

**For General Release**

<b>REPORT TO:</b>	<b>CABINET 20 June 2016</b>
<b>AGENDA ITEM:</b>	<b>8</b>
<b>SUBJECT:</b>	<b>Brick by Brick Croydon Limited – Property and Financial</b>
<b>LEAD OFFICER:</b>	<b>Richard Simpson, Assistant Chief Executive (Corporate Resources and Section 151 officer)</b>
<b>CABINET MEMBER:</b>	<b><i>Cllr Alison Butler, Cllr Simon Hall</i></b>
<b>WARDS:</b>	<b>All</b>
<p><b>CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:</b></p> <p><u>The Croydon Promise: Growth for All</u></p> <p>The site is highlighted as a key central Croydon project.</p> <p><u>Croydon Challenge</u> Contribute positively to the Council’s financial position and therefore the goals of the Croydon Challenge.</p> <p><u>Community Strategy</u> Development of sites enables the Council to deliver new homes and increase the supply of affordable homes, a key aspiration of the Community Strategy 2013-18.</p> <p><u>Corporate Plan 2013-15</u> <u>Housing supply is relevant to a number of targets within the Corporate Plan.</u></p> <p>The proposals presented in this report:</p> <ul style="list-style-type: none"> <li>• Maximise the use of the Council’s assets to deliver new homes, including affordable housing, private for sale and private rented stock.</li> <li>• Enable an innovative commercial model which will benefit the Council financially and help meet savings targets.</li> <li>• Brings forward the development of key sites across the borough addressing key local, regional and national policies.</li> <li>• Secures improved community facilities.</li> </ul>	
<p><b>FINANCIAL IMPACT</b></p> <p>The disposal of these sites delivers a key priority of the asset strategy. The Council will receive value for the land whilst also supporting the delivery of the priority of affordable housing.</p> <p>The Council will also receive income by acting as funder to the company.</p> <p>In addition the Council will gain from the development profit as 100% shareholder in the company.</p>	
<p><b>KEY DECISION REFERENCE NO.:</b> 14/16/CAB. This is a Key Decision as defined in</p>	

the Council's Constitution. The decision may be implemented from 1300 hours on the expiry of 5 working days after it is made, unless the decision is referred to the Scrutiny & Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below

## **1. RECOMMENDATIONS**

The Cabinet is recommended to:

1.1 Approve that the sites listed in Appendix A (in the Part B papers) be disposed to Brick by Brick Croydon Limited subject to satisfactory terms and conditions being reached to the satisfaction of the Assistant Chief Executive (Corporate Resources and Section 151 officer) acting in consultation with the Cabinet Members for Homes and Planning and Finance and Treasury, and that the scope of this delegation includes whether to dispose of the site by freehold or by way of long leasehold but in line with the indicative terms of proposal set out in Part B.

1.2 Approve that the Council lend Brick by Brick Croydon Limited funding to progress the development of the sites and that such funding will include funding for professional services to be received by Brick by Brick, funding for construction costs ('development finance') and funding for working capital and that the Assistant Chief Executive (Corporate Resources and Section 151 officer) be given delegated authority to finalise and agree the terms of such lending acting in consultation with the Cabinet Member for Finance and Treasury.

1.3 Approve that, where considered necessary by officers, and subject to the consideration of any objections by the Assistant Chief Executive (Corporate Resources and Section 151 officer) acting in consultation with the Cabinet Member for Finance and Resources, that the sites listed in Appendix A be appropriated for planning purposes pursuant the Council's powers under section 122 of the Local Government Act 1972 and/or under section 226 of the Town and Country Planning Act or such other relevant statutory powers as may be relevant in each case, prior to their disposal to Brick by Brick.

1.4 Note the governance and monitoring processes set out in this report.

## **2. EXECUTIVE SUMMARY**

2.1 This report sets out the detailed property, land and financial transactions between the Council and 'Brick by Brick Croydon Limited', the development company established by the Council to deliver housing led development across the borough. The report builds on a number of previous reports that considered the shortage of homes in the borough and recommended the establishment of Brick by Brick as a means by which the Council could help generate an additional supply of new homes, including affordable homes.

2.2 The company has a number of characteristics that help it to help deliver the required step-change in the delivery of new homes in Croydon. As a company which has an industrial/commercial character it is able to respond more quickly to new opportunities in the market place, placing it on an equal commercial footing to private sector developers.

2.3 The typical development model involves the Council selling land to Brick by Brick under terms which ensure market value is achieved, or on terms which otherwise satisfy the Council's statutory duty to secure best consideration. Brick by Brick then undertakes development activity on this land, delivering new residential space (both private and affordable), community space and other uses. Any development profit realised by Brick by Brick creates dividend which is then returned in full to the Council as sole shareholder, or is reinvested into further development activity at the direction of the Council as shareholder.

2.4 In some cases, the Council will also provide development finance for specific schemes (at comparable market rates). The interest paid by Brick by Brick provides a further revenue source to the Council which may be rolled up over time. This report recommends that delegated authority be given to the Assistant Chief Executive (Corporate Resources and Section 151 officer) to finalise and agree the terms of such lending acting in consultation with the Cabinet Member for Finance and Treasury.

### **3. DETAIL**

#### **Background**

3.1 The housing challenges in Croydon are well chronicled. Their nature and extent varies greatly, from poor standards in private rented properties through to the number of households in temporary accommodation and the need to help older people remain independent at home. The Council is already tackling these and a host of other issues, with notable recent successes being the introduction of a private sector landlord licensing scheme that is helping to ensure residents are living in safe, well-maintained properties.

3.2 Perhaps the greatest challenge for Croydon, along with the rest of London, remains the provision of new homes, particularly affordable homes. The borough's population is rising and is set to rise still further in the years ahead and aside from the number of homes needed, the affordability of homes for both purchase and for rent is increasingly challenging for many Croydon households.

3.3 With various factors generating greater and greater demand for housing in the borough, it is clear that 'business as usual' is not an option. For that reason the Council has over the past 18 months set out a hugely ambitious agenda for increasing the supply of new homes and affordable homes in Croydon, with a headline target to start construction of an average of 1,900 units per annum.

3.4 Clearly, the private sector will be instrumental if these targets are to be met, and through the Local Plan and the planning process we are working with developers to deliver new homes across the borough with considerable success. However, the Council also needs to take a direct role in delivery if these ambitious figures are to be realised. The borough is a significant land owner in its own right, and there is huge potential for new homes to be delivered on council land.

3.5 Traditionally the Council has delivered housing through land disposal or joint venture agreements with developers, a process which sometimes did not allow the Council to fully benefit from any uplift in land values and development returns. This has led Croydon and several other forward thinking local authorities to seek a much greater commercial role in development and house building by establishing development companies.

3.6 The Brick by Brick structure has a number of characteristics that help it to fully benefit from development activity and deliver the required transformational change in the delivery of new homes in Croydon. It is flexible in its approach, able to pursue projects individually or in partnership, and as a company which has an industrial/commercial character it is able to respond quickly to new opportunities. As the sole shareholder, any profit arising from company activity wholly accrues to the Council.

3.7 Brick by Brick commissions professional services (e.g. architecture, engineering, surveying etc.) to allow it to progress development activity. This includes a variety of services which it commissions from the Council, such as design and development management, financial, legal and company administration services. These services are charged out by the Council at market rates.

3.8 The initial stages of site development involve site appraisal and analysis leading to a planning application which addresses specific site constraints and opportunities. Once planning consent is in place, Brick by Brick will use a variety of approaches to deliver the development schemes including direct delivery via building contractors and/or agreements with other developers and/or investors. Brick by Brick has committed to adopting the Croydon Business Charter which will maximise local employment and the use of the local supply chain in development activity.

3.9 The intention is for Brick by Brick development activity to directly benefit local communities. For example:

- The programme will create much needed new homes of a variety of tenures and priority will be given to local residents through the sales and/or letting process.
- For schemes delivered by Brick by Brick which include an affordable housing component, consideration is being given as to whether the affordable housing should be owned in the long term by the Council (within the housing revenue account), a Council owned Registered Provider (e.g. Croydon Homes) or another registered provider. This will be agreed on a case by case basis as the detailed applications for schemes come forward on individual sites and will be dealt with in the terms of disposal between the Council and Brick by Brick.
- Where community facilities exist on the sites to be developed, these will be replaced with new, purpose built facilities which address local need.
- Where public car parking exists on the development sites, the new schemes will include new parking facilities.

#### **Work completed to date – smaller sites**

3.10 A key focus of work by the Council to date has been to develop a detailed knowledge of the development potential of smaller council owned sites. The first stage of this involved the completion of site analysis and technical due diligence work on sites identified by a review of council owned land assets. The intention of this initial phase was to identify developable sites, help de-risk them from a construction point of view, and to ensure that any barriers to development were highlighted prior to the commencement of any design or planning stages.

3.11 The analysis undertaken across the sites was detailed and included work in the following disciplines:

- Site Planning Constraint review
- Measured, Boundary and topographical surveys
- Utilities infrastructure assessments
- Geotechnical Survey (borehole and lab test to assess possible contamination)
- Gas monitoring & testing
- Flood risk scoping analysis
- High level financial viability report
- High level assessment of Rights of Light issues
- Existing building survey where appropriate
- Historic use assessment
- Archaeological survey
- Asbestos analysis
- Ecology survey
- Photographic survey

3.12 Following completion of this work, further analysis was undertaken with regard to potential development phasing and programming (i.e. which sites could be brought forward quickly and which sites may need further work undertaken due to certain delivery constraints).

3.13 It was subsequently agreed by the Brick by Brick Board to commission a selection of architectural and technical consultancies to undertake design and development work on these sites, including a detailed financial viability appraisal of each site. On completion of this work, the Board agreed to progress work to RIBA Stage 2 on those sites which were viable as per the appraisals, with a view to submitting planning applications on those sites between July and September 2016. This work is now underway and a summary of the sites can be found in Appendix 1 of Part B.

3.14 Overall, the smaller sites programme aims to deliver 1040 units of which 519 will be affordable and approximately one quarter will be 3 bed homes or larger. This equates to 50% affordable housing provision which is a huge increase on other development approaches. By way of comparison, the average affordable housing provision on mixed tenure schemes across the borough from 2011-2015 was c23%.

### **College Green Development**

3.15 The College Green development has been the subject of several previous Cabinet reports and comprises a £30m investment into Fairfield Halls, a c200,000sqft

new college/university building and approximately 2,000 new residential units alongside new public realm, retail and leisure space. A hybrid planning application was submitted in February 2016 and it is due to be considered by planning committee in July/August 2016.

3.16 As per the other sites suitable for immediate development across the borough, it is proposed to use the Brick by Brick structure to bring forward those elements of the College Green scheme where the council holds land interests and/or options. This will at least include Phase 1 (the refurbishment of Fairfield Halls, the initial residential development, the enabling works for the college facility and some public realm works) and Phase 2 (the delivery of the new college building, the redevelopment of the existing college land and the remainder of the public realm works).

3.17 The process would involve the transfer of land interests of the relevant parts of the site to Brick by Brick under terms as set out in Part B of the report. Brick by Brick would complete the £30m package of improvement works to Fairfield Halls under licence.

### **Transfer of land to Development Company**

3.18 In order to bring forward development, Brick by Brick must own the land or have a contractual right to call for land. With respect to council owned land, Brick by Brick presents proposals to the Council for sites based on the opportunities identified by their site analysis work. Any sale of land by the council to Brick by Brick is subject to the usual controls on land disposal and the council has to satisfy itself that the offer meets best consideration and is state aid compliant. The approval process for the disposal operates under the current regulations with respect to assets as set out in the Council's Financial Regulations.

3.19 Following detailed analysis, Brick by Brick has proposed to purchase a number of council sites and has set out the terms for this purchase. These are detailed in Appendix 1 of Part B of this report.

3.20 The indicative terms for the disposal are detailed in Part B. It is proposed that the land is appropriated for planning purposes prior to disposal where such land is no longer required for the purpose for which it is held (in reliance on its powers under section 122 of the Local Government Act 1972 or the Town and Country Planning Act 1990) where the council believes that this will facilitate the carrying out of development, re-development or improvement which is likely to contribute to the economic, social or environmental well being of the area, or which is required in the interests of the proper planning of the area in which the land is situated. This report seeks that the Assistant Chief Executive Corporate Resources and section 151 officer acting in consultation with the Cabinet Members for Homes and Planning and Finance and Treasury, be given delegated authority to deal with the appropriation process including the publication and /or serving of any required notices and to consider any subsequent objections (where relevant) to any proposed appropriations as part of determining whether or not to appropriate land intended to be transferred to Brick by Brick.

3.21 These proposed disposal terms have been analysed by the Head of Assets for best consideration purposes and determined to be best consideration for the purposes of section 233 Town and Country Planning Act 1990 (where land has been so

appropriated) or for the purposes of section 123 Local Government Act 1990 (where it has not) or, if applicable so as to facilitate disposal (subject to the need for Secretary of State consent) pursuant to section 32 Housing Act 1985 in respect of land held for the purposes of Part 2 of that Act). Although none of the sites currently have planning consent, consideration has been given to the proposed schemes for the purpose of valuation with an assumption that these will be granted. All disposals will be subject to the inclusion of overage or claw back clauses so that if the final schemes offer an increased number of units generating a higher value, the Council's position will be protected.

3.22 When assessing best consideration the number of units in the current proposals has been adopted together with the split between affordable (and the type of affordable housing) agreed as part of the disposal agreement. This will be in line with the planning guidance received each site and the definitions for affordable and intermediate housing adopted are as set out in the NPPF guidance. For each site the build costs adopted and likely capital value for the affordable, intermediate and private sales has been considered in detail to reflect the location and any specific site issues such as the relocation of services or challenging topography.

3.23 As part of the valuation for each site, the capital value where possible of any additional benefits has also been considered as part of the value to the Council when comparing against the best consideration. The values for each site have been provided in Appendix 1 in the Part B report.

### **Lending to the Development Company**

3.24 Brick by Brick can use a variety of approaches to deliver the development schemes including direct delivery via building contractors and joint ventures with other developers and/or investors. The company will need to address any private sector concerns as cross default - i.e. how risk on one project may impact on another. This is of equal concern to the Council as shareholder. As such, it may be prudent for Brick by Brick to set up a number of special purpose vehicles/subsidiaries to the company to 'ring fence' liability between projects. Should this be the case, they will be agreed with the Council as shareholder on a case by case basis.

3.25 Brick by Brick will seek development funding from the council on a site-by-site basis as required. The Council can provide funding by way of an equity investment and also as debt to the project. Each application is assessed individually and the Council is required to lend at market comparable terms and rates. The funding, if agreed, is allocated from the 'Revolving Investment Fund'.

3.26 The power under section 3 of the Local Authorities (Land) Act 1963 enables the Council to make an advance for the purchase of land, or for carrying out development by the company subject to 90% debt ceilings based on the land value and estimated development value on completion. Advances made must carry a rate of interest no less than  $\frac{1}{4}$  percent more than the rate that would be charged by HM Treasury in respect of loans to the Council granted at the same time as the advance, and for the loan period.

3.27 Section 24 Local Government Act 1988 gives the Council the power to lend money to landlords, (other than local authorities) to acquire or develop property for rental purposes. Although the consent of the secretary of state is needed (under

section 25 of that Act), a general consent has been issued in this regard. This would, for example, facilitate the development/acquisition of PRS homes by Brick by Brick, should that be applicable.

3.28 Where the Council provides finance, the Council must comply with the law on state aid. This means that any funding (which might otherwise distort competition) will be provided on market terms and the Council will ensure that it has the benefit of suitable security. This could result in funding costs which are significantly higher than ¼ percent over HM Treasury levels, and independent advice will be taken as to the appropriate levels and terms of funding, paying particular regard to cost, debt versus equity, repayment and security.

3.29 As such, the lending will have a positive impact on the Council's income and expenditure account as significant income will be accrued on the interest charged. The financial risk to the council of providing development finance relates mainly to default on the loan if the development was not successful. This risk is managed through the robust processes in place for assessing the scheme and by the company's ability to cross-fund from other developments that it would be delivering as part of its development portfolio.

3.30 The current estimates of proposed lending from the RIF to Brick by Brick for construction and professional fees are detailed in Appendix 1 in the Part B of this paper.

### **Ongoing monitoring by Council**

3.31 A detailed Business Plan is reviewed annually between the company and the Council (as shareholder) and no other changes to the business plan are expected to be made without shareholder approval. The company will also provide a detailed Annual Report to the Council.

3.32 The Board of the company is made up of two independent members (Jayne McGivern and Jeremy Titchen) and two council nominated members (Colm Lacey, Director of Development and Lisa Taylor, Assistant Director of Finance and Deputy 151 Officer). Information as to the operation and performance of the company will be provided on an ongoing basis to the Board of the company. Officers of the Council attend Board meetings (and receive Board papers) in an observer capacity on behalf of the Council as shareholder.

3.33 A new Member Steering Group is also being established, to be chaired by the Cabinet Member for Homes and Planning. Officers will report on an ongoing basis to this group and also provide an annual progress report to Cabinet, to be presented alongside the annual Company Business Plan and Company Annual Report.

3.34 The Council will have further controls commensurate with what reasonably minded investor would seek:

- As a lender, controls will exist within the loan agreement and security document (i.e. a debenture) which provides a fixed and floating charge over the development company's assets.



- As a seller of land, the land documentation may contain provisions that determine the use of the relevant property (but which do not amount to a procurement of works/services).
- The terms of appointment of directors will include reference to financial protocols for the development company regarding making investments with/without the consent of the Council.

#### **4. CONSULTATION**

4.1 There has been detailed consultation regarding the development company proposals as part of three previous Cabinet papers:

- Wholly owned housing company – an option for tackling the shortage of homes in Croydon, 29 September 2014
- Growth for the Prosperity of All: Growth Plan & District Centre Investment and Place Plans, 29 September 2015
- Homes – our 10 priorities, 16 March 2015

4.2 Detailed engagement on each of the sites proposed for development will be undertaken by the District Centres and Regeneration team, and also by Brick by Brick themselves as part of the pre-app planning process. This is likely to take the form of public exhibitions and presentation of development options online and in other media. There will also be a statutory public consultation process as part of the planning process.

### **5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

#### **1. The effect of the decision**

The detailed financial implications are set out in Part B. The disposals of the land if approved will deliver a significant capital receipt for the Council that can be invested in the borough.

Acting as funder to the development will deliver a revenue income from the interest earned. The Council will lend at a margin on its borrowing costs.

#### **2. Risks**

The risk for the Council are in effect the risks of development. The body of the report has set out the due diligence that has been done and the monitoring arrangements that will be in place to ensure that the development is successful.

#### **3. Options**

All relevant vacant land is surplus to the Council's requirements for alternative uses.

(Approved by: Richard Simpson Assistant Chief Executive (Corporate Resources and Section 151 officer)

### **6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

6.1 On behalf of the Acting Council Solicitor and Acting Monitoring Officer, it is commented that the majority of legal considerations relevant to the recommendations

of this report are set out in the body of the report. In particular, the report addresses above the powers of the Council to lend money subject to state aid rules and the need for the Council to obtain best consideration where it disposes of land whether this disposal is made under section 123 of the Local Government Act 1972 or section 233 of the Town and Country Planning Act 1990. To enable appropriation, appropriation that is proposed to be made will, in certain circumstances, need to be advertised for two weeks in a local newspaper and any objections considered. Any appropriation in such circumstances will therefore be subject to the outcome of the advertisement and consideration of objections. Legal advice will be given as to the appropriate route to be followed to appropriate land in relation to each site as necessary.

(Approved by: Sean Murphy, Principal Corporate Solicitor (Regeneration) on behalf of the Acting Council Solicitor & Acting Monitoring Officer)

## **7. HUMAN RESOURCES IMPACT**

7.1 The Council's intention is that the development company is a 'shell' company with no directly employed staff. The development company will have a contract (or SLA) for services with the Council and as a consequence engage the services of a number of Council employees to undertake specific projects and assignments connected with the company, but whose work will not be wholly or mainly assigned to the work of the company, or to the exclusion of other activities specifically for the Council. Whilst this remains the case the provision of the Transfer of Undertaking Regulations (2006) are not likely to apply.

If in the future the development company proposed activities / changes to be undertaken that would trigger any requirements under TUPE, consultation with affected staff and their representatives on the proposed changes will need to be managed in accordance with the Council's HR procedures.

(Approved by Adrian Prescod, HR Business Partner, for and on behalf of Director of HR, Resources Department)

## **8. EQUALITIES IMPACT**

8.1 The impact of the proposals to be delivered through the structures outlined in this report on protected groups are expected to be positive. The provision of new affordable housing, maintaining and improving existing, social housing and tackling poor private housing conditions, meeting housing need and preventing homelessness, providing housing support and high quality housing management services are all expected to benefit groups with protected characteristics.

## **9. ENVIRONMENTAL IMPACT**

9.1 No specific adverse environmental impacts have been identified resulting from the proposals contained in this report. Any environmental issues arising from site development will be regulated by the planning and building control processes.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

10.1 No specific adverse crime and disorder impacts have been identified resulting from the proposals contained in this report. Any secure by design issues arising from site development will be regulated by the planning and building control processes.

## **11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

11.1 The basis for the recommendations set out in this report are set out in previous Cabinet reports, including the opportunities to deliver real benefits to local people through developing new homes, infrastructure and community facilities, and the jobs, opportunities and stronger vibrant communities that will also flow from that growth.

## **12. OPTIONS CONSIDERED AND REJECTED**

12.1 Options considered for the development of land across the borough to address housing need have included the disposal of land on the open market to enable development and the procurement of developers via development agreement to take forward sites. These were rejected as neither option is as commercially efficient as the proposals contained in this paper, and they do not maximise the direct benefit to local residents from development in their borough.

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**CONTACT OFFICER:** Richard Simpson

### **BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972**

The documents below are already published

- Wholly owned housing company – an option for tackling the shortage of homes in Croydon, Cabinet 29 September 2014
- Growth for the Prosperity of All: Growth Plan & District Centre Investment and Place Plans, Cabinet 29 September 2015
- Homes – our 10 priorities, Cabinet 16 March 2015
- College Green Cultural and Educational Quarter Cabinet Report, 20 Oct 2015

