

<b>Item No.</b> 18.	<b>Classification:</b> Open	<b>Date:</b> 18 September 2018	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Disposal of council's freehold interest at Devonshire Grove to rear of 745-775 Old Kent Road SE15	
<b>Ward(s) or groups affected:</b>		Old Kent Road	
<b>Cabinet Member:</b>		Councillor Victoria Mills, Finance , Performance and Brexit	

## **FOREWORD BY COUNCILLOR VICTORIA MILLS CABINET MEMBER FOR FINANCE, PERFORMANCE AND BREXIT**

This report recommends the sale of the council's interest at Devonshire Grove to the rear of 747-775 Old Kent Road. The land was acquired to provide a new access road to the Waste Transfer Station. It has been used as open storage and is currently in temporary use for parking and as a temporary traveller site, enabling essential works to be carried out to the councils Ilderton Road traveller site.

The sale of the land will pave the way for a redevelopment that provides much needed new homes and which will generate around 270 full time jobs.

To ensure compliance with council planning policy the council will require the developer to provide 35% affordable housing. The mix of affordable units will be required to be planning policy compliant. The freehold of the site will not be transferred until the policy compliant scheme has been implemented. A covenant will be placed on the site to bind successors in title to the affordable housing requirement.

If the council were to seek to develop its land in isolation, the road could not be moved, there would be fewer homes built across both sites and less ground floor employment space.

The sale of the freehold will only proceed with vacant possession - once works have completed on the Ilderton Road travellers site and residents can return – and once planning permission is consented.

The planned uses will generate business rates and council tax that will help the council mitigate the loss of government funding and the capital will contribute to the council's capital programme.

## **RECOMMENDATIONS**

That the Cabinet agrees to (all in accordance with the terms set out in the closed cabinet report):

1. Sell its Freehold interest in land at Devonshire Grove to the rear of 747-775 Old Kent Road (as shown outlined in black in Appendix 1) to the adjoining owner Barkwest Ltd for a mixed use scheme of commercial on the ground floor and residential development above subject to planning permission being obtained;
2. That the Cabinet authorise the director of regeneration to negotiate the sale and development agreement with Barkwest Ltd and place a covenant on the site

which binds successors in title to an affordable housing requirement.

### **BACKGROUND INFORMATION**

3. The council is the freeholder of land at Devonshire Grove to the rear of 747-775 Old Kent Road SE15. It was acquired as part of a site to provide a new access road to the Waste Transfer Station development.
4. The land has been used as open storage and is currently in temporary use for parking and as a temporary traveller site, enabling essential works to be carried out to the councils Ilderton Road traveller site.
5. There are proposals for the extension to the Bakerloo Line down the Old Kent Road and the Old Kent Road Draft Area Action Plan has been published and is being consulted upon. The Draft AAP encourages mixed use development with tall residential buildings along the Old Kent Road in this location
6. Pre application discussions with the council's planning department are at an advanced stage and it is anticipated that a application for a mixed use development including retail, office/light industrial and between 400-450 units of residential accommodation will be made on the site before the end of this year. In all, it is estimated that the scheme would generate around 270 full time jobs.
7. The land is currently used as open storage with a temporary use as a traveller site. It is in a Preferred Industrial Location, however, this area was designated a Housing Zone by the GLA in February 2015.
8. The council has prepared a draft Area Action Plan for the Old Kent Road area which includes this site and allows residential and mixed use proposals.

### **KEY ISSUES FOR CONSIDERATION**

9. Negotiations have taken place between Barkwest Ltd's property advisors and the council's Property officers and its advisors Montague Evans regarding the sale of the council's freehold interest in the land. The council is advised that it has obtained best consideration with the terms agreed with Barkwest Ltd
10. A planning overage has been agreed so that if a higher density is achieved than that currently indicated in pre-planning discussions with the councils planning department then the uplift in value is shared.
11. If Barkwest Ltd were to sell on the site for a larger sum than has been agreed then the council would benefit from an overage payment reflecting this. If the council were to seek to develop its land in isolation, the road could not be moved and a larger comprehensive development would not take place. There would be fewer homes built across both sites, less ground floor employment space and the land values would be reduced.
12. The requirement for the delivery of 35% affordable homes is a requirement of planning policy however developers often make a viability case that this figure is not justifiable. To ensure compliance with council planning policy the council will require the developer in the development agreement to provide 35% affordable housing. The mix of affordable units will be required to be planning policy compliant. As proposed, the scheme will be required to deliver 70% of the

affordable units as social rented and 30% as intermediate. The freehold of the site will not be transferred until the policy compliant scheme has been implemented. A covenant will be placed on the site to bind successors in title to the affordable housing requirement.

13. If planning permission for the proposed scheme is not consented then the sale of the freehold does not proceed. The council's site can be developed in isolation however a comprehensive scheme across both ownerships deliver more homes and therefore greater value.
14. Part of the proposal will require the moving of the current road through the site from the Waste Transfer Station to the Old Kent Road. This is likely to be across to the west of the site with a new junction and this is the subject of discussions with TFL.

### **Policy implications**

15. The disposal of the council's interest will generate a capital receipt that can be used by the council to further its key strategic objectives.
16. Redevelopment of an early site on the Old Kent Road Opportunity Area will assist in the council's objectives as expressed in the Old Kent Road Draft Area Action Plan.
17. The ability to impose restrictions on the land title to ensure that planning requirements on the provision of social rented housing within the affordable homes will mean greater certainty that the council's policies are implemented.

### **Community impact statement**

18. The impact of the revised residential led development on the local community will be slight but positive. The current use of the site is only temporary and its redevelopment will improve the visual amenity of the area and provide much needed private and affordable housing as well as commercial space on the ground floor.
19. Officers have given due regard to the councils public sector equality duty in the sale of the freehold interest and do not believe that there are any PSED implications arising from the proposed sale and redevelopment.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Law and Democracy**

20. Section 1, Localism Act 2011 provides councils with a general power of competence whereby a local authority has the power to do anything that individuals generally may do. However, this power does not enable a local authority to do anything which it is unable to do by virtue of a pre-commencement limitation. Section 123, Local Government Act 1972 is a pre-commencement statute which imposes restrictions on a council's power to dispose of land.
21. Section 123, provides that a council shall not dispose of land under the section (unless it is by way of a short tenancy) for a consideration which is less than the

best that can reasonably be obtained except with the consent with the Secretary of State.

22. Paragraph 9 of the report confirms that the developer will pay a consideration to reflect the value of the council's interest and that it is confirmed that this will represent best consideration.
23. The report also comments on the importance of ensuring that the scheme is planning policy compliant providing 35% affordable housing. This is complicated by the fact that the site is currently within a Preferred Industrial Location although this will be reconsidered as the draft Old Kent Road Area Action Plan emerges and the area was designated a Housing Zone by the GLA in February 2015. A further complication is development plan policy (London Plan Policy 3.12) supported by the National Planning Policy Framework allows the affordable housing contribution in a scheme to be reduced where viability appraisals suggest this is justified.
24. Whilst a requirement to this effect will be included in the sale agreement, this will not necessarily be effective against a successor in title of the purchaser. It will be necessary to bind not simply the purchaser but also the land being disposed of for the covenant to be enforceable against future purchasers. The covenant is proposed in recommendation 2 and referenced in para 12.

#### **Strategic Director of Finance and Governance (FC18/011)**

25. The report is requesting cabinet to agree to sell the council's freehold interest in land at Devonshire Grove to the rear of 747-775 Old Kent Road (as shown outlined in black in Appendix 1) to the adjoining owner Barkwest Ltd for a mixed use scheme of commercial on the ground floor and residential development above subject to planning permission being obtained.
26. The report is also requesting cabinet to authorise the Director of Regeneration to negotiate the terms of the sale agreement and subsequent development agreement with Barkwest Ltd. Terms of the agreement and the financial implications are detailed in the closed version of the report.
27. The Strategic Director of Finance and Governance notes the Director of Regeneration considers the proposed transaction as set out in the closed version of the report to represent best consideration in terms of S123 of the Local Government Act 1972.
28. The capital receipts generated from the proposed arrangement will be recycled into the council's capital receipts funds in financing council priorities.

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
None.		

## APPENDICES

No	Title
Appendix 1	Site plan showing the council's freehold outlined in black

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Victoria Mills, Finance, Performance and Brexit		
<b>Lead Officer</b>	Kevin Fenton, Director of Place and Wellbeing		
<b>Report Author</b>	Marcus Mayne, Principal Surveyor		
<b>Version</b>	Final		
<b>Dated</b>	7 September 2018		
<b>Key Decision?</b>	Yes		
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
	<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
	Strategic Director of Finance and Governance	Yes	Yes
	Director of Law and Democracy	Yes	Yes
<b>Cabinet Member</b>		Yes	Yes
<b>Date final report sent to Constitutional Team</b>			7 September 2018