

Authority to Dispose of Land at Plot 3, Woodberry Down**Key Decision No - CE S015****CABINET MEETING DATE
(2021/22)**

13 September 2021

CLASSIFICATION:

Open with exempt appendix - exempt appendix 1.

By Virtue of Paragraph(s) 3 Part 1 of schedule 12A of the Local Government Act 1972 appendix A, is exempt because it contains Information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

If exempt, the reason will be listed in the main body of this report.**WARD(S) AFFECTED**

Woodberry Down

CABINET MEMBER**Mayor Glanville****KEY DECISION**

No

REASON

GROUP DIRECTOR
Ian Williams, Acting Group Director, Chief Executive's Directorate

1. CABINET MEMBER'S INTRODUCTION

- 1.1. Phase 3 of the Woodberry Down regeneration will deliver a substantial number of genuinely affordable social rented new homes for local residents who need them, adding to the hundreds of local Council tenants who have already benefited from a brand new home at social rent since our partnership started in 2009.
- 1.2. This includes nearly double the number of new homes for social rent built compared to previous proposals, with existing secure Council tenants guaranteed a move into them.
- 1.3. But it's not just about homes – the changes will also see a new energy centre, retail spaces, a new public park, 175 new trees and the equivalent of 29 tennis courts of open spaces as part of a major investment in better public spaces and facilities at Woodberry Down.
- 1.4. These plans have been developed in close collaboration with the local community, as well as our regeneration partners: the Woodberry Down Community Organisation (WDCO), Notting Hill Genesis, Berkeley Homes and the Manor House Community Development Trust.
- 1.5. The recommendation set out in this report is an important step in ensuring the next phase of these plans can be delivered and their benefits enjoyed by both new and existing Woodberry Down residents.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1. The regeneration of Woodberry Down Phase 3 will provide 584 new homes of which 243 will be genuinely affordable social rent and shared ownership or shared equity homes, as well as an energy centre, a new park and retail space.
- 2.2. This report requests Cabinet authority to dispose of the land outlined in red on the plan at Appendix 1, known as Plot 3, as set out in the Principal Development Agreement between Berkeley Homes, the Council and Notting

Hill Genesis. Plot 3 is substantially the same as Phase 3, however Plot 3 is referred to in terms of the lease, whereas Phase 3 is used in the context of the wider regeneration and planning application.

- 2.3. If the disposal is not authorised, it may cause significant delays to the delivery programme, which would result in additional project costs and diminish the viability of the project. It would also mean that existing council tenants have to wait longer for a new, modern home.
- 2.4. The report also seeks delegated authority to dispose of the remaining plots, forming future phases at Woodberry Down, subject to compliance with S123 of the Local Government Act 1972 at the point of disposal.

3. RECOMMENDATIONS

- 3.1. To grant a long lease of 299 years of the land outlined in red on the attached plan in appendix 1, known as Woodberry Down Plot 3.
- 3.2. To authorise the Director of Legal and Governance Services to prepare and sign the necessary legal documentation and any ancillary documentation required in order to implement the grant of the lease of Woodberry Down Plot 3.
- 3.3. To authorise the Group Director of the Chief Executive's Directorate and the Group Director of Finance and Corporate Resources to negotiate the commercial terms relating to the proposed disposal of the leasehold interest known as Woodberry Down Plot 3.
- 3.4. To authorise the grant of long leases on phases 4-8 Woodberry Down (shown for reference in appendix 2) in consultation with the Mayor and subject to the Director of Strategic Property Services confirming prior to disposal of the remaining plots forming part of Phases 4-8 at Woodberry Down that each disposal is compliant with s123 of the Local Government Act 1972.
- 3.5. To authorise the Group Director of the Chief Executive's Directorate and the Group Director of Finance and Corporate Resources to negotiate the commercial terms relating to the proposed disposal of lease interests for phases 4-8 Woodberry Down.
- 3.6. To authorise the Director of Legal and Governance Services to prepare and sign the necessary legal documentation in relation to the grant of the leases on Phases 4-8 Woodberry Down.

4. REASONS FOR DECISION

- 4.1. Authority is sought to dispose of the land outlined in red in the attached plan, known as Plot 3, in order to facilitate the regeneration of Woodberry Down. The land is to be transferred to Berkeley Homes on a long lease of 299 years, as set out in the Principal Development Agreement.
- 4.2. The Council is contractually obliged under the terms of the Principal Development Agreement to enter into this lease once certain conditions have been met, including having a Satisfactory Planning Permission, Vacant Possession, and an agreed Post-Planning Viability Test.
- 4.3. These conditions have now been met for Phase 3 and the partners are programmed to sign the Building Agreement by the end of September. The agreed form of the Lease will sit as an appendix to the Building Agreement, and will be largely in the form agreed under the Principal Development Agreement, which was approved by Cabinet on 25 January 2010.
- 4.4. Express authority is now sought from Cabinet to dispose of the land in Plot 3, in accordance with the Principal Development Agreement.
- 4.5. Delegated authority is also sought for disposal of the remaining plots (4-8) at Woodberry Down. The disposal of the future plots would be subject to the same triggers and conditions under the Principal Development Agreement, as set out above in relation to Plot 3. Disposal would also be subject to compliance with S123.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1. At its meeting of 25 January 2010, Cabinet gave authorisation for the Council to enter into the Principal Development Agreement with Berkeley Homes. The Principal Development Agreement sets out that the Woodberry Down scheme will come forward in phases, with a long lease granted to the developer once various conditions have been met for each phase. An agreed form of this lease was appended to the Principal Development Agreement, and Secretary of State approval was granted for the disposal of the land on this basis.
- 5.2. The Principal Development Agreement was signed in May 2010. Under the Principal Development Agreement the Council is contractually obliged to grant a lease to Berkeley Homes. An alternative option not to grant a lease was considered, however this was rejected as it would put the Council in breach of the Principal Development Agreement. This would also cause significant delays to the regeneration of Woodberry Down.

6. BACKGROUND

- 6.1. Woodberry Down is one of the largest single-site estate regeneration projects in Europe. It is being delivered by the Council in partnership with Berkeley Homes (the Developer) and Notting Hill Genesis (Housing Association).
- 6.2. The development programme in Woodberry Down is being carried out in a phased manner, and sites are being brought forward for development in line with the commitments set out in the Principal Development Agreement.
- 6.3. Phase 1 of the regeneration is now complete and works are well advanced on Phase 2. Phase 3 is therefore the next phase to come forward at Woodberry Down.
- 6.4. At its meeting on 18 June 2018, Cabinet gave approval for the Compulsory Purchase Order (CPO) on Phase 3. The CPO was confirmed on 24 September 2019, and the Phase 3 land and all third party interests vested in the Council on 16 April 2020. Vacant Possession was achieved in December 2020.
- 6.5. On 20 September 2020, Cabinet gave approval to appropriate the land for planning purposes.
- 6.6. Phase 3 received a resolution to grant planning permission on 23 April 2020 and that decision was reconsidered and confirmed by the Planning Sub-Committee on 9 September, following the adoption of Hackney's new Local Plan. A new decision notice was published in December 2020.
- 6.7. On 23 April 2020 the Council entered into a demolition licence with its development partner, Berkeley Homes. Demolition of the site, including the Happy Man Pub, the former Area Housing Office and five housing blocks: Ashdale, Burtonwood, Chattenden, Bayhurst and Farningham, is close to completion.
- 6.8. Berkeley Homes intend to begin development of the Phase 3 site as soon as possible. Under the Principal Development Agreement, prior to commencement of construction, the partners must enter into the Building Agreement, and shortly afterwards draw down the Lease for the plot.
- 6.9. The partners are close to agreeing the Building Agreement for Plot 3, which is largely in the form agreed when the Principal Development Agreement was entered into. Once the Building Agreement is signed, Berkeley Homes will then seek to draw down the Lease for the plot. The Lease will be in the agreed form (subject to minor amendments) as set out in the Principal Development Agreement, and is a 299 year lease.
- 6.10. The principle of bringing forward the regeneration at Woodberry Down by phased development was established in 2006, when Cabinet granted authority for the financial strategy to implement Phases 2-5, ideally through stock transfer, but if necessary through incremental development.

- 6.11. On 12 October 2009, Cabinet gave authority to appoint Berkeley Homes as preferred bidder on the basis of a non-transfer phased re-development of the estate in conjunction with Genesis Housing Group.
- 6.12. On 25 January 2010 Cabinet granted approval to sign and seal the Principal Development Agreement. Under the Principal Development Agreement, Berkeley Homes is granted a 299 year lease from the Council upon commencement of construction of each phase. The Council retains the freehold to the land.
- 6.13. Under s123 Local Government Act 1972, the Council is under a statutory duty to dispose of its land at best value. The Council may dispose of land held by it in any manner it wishes providing it is not for a consideration "less than the best that can reasonably be obtained". If land is to be disposed of at an undervalue, the Council must seek the Secretary of State's consent to the disposal.
- 6.14. The Council has powers to dispose of residential dwellings and land under s32 Housing Act 1985. The General Disposal Consent for Part II Land 2005 (General Consent E3.1) permits the Council to dispose of land held for housing purposes provided that this is for the best consideration that can reasonably be obtained.
- 6.15. The Council has received a written valuation from external advisers BNP Paribas confirming that the disposal of Phase 3 meets with the requirements of s123 Local Government Act 1972. This valuation and report are set out at Exempt Appendix 1 – BNP Paribas Valuation Report.
- 6.16. This report is now seeking express authority from Cabinet to dispose of the land in Plot 3, in accordance with the commitments of the Principal Development Agreement.
- 6.17. Delegated authority is also sought for the disposal of the remaining phases at Woodberry Down (4-8), subject to compliance with the Principal Development Agreement and s123 Local Government Act 1972.

7. Policy Context

- 7.1. A priority for the Council within its Sustainable Community Strategy 2018-2028 is to promote mixed communities in well designed neighbourhoods, where people can access high quality affordable housing. Disposal of land at Plot 3 will enable the regeneration of Woodberry Down to continue and meet this objective.

8. Equality Impact Assessment

- 8.1. The Equality Act 2010 introduced the public sector equality duty (“the Equality Duty” or “the Duty”). It covers the following nine protected characteristics: age, disability, gender, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sex and sexual orientation (“the Protected Characteristics”).
- 8.2. The Council has fulfilled its duty under the Equalities Act 2010 by preparing an Equalities Impact Assessment which considers the Protected Characteristics.
- 8.3. In consideration of any impacts identified by the Equalities Impact Assessment the Council has prepared and made available a number of options to accommodate those with Protected Characteristics and those without Protected Characteristics.
- 8.4. Hackney Council is committed to improving equality and making the Borough a place for everyone. In practice, this means ensuring all actions taken by the Council contribute to its equality objectives.
- 8.5. Hackney has a high level of persons with Protected Characteristics (under the Equalities Act 2010). It also has high levels of deprivation and overcrowding. It is believed that the regeneration of housing estates, which provides new, improved housing in a better mix of sizes, improved accessibility and social infrastructure will improve the quality of life of many residents, and will support the Borough in meeting its Public Sector Equality Duty.

9. Sustainability

- 9.1. The delivery of the Woodberry Down regeneration scheme, which will be facilitated by the disposal of the land at Plot 3, will provide balanced communities, better integrated with their surrounding areas, and with well-designed homes, improved community facilities, and a safer, more attractive environment. Through the incorporation of sustainable design and construction methods, energy, water and waste saving measures, as well as increased open/green space provision and measures to enhance the ecological value of the site, the proposed development is considered high quality and sustainable.

10. Consultations

- 10.1. Comprehensive and detailed consultation is an integral part of the delivery of Woodberry Down. As part of the wider regeneration programme, Phase 3 has been the subject of regular updates at the Woodberry Down Community Organisation (WDCO) Board meeting, as well as Round Table meetings with the scheme partners.

- 10.2. The Design Committee, made up of representatives from Woodberry Down Community Organisation, Berkeley Homes, Notting Hill Genesis and the Council, has contributed to the development of designs for Phase 3. The planning application includes a Statement of Community Involvement within the Design and Access Statement, detailing the scope of consultation with various stakeholders, as well as the local residents and the wider community.

11. Risk Assessment

- 11.1. A risk register of project and technical risks is maintained and updated for the Woodberry Down regeneration programme. The risk register is reported on a quarterly basis, with any major risks escalated as appropriate. There are both cost and programme risks if the land at Phase 3 is not disposed of as set out in the Principal Development Agreement and in this report.

12. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

- 12.1 The Woodberry Down Programme is the long-term development of the estate and, whilst individual phases may generate surpluses (overage) or deficits, the overall programme remains viable and so the financial appraisals need to be considered in the context of the overall Programme.
- 12.2 The report recommends the grant of a long term lease of the land for Phase 3 at nil value, which is consistent with the Principal Development Agreement and agreement with Berkeley Homes. The financial appraisal and budgets have always assumed a nil transfer value, as the Council will be getting the nomination rights for the affordable housing (social rent) properties delivered in the programme. The recently approved Formula 4 also allows for the Programme to continue, with past and future surpluses/overage being used to manage the overall viability of the Programme to deliver specific phases.
- 12.3 Therefore the recommendations are supported.

13. VAT Implications on Land & Property Transactions

- 13.1 There are no VAT implications applicable to this report.

14. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES

- 14.1 The grant of a lease is pursuant to the Hackney Mayoral Scheme of Delegation of January 2017 and is reserved to the Mayor and Cabinet.

- 14.2 Section 123(1) of the Local Government Act 1972 provides the Council with the power to dispose of land and property, provided such disposal is made for the best consideration reasonably obtainable. However, the General Disposal Consent 2003 removes the requirement for local authorities to seek specific consent from the Secretary of State for any disposal of land where: the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of: (i) the promotion or improvement of economic well-being; (ii) the promotion or improvement of social well-being; (iii) the promotion or improvement of environmental well-being; and the “undervalue” (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2 million or less.
- 14.3 Where the case does not fall within the terms of this General Consent then an application to the Secretary of State for Communities and Local Government for a specific consent is required. Furthermore, the General Consent Order 2003 specifies that it is the responsibility of the Council to satisfy itself that the land is held under powers which permit it to be disposed of under the terms of the 1972 Act. A grant of a long lease is defined as a disposal within the Local Government Act 1972.
- 14.4 The comments of the Director of Property at 15.5 confirm Best Consideration in line with s123 of the Local Government Act 1972 have been met.

15. COMMENTS OF THE DIRECTOR OF STRATEGIC PROPERTY SERVICES

- 15.1 Woodberry Down is a multi-phased development that is being brought forward by the Council in partnership with Berkeley Homes and Notting Hill Genesis Housing Association. The overall development comprises approximately 18.6 hectares and is being developed in eight phases, 2-6 of which are contracted by way of a development agreement signed on 28 May 2010 and still operable today.
- 15.2 Draw down of each site is subject to satisfaction of certain contractual conditions, which in respect of Phase 3 have been met, however the disposal of any Council owned land for a term in excess of seven years is still subject to satisfying the best consideration requirements of s123 Local Government Act 1972.
- 15.3 The Council appointed BNP Paribas to prepare a valuation of Phase 3 in accordance with RICS Valuation – Global Standards, 2020 (the Red Book), and this report dated the 27 August 2021 may be found at exempt appendix 1.
- 15.4 The BNP Paribas report values the land comprising Phase 3 assuming that the existing development agreement did not exist and compares that valuation with one taking into account the value of the land and other contractual

benefits with the development agreement in place, respectively known as the 'Unrestricted' and 'Restricted' valuations.

- 15.5 BNP Paribas conclude, and the Director of Strategic Property Services agrees, that as the Restricted value and the capitalised financial benefits attached to the development agreement are in excess of the Unrestricted value as determined by this report, that this disposal meets the best consideration requirements of s123 of the Local Government Act 1972.
- 15.6 With respect to Phases 4-8, further separate valuations will be required for each proposed disposal from time to time, dealing with compliance with statute.

APPENDICES

Appendix 1: Indicative Red Line Plan Plot 3

Appendix 2: Indicative Red Line Plan Plots 4-8

EXEMPT

Exempt Appendix 1: S123 Valuation Report (BNP Paribas)

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

Description of document (or None)

None

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