

REPORT TO:	CABINET 10 June 2019
SUBJECT:	Brick By Brick Croydon Ltd – Pipeline Sites
LEAD OFFICER:	Jacqueline Harris Baker – Executive Director Resources Mark Norrell – Director Facilities and Support Services
CABINET MEMBER:	Councillor Simon Hall Cabinet Member for Finance and Resources and Councillor Alison Butler Cabinet Member for Homes and Gateway Services
WARDS:	Various

CORPORATE PRIORITY

To provide a decent, safe, and affordable home for every local resident who needs one

To help families be healthy and resilient and able to maximise their life chances and independence

AMBITIOUS FOR CROYDON & WHY ARE WE DOING THIS

This report identifies the next tranche of potential sites for the development of new homes by Brick by Brick. The developments will continue to aim to deliver 50% affordable housing of a high quality for the benefit of Croydon residents and will help meet the overall targets for the provision of residential properties set out in the London Plan.

FINANCIAL IMPACT

The Council will receive a market value for the land in line with the proposed development together with income by acting as a funder to the company. In addition the council will benefit from the development profit as a 100% shareholder in the company.

FORWARD PLAN KEY DECISION NO. 1119CAB

This is a Key Decision as defined in 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 the pipeline sites listed in Appendix A to be disposed of to Brick by Brick Croydon Ltd (BBB) subject to terms and conditions being agreed to the

satisfaction of the Executive Director (Resources) and the Director of Finance and s151 Officer acting in consultation with the Cabinet Members for Homes and Gateway Services and Finance and Resources and the scope of this delegation includes the decision as to whether the disposal of land is by freehold or by way of a long lease in line with the indicative terms set out in sections 3.5 to 3.7 of this report.

1.2 Approve that the Council lend Brick by Brick Croydon Ltd funding to progress the development of the sites and that such funding will include funding for professional services, construction costs, acquisition of third party sites and working capital and that the Executive Director (Resources) and the Director of Finance and s151 Officer be given delegated authority to finalise and agree the terms of such lending acting in consultation with the Cabinet Member for Finance and Resources.

1.3 Approve that where it is considered necessary by Officers and subject to consideration of any objections received by third parties, that the sites listed in Appendix A will be appropriated for planning purposes pursuant to the Council's powers under s122 of the Local Government Act 1972 and/or s233 of the Town and Country Planning Act 1990 or such other statutory powers as may be relevant and that the Executive Director (Resources) be given delegated authority to finalise and agree the terms of such appropriation acting in consultation with the Cabinet Member for Finance and Resources.

1.4 Note the governance and monitoring process set out in this report

2. EXECUTIVE SUMMARY

2.1 This report details the next tranche of sites to be offered to BBB for residential development together with the disposal process and financial transactions between Croydon Council and Brick by Brick Croydon Ltd. The report follows on from the initial June 2016 Cabinet Report and earlier reports setting out the details for the establishment of the company for the delivery of new homes and in particular affordable homes in Croydon through the utilisation of surplus Council owned land. The detailed BBB Business Plan was approved by Cabinet in February 2019 and this report is in line with that approval.

2.2 The development model established through earlier tranches has been retained whereby the Council sell land to BBB under terms to meet its obligations to ensure best consideration is obtained given the planning consent in place and the aspiration to deliver 50% affordable housing where possible. BBB then undertake the development, delivering new homes including both private and affordable units and where appropriate, improved community space and other uses.

2.3 As part of the disposal process an initial land value will be agreed based on the planning consent granted and the costs known at the time of valuation. There will also be provisions to capture 100% of any additional uplift in value calculated on completion of the scheme. Whereas this had previously been captured solely through an overage provision, as BBB are now a more established company, it is proposed that the overage agreement will retain 50%

of any uplift in value. This is more in line with the higher end for overage agreements achieved by the Council in other development land sales. The overage will still be calculated on an open book basis to capture any additional financial benefits realised on completion of the scheme and will be retained by the Council as a capital payment as part of the disposal price. In addition, the remaining 50% increase in development profit will be captured through the increased profits made by BBB which will be returned to the Council as sole shareholder through dividend payments. Through this mechanism the Council can secure the best possible return for the land and ensure a higher percentage of good quality affordable homes are delivered.

- 2.4 In some cases the Council will also provide development finance for specific schemes which will be charged at a comparable market rate. The interest paid by BBB will therefore provide a further source of revenue to the Council.

3. DETAIL

- 3.1 Despite a number of different housing initiatives, the need for new homes and especially affordable ones, is still a high priority for the Council. With increasing housing delivery targets being set by the London Plan, the pressure to deliver is increasing and therefore the continued use of surplus Council owned land is essential.
- 3.2 With the housing market currently seeing a flattening out of house prices and build costs increasing, the delivery of affordable housing through private development is being tested and the viability of schemes is demonstrating a generally lower level of affordable housing being brought forward. However, the demand for housing, and especially affordable housing, is increasing within borough.
- 3.3 Seventy five percent of the sites included within the latest tranche are likely to generate 9 homes or less per site which, if disposed of privately, would not have the planning requirement to deliver any affordable units (as the current threshold is for developments of 10 or more dwellings). Disposing of these sites to BBB therefore has the advantage of delivering a greater number of affordable units overall (due to the aspiration to deliver 50% affordable) with the aim of achieving up to 40% of these as affordable rented units making housing options more obtainable for Croydon Residents. However, as this form of housing is the least cost effective to develop this will inevitably impact the capital value of any land sold.
- 3.4 BBB developments will directly benefit local communities by providing:
- Local affordable and private housing of a high standard where priority will be given to local residents through the sales and lettings process
 - Affordable rent properties will be transferred to Croydon Affordable Tenures LLP to ensure that this element of the affordable accommodation is retained as affordable rent and will not be subject to right to buy initiatives
 - Improved community facilities will be provided where these need to be relocated as part of the scheme
 - Local employment and supply chain benefits delivered through a variety of contracts

Transfer of Land to Brick by Brick Croydon Limited

- 3.5 The delivery of the developments for the sites detailed in Appendix A will build on the lessons learned from the first tranche of developments. It is therefore proposed that a slightly varied process is adopted:
1. An option agreement for the disposal of the site will be entered into at an earlier stage to provide more assurance for both parties. This will mean that the Council will be required to sell the land if certain conditions are met. The initial option will be granted for a nominal premium. An external valuation will then be undertaken and used to agree the initial sale price following due diligence and planning investigations.
 2. The option agreements must be operated within 24 months of completion or such longer period as may be agreed to reflect delays or specific site complications. If the option has not been actioned the property will remain in Council ownership and other alternative options will be considered.
 3. The option will be conditional upon BBB obtaining a suitable planning consent and the initial price for the land being agreed. The external consultants will base their valuation on the consented planning scheme or on the basis of the proposed scheme as if planning consent had been granted. The Agreement will include provisions for an upward only overage payment with a clawback of any additional residual value that is achieved on completion of the scheme.
 4. Once terms have been agreed and the option agreement completed, the land will be transferred to BBB
 5. The payment for the land will be deferred until completion of the scheme and disposal/letting of the homes as allowed for within the agreement.
 6. The Council will not be required to provide any reports on title for the sites and BBB will be expected to undertake their own reports as part of their due diligence work prior to purchase.
 7. If the option is not completed, BBB will be required to pass to the Council any information that they have obtained as part of their due diligence work
 8. Each side will bear their own costs
- 3.6 As it will not always be necessary to link all the individual sites through the planning process as with the previous tranches, where they are treated as standalone sites, they will be valued based upon the individual site planning consents. However, to ensure that the capital receipts fairly reflect the percentage of affordable homes required, an adjustment mechanism may be included to allow for the impact of any sites that may not be brought forward or where they provide negative site values.
- 3.7 When assessing best consideration the number of units within the proposed or consented scheme will be considered and the valuation undertaken as if the planning were in place. This will also include the proposed mix of affordable homes (both affordable rent and intermediate shared ownership homes). For each site the build costs assessed by the professional advisers or agreed through competitive tendering will be adopted and the likely capital values for the homes assessed to reflect their tenure type and the location of the site.
- 3.8 It is proposed that, where it is considered appropriate in line with the requirements of s122 of the Local Government Act (LGA)1972 or s233 of the

Town and Country Planning Act 1990 (TCPA) and the site is no longer required for the purpose for which it is held, sites will be appropriated for planning purposes prior to disposal. This report seeks that the decision to appropriate the sites is delegated to the Executive Director Resources in consultation with the Cabinet Member for Finance and Resources. All sites that are to be appropriated will be advertised in the local press for a minimum of two weeks and any comments received will be duly considered by the Executive Director and Cabinet Member prior to taking a decision to appropriate the land.

- 3.9 The proposed disposal terms outlined in 3.5 to 3.7 above are considered to be appropriate to ensure that best consideration is secured for the sites as required under section 233 of TCPA where the land has been appropriated or s123 of the LGA if a decision has been taken not to appropriate the land. If any of the sites held within the HRA estate are being sold and they contain housing then consent from the Secretary of State will be obtained in line with the requirements of s32 of the Housing Act 1985 prior to any disposal.

Lending to the Development Company

- 3.10 Brick by Brick will seek development funding from the Council on a site by site basis as required. The Council provides funding by way of debt and equity investment to the project. Each application is assessed individually and the Council is required to lend at market comparable terms and rates. If the funding is agreed, it is allocated from a rolling investment fund.
- 3.11 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 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 same loan period.
- 3.12 Section 24 of the 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 to this regard. This would for example allow the development of private rented sector (PRS) homes by BBB.
- 3.13 Where the Council does provide finance it must comply with the Law in respect of 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 being considerably higher than $\frac{1}{4}$ percent over HM Treasury levels and independent advice will be taken as to the appropriate levels and terms of any funding.
- 3.14 For any lending against purchases of land or buildings from third parties to help facilitate development, the Council will undertake or commission a valuation of the asset being acquired to ensure that any funds advanced by the Council to purchase the asset are suitably secured.

- 3.15 Given the interest rate that will be charged to BBB through this funding mechanism, the lending will have a positive impact on the Council's income and expenditure account as it is anticipated that significant income will be accrued through the interest charges. The financial risk to the Council in providing such development funding relates mainly to default on the loan if the development is not successful. This will be managed through the robust processes in place for assessing the scheme and from the company's ability to cross fund from other developments that will be delivered as part of its development portfolio.

Monitoring of Brick by Brick

- 3.16 A process has already been established and this will continue to be followed. The monitoring will take the form of:
- A detailed Business Plan is provided annually by BBB and this is reviewed annually by the two parties. No changes are made to this plan without the Council's (as sole shareholder) approval.
 - A Board has been established with an Independent chair (currently Martyn Evans), two Council nominated members (currently Shifa Mustafa plus one other to be appointed) and the BBB Managing Director (Colm Lacey).
 - Regular reports on progress are presented to the Council by BBB in through meetings and various formats.
- 3.17 The Council also has further controls commensurate with those that a reasonably minded investor would seek:
- A Loan Agreement and security document is entered into for each site which provides a fixed and floating charge over the Company's assets
 - The land transfer documents, where appropriate, contain provisions to determine the use of the property
 - Bespoke shareholders reserved rights are contained within the Articles of Association and these are reflected in the terms of appointment of directors.

Consideration against other Housing Initiatives

- 3.18 When assessing the proposed sites, consideration has been given to other housing initiatives that the Council is currently considering and in particular the Housing Capacity project and future estate works. Through early and ongoing discussion with other service areas, it has been confirmed that opportunities for other housing works and regeneration will not be impacted by the release of these sites.
- 3.19 Consideration has also been given to the impact on local council residents on the loss of garage sites. The sites that have been included for potential development are typically under-utilised by local tenants and many no longer meet the needs of modern car owners and in many cases attract anti-social behavior and fly-tipping. Whilst the Council's key priority is the provision of new homes, further work is being undertaken to review the use of garage sites for parking cars by council tenants.
- 3.20 Where major housing refurbishment projects have been identified, the timing and location of these has been noted so that these can be factored into any early investigation works and subsequent developments to avoid any possible conflict.

4 CONSULTATION

- 4.1 As with the previous BBB sites, detailed engagement for each site proposed for redevelopment will be undertaken by BBB as part of the design, planning, appropriation and construction processes. This typically takes various forms, including letter drops to residents and stakeholders within the local area, public consultation events, one to one meetings, digital engagement, and adverts in the local press. Councillors are provided with details of proposed sites within their areas prior to any public consultation and there is ongoing engagement throughout the development process.
- 4.2 In addition, various parts of the council also undertake their own statutory consultations processes (eg planning consultations).

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

1. The effect of the decision

The disposal of the land, if approved, will deliver a capital receipt to the Council that can be invested in the borough. Any capital payments will be deferred until BBB has received income from the sites by way of sale or rental income.

The Council are proposing to act as equity partner and debt funder to these schemes. The debt/equity ratio and the proposed interest rates are set in line with market terms. Debt would be repaid after land and then equity payment would follow

Most of the land represents surplus or amenity land and therefore will not lead to a loss of income, however where garage sites are released this will reduce the revenue received by the Council. These sites are generally not well let and are in a poor condition and therefore the loss of garage sites will have a minimal revenue impact and will remove a short to medium term need for capital investment to either repair or demolish the buildings.

Where the Council acts as a funder to the development this will deliver a revenue income from the interest earned.

2. Risk

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

3. Options

All the sites that are to be released are surplus to the Council's requirements for alternative uses.

6 LEGAL CONSIDERATIONS

- 6.1 The Director of Law and Governance comments that the majority of legal considerations relevant to the recommendations of this report are set out within the body of the report. In particular the report addresses the power 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 s123 of the Local Government Act 1972 or section 233 of the Town and Country Planning Act 1990. To enable the appropriation of land to be made, it will in some circumstances be necessary to advertise the intention within the local paper for a minimum period of 2 weeks and for any comments to be considered. Any appropriation in such circumstances will therefore be subject to the outcome of the advertisements and the consideration of any objections. Further legal advice will be provided as to the appropriate route to be followed in relation to each site as necessary.

Approved by: Sean Murphy, Director of Law and Governance and Deputy Monitoring Officer

7 EQUALITIES IMPACT

- 7.1 The programme aims to deliver new or replacement cultural, community, educational, health, public realm and other development as part of mixed use schemes. It has also set targets to maintain up to 50% affordable housing provision across the BBB residential programme as a whole (a mix of shared ownership and affordable rent) and a prioritisation period for Croydon residents to purchase/rent BBB homes when they are launched to market (with a corresponding aim to prioritise provision of homes to households and first-time buyers ahead of investors).
- 7.2 An equalities impact report has been undertaken to consider the impact of these proposals on protected groups which helps to demonstrate the positive impact of the proposals. BBB emerging social value policy also aims to ensure there is the broadest possible positive impact from BBB work beyond housing delivery, making real, tangible improvements to the lives of Croydon residents.

Approved by: Yvonne Okiyo, Equalities Manager

8 ENVIRONMENTAL IMPACT

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

9 CRIME AND DISORDER REDUCTION IMPACT

- 9.1 Many of the proposed developments are on currently neglected amenity land or garage sites that attract antisocial behaviour and fly-tipping. The development of these sites and the provision where appropriate of new estate and community facilities will therefore have a positive impact. No specific adverse crime and disorder impacts have been identified resulting from the proposals contained in this report. All development will be subject to secure by design considerations through the planning and building regulation process.

10 REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 10.1 The release of these sites for development by BBB will provide real benefits to Croydon residents to secure new, good quality housing that will help generate stronger more vibrant communities that are created through the development. The developments will also create improved local infrastructure and job opportunities.

11 OPTIONS CONSIDERED AND REJECTED

- 11.1 The main options considered and rejected are:

Do Nothing – this would not help to address the need to provide the significant number of new homes required by the London Plan and would not make best use of the surplus or underutilized sites.

Dispose of sites on the open market – this is unlikely to deliver the same level of affordable housing as will be provided through disposal to Brick by Brick. Many of the sites would deliver less than 10 units and therefore there would be no requirement for private developers to deliver affordable housing. Out of the 61 sites included within Appendix A, 46 are for sites likely to offer less than 10 units. It is also expected that even on the larger sites, developers would provide less than the target 50% affordable units and therefore the impact could be that only 16% affordable units are delivered for the 60 sites overall or 161 less affordable rented and intermediate shared ownership properties

The Council directly instructing private contractors – this will not be as commercially as efficient as the proposals contained within this paper

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BACKGROUND PAPERS: Equality Assessment

APPENDICES: Appendix A: List of proposed sites