



Housing & Growth Committee

24 November 2020

Title

**Hermitage Lane Development Project
Full Business Case**

Report of

Chairman of the Housing & Growth Committee

Wards

Childs Hill

Status

Public with accompanying exempt report
Exempt from publication in accordance with Schedule 12A of the Local Government Act 1972 on account that it contains (i) information relating to the financial or business affairs of any particular person (including the authority holding that information) (para. 3) and (ii) information in respect of which a claim to legal professional privilege could be maintained in legal proceedings (para. 5).

Urgent

No

Key

Yes

Enclosures

Appendix 1 - Site plan of Property

Accompanying Exempt report

Officer Contact Details

Derek Rust, Director of Growth and Development, Barnet Homes derek.rust@barnethomes.org

Meera Bedi , Head of Development (New Build) , Barnet Homes meera.bedi@barnethomes.org

Summary

The Council has been exploring alternative delivery options for its development pipeline, at ARG September 2018 the case was agreed for appointing the Barnet Group as its development partner, exploring options through Opendoor Homes and utilising other methods.

The Council approved the strategic principle for Opendoor Homes (ODH) to become its preferred partner for the development of a number of its 'mixed tenure' sites including Hermitage Lane at the September 2018 ARG Committee.

Opendoor Homes was instructed to act as development agent to progress the design and delivery proposals for the site and a budget of £250,000 was approved at P&R Committee in December 2018 to enable it to do so.

Hermitage Lane was identified by the council as a site within Tranche 1 which also included Moxon Street, Whitings and Broadfields. In January 2020 the Housing and Growth Committee agreed to dispose of Broadfields but the remaining three sites are to be developed by The Barnet Group with approval from this Committee for the Full Business Case on a site by site basis.

The Hermitage Lane site is located in the Childs Hill ward, occupies approx. 0.25 hectares and currently comprises of commercial space with 2 x residential flats above and 4 x residential bungalows. All the buildings are vacant and in a poor state of repair.

Hermitage Lane is located north of Hampstead. The site lies just to the east of Finchley Road and has good public transport with two stations within 15 minutes' walk. The site is also opposite the green space at Elm Park and Hampstead Heath is nearby.

To support and progress the scheme, a third-party commercial developer was selected by ODH to lead and fund the preparation of a mixed tenure planning application for the redevelopment of the site. The intention was for the developer to become ODH's development and construction partner for the project, subject to agreeing appropriate commercial terms and satisfying governance, financial and risk management processes.

The scheme received a resolution to grant planning approval in October 2019 followed by the granting of full planning permission when the s106 agreement was completed in August 2020.

In February 2020, a Chief Officer's Report approved the budget of c. £1.5m to underwrite a programme of design work, site survey and investigations plus legal due diligence under a Pre-Contract Service Agreement in the sum of c. £1.5m. Subsequently it was agreed by LBB officers that this did not need to go to Policy and Resources Committee for ratification at that time as the sum could be accommodated within reserves and Council officers' agreed that it would go to Policy and Resources Committee if the underwritten sums were required.

The structure of the delivery model and key commercial principles were endorsed at the Gateway Review held on 29 October 2020 with LBB Commissioning officers. Draft Heads of Terms between LBB and ODH will be prepared immediately after Committee as the project is approved. That will form the basis of legal documents to be finalised between LBB and ODH.

Separately, ODH has progressed terms and legal negotiations in respect of the legal documents between ODH and the Developer.

This report seeks approval of the recommendations set out below and included in the Full Business Case to deliver 52 new homes, approving the sale of the site from the Council to ODH and a simultaneous Development Lease Agreement between ODH and The Developer.

Officers Recommendations

That the Housing and Growth Committee:

- 1. Note and approve the Full Business Case at Appendix 2**
- 2. Delegate authority to the Director of Growth to appoint an external independent valuer to carry out an independent valuation of the land shown edged in red on the site plan at Appendix 1 (“Property”)**
- 3. Delegate authority to the Director of Growth (in consultation with the Chairman of Housing & Growth Committee) to negotiate and agree, acting in the best interests of the Council, heads of terms with TBG Open Door Limited (‘ODH’) for the sale of the Property from the Council to ODH, upon the best commercial terms that can be obtained and delegate authority to use such of the general consents available for the disposal of the Property and, where required, to apply for consent to dispose from the Secretary of State.**
- 4. Subject to the valuation referred to above supporting the proposed sale price, delegate authority to the Director of Growth (in consultation with the Chairman of Housing & Growth Committee) to enter into and conclude all required documentation and do all acts and things necessary, acting in the best interests of the Council, to effect the sale of the Property from the Council to ODH upon the agreed terms.**
- 5. That authority is delegated to the Council’s Section 151 Officer, in consultation with HB Public Law and other professional advisors as appropriate, to agree the legal documentation to support the loan to ODH, including the Loan Agreement.**

1. WHY THIS REPORT IS NEEDED

- 1.1 This report sets out the preferred way forward for the development of the Hermitage Lane site.
- 1.2 The Assets, Regeneration and Growth Committee (ARG) approved at its meeting on 9 July 2014, the approach to, and the principles underpinning, the creation of a development pipeline on Council owned land.
- 1.3 The Council’s Housing Strategy 2019-2024 sets out the intent to deliver homes that people can afford by increasing housing supply, regeneration and growth. The strategy sets out how a continuing pipeline of developing on council land will secure a range of tenures, including mixed tenure housing with affordable homes funded by private sales, new affordable homes to rent, extra care and wheelchair accessible homes to reduce demand for care, and private housing for rent.
- 1.4 The Strategy for development of housing on council land and acquiring new homes, January 2020, sets out the benefits and opportunities of working with Opendoor Homes

(ODH) to deliver additional new homes at a time when the capacity of the Housing Revenue Account (HRA) is constrained by other investment commitments. Section 5 of the report states that 'the council will continue to work with Opendoor Homes, with a focus on mixed tenure' as we are presenting at Hermitage Lane.

- 1.5 The Outline Business Case was presented to the Assets Regeneration & Growth Committee in September 2018 noting that the preferred development option would be presented to Committee within the Full Business Case.
- 1.6 This report notes that many assets owned by the Council do not currently maximise the potential of the land upon which they are built. Such assets generally offer the potential for redevelopment of the land to provide a mix of uses on site.
- 1.7 The Council is committed to deliver its housing targets set out in the Adopted Local Plan 2012.

2. REASONS FOR RECOMMENDATIONS

- 2.1 Barnet has the largest population of any London Borough with 394,400 residents. The figure is expected to grow to 452,000 by 2036. With a third of the borough designated green belt, Barnet Council has to be innovative in how new homes can be built in the borough.
- 2.2 The Council's Housing Strategy 2019-2024 identifies that delivering more homes that people can afford is a key priority. The recent Strategic Housing Market Assessment showed a need to provide at least 3,060 new homes a year, to accommodate an expected 16% population growth by 2041.
- 2.3 MHCLG published figures show Barnet delivered just under 2,000 homes per annum over the past three years; 82% of its current target. To deliver an increase in housing completions requires the Council and wider public sector to increase its own pipeline of housing delivery. To that end the Council is reviewing its assets to consider all suitable sites for redevelopment potential.
- 2.4 In terms of affordability, prior to the Covid-19 pandemic strong demand has resulted in average house prices increasing to 15 times the median household income for Barnet. The delivery of new affordable rented homes, funded in a variety of ways, including mixed tenure development, will ensure the Council's estate is used to help meet the Housing Strategy objective - this is to prevent and tackle homelessness by reducing the use of temporary accommodation, to help meet Housing Committee savings targets.
- 2.5 The draft Local Plan (2021-2036) sets out the vision for growth and development in the borough and the delivery of 32,200 new homes and 20,000 new jobs by 2030. The Regeneration Strategy builds on this, articulating the Council's approach to delivering growth and focusing on the places that need intervention. The strategy creates a framework to inform future decision-making, and is accompanied by a Delivery Plan. This will set out how the council will direct future investment, the approach to securing funding and how we will form strategic partnerships.
- 2.6 The key project aims are to:

- Maximise the development potential of the site.
- Increase the supply of new housing.
- Delivering a low risk, mixed tenure scheme that retains the freehold asset within the wider LBB 'family'.
- Provide a range of housing options to Barnet residents including Market Sale, Barnet Affordable Rent and Shared Ownership.
- Provide a capital receipt to the Council.
- Deliver an annual homelessness dividend to the Council from affordable rented units.
- Achieve a high quality development in compliance with local planning policies including the provision of 40% affordable housing.
- Optimise the use of scarce land resources and improve the physical environment.
- Attain greater control of outcomes.
- Manage and maintain the whole scheme on completion.
- Optimise the use of and deploy the resources and capacity of organisations within the Barnet Group.

2.7 A resolution to grant planning permission was achieved in October 2019 and the accompanying section 106 agreement was completed in August 2020. The consented scheme consists of 31 x Market Sale units, 15 x Affordable Rent units and 6 x Shared Ownership units.

2.8 Four of the affordable rented units will be wheelchair standard compliant, meeting the objective in the Council's Housing Strategy of providing housing to support vulnerable people.

2.9 Agreement has been reached with the Council's valuation team on the consideration for the transfer of the site to ODH subject to an independent external validating valuation. At the same time, terms have been agreed between ODH and the Developer on the development lease agreement to fund the delivery of the scheme.

2.10 See Exempt report.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 Do nothing

An alternative option is to **do nothing**, but it would limit the Council's ability to deliver much needed affordable housing. The site is currently vacant and the buildings are in a poor state of repair. The Council receives no revenue from the site and if left, it will attract squatters and anti-social behaviour thereby incurring ongoing security costs and negative publicity for the Council.

3.2 Do minimum

The **minimum** option would be to sell the site on the open market. This may achieve a slightly higher capital receipt, depending on market conditions, and would carry no

development risk. However, there is no guarantee that the site would be developed for housing and thus the Council may fail to contribute to the strategic objective of securing new housing supply. Moreover, even if the site were developed for housing, a private developer may seek to reduce the affordable housing offer.

4. POST DECISION IMPLEMENTATION

- 4.1 An independent valuation will be instructed, to confirm that the agreement between the Council and ODH is a market value transaction in accordance with section 32 of the Housing Act 1985 and the General Disposal Consents 2013.
- 4.2 Exchange contracts with ODH and complete the transfer of the site from the Council to ODH.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2019-2024 sets out the aim to ensure Barnet is a pleasant, well maintained borough that is protected and invested in by:
 - a) Ensuring decent quality housing that buyers and renters can afford, prioritising Barnet residents, that will be delivered by increasing supply to ensure greater housing choice for residents and delivering new affordable housing, including new homes, on Council owned land
 - b) Responsible delivery of our major regeneration schemes to create better places to live and work, whilst protecting and enhancing the borough - delivered by working with The Barnet Group to deliver housing on smaller sites across the borough.
- 5.1.2 The Corporate Plan further sets out how the council will deliver these ambitions within financial constraints by ensuring that taxpayers' money goes as far as it can through adhering to the following key principles:
 - a) A fair deal - by delivering the services that matter most and making decisions to prioritise our limited resources alongside providing value for money for the taxpayer by ensuring we are transparent in how we operate.
 - b) Maximising opportunity - by taking a commercial approach to generating income, and looking for new opportunities to generate revenue from our estate, alongside capitalising on opportunities from responsible growth and development to boost the local economy.
- 5.1.3 The draft London Plan and draft Local Plan recognise the need to deliver more housing

in the Borough. The council's Housing Strategy 2019-2024 continues to emphasise that delivering more homes that people can afford is a key priority and sets out how the council will deal with a number of challenges including high prices, a shortage of affordable housing and the potential threats to the qualities that make the Borough attractive.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

Finance

5.2.1 See Exempt report

5.2.2 See Exempt report

5.2.3 See Exempt report

5.2.4 The Developer will fund the construction of the development and take responsibility for marketing the flats for sale along with associated financial risk.

5.2.5 The construction costs proposed by the Developer have been checked by a Chartered surveyor from a Royal Institution of Chartered Surveyors registered construction consultancy who will remain ODH's cost consultants throughout the project. The cost consultant has verified the construction costs represent value for money in the current market.

5.2.6 See Exempt report

5.3 Social Value

5.3.1 The development will provide a range of new housing opportunities, with 21 new homes for Affordable Rent and Shared Ownership.

5.3.2 The main contractor will be required to provide opportunities for employment, training and apprenticeships for local people and use local suppliers where appropriate.

5.3.3 A high quality new residential building will improve the street scene and local environments for residents.

5.4 Staffing

5.4.1 Hermitage Lane is located next to Hermitage Court which is an estate managed by Barnet Homes so there will be efficiencies in the delivery of housing management and maintenance services with two schemes in close proximity.

5.5 Legal and Constitutional References

- 5.5.1 Council Constitution Article 7.5 states that the remit of the Housing and Growth Committee includes responsibility for regeneration strategy and oversight of major regeneration schemes, asset management, employment strategy, business support and engagement.
- 5.5.2 The Council Constitution, Article 10 Table A states that Housing and Growth Committee is responsible for authorising all acquisitions and disposals over £500,000.
- 5.5.3 The Council has a range of powers including the general power of competence under Section 1 of Chapter 1 of the Localism Act 2011 to do anything that individuals can do subject to any specific restrictions contained in legislation and Section 111 of the Local Government Act 1972 which provides that a local authority has power to do anything which is calculated to facilitate, or is conducive or is incidental to, the discharge of its functions.
- 5.5.4 The Council has power under section 32 of the Housing Act 1985 (as amended) to dispose of HRA land with prior consent from the Secretary of State. Where the disposal is at market value, consent is given under Consent A3.1.1 of the General Disposal Consents (2013) (as amended) and no express application to the Secretary of State is required. However, in this particular instance Consent A3.1.1 does not apply as the local authority owns an interest in ODH.
- 5.5.5 Under the General Disposal Consents 2013, Consent A3.2 the council may dispose of vacant land upon any terms. 'Vacant' for this purpose means that (i) any former dwellings on the land have been demolished when the transfer takes place or (ii) any such dwellings are no longer fit for human habitation and are due to be demolished. Before contracting to sell the Property to ODH, the council must satisfy itself that this general consent applies, or else an application for express ministerial consent will be required.
- 5.5.6 If the delivery option for the proposed development includes a loan/grant from the council then under State Aid rules, in order to avoid the distortion of competition and trade within the European Union, the council should ensure that no advantage results from funding that is granted on a selective basis to any organisations. It is essential that all legislation concerning State Aid is observed, and in particular such loans should be at normal commercial rates. Moreover, if there is any element of loan/grant from the council then Sections 24 and 25 of Local Government Act 1988 Act (if privately let accommodation is to be provided) apply. These provisions may require an express ministerial consent, unless it can be shown that one of the General Consents applies.
- 5.5.7 Procurement of public works and services contracts over the relevant value thresholds must observe the requirements of the Public Contracts Regulations 2015, to include the placing of OJEU notices where such contracts are not drawn down from a compliant framework. The Public Services (Social Value) Act 2012 requires the Council to consider whether it can achieve an improvement to the economic, social and environmental well-being of an area as part of the procurement of these services. If so, the social value objectives identified must be written into the procurement process. All of this must be achieved with regard to value for money and in a way that is compliant with existing public procurement law. "Social value" objectives can include: the creation of employment, apprenticeship and training opportunities for local people; and trading opportunities for local businesses and the third sector through contract delivery.

5.6 Risk Management

- 5.6.1 The main business and service risks associated with the potential scope for this project are noted below.

Design

- 5.6.2 There is a risk that the design is not fit for purpose. To mitigate this risk, the project team have undertaken an extensive design process that maximises the development potential of the site and delivers a policy-compliant scheme. Client departments, including Housing Management and Property Services, have been consulted to ensure the completed scheme will meet the needs of residents. The project team have drawn on the design and construction experience of the Developer in delivering this type of mixed tenure scheme. The scheme design standards meet all the Council's policy requirements as well as the Mayor's London Design Guide and Secure by Design.

Planning consent

We have ensured that the scheme is policy compliant on the tenure mix and for space standards, parking requirements and design. We have ensured this by paying for pre-planning meetings with the planning department so that their advice and comments can be followed; and through the use of planning consultants to ensure all standards are being met.

Title matters and third-party rights

- 5.6.3 There is a risk that title matters or third-party rights may prevent or delay development. To mitigate this, legal teams representing ODH, the Developer and the Council are working to review all title matters and rights.

Site assembly

- 5.6.4 There is a risk that the financial offer from ODH does not represent a best value transaction in accordance with section 32 of the Housing Act 1985 and the General Disposal Consents 2013. The offer has been thoroughly assessed by CSG Estates, who confirm that it does, but an independent valuation will be commissioned for verification.

Programme and cost

- 5.6.5 There is a risk of prolongation costs if start on site is delayed. To mitigate against this, a pre-contract services agreement (PCSA) has been entered into, allowing the Developer to undertake detailed survey and site investigation work which will allow an immediate start on site.
- 5.6.6 There is a risk that construction costs increase post-contract. The development agreement places this risk with the Developer.

- 5.6.7 Contingency figures have been allowed in the budget to cover potential additional costs which may be apparent following demolition of the existing building. For example, asbestos in the ground.
- 5.6.8 In addition, we have ensured that the programme takes into account any further issues regarding Covid 19 and these will be included in the Development Agreement between ODH and the Developer.

Sales

- 5.6.9 The Developer will take the sales and marketing risk on all the Market Sale units.
- 5.6.10 ODH has some sales risk associated with the 6 x Shared Ownership units. Independent advice has been obtained on sales values and sensitivity analysis exercises undertaken. In addition, a review of Shared Ownership opportunities in a 2-mile radius of the site indicates there is a limited supply which will strengthen demand and support values.

5.7 Equalities and Diversity

- 5.7.1 Under the Equality Act 2010, the Council must have due regard to the need to:
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - b) advance equality of opportunity between those with a protected characteristic and those without;
 - c) promote good relations between those with a protected characteristic and those without.

The 'protected characteristics' referred to are; age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination.

- 5.7.2 The Council is committed to improving the quality of life for all, and wider participation in the economic, educational, cultural, social, and community life in the Borough.
- 5.7.3 The development of Hermitage Lane will make a significant contribution to the provision of additional high-quality housing in the Borough including needed affordable rented housing and opportunities for first time buyers through the offer of shared-ownership flats. The development will generate training and employment opportunities for Barnet residents.

5.8 See Exempt report

- 5.8.1 At this stage, the proposal does not raise any issues under the Council's Equalities Policy and does not have a bearing on the Council's ability to demonstrate that it has paid due regard to equalities as required by the legislation. No immediate equality impacts are anticipated because of this proposal.

5.9 Corporate Parenting

5.9.1 Barnet Council have a small number of care leavers in temporary accommodation. Increasing the supply of affordable housing is therefore a corporate parenting issue.

5.10 Consultation and Engagement

5.10.1 Consultation took place during the early design stages and the statutory consultation during the planning application. The Developer will provide a Residents Liaison Officer to lead on consultation and engagement during the construction process and will be supported by the Community Engagement team at Opendoor Homes.

5.11 Insight

5.11.1 The Council's Housing Strategy and emerging Local Plan respond to evidence such as the Strategic Housing Market Assessment and other needs assessments that have identified a need for increased housing delivery. Barnet has 393,000 residents and this figure is expected to grow by 76,000 over the next 25 years, an increase of 19%.

5.11.2 The delivery of new affordable rented homes will help to meet the objective in the Council's Housing Strategy to prevent and tackle homelessness, by reducing the use of temporary accommodation. There are currently more than 2,700 households living in temporary accommodation which presents significant budgetary pressures for the Council.

5.11.3 Barnet's Health and Wellbeing Strategy recognises the importance of access to good quality housing in maintaining well-being in the Community.

5.11.4 Lack of affordable housing is highlighted in Barnet's Joint Strategic Needs Assessment (JSNA) as one of the top three concerns identified by local residents in the Residents' Perception Survey.

6 BACKGROUND PAPERS

ASSETS REGENERATION AND GROWTH COMMITTEE , 24 JULY 2017

<https://barnet.moderngov.co.uk/documents/g9337/Public%20reports%20pack%2024th-Jul-2017%2019.00%20Housing%20and%20Growth%20Committee.pdf?T=10>

ASSETS REGENERATION AND GROWTH COMMITTEE, 17 SEPTEMBER 2018

<https://barnet.moderngov.co.uk/documents/g9764/Public%20reports%20pack%2017th-Sep-2018%2019.00%20Housing%20and%20Growth%20Committee.pdf?T=10>

PLANNING COMMITTEE, 10 OCTOBER 2019:

<https://barnet.moderngov.co.uk/documents/s55571/18-4674-FUL%20-10%20Hermitage%20Lane.pdf>