

For General Release

REPORT TO:	Executive Mayor of London Borough of Croydon
SUBJECT:	Brick By Brick Lender Decision - Request for approval to Dispose of Kindred House Development
LEAD OFFICER:	Jane West – Corporate Director of Resources and S151 Officer
CABINET MEMBER:	Cllr Jason Cummings – Lead Member of Finance
WARDS:	Fairfield

Summary of Report

This report requests approval from the Council , acting as Lender, to allow Brick by Brick Croydon Ltd (BBB) to bulk dispose of residential units at Kindred House development at less than the market value and in accordance with the Funding Facility Agreement.

The report includes exempt and commercially sensitive information relating to the financial affairs of the Council, BBB and other third parties and that could potentially affect their respective commercial position and therefore are contained in the Part B of the report.

The Council has a key objective to wind down the activities of BBB and this will only be achieved once all developed units within BBB have been disposed of at the best consideration possible considering current market conditions. Kindred House development is expected to reach practical completion soon, and it is expected the exchange for the sale will be completed within a few days of this date.

BBB’s proposed disposal of this development is in accordance with the Business Plan but will be for a sum that is less than the market value contained in a Valuation obtained by BBB. Accordingly, it requires the Council’s consent as Lender.

The bulk disposal being recommended by this Report allows the Council, as Shareholder, to achieve wind down of the company activities much sooner and reduce future operational costs. As Lender, the disposal secures a partial repayment of the loan and mitigates risk of a lower sum being paid, taking into account market volatility and uncertainty.

FINANCIAL IMPACT

The Council is the only lender to Brick by Brick and therefore requests that material decisions on disposals of development and units by Brick by Brick are consulted with the Council. If BBB disposes of its developments at below best price the Council is directly impacted as it may result in BBB not being able to cover the loan repayment fully.

Further details of financial impact are provided in Part B to protect the commercial sensitive matters that arise from this disposal.

All work carried out are contained within existing budgets.

KEY DECISION REFERENCE NO.:

1. RECOMMENDATIONS

The Executive Mayor of the Council is Recommended to:

- 1.1. Approve that Brick by Brick Croydon Ltd may sell the freehold of the development at Kindred House (previously called Wandle Road Car Park) which comprises 128 residential units, 3 office spaces and one commercial units for the disposal price agreed with the purchaser and under conditions as detailed in Confidential Part B of the report.
- 1.2. Note that the disposal consists of 128 residential units of which 60 are Affordable Units and which includes 41 as Shared Ownership units and the rest are 100% affordable rental properties. This mix is in line with the existing S106 agreement as attached in Appendix 2.
- 1.3. Note consultation with the Deputy Mayor and Cabinet Member for Homes, the Cabinet Member for Finance, Chief Executive and Section 151 Officer took place on 14th September 2022 and 1st November 2022 at the Brick by Brick Shareholder Mayor’s Advisory Board.
- 1.4. To approve that the Council will withdraw the Homes for London grant allocation received from GLA with regards to Kindred House.

2. Background

- 2.1 Brick by Brick Croydon Ltd is a fully owned Council housing development company and the Council is the only lender to the company. The purpose of this paper is to obtain Lender approval as required under the loan agreement for the sale of 128 residential units, 3 Offices and a Commercial Unit at Kindred House. Details of the conditions that require this approval are detailed within Part B of the report
- 2.2 The development started in 2019 and has taken 3 years to complete. The development was granted planning permission in January 2019 (ref no: 17/06318/FUL) with a s106 agreement for 60 affordable units (19 affordable rent and 41 intermediate). The scheme comprises a mix of 1,2 and 3 bed units in one block with the table below providing a breakdown of the units for each Tenure type:

	1 bed	2 bed	3 bed	Total
Affordable Rent	8	7	4	19
Shared-Ownership	14	18	9	41
Private Sale	34	34	0	68
Total	56	59	13	128

- 2.3 The disposal of the units at Kindred House was always predicted to be difficult particularly due to its location and the design of the building. At the beginning of February 2022 Ikon (BBB’s Marketing agents) approached 30 Registered Provider’s (RP) of affordable housing, a mixture of Not for Profit and For-Profit RP’s and BBB sent the sales particulars to Council’s Property team for consideration. The invitation to bid document contains

exempt information and is attached to the Part B part of this Report as Appendix 3.

- 2.4 During August 2022 it was decided that it would be unfair on potential purchasers to accept any reservations, whilst a bulk purchase was being considered. This was because the reservation deadline for the Help to Buy scheme was 31st October 2022, which may have left people with no time to buy an alternate property with the support of Help to Buy.

GLA Grant Agreement

- 2.5 The Council applied for GLA Grant under the Homes for London scheme in order to purchase the 60 affordable homes at the Kindred House Development. The Council has since decided not to purchase these properties for its own use and therefore is now formally required to relinquish its allocation of the Grant.

3. Consultation, reasons for the recommendations & options considered, and risks.

- 2.6 Sale of Kindred Development has been reviewed and consulted with key officers and Members as part of the Brick by Brick Advisory Board. Various macroeconomic and commercial considerations have been discussed to ensure the right and best decision is being made with all factors considered.
- 2.7 Key options considered included selling the residential units individually or selling them as a bulk development. Key pros and cons were discussed with regards to a bulk sale at a price lower than the market price. The implications include not receiving receipts at valuation which impacts on BBB's ability to meet its liabilities.
- 2.8 However, the alternative option was to go back to the market and seek other buyers to try and achieve a higher price. This process would have taken c3-6 months including time for due diligence required by prospective buyers. As supported by the review done by PwC delays in disposing of developments increases costs which only re-directs resources to pay for those extra costs and hence not improve the financial position. Extracts of the PwC review has been provided as a confidential Appendix 5.
- 2.9 Furthermore, the worsening macroeconomic climate creates a significant level of uncertainty with the actual price the Council will receive and, therefore, there is the risk that a higher price may not be achieved.
- 2.10 The Council has a key overarching objective to ensure BBB activities are wound down as soon as possible. A bulk sale and allows the key overarching objective to be met.
- 2.11 The Council did consider acquiring the units from BBB within its HRA account, however it was decided that the Council would find it difficult to manage the facilities management and the development would not fit the purposes of the Council's Housing requirements.

4. Council Implications

Financial

- 2.12 The Council borrowed to fund the developments carried out by BBB and should the loans not be paid the Council will be left with debt that it will need to pay through its Minimum Revenue Provision which will impact on Council's budgets.
- 2.13 The financial implications will not result in any further need to set aside new revenue budget to cover these pressures as the Council prudently provided for this as part of the Budget and Financial plans presented to Full Council in March 2022.
- 2.14 The Council is carrying out detailed review on the total amount of loans that BBB will be able to pay back and a further report will be brought back to Cabinet later this financial year which will detail the outcome of the assets and liabilities review work.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 2.15 Details of the Financial Implications are provided within Part B of this report.

6. LEGAL CONSIDERATIONS

Powers

- 2.16 Section 1 of the Localism Act 2011 states that a local authority "has power to do anything that individuals generally may do". This enables a local authority to act as though an individual with full capacity, unless otherwise expressly prevented or restricted by some other statutory provision. This power, in conjunction with the powers and duties of the Council in relation to the provision of housing, have underpinned prior decisions to establish and support BBB. Where the general power is relied on to carry out a commercial purpose of a local authority, that must be pursued through a limited company. Therefore, under this general power the Council may exercise its rights as Lender to BBB under the consolidated Facility Agreement to take the steps identified in this report, being mindful of the Council's financial position, its fiduciary duty (see below) and the requirement to have regard to all relevant factors and to disregard irrelevant ones. In short, the Council must act in accordance with the principles of Wednesbury reasonableness, meaning to make decisions that a rational person might make, having regard to all relevant considerations. The Council, as Lender should also have full regard to its fiduciary duties and act prudently.
- 2.17 The fiduciary duty of a council, in this case exercised by the Elected Mayor, derives from case law such that 'fundamental to a public body's accountability is the care it exercises in handling public monies'. In a local authority context, this 'takes legal shape in the principle of their fiduciary duty to local taxpayers'. This is especially pertinent in this context.

2.18 In particular, the Council should (i) weigh up the risks and benefits under the other options considered in the Report (as well as taking into account any other options that may be available), (ii) take note of the matters cited in the Report that relate to value and the offer made by the prospective purchaser and especially the financial exposure that may accrue (to the Council as Lender) by way of deferring or not proceeding with this disposal.

Subsidy Control

2.19 The Subsidy Control Act 2022 (the Act) will provide a new framework for the provision of subsidies within the UK building on the provisions in the subsidy control chapters of the Trade and Co-operation Agreement (TCA), which have applied in the interim of the UK's exit from the EU. The TCA regime still applies because the Act was expected to take effect in Autumn 2022 but the statutory guidance and secondary legislation supporting it have not yet been published (other than in draft). Under the TCA, a subsidy is financial assistance which may include the forgoing of revenue that is otherwise due, and where that confers an economic advantage on one or more economic actors (in this case BBB), and "is specific, insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services, and has, or could have, an effect on trade or investment between the parties (meaning the UK and the EU). However, the Market Economy Operator Principle (MEOP) (now sometimes referred to as the Commercial Operator Principle) is the principle that where a public authority does something on the same terms as a comparable economic actor would, then no subsidy arises because there is no specific 'economic advantage' to any other economic actor as a result. The MEOP covers many different circumstances, including the provision of funding.

In relation to subsidy control therefore, the disposal does not represent a subsidy to BBB, and since the sale price reflects a marketing process, is not involving a subsidy to the purchaser. Although the market valuation obtained by BBB suggests that a higher value may be obtainable, Appendix 6 sets out the reasoned judgement of the Council's internal valuer and supports a reasonable view that the offer made (and therefore disposal sum) can be judged to be on-market, having regard to the factors referred to in that Appendix and any wider consideration of market uncertainties.

Approved by: Stephen Lawrence-Orumwense - Director of Legal Services and Monitoring Officer

7. HUMAN RESOURCES IMPACT

2.20 Details of the Human Resources Impact are provided within Part B of this report.

8. EQUALITIES IMPACT

2.21 Details of the Equalities Impact are provided within Part B of this report.

9. DATA PROTECTION IMPLICATIONS

2.22 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO

CONTACT OFFICER: Nish Popat – Interim Head of Corporate Finance

APPENDICES TO THIS REPORT