

Item No. 35.	Classification: Open	Date: 24 March 2020	Meeting Name: Cabinet
Report title:		Acquisition of new housing at Harper Road, Borough	
Ward:		Chaucer	
Cabinet Member:		Councillor Victoria Mills, Finance, Performance and Brexit	

FOREWORD – COUNCILLOR VICTORIA MILLS, FINANCE, PERFORMANCE AND BREXIT

This proposes the Council acquires ten units of new housing scheduled to be built on Harper Road at its corner with Borough High Street. The proposed purchase will be on the basis of the Council transferring two very small parcels of land of limited use and value to form part of the overall development site and making a capital payment to the developer. The proposed housing includes one, two and four bedroom units in a very desirable and convenient location. This is an opportunity to add to the social housing stock in a ward that has limited potential for new housing.

The housing challenge faced by Southwark has and will continue to the subject of many reports to Cabinet. We have committed to providing 2,500 new Council homes by 2022 and 11,000 by 2043 and the approval of the recommendations in this report will be a contribution to fulfilling these targets.

RECOMMENDATIONS

That Cabinet:

1. pursuant to s17 of the Housing Act 1985 the Council acquires a long leasehold interest in the land edged red on the plan at Appendix A in accordance with the principal terms set out substantially in paragraph 16 of this report and fully in paragraph 4 of the closed version of the report subject to that land being developed with housing in accordance with the planning consent granted for application 18/AP/0657
2. as part of the consideration payable for the new housing, on its completion the Council pursuant to s 233 of the Town and Country Planning Act 1990 transfers to the freeholder of the land edged red on the plan at Appendix A the freehold interest in the land shaded blue on the same plan
3. delegates to the Director of Regeneration authority to agree detailed terms of the transaction.

BACKGROUND

4. Within the area of land shown edged green on the plan at Appendix A stand a range of buildings. Fronting Borough High Street at the corner of Harper Road stands a Victorian building ranging from two to four stories in height providing retail to the ground floor with residential and or housing above. Adjacent this and adjoining Kings Place is a four storey 1960s building that provides primary health care (Borough Medical Centre). To the rear of these buildings and

fronting Harper Road is a two storey brick built building and adjoining that there is a two storey prefabricated building dating from shortly after the second world war (formerly a weights and measures facility and subsequently a social services office). The existing buildings make for a hodgepodge on what is a prominent site.

5. On 30 October 2019 Planning Committee resolved, subject to the completion of a planning agreement pursuant to s106 of the Town and Country Planning Act 1990 to grant planning consent for the demolition of existing buildings on the land edged green and for the erection in their place of a building of five, seven, eight and thirteen stories providing:

- A 328 room hotel
- 10 Market sale units of housing
- 8 social rent units of housing
- 2 intermediate units of housing
- Business space
- Retail space
- Community events space

6. The promoter of the redevelopment is Southwark Homes Limited a private limited company. To be able to proceed, the promoter must acquire all the land within the consented area and secure vacant possession of it.

7. By a quirk of fate, the Council holds for general fund purposes the freehold interest in two small plots of land within the site shown shaded blue on the plan at Appendix A. This land has a total area of 46m². The sites in isolation are too small to be put to any beneficial use which ordinarily means they have a limited value. However, the land is essential for Southwark Homes Limited to deliver the consented scheme. This means that land is of special value to Southwark Homes.

8. The current Council Plan sets out a number of commitments including *A Place to Belong*; one of the undertakings to meet this commitment is to *Build at least 1,000 more council homes.....by 2022*. The consented scheme will provide ten units of new housing (eight designated for social rent and two for intermediate purposes). The Council needs new housing and the promoter needs Council land within the site so it was appropriate for the two parties to come together to establish if an agreement can be reached to satisfy respective aspirations.

9. Should the consented scheme proceed (as well as the promoter securing title and possession to all the land needed the planning agreement must be completed) the affordable new homes profile is:

Type	Quantity	Tenure	Average Gross Internal Area/unit
1 bed flat	2	Social Rent	58
2 bed flat	4	Social Rent	77
2 bed flat	2	Intermediate	77
4 bed flat	2	Social Rent	96.5

10. This housing together with the ten flats for sale will be situated towards the south east boundary of the site as shown edged red on the plan at Appendix A. There will be a common entrance to for both private and affordable residents. A

communal roof top (on fifth and sixth floors) garden for housing residents only; i.e. hotel guests will be excluded from that part of the scheme. The hotel will have guest only facilities including a gymnasium that will not be available to housing residents. Its top floor will however have a bar/restaurant that will be available to the public at large. The basement of the proposed hotel will provide a community area that housing residents will be able to book but there will be a charge payable. The housing element of the scheme is situated in the seven storey wing of the consented scheme. The social rent units are situated on the first and second floors, the intermediate ones on part of the third floor and the units for sale on part of the third and fourth, fifth and sixth floors.

KEY ISSUES FOR CONSIDERATION

11. This is an opportunity to increase the number of Council controlled homes for rent in a ward that owing to existing land uses has limited capacity for additions.
12. The Council's ownership of two very small parts of the consented site for development puts in a strong position in agreeing a price for the new housing which is considerably less than what equivalent homes could be constructed for if built directly.
13. As the housing will form part of a much larger building, it is not possible to isolate and acquire a freehold interest of it. Instead, a leasehold interest will have to be taken. This will mean there will be an ongoing service charge liability to cover freeholder costs including repairing and maintaining the exterior of the building, maintaining common parts and insuring the building against usual building risks including fire. These are costs the Council would face if it carried out these functions directly but they will be under third party control.
14. Whilst direct acquisition of affordable housing from privately built schemes is an expedient and economical way of expanding the housing stock it does suffer drawbacks insofar as small numbers away from larger estates tend to have higher unit management costs and are challenging to integrate in management terms.
15. It is agreed with Southwark Homes Limited that whilst the detailed specification for the affordable housing has not been established, it will need to comply with the Council's Design Standards and Employers Requirements. Both of these documents are currently in the process of being updated and Southwark Homes have seen the latest drafts.
16. S17 of the Housing Act 1985 enables the Council to acquire dwellings for housing purposes. Such dwellings once acquired will usually be held by the Housing Revenue Account.
17. The land shaded blue is held for planning purposes. It's disposal will be pursuant to s233(1)(a) of the Town and Country Planning Act 1990. The requirements of section 233(1)(a) have been considered and that the terms of the proposed disposal are expedient to secure the best use of the land.

PRINCIPAL TERMS FOR PROPOSED LAND TRANSFER AND LEASE ACQUISITION

18. (a) The Council grants a building lease of the land shaded blue on the plan to Southwark Homes or its successor in title to build out the consented scheme. On practical completion of the affordable housing element of the scheme the lessee will have the option to acquire the blue land for consideration (see closed version of the report). At the time of the granting the building lease, the Council and lessee enter into an agreement for lease that provides for a lease of the ten units of affordable housing to be granted to the Council on their practical completion.
- (b) The lease of the new housing to be on the following terms:
- (i) A duration of 250 years.
 - (ii) A fixed rent of one buttercup per annum
 - (iii) The freeholder to be responsible for external repairs and repairs to common parts including communal infrastructure.
 - (iv) The freeholder to be responsible for maintenance and decoration of external and common parts.
 - (v) The freeholder to insure the building including the area to be leased to the Council against all normal buildings risks.
 - (vi) The Council to pay an annual service charge to cover the freeholder's reasonable costs in discharging its repair, maintenance and insurance obligations.
 - (vii) The lease to restrict the use of the demised area to housing purposes only.
 - (viii) The Council with the freeholder's consent (such consent not to be unreasonably withheld) to be able to transfer the lease.
 - (ix) The Council to be permitted to grant under-leases (including leases pursuant to the right to buy set out in the Housing Act 1985) and tenancies to enable it to discharge its duties as a housing authority.
 - (x) The premium for the grant of the lease to be payable as follows:
 - 40% on golden brick (foundations reaching ground level)
 - 40% during construction billed monthly in arrears against the certified value of work carried out
 - 20% on practical completion subject to a 3% retention released twelve months after completion on issue of a Making Good of Defects Notice.
- (c) An overall consideration set out in the closed version of this report for the grant of the lease to the Council and transfer of the freehold interest in the land shown shaded blue on the plan to Southwark Homes Limited.

COMMENTARY ON PRINCIPAL TERMS

19. The numbering used follows that used in paragraph 18 above.
- (a) This is a mechanism that gives the developer the ability to build on the Council's land ahead of receiving ownership from the Council of the land it needs. This protects the Council against transferring it and then the purchaser building an entirely different scheme to what received planning consent last year.
 - (b)
 - (i) This is a substantial term of years
 - (ii) This is a nominal rental
 - (iii) Standard provision for residential leases
 - (iv) Standard provision for residential leases
 - (v) Standard provision for residential leases
 - (vi) Standard provision for leases.
 - (vii) To enable the buildings to be used for the purpose they are to be acquired for
 - (viii) This protects the Council's position in the extremely unlikely event of it wanting to transfer the properties to other ownership
 - (ix) This clarifies that the Council can if it receives a valid right to buy grant the applicant a lease of their accommodation. In any event any provision in the lease to the contrary will be overridden by s179 Housing Act 1985
 - (x) Standard payment regime in respect of social housing that is to be built by a developer.
 - (c) Refer to closed version of the report.

RATIONALE FOR RECOMMENDATIONS

20. The rationales are:
- To deliver a current Council Plan commitment.
 - To assist in providing new homes for person's on the Housing Waiting List.
 - To enhance the Council's asset base.

Community impact statement

21. The new Council Plan was the subject of extensive community consultation. The recommendations herein further the delivery of the *A Place to Belong* commitment set out in the Plan.
22. 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.
23. 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.
24. In considering the recommendations herein the Cabinet must have due regard to the possible effects on any groups sharing a protected characteristic in order to discharge its public sector equality duty. This is an ongoing obligation.
25. If the recommendations set out are approved, the Council will be able to contract to acquire ten new homes providing twenty-two bedrooms. Persons currently using the existing buildings on site may have protected characteristics and these were considered by the Planning Committee in resolving to consent to the proposed redevelopment. Ultimate tenants of the new housing that will be provided may also have protected characteristics; they will benefit from the proposed acquisition. The Council's policy to build additional housing for rent is designed to mitigate homelessness in the Borough and this is allocated having regard to policies that have been designed to address the Equality Act 2010.

Financial Implications

26. The purchase of the new housing will incur the Council in a capital cost and this is addressed in the closed version of the report. The cost of financing the purchase will fall upon the Housing Revenue Account as will future operational and management costs. However, the rents received for the new housing together with service charges levied will be received and held by the Housing Revenue Account and will therefore be set against these costs.
27. Completing the proposed transaction will result in legal, property and housing management costs that will be met from existing budgets.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

28. Section 17(1)(b) of the Housing Act 1985 states that a local housing authority may acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings.
29. S233(1)(a) of the Town and Country Planning Act 1990 ("TCPA") states that where any land has been acquired or appropriated by a Local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may dispose of the land to such person, in such manner and subject to such conditions as appear to them to be expedient in order to secure the best use of that or other land and any buildings or works which have been or are to be erected, constructed or carried out on it (whether by themselves or by any other person).
30. S233(3) of the TCPA states that the consent of the Secretary of State is also required where the disposal is to be for a consideration less than the best that can reasonably be obtained and is not (a) the grant of a term of seven years or less; or (b) the assignment of a term of years of which seven years or less are unexpired at the date of the assignment.
31. The report confirms in paragraph 17 that the land was appropriated for planning purposes and is held for planning purposes. The report confirms that officers have considered the requirements of section 233(1)(a) of the TCPA and consider that the terms of the proposed disposal are expedient to secure the best use of the land. The closed version of the report also confirms that the consideration for the disposal represents the best that can reasonably be obtained.

Strategic Director of Finance and Governance (HM19/153)

32. The proposal set out in this report will enable the Council to acquire ten newly built homes, which under existing planning consent will provide eight new homes at social rent and two at intermediate rent. Consideration for new homes will in part be payable by the transfer of council land forming part of the development site, with the balance funded by resources supporting the Council's housing investment programme. Paragraph 5 of the closed version of this report confirms that best consideration has been obtained for the land.

Strategic Director of Housing and Modernisation

33. This is an opportunity to provide much needed new Council housing as part of the programme to deliver 11,000 new Council Homes by 2043 and 2,500 by 2022. Once purchased, The Housing Department will oversee the construction of the new homes including compliance with Employers Requirements and authorisation of the staged payments referred to in paragraph 18 (b)(x).

BACKGROUND DOCUMENTS

Background Papers	Weblink
Council Plan 2018/9 – 2021/22	http://modern.gov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf
Planning documentation	https://planning.southwark.gov.uk/online-applications/applicationDetails.do?activeTab=document&keyVal=ZZZV0PKBWR684
Companies House documentation for Southwark Homes Limited	https://beta.companieshouse.gov.uk/company/09102435

APPENDICES

Appendix	Title
Appendix A	Acquisition of new housing Harper Road, Borough

AUDIT TRAIL

Cabinet Member	Councillor Victoria Mills, Finance, Performance And Brexit	
Lead Officer	Kevin Fenton; Strategic Director Place and Wellbeing	
Report Author	Patrick McGreal, Regeneration North	
Version	Final	
Dated	12 March 2020	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Strategic Director of Housing and Modernisation	Yes	Yes
Cabinet Member	Yes	
Date final report sent to Constitutional Team	12 March 2020	