

	<h2>Housing & Growth Committee</h2> <p>14 June 2021</p>
<p style="text-align: center;">Title</p>	<p>Fosters Estate Development Project Update</p>
<p style="text-align: center;">Report of</p>	<p>Chairman of the Housing & Growth Committee</p>
<p style="text-align: center;">Wards</p>	<p>Hendon</p>
<p style="text-align: center;">Status</p>	<p>Public with accompanying exempt report -Exempt from publication in accordance with paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 on account that it contains information relating to the financial or business affairs of any particular person including the authority holding the information and information in respect of which professional legal privilege could be maintained in legal proceedings.</p>
<p style="text-align: center;">Urgent</p>	<p>No</p>
<p style="text-align: center;">Key</p>	<p>Yes</p>
<p style="text-align: center;">Enclosures</p>	<p>Appendix 1: Estate plan</p>
<p style="text-align: center;">Officer Contact Details</p>	<p>Luke Ward – Assistant Director Development & Economy, Barnet Council</p> <p>Derek Rust – Director of Growth & Development, The Barnet Group</p>

<h2>Summary</h2>
<p>The Upper and Lower Fosters (ULF) estate (“the Estate”) in Hendon Ward occupies 3.19 hectares and comprises a 1960s housing estate formed of 168 existing residential properties across 11 residential blocks which range between 2 and 11 storeys.</p> <p>There was an existing sheltered housing scheme on part of the Estate providing 28 homes known as Cheshir House. In 2019, under delegated powers to the Deputy Chief Executive in</p>

consultation with the former Chairman of the Housing Committee, approval was given to commence the re-homing of the residents to enable the demolition of the existing buildings and the construction of a new extra care scheme. Currently 3 residents remain.

Barnet Council assembled an experienced design team and led the scheme through a two-year co-design process with the local community, leading to a planning submission and subsequent consent. The designed scheme includes the construction of a 75-bed extra care scheme as well as 142 general needs homes on infill plots within the estate. The scheme will introduce a new orbital road so that the centre of the estate can be improved for amenity use with high quality landscaping and public realm.

The Full Business Case was approved by the Housing & Growth Committee in November 2020. This approved Heads of Terms with Sage Housing Ltd for a funding and disposal arrangement to provide capital funding for the general needs element of the scheme. The Council will ultimately dispose of 142 completed units to Sage under long leases, made up of 82 London shared ownership homes and 60 to be let at London affordable rent.

A separate budget has been allocated in the Housing Revenue Account (HRA) to redevelop Cheshir House to provide the 75 new extra care homes. These will be retained in the Council's ownership.

Barnet Homes, acting as development agent on behalf of Barnet Council, have appointed a main contractor to deliver the construction works on both elements of the scheme through to completion. This also includes delivering improvements for existing residents such as new entrance canopies to existing blocks, enhancements to existing balconies to improve appearance and the re-decoration to banding strips on the elevations of the existing blocks.

Recent Central Government announcements indicate that in the future the Government may seek to ban the disposal of houses (as opposed to flats) on a leasehold basis. This was referenced in the Queen's Speech 2021 in respect of a Leasehold Reform Bill. Sage is concerned that in future years, the buyers of the seventeen London shared ownership houses within the scheme may find that their houses are unmarketable or unmortgageable, should they staircase to 100% ownership. The sale agreement to Sage Housing Ltd requires officers to seek the approval of this Committee to the disposal of the seventeen London shared ownership houses (as opposed to flats) to Sage Housing Ltd on a freehold basis, and if such approval is obtained, to vary the sale agreement accordingly in order to give effect to this.

This report seeks to update the Housing & Growth Committee on project progress as well as the matter pertaining to the disposal of houses on a leasehold basis, therefore seeking approval to vary the sale agreement with Sage Housing Ltd under delegated authority to the Deputy Chief Executive.

Recommendations

That the Committee:

1. notes the progress made on delivering the project to date.
2. agrees to the transfer of the freehold interest in the 17 shared ownership houses to Sage Housing Limited and delegates authority to the Director of Growth to agree finalise and enter into (1) a deed of variation to the existing Development Agreement with Sage Housing Limited dated 12 March 2021 and (2) any ancillary documents that may be required, in order to give effect to this.

1. WHY THIS REPORT IS NEEDED

- 1.1 This report provides a project progress update for the development of the Upper and Lower Fosters Estate ("ULF").
- 1.2 The Assets, Regeneration and Growth Committee (ARG) in November 2020 previously agreed the Full Business Case for the project, supporting the development of 217 new homes within the existing Fosters Estate with a fully affordable housing mix.
- 1.3 This included approving Heads of Terms with Sage Housing Limited to forward-fund the construction and purchase of 142 of the new homes, namely the general needs housing. These homes are edged in blue on the appended site plan.
- 1.4 The remaining 75 homes are included within the extra care scheme that replaces Cheshir House, and have an allocated budget in the Housing Revenue Account. These homes will be retained in the Council's ownership.
- 1.5 Under delegated authority to the Deputy Chief Executive, a sale agreement with Sage Housing Ltd was exchanged on 12 March 2021.
- 1.6 The sale agreement to Sage Housing Ltd requires officers to seek the approval of this Committee to the disposal of the seventeen London shared ownership houses (as opposed to flats) to Sage Housing Ltd on a freehold basis, and if such approval is obtained, to vary the sale agreement accordingly in order to give effect to this.
- 1.7 There have been a number of recent Central Government announcements indicating that in the future the Government may seek to ban the disposal of houses (as opposed to flats) on a leasehold basis. This was referenced in the Queen's Speech 2021 in respect of a Leasehold Reform Bill. Sage is concerned that in future years, the buyers of the seventeen London shared ownership houses within the scheme may find that their houses are unmarketable or unmortgageable, should they staircase to 100% ownership.
- 1.8 Both the general needs and extra care housing elements of the project are to be delivered as one scheme. Barnet Homes, acting as the Council's development agent, have appointed a main contractor and work officially started on site in February 2021.
- 1.9 The main contractor has been instructed under a Letter of Intent ahead of the main build contract being finalised. The contractor has commenced their technical design and several

ground investigation and site surveys. They have also started establishing a site presence and engaging with the community.

- 1.10 Subject to resolution of vacant possession issues and land assembly matters the project is due to complete in March 2024.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The objectives for the project were set out in the Full Business Case in November 2020.
- 2.2 This project is of strategic importance to the Council. It will deliver 142 homes for London shared ownership (82no.) and London affordable rent (60no.). Barnet Council will have nominations rights to the affordable rent homes.
- 2.3 The project also includes delivering improvements for existing residents such as new entrance canopies to existing blocks, enhancements to existing balconies to improve appearance and the re-decoration to banding strips on the elevations of the existing blocks.
- 2.4 An independent valuation was obtained by the Council in February 2021. It confirmed that the agreement with Sage Housing Ltd constitutes a disposal at best consideration in accordance with S123 of the Local Government Act 1972 or S233 of the Town and Country Planning Act 1990.
- 2.5 The sale agreement between Barnet Council and Sage Housing Ltd has been exchanged, under delegated authority to the Deputy Chief Executive in discussion with the Chair of the Housing and Growth Committee.
- 2.6 Contracting arrangements have been progressed by Barnet Homes with the appointed contractor. Services and works have commenced under a Letter of Intent whilst contract discussions are underway, ahead of signing the main contract.
- 2.7 The required consents so far as not already in place including stopping-up, appropriation to planning and a compulsory purchase order and any required open space disposal consultation/decisions well as other ancillary matters are under way and will need to be obtained. The Urgency Committee called in April 2020 delegated authority to the Deputy Chief Executive in consultation with the Chairman of the Housing and Growth Committee to include the use of CPO powers in relation to the Fosters Estate, to take any other actions necessary to complete the scheme and approved the recommended routes for land transfer and appropriation as mentioned in that report.
- 2.8 The intention is that the completed homes will be managed by Barnet Homes, ensuring a one landlord approach across the Estate. Barnet Homes and Sage will seek to agree a management agreement for the internal management of the Blocks, before Partial Possession of the first Block. If the parties succeed, then that management agreement will be put in place and will apply across the Development. If they do not succeed then the obligation falls away. It was agreed that Barnet Homes would be responsible for estate management in any case.

- 2.9 The Council have been awarded by way of a grant allocation £7.5m from the Greater London Authority (GLA) to support the provision of the new extra care scheme; the grant agreement for this was signed in December 2019. The grant conditions for start on site were satisfied in February 2021.
- 2.10 Sage have also been awarded a grant allocation for the affordable rent and shared ownership homes they are forward-funding. The grant conditions for start on site were also satisfied in February 2021.
- 2.11 The total project budget, including both general needs and the extra care homes, is £67.9m. The budget costs will be met through funding from Sage for the general needs homes and the Housing Revenue Account for the extra care homes in conjunction with the GLA grant funding.
- 2.12 The Council are keen to maintain policy compliance. Sage's offer enables the project aims to be delivered at minimal, or no, cost to the Council with a fully policy compliant scheme. Furthermore, estate transformation will be delivered in one go by the delivery of new housing, improvements to the existing blocks and the extensive public realm improvements made at the same time.
- 2.13 The sale agreement to Sage Housing Ltd contemplated that the Council would dispose of the 142 general needs homes under a long lease of each block. However, there have been a number of recent Central Government announcements indicating that in the future the Government may seek to ban the disposal of houses (as opposed to flats) on a long leasehold (as opposed to freehold) basis. Sage is therefore concerned that in future years, the buyers of the seventeen London shared ownership houses within the scheme may find that their houses are unmarketable or unmortgageable, should they staircase to 100% ownership.
- 2.14 In order to accommodate this concern, the Council agreed a provision in the sale agreement to Sage Housing Ltd, whereby officers are required to seek internal approval to the transfer of the freehold interest in those seventeen units.
- 2.15 The terms of the sale agreement require that:-
- 2.15.1 the Council will use its reasonable endeavours to obtain the necessary internal approvals to disposing of the 17 houses to Sage on a freehold basis, and if it receives the approvals the parties will enter into a variation to the sale agreement to cater for this;
- 2.15.2 alternatively, the Council will seek approval to allow shared ownership leaseholders to staircase up to its freehold for each of the houses, and if received, again the documents will be varied to cater for this;
- 2.15.3 if approval is not received to either of the above, the parties will act in good faith to try to reach a solution that works for both;
- 2.15.4 if they can't agree by the main Conditions Long Stop Date (30 November 2021), then the houses will be "dropped" from the sale agreement. The Council will repay Sage any funds paid towards the delivery of the houses but will get to keep and market them as it sees fit.
- 2.16 The purpose of this report is to seek the approval of the Housing and Growth Committee as contemplated by the sale agreement. If obtained, those seventeen units will be disposed of on a freehold basis to Sage Housing Ltd. Given that the terms of the sale agreement required the grant of 250 year leases (which are "virtual freehold" in the market)

it is not considered that there is any material commercial difference if this approach is approved.

- 2.17 The variation of the sale agreement will need to ensure that the terms of the freehold disposal of these seventeen units is on comparable terms to the 250 year leases. Lawyers will be instructed to ensure that insofar as legally possible this is achieved.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

As set out in the Full Business Case approved by Housing & Growth Committee in November 2020.

4. POST DECISION IMPLEMENTATION

- 4.1 Contracting arrangements will continue with the appointed contractor.
- 4.2 Any required outstanding consents so far as not already in place to include stopping-up, appropriation to planning and a compulsory purchase order and any required open space disposal consultation/decisions well as other ancillary matters will be obtained.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Barnet Plan 2021-2025 sets out the council's vision to make Barnet a great place to live work and visit. It focusses on four priorities over the next 4 years to realise this vision:

- Clean, safe and well run: A place where our streets are clean and anti-social behaviour is deal with so residents feel safe. Providing good quality, customer friendly services in all that we do
- Family friendly: Creating a Family Friendly Barnet, enabling opportunities for our children and young people to achieve their best
- Healthy: A place with fantastic facilities for all ages, enabling people to live happy and healthy lives
- Thriving: A place fit for the future, where all residents, businesses and visitors benefit from improved sustainable infrastructure & opportunity

- 5.1.2 This project supports delivery of the Thriving priority, by delivering affordable housing and improved infrastructure.

Barnet Growth Strategy 2019-30

- 5.1.3 The Growth Strategy sets out the council we will offer greater local opportunities, create better places, encourage more active lifestyles and over time increase the health and well-being of Barnet's residents. The Strategy sets out five goals:

- A growing borough – Delivering more homes that people can afford, ensuring that communities across the borough get a 'growth benefit' from investment. This theme also prioritises creating new jobs for people of all ages, backgrounds and skills levels.

- A connected borough - working with private providers to tackle digitally excluded areas, and with every council home in the borough having access to fast, affordable broadband by 2023. Delivering new and enhanced public transport connections and healthier street design.
- An entrepreneurial borough - supporting businesses, including microbusinesses, to thrive and to adapt to the opportunities of the economy after the pandemic – making Barnet the best place to be a small business in London.
- A borough of thriving town centres - diversifying the role of town centres, encouraging a broad mix of uses, delivering new housing and creating an environment in which businesses can succeed.
- A great borough to live in and visit - delivering social infrastructure to support growth, getting the best out of the borough's green assets, growing the visitor economy and creating a broader canvas for creative industries

This project delivers affordable housing in town centre environment and so supports both the growing borough and borough of thriving town centres themes.

5.1.4 The 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 Under the terms of the development agreement, Sage Housing Ltd, a for-profit registered provider, will forward fund the purchase of the 142 general needs homes. 82 of these will be London shared ownership and 60 will be let at London affordable rent. The funding from Sage will incorporate GLA grant obtained by Sage.

5.2.2 There is a £46.6m allocated budget in the general fund for the delivery of this scheme.

5.2.3 In respect of the disposal of the 142 general needs homes to Sage, the council had a statutory obligation to obtain the best price reasonably obtainable as evidenced by an independent valuation. This was obtained and completed in February 2021. There is no difference to this valuation in view of the disposal of the seventeen share ownership houses being on a freehold basis, as they were disposed as a virtual freehold in the development agreement.

5.2.4 There is an allocated budget within the Housing Revenue Account for £35.5m for the delivery of two extra care schemes, including Cheshir House. The total scheme cost for Cheshir House is £21.53m.

Value for Money and Procurement

5.2.5 As set out in the Full Business Case in November 2020:

<https://barnet.moderngov.co.uk/documents/s61230/Fosters%20Estate%20Development%20Project%20Full%20Business%20Case.pdf>

5.2.6 An independent valuation has confirmed that the agreement with Sage Housing Ltd constitutes a disposal at best consideration in accordance with S123 of the Local Government Act 1972 or S233 of the Town and Country Planning Act 1990.

5.3 Social Value

5.3.1 Increasing the utility of existing assets through mixed use redevelopment will enable the Council's portfolio of assets to go further towards supporting local needs by helping to provide new opportunities for housing, (in particular, affordable housing) and new, improved community facilities.

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. This includes:

- Jobs and careers workshops in local colleges
- Work experience for 16 students
- Places for progression into employment
- 13 apprenticeships aligned with Living Wage
- Commitment to 30% local labour
- Commitment for two locally procured goods and services

This will be monitored by the council's Economic Development Team.

5.4 Legal and Constitutional References

5.4.1 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.

5.4.2 The Council Constitution, Article 10 Table A states that the Housing and Growth Committee is responsible for authorising all acquisitions and disposals over £500K.

5.4.3 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.

5.4.4 Additionally, the council has the power to acquire and dispose of land in accordance with Sections 120 to 123(2A) of the Local Government Act 1972, and subject to obtaining all appropriate consents and approvals.

- 5.4.5 Where land is being and has been appropriated under section 122 of the LGA 1972 for planning purposes, any disposal of land appropriated for such purposes is effected in reliance on Section 233 Town and Country Planning Act 1990. On any disposal of property, the council is required to observe the requirements of s123(2) of the LGA 1972 or Section 233 Town and Country Planning Act 1990 to ensure that any disposal is not for a consideration less than the best that can reasonably be obtained. Any land held for the purposes of part 2 of the Housing Act 1985 can be disposed of under section 32 of that Act either in reliance on a general or express consent of the consent of the Secretary of State.
- 5.4.6 The Council will need to make the required adjustments as between the Housing Revenue Account and the General Fund to account for the value of any housing land appropriated to planning.
- 5.4.7 The Council will need to consider, comply with and obtain any statutory and legal requirements /consents to give effect to the preferred option. These have been set out in full in previous report to this committee including the process required for disposal of open space land.
- 5.4.8 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. Barnet Homes on behalf of Barnet Council undertook a compliant tender process in line with the Public Contracts Regulations 2015 in appointing the building contractor.
- 5.4.9 In the event the delivery option for the proposed development is with the assistance of a loan/grant then the Council must note that under State Aid rules, in order to avoid the distortion of competition and trade within the European Union, no advantage should result from funding that is granted by public authorities on a selective basis to any organisations. It is essential that all legislation concerning State Aid is met, in particular such loans should be at normal commercial rates.

5.5 Risk Management

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

Design

- 5.5.2 There is a risk that the design is not fit for purpose. To mitigate this risk, Allies & Morrison Architects were successfully appointed following a competitive process to design the scheme to RIBA stage 3 and including a detailed planning application. They are being retained as 'design champion' which will help ensure the golden thread of design quality from start to completion.

Planning consent

- 5.5.3 This is in place alongside the S106 agreement and the judicial review period has expired.

Programme and cost

- 5.5.4 There is a risk of prolongation costs if the preferred contractor is prevented or delayed from starting or delivering works on site by the client. To mitigate this, early services and works are being instructed under a Letter of Intent.
- 5.5.5 This has enabled the start on site milestones for the GLA to be achieved, in relation to both Cheshir House and Sage's grant allocations.
- 5.5.6 There is a risk that construction costs increase post-contract and that the Sage offer would not cover this. A client contingency of 4-5% has been allowed within the construction budget. While low for a scheme of this size, this is deemed to be sufficient to help mitigate this risk.
- 5.5.7 There is a risk that the land assembly costs exceed the allocated budget. Expert advice has been taken on the likely costs arising from this issue and included as a dedicated budget item in the project budget. This is being continually de-risked as progress is made with each activity.

5.6 Equalities and Diversity

- 5.6.1 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.

- 5.6.2 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.
- 5.6.3 The development at Upper and Lower Fosters will make a significant contribution to the provision of additional high quality intermediate housing in the Borough to assist first time buyers, many of whom are currently priced out of the market. In addition, much needed affordable rented housing will also be provided, as well as promotion of further construction jobs in the borough.
- 5.6.4 Barnet Homes have completed an Equalities Impact Assessment, as summarised in the Full Business Case in November 2020:

<https://barnet.moderngov.co.uk/documents/s61230/Fosters%20Estate%20Development%20Project%20Full%20Business%20Case.pdf>

- 5.6.5 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.

5.7 Corporate Parenting

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

5.8 Consultation and Engagement

5.8.1 Barnet Council adopted a community engagement and co-design strategy for this project, which encouraged residents to play a full role in developing the improvement proposals from design through to post-delivery.

5.8.2 During the planning-stage design period the scheme followed a co-design process that enabled residents to engage and contribute to the design process.

5.8.3 Following submission of the planning application, it was agreed with the Resident Steering Group that regular workshops were no longer required as the scope for input to the design had largely been concluded. It was agreed that regular newsletters would be sent out at key points and that there may be the opportunity to contribute to the landscaping design once the contractor had been appointed.

5.8.4 Barnet Homes invited a resident representative to join the interview panel for the main contractor and their scores contributed to the tender analysis.

5.8.5 Barnet Homes have designed a project website, which is used to update and record news shared with residents and the local community.

5.8.6 The appointed contractor held a virtual meet the contractor event in March 2021. They will also be arranging workshops and activities at key points throughout the scheme.

5.8.7 The appointed contractor has a dedicated point of contact for residents throughout the construction period. They are also developing a smart phone app which will provide continued updates to residents and act as a signposting tool.

5.9 Insight

5.9.1 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%.

5.9.2 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.

5.9.3 Barnet's Health and Wellbeing Strategy recognises the importance of access to good quality housing in maintaining Well-Being in the Community.

5.9.4 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, 12 December 2016, Upper and Lower Fosters:

<https://barnet.moderngov.co.uk/documents/s36542/Upper%20and%20Lower%20Fosters.pdf>

Assets, Regeneration and Growth Committee, 13 June 2019, Upper and Lower Fosters:

<https://barnet.moderngov.co.uk/documents/s52938/Upper%20and%20Lower%20Fosters%20report%20public.pdf>

Council, 30 July 2019, referral from ARG – Upper and Lower Fosters:

<https://barnet.moderngov.co.uk/documents/s54756/Referral%20from%20the%20Assets%20Regeneration%20and%20Growth%20Committee%20-%20Upper%20and%20Lower%20Fosters.pdf>

Planning Committee, 10 October 2019:

<https://barnet.moderngov.co.uk/documents/s55564/19.2517.FUL%20-%20Fosters%20Estate.pdf>

Urgency Committee, 27 April 2020:

<https://barnet.moderngov.co.uk/documents/s58641/Urgency%20Committee%20-%20Emergency%20Decisions%20Final.pdf>

Housing & Growth Committee, 24 November 2021, Full Business Case:

<https://barnet.moderngov.co.uk/documents/s61230/Fosters%20Estate%20Development%20Project%20Full%20Business%20Case.pdf>