

# LONDON BOROUGH OF CROYDON

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|---------------------------------------|---|--|
| <b>REPORT:</b>                        | <b>OFFICER DELEGATED KEY DECISION</b>   |  |
| <b>DATE OF DECISION</b>               | <b>15<sup>th</sup> March 2023</b>   |  |
| <b>REPORT TITLE:</b>                  | Acquisition of Land sites, Regina Road and Malton House, from Brick by Brick Croydon Ltd  |  |
| <b>CORPORATE DIRECTOR / DIRECTOR:</b> | <b>Jane West</b> – Corporate Director of Resources and S151 Officer<br><b>Susmita Sen</b> – Corporate Director of Housing   |  |
| <b>LEAD OFFICER:</b>                  | <b>Jane West</b> - Corporate Director of Resources  |  |
| <b>LEAD MEMBER:</b>                   | <b>Cllr Jason Cummings</b> – Lead Member for Finance<br><b>Cllr Lynne Hale</b> – Lead Member for Housing  |  |
| <b>DECISION TAKER:</b>                | <b>Jane West</b> – Corporate Director of Resources and Section 151 Officer  |  |
| <b>AUTHORITY TO TAKE DECISION:</b>    | <p>Recommendation 6 within November 30<sup>th</sup> 2022 Cabinet report<br/>Brick by Brick Croydon Ltd Update Report</p> <p>Delegate authority to the Corporate Director of Resources and Section 151 Officer, in consultation with the Monitoring Officer and the Cabinet Member for Finance, to exercise buy-back option(s) under the relevant option agreement(s) for the undeveloped sites earmarked by BBB for disposal, should these be required. The value of any such buy backs shall either be paid to BBB or be set off against the Loan agreement, as varied within the option agreement(s).</p> |  |
| <b>KEY DECISION?</b>                  | <b>Yes</b>  |  |
| <b>CONTAINS EXEMPT INFORMATION?</b>   | <b>No</b>   |  |
| <b>WARDS AFFECTED:</b>                | South Norwood   |  |

## 1 SUMMARY OF REPORT

- 1.1 The Council has identified that two sites previously transferred to Brick-by-Brick Croydon Ltd for development purposes, for its own needs. These two sites are Regina Road and Malton House with a total value of £0.900m for Regina Road and £0.500m for Malton House.
- 1.2 The two sites will support future housing regeneration projects, such as the Regina Road redevelopment proposals, and ensure there is Land available to deliver additional homes within the Borough.

## 2 RECOMMENDATIONS

For the reasons set out in the report Corporate Director of Resources is recommended, in consultation with the Monitoring Officer and the Cabinet Member for Finance:

- 2.1 To approve that the Housing Revenue Account (HRA) acquires the land at Regina Road for a total sum of £0.900m by allowing the Council to exercise the Option agreement to buy back the site.
- 2.2 To approve that the Housing Revenue Account (HRA) acquires the land at Malton House for a total sum of £0.500m by allowing the Council to exercise the Option agreement to buy back the site.
- 2.3 To note that the Varied Option Agreements within Appendix A1 and A2 agreeing the purchase values between the Council and Brick by Brick for each site.
- 2.4 To note Appendix B justifying that the purchase values as advised by Council's internal valuation.
- 2.5 To note that the Council, as the original landowner, is due payments back from BBB for the land values on Malton House for £0.160m as stipulated within the Option agreements and referred to as the Initial Price. These land payments will be resolved as part of the final assets and liabilities review work for winding down BBB. The land value for Regina Road was determined as nil due to significant pre-development work that was needed to make the land viable for housing.
- 2.6 Note that the date to exercise Option agreements is 17<sup>th</sup> March and it is unlikely that the Council will meet this deadline and thus has an agreement with BBB to extend this date by a reasonable timeline.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 On 30<sup>th</sup> November 2022 Mayor in Cabinet agreed to Delegate authority to the Corporate Director of Resources and Section 151 Officer, in consultation with the Monitoring Officer and the Cabinet Member for Finance, to exercise buy-back option(s) under the relevant option agreement(s) for the undeveloped sites earmarked by BBB for disposal, should these be required. The value of any such buy backs shall either be paid to BBB or be set off against the Loan agreement, as varied within the option agreement(s).
- 3.2 The Council has now carried out a review of the land sites and has identified that two sites would play a key role in future Council housing plans and therefore acquiring them now will ensure key sites are there to provide much needed social housing.

### **4 BACKGROUND AND DETAILS**

- 4.1 The February 2021 Cabinet agreed that Brick by Brick would be funded by the Council to build out 29 sites, the majority of which were expected at that time to

be completed by October 2021. At that time, it was assumed that works would commence on all sites. However, as indicated within the July 2021 update report there were six sites where work had not commenced on site. These sites are: Academy Gardens, Belgrave and Grosvenor, Coombe Road, Eagle Hill, Malton House and Regina Road. It was therefore agreed that the six sites should not progress to development.

- 4.2** Of the six sites indicated in paragraph 4.1, Belgrave and Grosvenor, is the largest and is likely to generate a significant value. However, this is still under consideration by the Council for its own use so has not yet been marketed for potential sale by BBB. The Council transferred sites at Regina Road, within the Belgrave and Grosvenor Estate and to the rear of Malton House as part of the wider disposal programme to BBB to allow the development of new homes.
- 4.3** All 6 sites are bound by Option agreements that the Council and BBB previously entered into. Those agreements include an option for the Council to buy back undeveloped sites within a certain amount of time. Since the decisions were made with regards to the disposal of the six sites, as a result of wider regeneration proposals at the Regina Road Housing Estate the Council is interested in re-acquiring Regina Road and Malton House sites.
- 4.4** The Option agreement when initially entered required that the acquisition of the sites would be netted off against the Loan Agreement. However, due to the accounting challenges this would have caused, particularly with regards to the segregation of duties between the Housing Revenue Account (HRA) and General Fund (GF) the Option agreements for Regina Road and Malton House were varied to include the option of purchasing the site instead of setting off against the loan.
- 4.5** This variation would allow the HRA to pay BBB for the sites and BBB would then be able to use the proceeds to pay the Council's GF back for the loans provided or would be able to use the proceeds to cover ongoing operational cash flow needs. Furthermore, under Schedule 5 of the existing Option Agreements, the Buy Back option allows the Council to buy the sites if the development has not attained practical completion within a period of 48 months from the Option Agreement date.
- 4.6** The two sites are proposed to be used for decanting and re-development purposes and will play a crucial role with regards to development proposals for the Regina Road Housing Estate. Holding onto these two sites will provide the Housing service with greater flexibility and ensure that the Council has land to deliver an efficient scheme.
- 4.7** It is important to note that acquisition of the two sites is mutually exclusive and not purchasing of one site will not impede the wider Regina Road Development to progress. Hence this decision is presented as two separate decisions one pertaining to each site.
- 4.8** The values identified for each site meet best considerations and this is confirmed by the Council's in-house valuation team and reflected within the Option agreements and further confirmation attached within Appendix B.

- 4.9** The Council spent quite sometime carrying out the due diligence and has had a number of detailed discussions with the Housing team to test the need to acquire these sites. The rationale for purchasing them in order to directly support Regina Road Estate development, which would apply to Regina Road and for enabling and decant purposes to support resident needs with regards to Malton House, is important for necessary flexibility to efficiently develop the Regina Road Estate.
- 4.10** The delay in due diligence has meant the Council will unlikely meet the date within the Option Agreement to exercise the options by 17<sup>th</sup> March. The Council has the option to seek a reasonable extension from BBB to ensure commercially suitable for both organisation and that the transaction completes before the end of the financial year. The latter is crucial for BBB so that they can begin to accurately identify their assets and liabilities as part of the overarching plan to winddown the company. The Council will seek an extension to 24<sup>th</sup> March and hence has also submitted a request under special urgency process to accelerate the implementation of the decision.

## **Land Values**

- 4.11** The Council must ensure that it receives best consideration for disposing its assets. When the Council initially entered into the Option agreements a land value was indicated that BBB would need to pay at either disposal of the land or at Practical Completion.
- 4.12** The payment for land values are a liability for BBB which will need to be resolved as part of the final work that the Council will do to winddown the company. The liabilities will remain once the Council's HRA has acquired both the land sites indicated within this report. The value for Regina Road is nil however the land value for Malton House is £0.160m which BBB would need to pay to the Council.
- 4.13** The nil value for Regina Road reflects the need to carry out significant works on the site before it can be developed. The value was therefore deemed as nil and was confirmed by Council valuers as an appropriate value.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1** The alternative option was to let BBB dispose of the sites in the open market. The outcome for BBB would be the same as the proceeds from the disposal in the open market would have generated the same cash receipt, however such an outcome would have limited options for the Council's HRA and the Regina Road redevelopment proposals.

## **6 IMPLICATIONS**

### **6.1 FINANCIAL IMPLICATIONS**

- 6.1.1** The purchase of the two sites for a total of £1.4m will be funded within the HRA using borrowing or internal resources. The HRA will review at year end the best course of funding the acquisition however should borrowing be used then further borrowing costs will be incurred by the

HRA. Borrowing rate for a 20year PWLB loan is c4.77% resulting in ongoing interest charges of £0.067m per annum.

- 6.1.2** The HRA's revenue budget has sufficient coverage to pay for the interest costs. The acquisition of previously transferred assets is in line with the Option Agreements
- 6.1.3** The funding received by BBB from selling the two sites will be used to pay the Council the outstanding loans. This transaction will not negatively impact on the General Fund account.
- 6.1.4** As stated within this report the Council has the option to net of the land values against loan balances and transfer the value of the debt to the HRA. The debt will transfer to the HRA because the HRA will become the beneficiary from holding the land assets. However, this outcome complicates the accounting and to some extent is abnormal to proper commercial practices as it is important that there is a clear audit trail with regards to movement of cash and assets which should be in line with legal agreements. As the HRA is buying the assets it is important to see the clear trail that the HRA pays for them and subsequently a clear trail to indicate BBB has paid back to the General Fund the outstanding debt.
- 6.1.5** Both options, i.e. to net of the debt as explained in 6.1.4 and payment of the cash as stated in 6.1.1 lead to the same financial outcome for all organisations involved.

Comments approved by: Orlagh Guarnori - Head of Finance - Housing

## **7.1 LEGAL IMPLICATIONS**

- 7.1.1** Of particular relevance are the following provisions:
- 7.1.2** Section 8 of the Housing Act 1985 and Part 7 of the Housing Act 1996 under which the Council is required to consider housing conditions and needs within the Borough including addressing homelessness. This duty can be discharged.
- 7.1.3** Section 17 of the Housing Act 1985, under which the Council has the power to acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings.
- 7.1.4** Section 120 of the Local Government Act 1972, under which the Council has the power to acquire land to enable the fulfilment of its functions (in this case housing functions)
- 7.1.5** Section 12 of the Local Government Act 2003 and the Council's powers to invest for any purpose relevant to its statutory functions or for the purposes of prudent management of its financial affairs.
- 7.1.6** Section 1 and Section 3 of the Local Government Act 2003 which permit the Council to borrow for any purpose relevant to its statutory functions, subject to its own prudential borrowing limit.

**7.1.7** The Council is under a general Duty of Best Value to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007)).

Comments approved by the Head of Commercial & Property Law on behalf of the Director of Legal Services and Monitoring Officer.

## **7.2 EQUALITIES IMPLICATIONS**

**7.2.1** Under the Public Sector Equality Duty (PSED) of Equality Act 2010, decision makers must evidence consideration of any potential impacts of proposals on groups who share the protected characteristics, before decisions are taken. This includes any decisions relating to how authorities act as employers; how they develop, evaluate and review policies; how they design, deliver and evaluate services, and also how they commission and procure services from others.

**7.2.2** Section 149 of the Act requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic
- Foster good relations between people who share a protected characteristic and people who do not share it.

**7.2.3** An equality analysis has been carried out in respect of resident consultation at Regina Road. This is a live document and will be updated with the results of the consultation in relation to protected characteristics.

**7.2.4** The impact analysis has confirmed that the service does not have sufficient data on protected characteristics of Council tenants. This has been recognised by the service and forms a workstream within the housing improvement plan. This work will ensure that activities and actions are inclusive to all residents.

Comments approved by Denise McCausland Equality Programme Manager

## **7.3 HR IMPLICATIONS**

**7.3.1** There are no HR implications arising from this decision.

Approved by: Gillian Bevan, Head of HR Resources and Assistant Chief Executives, on behalf of the Chief People Officer. (22/02/2023)

## **8. APPENDICES**

**8.1** Appendix A1 – Varied Option Agreement for Malton House

**8.2** Appendix A2 – Varied Option Agreement for Regina Road

## **9. BACKGROUND DOCUMENTS**

**9.1** Brick by Brick Croydon Ltd Update Report – 30th November 2022

### **MATTERS TO BE DEALT WITH UNDER EXECUTIVE DELEGATED POWERS OF THE CORPORATE DIRECTOR OF RESOURCES**

**REPORT TITLE:** Acquisition of Land sites, Regina Road and Malton House, from Brick by Brick Croydon Ltd

#### **RECOMMENDATIONS**

For the reasons set out in the report the Corporate Director of Resources is recommended, in consultation with the Monitoring Officer and the Cabinet Member for Finance:

**6.2** To approve that the Housing Revenue Account (HRA) acquires the land at Regina Road for a total sum of £0.900m by allowing the Council to exercise the Option agreement to buy back the site.

**6.3** To approve that the Housing Revenue Account (HRA) acquires the land at Malton House for a total sum of £0.500m by allowing the Council to exercise the Option agreement to buy back the site.

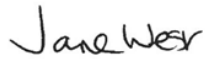
**6.4** To note that the Varied Option Agreements within Appendix A1 and A2 agreeing the purchase values between the Council and Brick by Brick for each site.

**6.5** To note Appendix B justifying that the purchase values as advised by Council's internal valuation.

**6.6** To note that the Council, as the original landowner, is due payments back from BBB for the land values on Malton House for £0.160m as stipulated within the Option agreements and referred to as the Initial Price. These land payments will be resolved as part of the final assets and liabilities review work for winding down BBB. The land value for Regina Road was determined as nil due to significant pre-development work that was needed to make the land viable for housing.

**6.7** Note that the date to exercise Option agreements is 17<sup>th</sup> March and it is unlikely that the Council will meet this deadline and thus has an agreement with BBB to extend this date by a reasonable timeline.

I confirm that I have consulted with the Monitoring Officer and the Cabinet Member for Finance and approve the recommendation:



**Signed:**

Jane West  
Corporate Director of Resources and S151 Officer

**Dated:** 27 March 2023