

For General Release

DELEGATED DECISION REPORT TO:	Cllr Simon Hall, Cabinet Member for Finance and Resources
SUBJECT:	Disposal of various sites in the Borough to Brick by Brick Croydon Ltd for Residential Development
LEAD OFFICER:	Steve Wingrave Head of Estates and Asset Management
CABINET MEMBER:	Simon Hall Cabinet Member for Finance and Resources
WARDS:	Various
CORPORATE PRIORITY/POLICY CONTEXT: Corporate Plan - the proposals presented in this report will: <ul style="list-style-type: none">• Maximise the use of the Council's assets to deliver new homes, including affordable, private for sale and private rented stock• Bring forward the development of key sites across the borough to address key local, national and regional policies• Secure improved community facilities Community Strategy – Development of sites enables the Council to deliver new homes and increase the supply of affordable homes, a key aspiration of the Community Strategy	

FINANCIAL IMPACT

The disposal of the various sites will generate a capital receipt with provision to capture any increased value through a clawback mechanism on final completion.

There will be an annual loss of income of c£46k due to the redevelopment of rented garage space and the loss of part of the Wandle Road car park

In addition the Council will gain from the development profit as 100% shareholder in the Company.

FORWARD PLAN KEY DECISION REFERENCE: N/A

The Leader of the Council has delegated to the Cabinet Member for Finance and Resources the power to make the decisions set out in the recommendations below

1. RECOMMENDATIONS

- 1.1 Approve the disposal of the 7 sites detailed in Appendix A to Brick by Brick Croydon Ltd subject to satisfactory terms and conditions being agreed to the

satisfaction of the Executive Director Resources and Section 151 Officer acting in consultation with the Cabinet Member for Finance and Resources, and the scope of the delegation includes whether to dispose of the site by way of a freehold or long leasehold transfer but in line with the indicative terms of the proposal and values for each site are set out within Part B of this report

- 1.2 Approve that, where considered necessary by officers and subject to the consideration of any objections received from residents by the Executive Director Resources and Section 151 Officer and Cabinet Member for Finance and Resources, that the sites listed in Appendix A be appropriated for planning purposes pursuant to the Council's powers under section 122 of the Local Government Act and Section 203 of the Housing and Planning Act 2016 or such other relevant powers as may be relevant in each case, prior to their disposal to Brick by Brick

2. EXECUTIVE SUMMARY

- 2.1 On 20 June 2016, Cabinet agreed to dispose of a number of sites to Brick by Brick Croydon Ltd ('**BxB**') in order to help meet housing needs in the Borough. As part of this recommendation Cabinet also delegated authority to appropriate sites for planning purposes in accordance with the Council's powers under section 122 of the Local Government Act 1975 ('**LGA**') to the Executive Director of Resources (Section 151 Officer), acting in consultation with the Cabinet Member for Finance and Treasury in order to facilitate the individual developments.
- 2.2 This report details those sites which the Council is proposing to transfer to BxB under the next phase of the project. It is proposed that where appropriate these sites will be appropriated for planning purposes.
- 2.3 All sites that involve the disposal of open space will be advertised for two weeks in The Croydon Guardian clearly stating that they would be appropriated and disposed of by the Council.

3. DETAIL

Background

- 3.1 BxB has obtained planning consent for some of the sites listed and where granted this has been included on the details within Appendix A. This includes details as to the number and type of housing to be provided.
- 3.2 All sites have had title reports prepared by external solicitors and an Option Agreement will be entered into for each site.
- 3.3 Where appropriate, sites will be appropriated for planning purposes and the valuations included within Part B have been negotiated with BxB in line with the principles in s233 of the Town and Country Planning Act 1990 (TCPA).

- 3.4 Under s233(1) TCPA a local authority may dispose of land appropriated for planning purposes in such manner and subject to such conditions as appear to the local authority to be reasonable to secure either the best use of the land and or buildings or the construction of new buildings or works that appear to the local authority to be required for the proper planning of the area. A disposal includes an option to purchase the freehold as proposed for these sites.
- 3.5 The local authority has a duty under s233 to dispose of the land for the best consideration it can reasonably obtain except where the consent of the Secretary of State is obtained. It is not considered that Secretary of State consent is required in respect of any of these disposals.
- 3.6 Consideration has been given to the issue of State Aid which has been considered within section 7 of this report.
- 3.7 In line with the Department for Communities and Local Government disposal guidance issued in March 2016, the Council has considered the main principles set out to ensure the land is effectively and efficiently disposed of.
- **Every disposal to have a clear objective** – the requirement to provide additional housing and especially affordable housing within the Borough has been the clear objective throughout the process.
 - **Disposal rooted in local plans** – under the current Local Plan, SP2.4 has an aspiration to provide up to 50% affordable housing for any development of 10 or more properties with smaller developments paying a commuted sum. The planning consents for the 7 sites, when reviewed overall deliver this mix of private and affordable housing.
 - **Early and meaningful engagement with public and other bodies and the market** – an engagement process has been undertaken with other public bodies and organisations for a number of the key sites to try and accommodate or build in their requirements where possible and in particular within the 3 sites in Coulsdon.
 - **Appropriate level of investment prior to disposal** – all the sites have either been granted or have been submitted for planning consent. All sites will have consent granted prior to disposal and extensive ground investigation and local consultation undertaken.

4. VALUATION

- 4.1 The requirement for the local authority to achieve Best Consideration requires them to be able to demonstrate that the proposed valuation represents the best price that could reasonably be achieved for the asset. This will reflect the likely planning consent achievable, or actual consent in place and disregards any voluntary conditions imposed by the authority in respect of the site. Therefore in the case of these sites the valuations will reflect the overall aspirations to achieve 505 affordable housing.

- 4.2 All the sites have already been granted or have been submitted for planning consent. All will be subject to the completion of s106 agreements which will not be completed until after completion of the Option Agreements transferring the land to BxB. The valuations have been undertaken on the basis that these consents are in place.
- 4.3 Although valuations have been considered for each site based on the actual consented schemes or the submitted schemes for the individual planning consents, they have been adjusted where appropriate if, sites are being linked in respect of the provision of the required affordable housing or community buildings. This mainly applies to the 3 sites in Coulsdon as within the planning recommendations they are all tied in with the suggested following phasing:
- Phase 1: Re-providing the community use at the former CALAT site (this needs to be completed before any other development on the other sites can be started)
 - Phase 2: Redevelopment of the Lion Green Road site (including affordable housing delivery)
 - Phase 3: Provision of residential at the former community building site with the affordable delivery first
 - Phase 4: Provision of the new D1 Community use (possible NHS healthcare facility) on the southwest part of the former CALAT site, ideally prior to completion of Lion Green Road.
- 4.4 Valuations have been undertaken by the Head of Estates and Asset management who is an MRICS Registered Valuer. The methodology and approach follows that previously adopted for the first tranche of disposals where several of the valuations were undertaken by external valuers, Lambert Smith Hampton and are therefore in line with current market practice.
- 4.5 The valuations have been undertaken on the basis of Market Value (MV) as defined in the Royal Institution of Chartered Surveyors Valuation – Professional Standards UK January 2014 (as amended April 2015) subject to the following assumptions:
- The sites have vacant possession
 - The properties have planning consent for the schemes
 - The schemes have the tenure mix as identified in Appendix 1
 - The affordable rented units have been valued in accordance with the Councils social rent charging policies.
- 4.6 The building costs adopted within the valuations have been estimated by BxB cost consultants as pre contract tender costs were not available at the time of the valuations. The valuations undertaken by the Council have included a benchmarking exercise with reference to BCIS data and consultation with the in house projects team. Some pre contract tender prices have now been received and are being reviewed but these have generally supported the original cost consultant's estimates. The valuations undertaken in-house have therefore adopted these original figure as representing the most accurate basis. As the costs are still not finalised.
- 4.7 As part of the terms of the Option Agreements, the Council has included a clawback provision. This allows for a revised valuation appraisal to be carried

out on completion of the works and disposal of the properties. This will be carried out on the same basis as the original but utilising actual costs and capital receipts. If this demonstrates a greater profit than the original valuation then the Council will retain 100% of the increase in value. This will allow any variance in build costs and sale prices to be reflected to ensure best consideration is obtained.

- 4.8 In addition, the Option Agreements will contain a second review mechanism which will review all the completed developments to assess whether any balancing payments are required should either less than the whole portfolio detailed in Appendix A have been drawn down and developed by a long stop date of 4 years or that the number of affordable units required under the original planning consents and the valuations have not been provided.
- 4.9 The three Coulsdon sites have been considered as a mini tranche and the values for each site adjusted to reflected the provision of some of the planning requirements on a different site. For example, the provision of the medical centre on the Malcolm Road site rather than Lion Green as required under the original planning consent. From a valuation perspective this is considered a reasonable approach as the requirements are reflected in the planning requirements and if valued independently, the valuations would not be an accurate reflection.
- 4.10 Where sites demonstrate a negative land value due to the number of affordable units being provided a zero value has been adopted and the value of any linked donor sites reduced to offset the deficit. Given the nature of the planning consents this is considered to be a reasonable approach to demonstrate that best value is achieved across the sites as a whole.
- 4.11 As required by the definition of best consideration, any voluntary conditions imposed by the Council have been disregarded within the Council's valuations.

5. CONSULTATION

- 5.1 The Council will advertise its intention to appropriate and dispose of the sites listed in the Croydon Guardian and invited those affected by the developments to provide representations to the Council to be considered.

6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

The sale of the 7 sites will generate a capital receipt and if the planning consents are granted will provide 339 new residential units in the borough of which 50% will be affordable units

As a result of the sale there will be a loss of income through the development of existing garage sites, public parking areas and changes to existing lease structures. The loss of income through the garage sites is difficult to assess as many are vacant due to the current poor state of repair and transient nature of the lettings. The redevelopment of the Lion Green Road car park will mitigate any

losses through the provision of 116 new public parking spaces which will come back to the Council.

The terms agreed for the relocation of the Coulsdon Community Centre will lead to a small loss of income as the new lease will be agreed at a peppercorn as part of the relocation package.

Risks

- 6.1 The inclusion of a clawback provision that allows 100% of any additional profit to be retained by the Council removes the risk of not capturing the benefit of future beneficial price changes. Given the number of sites being developed, and the period of time the developments will take, this is considered essential to help secure the best value is achieved.
- 6.2 There is a risk that a third party could challenge the approach taken by the Council to the valuations by way of judicial review. However, external legal advice has been sort and proper advice has been obtained and acted upon.
- 6.3 The risk that the developer will not complete the development or provide the necessary affordable units is addressed through the Option Agreement which has step in rights and the planning consents and s106 agreements.

Options

- 6.4 It would be possible to dispose of the sites on an individual or packaged basis to other private developers following a full marketing exercise. It is not believed that this would secure a better financial outcome given the planning consents that have been granted. Many of the sites are challenging to develop and would not appeal to many developers or secure a better offer.

Future savings/efficiencies

- 6.5 The redevelopment of these surplus sites will help to reduce ongoing maintenance and security costs associated with them and also help to generate additional revenue through new homes bonus. The provision of the affordable elements of the schemes will also help to alleviate the reliance on the Council to provide social housing and therefore offer further savings as a result.

Approved by Richard Simpson Executive Director Resources and S151 Officer

7. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 7.1 Powers of appropriation – the power of the Council to appropriate is contained in s122 of the Local Government Act 1972 and external legal advice has been followed in this regard.
- 7.2 Open Space – those sites that contain open space have been advertised in accordance with external legal advice.
- 7.3 Best consideration – legal advice has been taken as to the approach taken to assessing best consideration across the portfolio. BxB has the option to draw

down sites, not an obligation to do so. The Council could be left therefore with challenging sites to deliver as there is no requirement for these to be drawn down in tranches/packages. A revaluation mechanism will be included in the option agreement that allows the Council to take the approach to best consideration described in paragraph 4.3 above.

- 7.4 Public Contracts Regulations 2015 ("Regulations") – the option agreement does not contain an enforceable obligation on BxB to undertake the relevant works. The lack of such an enforceable obligation means that the option agreements are not subject to a requirement on the Council to procure a developer under the Regulations. The consequence of this is that the Council cannot force BxB to undertake the works but can step in and complete each project should BxB fail to do so.
- 7.5 State aid – a state aid claim could arise because of an alleged disposal of land at an undervalue. A circular issued by the European Commission provides a defence to any such claim provided the land is not sold at less than a figure which has previously been determined by an independent valuation. Council officers confirm that this is the case. The Circular does not address the disposal of land in tranches or by way of a portfolio nor does case law exist on this point so far as legal advisors are aware. However, Gowling WLG is of the opinion that the Council would have a reasonably robust defence provided the agreement with BxB provides a mechanism for balancing payments to be made in the event of non-delivery.
- 7.6 Non-payment of sums due – note that the option agreement will contain two mechanisms for revaluing sites at practical completion. The first is the through a clawback mechanism and the second will assess whether any balancing payments are required should less than the whole portfolio be drawdown by a long stop date of 4 years. The ability of BxB to meet these payments is of course dependent on its covenant strength at the time. Whilst the Council will have a legal charge over the asset, the benefit of this security will depend on the then value of the underlying security.

(Approved by: Sean Murphy, Head of Commercial and Property Law and Deputy Monitoring Officer)

8. HUMAN RESOURCES IMPACT

- 8.1 There is no human resources impact as a result of this decision.

9. EQUALITIES IMPACT

- 9.1 The impact of the housing developments to be delivered will be positive. The provision of new affordable housing, tackling poor private housing and meeting housing need by providing a greater percentage of affordable housing than through other private schemes are all expected to benefit groups with protected characteristics.

10. ENVIRONMENTAL IMPACT

- 10.1 There is no direct environmental impact as a result of this decision but all developments taking place as a result of the proposed schemes will be fully compliant with the current building regulations and in particular the provisions within Part L. The developments will also have a positive impact on many of the sites that currently have older and in some cases semi derelict buildings.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There will be no impact on crime and disorder as a result of the appropriation of the land. However, the subsequent development of many of the sites that represent rundown buildings or garage blocks will significantly improve the local environment and help reduce crime and anti-social behavior.

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 12.1 The disposal of the sites will help to ensure the developments are progressed as quickly as possible and help deliver a high number of high quality properties including shared ownership and affordable rented units.

13. ALTERNATIVE OPTIONS CONSIDERED

- 13.1 The only real alternatives are to either not develop the sites or look to sell them to a number of separate developers which for the reasons detailed above, has been rejected as it is believed that the disposal to BxB will achieve the best outcome and secure best consideration for the sites.

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BACKGROUND PAPERS:

Appendix A Planning Details for each site