. The development of this site, on what currently contains single storey domestic garages, will have wider regenerative benefits for the local community.
54. Three of the homes are fully wheelchair accessible and all twenty seven are designed to lifetime homes standard.
55. No residents will be displaced as result of this scheme.

56. 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.
57. 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.
58. 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.
59. 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.
60. 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

61. The scheme build cost is based upon an estimate of £2,650 per m². This equates to around an average of £350,000 per unit (without land). These costs are subject to a competitive tendering process undertaken by the CBS.
62. This level of build cost is considered to be within a range that is considered acceptable given the location, type and scale of build envisaged.
63. The Grant agreement provides that the net rents received by the CBS from this scheme will be held by them and used to fund future developments on sites identified within the Leathermarket JMB managed area.
64. The proposed land transfer out of HRA ownership makes the proposed grant accountable in the General Fund capital programme, although funding will need to come from Housing Investment Programme resources.
65. It is intended that an application to Planning Committee will be made for 65% of the contract costs to be funded from developer payments under Section 106.

66. Because the development is non-HRA and non-RSL the remaining 35% is not able to be funded from new-build Right to Buy Receipts, nor from HRA depreciation/revenue contribution, so therefore would need to be met from Housing capital receipts, which are overcommitted. Hence there will be an impact on the Housing Investment Programme, which would have been largely avoided with the 30% RTB receipt funding available for a Council or RSL build on the site.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

67. Cabinet is being asked in this report to approve the terms of a housing grant agreement relating to the Property which is sited at the Kipling estate, Weston Street. The report also authorises a housing grant agreement to be entered into in accordance with the heads of terms set out at paragraph 23 of this report.
68. External lawyers, Pinsent Masons, have been advising the council concerning the terms of the funding agreement and have ensured that the matters as set out in this report are reflected accordingly.
69. 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.
70. 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 specific terms of the specific 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 Regulations 2010.
71. 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.
72. 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.
73. 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 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. There are differences between council tenancies and standard assured tenancies.
74. 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.

75. 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.
76. 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.
77. Paragraphs 52 to 59 of and Appendix 4 to this report set out the assessment of community impacts, including equality impact. Cabinet members should carefully consider the Equality Analysis which is provided with this report.

Strategic Director of Finance and Governance (H&M16/019)

78. The Strategic Director of Finance and Governance notes the proposals to transfer land at nil value and the provision of grant funding to a maximum value of £9,661,815 to the Leathermarket Community Benefit Society Limited (CBS) for the development of 27 affordable homes on the Kipling Estate, Weston Street SE1.
79. Proposed funding for the scheme comprises commuted S106 monies of £6,280,182 (subject to future Planning Committee approval) and from the Council's HIP (£3,381,633) respectively. An interim payment of £347,998 has already been made to Leathermarket CBS 2015/16, leaving a residual sum of £3,033,645 to be paid as part of the initial funding tranche.
80. Due to the nature of the development arrangements with the CBS the development is non-HRA and non-RSL and regulations preclude the use of RTB receipts or depreciation/revenue contribution to fund it. Therefore, non RTB capital receipts will be required which are already overcommitted and will exacerbate the council's investment funding gap going forward.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Cabinet Report 16 th September 2014 - Kipling Garages, Weston Street, Bermondsey, SE1 – Grant of Long Lease	160 Tooley Street, SE1 and on the Council's website	Paul Davies 55529

APPENDICES

No.	Title
Appendix 1	OS plans, indicating the property – edged black
Appendix 2	Leathermarket CBS Business Plan 2016-2022
Appendix 3	Draft Grant Agreement
Appendix 4	Equality Analysis

AUDIT TRAIL

Cabinet Member	Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing, & Councillor Mark Williams, Cabinet Member for Regeneration and New Homes	
Lead Officer	Gerri Scott, Strategic Director of Housing & Modernisation & Stephen Platts, Director of Regeneration	
Report Author	Stephen Douglass, Director of Communities & Paul Davies, Principal Surveyor	
Version	Final	
Dated	11 July 2016	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
	Officer Title	Comments Sought
	Director of Law and Democracy	Yes
	Strategic Director of Finance and Governance	Yes
	Cabinet Member	Yes
	Date final report sent to Constitutional Team	11 July 2016