

Cabinet

Title	Bunns Lane Car Park – Long Leasehold Disposal
Date of meeting	18 July 2023
Report of	Cabinet Member (Portfolio Holder) for Resources and Effective Council – Councillor Barry Rawlings Cabinet Member (Portfolio Holder) for Homes and Regeneration – Councillor Ross Houston
Wards	Edgware
Status	Public with accompanying Exempt Report (not for publication by virtue of paragraph 3 of Schedule 12a of the Local Government Act 1972 as amended as this relates to information of a financial or business nature)
Key	Yes
Urgent	No
Appendices	Appendix A – Transaction structure diagrams
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Summary

This report sets out an updated proposal for the sale and leaseback of Bunns Lane Car Park. The report seeks approval to appoint a new preferred developer for this opportunity on the terms described.

The proposed transaction is a sale and leaseback arrangement involving two parties: the developer (a joint venture between Stories (Bunns Lane) Ltd (“Stories”) and Aviva Capital Partners Ltd (“ACP”)) and the annuity funder (Aviva Investors). The principle of this transaction received approval from the Housing and Growth Committee on 13th September 2021. Stories was the underbidder to the previously recommended offer. The Council and the previously approved bidder were unable to finalise the terms of the transaction and negotiations were ended by mutual agreement in late 2022.

Cabinet approval is now sought to enter into a contract with Stories & ACP. Detailed Heads of Terms for the proposed transaction have been negotiated and are contained in the exempt report. The Council has received the report of an independent valuer who has assessed the Stories & ACP proposal and confirmed that it represents the best consideration reasonably obtainable for this disposal.

The current proposal is very similar in format to that previously approved at Bunns Lane but also at Fairway and Burnt Oak too; that the Council will enter into a transaction with a developer who will redevelop the site to deliver a mixture of new market and affordable housing for rent, a replacement public car park and ancillary commercial facilities to be leased back to the Council on completion - whilst also enhancing Mill Hill's social and environmental outcomes and supporting the economic prosperity of both Mill Hill and the broader borough. By creating a revenue-generating asset, the Council aims to reduce its budget gap and generate capital receipt and additional Council tax revenue. At Bunns Lane this asset will take the form of a Build to Rent ("BtR") development primarily targeting local residents, providing over 128 residential units, with 50% of them being affordable. The development will be coordinated with the implementation of step-free access to the Broadway station.

Recommendations

1. That Cabinet approves the Stories (Bunns Lane) Ltd & Aviva Capital Partners Ltd joint venture as the preferred developer for the delivery of the sale and leaseback arrangement on the Bunns Lane Car Park site.
2. That Cabinet delegates authority to the Deputy Chief Executive of the Council and in consultation with the Cabinet member for Homes and Regeneration to:
 - a. agree the final terms for the proposed transaction.
 - b. approve and conclude the exchange of an Agreement for Lease and Leaseback to be entered into with the Stories & ACP joint venture.
 - c. to negotiate, approve, finalise, and complete such other documents as may be required to effect implement fund deliver and/or manage the scheme.
3. That Cabinet agrees to the creation of a management company (ManCo) by the Council for the ongoing management of the completed units at the Site and to enter into the proposed sub-underlease with the Council as outlined at paragraph 1.30.
4. That Cabinet (i) approves the advertising as required to appropriate to the required use or to appropriate to planning purposes any part of the Site deemed or designated as Public Open Space in accordance with S122(2A) of the Local Government Act 1972 and (ii) delegates to the Deputy Chief Executive the consideration of any objections received following the conclusion of the above advertising process.
5. That Cabinet approves the advertising as required to dispose of any part of the Site deemed or designated as Public Open Space in accordance with Section 123 of the Local Government Act 1972 or section 233 of the Town & Country Planning Act 1990 as appropriate and delegates to the Deputy Chief Executive the consideration of any objections received following the conclusion of such advertising process.
6. That Cabinet delegates to the Deputy Chief Executive if appropriate following the conclusion of the consideration of any objections to the advertising required pursuant to S123(2A) of the LGA 1972, or S233 of the Town and Country Planning Act 1990 authority to dispose of any land referred to at (Recommendations) 4 and 5 above which is to be comprised as part of the Site.
7. That Cabinet delegates authority to the Deputy Chief Executive to authorise that the whole or any part of the Site as may be required be appropriated for planning purposes pursuant to S122 of the LGA 1972 and to commence negotiations and settle any lawful claims asserted by third parties pursuant to SS 203 and SS 204 of the Housing and Planning Act 2016.
8. That Cabinet delegates authority to the Deputy Chief Executive to make any applications to the Secretary of State for consent that may be required to enable the lawful disposal of the Site.

9. That Cabinet delegates authority to the Deputy Chief Executive in consultation with the Cabinet member for Regeneration and Growth to make minor alterations to the extent of the Site as appropriate provided with the above recommendations to apply to the Site as altered.
10. That Cabinet delegates authority to the Deputy Chief Executive to take all and any such actions as may be required to give effect to the recommendations to secure the sale of the Site including the termination of any extant parking arrangements.

1. Reasons for the Recommendations

Context

- 1.1 In September 2021, following an open and competitive marketing process, the then Housing and Growth Committee gave delegated authority to the Deputy Chief Executive to pursue the sale and leaseback of Bunns Lane Park with Muse Developments Limited. A link to the September 2021 Committee report is contained in the list of Background Papers in section 9.
- 1.2 Following the decision to treat with Muse as the preferred bidder the parties were unable to finalise terms and negotiations were ended by mutual agreement in late 2022.
- 1.3 At the time of initial decision to appoint Muse, Stories was identified as the underbidder. The Council has, since January 2023, been in discussions with Stories to confirm the terms of their proposal and negotiate detailed Heads of Terms.
- 1.4 Stories has committed to maintain the commercial fixtures of its original tender with some improvements to the structure of the transaction, in the Council's interest. The terms provided by Stories & Aviva Capital Partners have been subject to review by an independent valuer who has confirmed that the offer represents best consideration for the council.
- 1.5 This report seeks approval to appoint the Stories & ACP joint venture as the Council's new preferred development partner and seeks delegated authority to enter into the arrangements as described in this report.

The Site

- 1.6 The Site is known as the Bunns Lane Car Park, Bunns Lane, NW7 2GD. Key components of the Site are:
 - Size of Site is 0.5ha (1.24 acres)
 - Currently a 184-space pay and display car park
 - Located next to a railway line and the M1
 - Access to the Mill Hill Broadway Railway Station.

Figure 1: The Bunns Lane Car Park Development Site



Reasons for the Recommendations

- 1.7 The disposal and future development of the Bunns Lane Car Park Site provides an opportunity for both the economic prosperity of the Town Centre and contributes to private sector and affordable housing supply targets in several ways, as well as raising income from rents.
- 1.8 The Barnet Corporate Plan 2023-2026 describes the council's commitment to caring for people, places and the planet. The plan describes how 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. One of the key goals of the plan is to deliver more homes that people can afford. This proposal directly contributes to that aim and, in Stories, will be delivered by a 'B-Corp' developer that shares the council's commitment to delivering positive outcomes for the community (see 1.38 below for more information on the nature of the developer and on the B-Corp movement).
- 1.9 The Bunns Lane Car Park Site is part of a rolling programme of site disposals and developments that generate capital receipts and / or revenue, all of which are designed to help close the Council's forecasted budget gap.
- 1.10 The population in Barnet is expected to increase to 466,500 by 2041. The most recent Strategic Housing Market Assessment shows that there is a need to provide up to 3,060 new homes a year to accommodate this growth.
- 1.11 Barnet faces significant challenges when providing a suitable mix of good quality housing in meeting the changing demographic and economic make-up of the Borough. Whilst the need to tackle these challenges is not new, it will become more apparent in the future as the population continues to rise. The development of this Site contributes to meeting this challenge.
- 1.12 The decline in the affordability of home ownership together with pressure on the social rented sector has prompted growth in the rented sector. Growth in the Build to Rent (BtR) sector is supported by a record level of investment of £4.3bn of investment in 2022, a fourth consecutive record-breaking year (source: Savills BtR market updates Q4 2022 and Q1 2023).
- 1.13 Although Q1 2023 data shows that starts and completions in the BtR sector have dropped relative to the previous year, residential build-to-rent remains attractive to investors given its inflation-matching characteristics and structural tailwinds that include increased demand, a continuing supply shortfall and challenges to home ownership. In 2022, 30% of investors were new entrants, showing faith in UK market fundamentals. (source: Savills BtR market update Q4 2022 and Q1 2023).
- 1.14 The Council has an important role to play in delivering housing over the coming years. As detailed in the Council's Housing Delivery Action Plan, Barnet has consistently approved significantly more new homes than the annual London Plan requirement figure and has improved upon the number of homes delivered year on year when measured against the annual requirement figure. However, despite an extensive pipeline, delivery can be slow. Typically, schemes take 21-35 months to start on site after planning consent. Barnet is also reliant on larger (and often more complex) schemes of more than 150 units. In 2019/20 over 65% of new homes approved were in large schemes. By contrast small sites (under 0.25 ha) are delivering just a third of new homes in Barnet.
- 1.15 The proposed scheme for the Bunns Lane Car Park will be an important contribution towards the delivery of new housing in the borough. The development will be designed to the highest quality contributing to these targets and requirements. The redevelopment of this brownfield Site for mixed use housing provides a long-term asset that will support future housing delivery

objectives of the Council and create employment opportunities both during and after construction.

1.16 A key investment objective is to create stable and low risk long term returns to generate sustainable long-term returns to support the financial stability of the Council in line with its Capital Strategy.

1.17 One of the Council's priorities is a thriving borough for local residents, businesses and visitors who will all benefit from improved sustainable infrastructure, high quality public realm with fantastic facilities for all ages, enabling people to live happy and healthy lives.

1.18 The scheme will also contribute to growth in the Town Centre by being a catalyst for inward investment and future regeneration.

Background

1.19 The proposal is to develop a BtR product which consists of upwards of 128 residential units on the Bunns Lane Car Park Site. 50% of the homes will be affordable.

1.20 BtR is a specific asset class designed, built & managed for the rental customer in mind. This is different from the existing Private Rented Sector (PRS) offer because it provides high-quality, purpose-built homes with professional management and longer tenancies for those who want them.

1.21 BtR can also increase the overall supply and accelerate the construction of new homes, as its model is to build and rent the homes straight away so that income can be generated. BtR delivers the following:

- Increases to the overall supply and acceleration of the construction of new homes.
- Greater choice for tenants in the local rental market.
- A better quality of rental product that is professionally managed for Mill Hill residents
- An opportunity for the Council to generate a long-term income stream to invest in local priorities

1.22 For the tenants, BtR provides an enhanced experience when compared to a normal PRS product, this may include the following:

- No deposits
- Longer term, family friendly tenancies
- High quality, professional leasing and management by a single operator
- Predictable rents
- Concierge
- Resident Lounges
- Roof gardens
- Open space
- Tech-enabled management solution
- On-site staff and 24/7 security
- Superfast broadband
- Storage lockers
- Bike sheds

1.23 BtR attracts persons and families from various professions as can be seen in the illustration below. The latest publicly available data suggests some 25% are from financial and insurance activities and 15% from IT/Information and communication, marketing and advertising. These

sectors have been resilient through the recent pandemic which led to continued rental revenue against such schemes during an otherwise difficult period.

Figure 2: Build to Rent occupants by employment sector. (British Property Federation, Feb 2021)

Employment sector	Build-to-Rent
Accommodation and food service activities	4%
Administrative and support service activities	3%
Arts, entertainment and recreation	4%
Construction and Manufacturing	3%
Education	4%
Financial and insurance activities	25%
Health and social work activities	4%
IT/Information and communication, marketing and advertising	15%
Lawyer and legal professional	3%
Other service activities (e.g. recruitment consultants, photographers, journalist, fitness instructor)	20%
Public administration	1%
Real estate activities	3%
Transportation and storage	1%
Wholesale and retail trade; repair vehicles	3%
Not Working (stay at home parent, student, unemployed, retired)	6%

- 1.24 The proposed transaction for the Site is a sale and lease back between a developer/annuity funder and the Council as the best commercial structure. To note this is not a procurement of a development partner with enforceable development obligations, but a land asset disposal that must satisfy best consideration. A large number of local authorities are looking to fund projects in a more flexible way, and in doing so are looking to the external markets to source a wide range of debt products. Where there's income to support the debt, products are linked to annual increase (e.g., housing) then authorities are investigating index linked products to access the benefits of cheap early year payments; thereby increasing viability.
- 1.25 Under this structure, following the developer's satisfaction of conditions, the Council grants the annuity funder a major interest in the land i.e., a 150- year lease and retains the freehold. Out of that interest the annuity funder grants back to the Council a lease for 50-years if and when practical completion of the BtR development is achieved. There are no upfront costs as the developer takes all design, planning and development risk. The developer/annuity funder will pay a lump sum (purchase price) to the Council for the land, which will accord with the developer's bid received during the competition process.
- 1.26 On financial close (satisfaction of conditions), the land will be disposed, and long leasehold ownership will be granted to the annuity funder with an obligation to grant the Council to a 50-year lease on practical completion. During the period between financial close and practical completion, the funder will have long leasehold ownership of the land with the Council awaiting practical completion for the 50-year lease to be put in place.
- 1.27 Once practical completion takes place and following the grant of the underlease to the Council, the Council is under an obligation to pay a guaranteed and indexed linked rent to the funder for

the proposed term subject to a collar (0%) and cap (5%) per annum arrangement (this is a mechanism used to set the minimum and maximum limits that the LBB rent can increase within).

- 1.28 The rent received from the Council's occupational tenants is designed to be greater than the rent payable by the Council to the annuity funder, which provides the Council with a profit rent, through the life of the development, provided that occupational rent receipts are sufficiently high.
- 1.29 At the expiry of the 50-year lease term the Council acquires the asset back for £1.00 and can then either continue to rent, refinance, or sell the assets. Over the term of the lease, the assets are highly likely to increase in value due to capital growth, providing an additional return on the investment, over and above the annual revenues.
- 1.30 This sale and leaseback is the optimal structure as it enables the Council (acting via a wholly owned Management Company) to create Assured Shorthold Tenancies (AST), which are different to secure tenancies in that there is no potential of any Right to Buy (RTB) interest being created. AST tenancies are commonly used by Registered Providers (RPs) but cannot be granted directly by local authorities. Managing the assets via a wholly owned Management Company enables AST's to be used here. The Council will therefore grant an underlease of 50 years less 3 days (or a similar term) to its wholly owned Management Company, which in turn will grant occupational tenancies to individual occupiers. The proposed structure has been reviewed by KPMG from a tax and VAT liability perspective and found to be compliant and tax efficient. There is a proposal for the replacement of ASTs with a form of residential tenancy which enables the landlord to gain possession if they satisfy one of a number of grounds, but it is not known whether or when it will be brought into law and whether the bill will be altered before it comes into law.
- 1.31 Appendix A contains diagrammatic representations of the transaction structure through the stages of development; from planning through to construction, and then through the first fifty years and beyond.

Site Proposal

- 1.32 The Site is within the vicinity of Lyndhurst Park which lies to the southwest of the Site providing access to a network of green outdoor spaces. Mill Hill Broadway town centre is immediately to the east with the Site acting as a termination point and a key urban marker for the Midland Railway station.
- 1.33 The proposal is a 'high quality' BtR scheme and will be inclusive of amenity including concierge, parcel storage facility and may include coworking space, communal lounges, adaptable leisure space/ Gym, free Wi-Fi, etc.
- 1.34 The Bunns Lane Car Park site very much fits the profile of a target BtR development, a few of the key attractions that the Site brings are highlighted below:
 - Excellent connectivity – proximity to public transport has been a cornerstone of BtR development over the years and is normally the first aspect an annuity funder or operator will look at. The Site excels in this respect, with Mill Hill Broadway rail station and bus stops within a few minutes' walk from the Site. This will involve collaboration between the developer and Network Rail, with the latter undertaking feasibility studies to deliver step free access. The Site is expected to perform well in attracting renters who value connectivity.

- Access to Amenity and High Street – Easy access to amenities is key for successful BtR schemes. The high street is within a 5-minute walk from the site which will be attractive to renters supporting local businesses such as retail, food, and leisure.
- Open Space – immediate access to green open space can be difficult to achieve in many developments. The development will deliver amenity area with green screening for acoustic insulation from the nearby road and rail.
- Energy efficient - The scheme meets London Plan policy relating to carbon reduction and sustainability through the energy hierarchy and will be designed to meet the *Future Homes Standard*. As with the previous proposal, Stories & ACP are proposing an all-electric solution. This responds to the significant shift in the way electricity is generated (proliferation of embedded renewable sources and reduction in coal fired power stations). It is expected that in years to come it could be a zero-carbon energy source.

1.35 It is proposed that the Site will deliver a BtR product consisting of upwards of 128 new homes with 50% affordable provisions being made.

1.36 In addition to the residential units the key components of delivery are likely to be:

- Opportunity to create a direct pedestrian route through the site to the train station. Enhancing day to day experience and improving connectivity.
- Retaining as many of the 184 public pay and display parking spaces as possible whilst modernising the offer to provide EV charging.
- Focusing on integrating the parking into a place and landscaping strategy to make sure the site is welcoming to both cars and pedestrians. The details of the car parking provision will be subject to the outcome of engagement with TfL and the community.
- Target car free development with 10% accessible provision.
- Flexible class E space at ground floor that can accommodate a number of hospitality and community uses creating an active and vibrant ground floor.
- A flexible resident amenity provision that promotes healthy lifestyle and a sense of belonging. These might include work from home space, fitness studio, lounge, communal gardens, etc.

Benefits

1.37 The table below shows the main benefits of the proposed sale and leaseback delivery solution with Stories & ACP as the preferred partner:

Figure 3: Sale and leaseback benefits

Benefit	Description
Lower risk for LBB	<ul style="list-style-type: none"> • LBB will not have to contribute any financing to the project. • Turnkey development solution under a single management structure, no development or construction risks for LBB
Contribution to housing targets	<ul style="list-style-type: none"> • Scheme to target upwards of 128 new homes, with the ability to increase density subject to planning permission. • 50% of these will be affordable homes. • Creates a variety of housing tenures.

Income for LBB	<ul style="list-style-type: none"> • Proposal generates income for LBB General Fund of over 50-years, this includes: <ul style="list-style-type: none"> ○ Initial lump sum payment. ○ Regular revenue income. ○ Additional Council Tax revenues for LBB. ○ New Homes Bonus income. ○ Increased Section 106 and CIL income for further improvements in Mill Hill
Additional benefits for LBB	<ul style="list-style-type: none"> • Creation of employment and training opportunities throughout the build phase. • Improved use of the Site and estate environment that will be secured by design. • Improved quality of accommodation including new communal facilities, e.g., gardens, café etc. • Facilitates a new Build to Rent development in Barnet. • Improved public realm within Barnet with quality architecture. • Contribution towards improved health and wellbeing.

About the developer

1.38 Stories is a socially responsible and purpose-led development company (certified B-Corp) founded in 2018. B-Corp certification is a designation that a business is meeting high standards of verified performance, accountability, and transparency on factors from employee benefits and charitable giving to supply chain practices and input materials. In order to achieve certification, a company must:

- Demonstrate high social and environmental performance by achieving a B Impact Assessment score of 80 or above and passing an independent risk review.;
- Make a legal commitment by changing their corporate governance structure to be accountable to all stakeholders, not just shareholders; and
- Exhibit transparency by allowing information about their performance measured against B Lab's standards to be publicly available on their B Corp profile on B Lab's website.

1.39 Stories has recently obtained planning permission for a build-to-rent development in conjunction with St Mungo's in Westminster and is working elsewhere with landowners including The Crown Estate, an NHS Trust and an Oxford college. Stories' business model is to work with landowners who are aligned in the purposeful pursuit of outcomes across financial, social and environment metrics. Earlier this year Stories and Aviva Capital Partners announced a new £100million joint venture designed to deliver projects such as Bunns Lane; high quality sustainable development projects in partnership with long term landowners. Stories and Aviva Capital Partners will form a new company that will enter into the sale and leaseback contract with LBB.

1.40 The equity required by the developer to prepare this site for forward funding will be guaranteed by Aviva Capital Partners which in turn has a funds committed from Aviva plc of £500million. The construction funding of this project is intended to be provided by Aviva Investors (£357billion Assets Under Management (AUM)), however the price of the funding will be market tested prior to this commitment to ensure VfM.

1.41 The development project will be led on a day-to-day basis by Stories.

2. Alternative Options Considered and Not Recommended

2.1 Whilst the Council has already agreed in principle to this sale and leaseback approach to the development of the Bunns Lane Car Park Site and at Fairway and Burnt Oak (see links in section

9), historically, several other options were considered by the project team, they are shown with their pros and cons in Figure 4.

Figure 4: Other options considered

Delivery Option	Pros	Cons
Do Nothing	<ul style="list-style-type: none"> • Path of least resistance and change • No long-term risk associated with underoccupancy 	<ul style="list-style-type: none"> • Does not make best use of the Site • Doesn't provide significant level of income & return for LBB
Traditional Disposal	<ul style="list-style-type: none"> • More straightforward delivery option for LBB • No long-term risk associated with underoccupancy 	<ul style="list-style-type: none"> • Less LBB influence on use of the Site • Provides lower level of income & return for LBB than other options.
LBB PWLB funded development	<ul style="list-style-type: none"> • LBB retains full control over scheme design and configuration • LBB retains Site and all asset ownership 	<ul style="list-style-type: none"> • There is a risk new prudential code guidance doesn't allow PWLB borrowing for this scheme where one of its objectives is income generation • LBB required to manage the development and associated risks. • Requires LBB to establish delivery structures and various partners. • All risk of under occupancy on future revenue streams remains with LBB. • PWLB interest payments reduce contribution to LBB General Fund to 25% of what a sale and leaseback could deliver over 50-years for same scheme

3. Post Decision Implementation

3.1

No.	Step	Explanation	Timing
1	Achieve contractual closure with Stories and ACP	Develop the detailed structure of deal and enter into a conditional agreement for lease with Stories and ACP enter contract.	8 – 12 weeks to draft contracts, further four weeks for final adjustments and approvals, further four weeks for LBB, Stories and ACP approvals.
2	Establish Internal Project Governance Board	Project monitoring	12 weeks

3	Developer mobilisation	Appointment of multi-disciplinary team	Stories & ACP will mobilize by appointing the architects to refresh their scheme design, then ramp up the full team to commence community engagement and prepare a planning application immediately after exchange of contracts.
4.	Submission of Planning Application and technical design	RIBA stage 3 – 4	From Q1 2025
5.	Start on Site	RIBA stage 5	By Q4 2025

4. Corporate Priorities, Performance and Other Considerations

Corporate Priorities

- 4.1 The Council’s Corporate Plan 2023-26 sets out the aim to ensure Barnet puts caring for People, our Places and the Planet at the heart of everything we do. This project particularly aligns with the themes of housing and sustainability;
- Delivering the right homes to meet diverse needs now and for future generations, that people can afford and are in the right places, is a key priority and challenge for the council. The new Local Plan focuses development in existing growth areas; in town centres and transport hubs such as; and along main roads where there is capacity for change.
 - Put sustainability at the heart of everything we do – becoming a net zero council by 2030. We will work with local people, communities and businesses across the borough to make Barnet net zero by 2042. We will work to create a place fit for the future, where everyone benefits from improved green infrastructure, green employment and business opportunities.
- 4.2 The Corporate Plan further sets out how the Council will deliver these ambitions within financial constraints by making efficient use of money and working more closely with partners in order to deliver for the residents of Barnet.
- 4.3 The 2021 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.
- 4.4 Barnet’s Joint Health and Wellbeing Strategy 2021-25 recognises the importance of access to good quality housing in maintaining Well-Being in the Community.
- 4.5 Lack of affordable housing is highlighted in Barnet’s Joint Strategic Needs Assessment (JSNA) as one of the top five concerns identified by local residents in the latest Residents’ Perception Survey.
- 4.6 The Council has a forecasted budget gap over the Medium Term Financial Strategy (MTFS), and it is estimated that once complete, operational and let the Bunns Lane Car Park Site could contribute c.£500k pa towards closing this gap. This will continue to be kept under review as the delivery of this scheme progresses.

Corporate Performance / Outcome Measures

4.7 Prior to the granting of the long lease the council will undertake a valuation of the consented development scheme to satisfy itself that the forecast net income from the scheme will be an acceptable level, relative to the gross income. This viability test is detailed in the exempt papers.

Sustainability

4.8 In May 2022, Barnet declared a Climate and Biodiversity Emergency because we recognise that urgent action is needed. Barnet is committed to becoming a Net Zero council by 2030 and a place no later than 2042.

4.9 In January 2023, the borough launched its BarNET ZERO campaign, which seeks to bring communities, residents, and businesses together to achieve this goal.

4.10 Stories and ACP are required by law to meet the newly revised Part L of the Building Regulations, and by 2028 (the project's intended completion date) the Government's *Future Homes Standard*. In practice this will mean

- new homes will not be built with fossil fuel heating, such as a natural gas boiler.
- These homes will be future proofed with low carbon heating and high levels of energy efficiency.
- No further energy efficiency retrofit work will be necessary to enable them to become zero-carbon as the electricity grid continues to decarbonise.

4.11 The developer has been briefed about LBB's intentions for a district wide heating system in the future.

Corporate Parenting

4.12 It is not considered that this decision will have a direct impact on looked after children or care leavers. The increased availability of high-quality housing and affordable housing may have an indirect positive benefit.

Risk Management

4.13 A key benefit of the transactional structure of this project is the transfer of development risk away from the council. Until the development is capable of being built (i.e. a consented, viable, funded scheme with vacant possession of the site) the council will continue to benefit from the income of the car parking. The key risks of this project from the council's perspective principally relate to the timeliness and scale of net income received by the council. The key risks as they relate to the council's receipt of the completed scheme are therefore;

- Timing of the start of construction
- Council officers are in ongoing discussions with Network Rail over plans to upgrade Mill Hill Broadway station to become step-free. The works that are required to deliver this programme of works have the potential to impact on the development programme at Bunns Lane Car Park. Presently the programmes of the two projects appear to be deliverable in parallel and independently of each other. However, any slippage in Network Rail's programme has the potential to introduce a delay to the start on site at Bunns Lane Car Park.

Performance of the developer/construction contractor

- 4.14 The covenant strength of the developer has been considered by the Council and will obtain company health check reports and guarantees from ACP for the required investment will be put in place.
- 4.15 As the Council has no direct funding obligations, upon practical completion the Council will enter the lease structure with the annuity funder. The Council will retain step in rights as a part of the agreement for lease arrangements and the council will place longstop dates on the development to enable it to terminate the headlease if the development has not been built within the agreed timeframe. Albeit that there are no enforceable build obligations in the Agreement for lease the funder has every incentive to enforce the build obligations against the developer in the Agreement for Lease to arrive at the point where Practical Completion is achieved, and it can require the Council to take the 50-year lease back and obtain the income that flows from that.

Revenue

- 4.16 Inflation was stripped from the bidders' financial model to establish a baseline position. Financial sensitivity analysis was undertaken to understand at what threshold the Council are exposed to any losses or revenue below the existing car park income. More detail is provided in the exempt papers.
- 4.17 The principal risks to net council revenue will stem from the Planning risk (fewer homes being consented) and the Funding Risk (market movements between now and start on site).
- 4.18 Any changes to rent control, may reduce the Councils returns. Under the reform Bill, rent increases are limited to annually with two months' notice. The Developers model is index linked to CPI +1% on a collar and cap of 0 - 5%, set in line with open market rent.
- 4.19 The Planning Risk will be managed by Stories & ACP and failure to deliver a viable and implementable consent sits with the developer and not the council.
- 4.20 In terms of the Funding Risk, on going to market to obtain final annuity funder pricing from Aviva Investors, the market may demand a higher yield than what has been modelled by the developer. Thus, reducing the possible modelled rental income to the Council. The benefit of the Stories & Aviva partnership is that the developer will be able to draw on Aviva Investors' regular input into the project and flag any market risks as they might arise.
- 4.21 Red Book valuations will be undertaken prior to unconditionality.
- 4.22 Although there is no borrowing required to enter into this deal, the Council will be assuming obligations under the 50-year lease with an obligation to pay an index linked rent for the lease term, the rental modelling demonstrates this. The 50-year lease is not assignable, so the Council remains liable to pay the index linked rent throughout the term regardless of the rental income it itself is achieving from occupiers.
- 4.23 There are options to mitigate the rental risk in the event of market downturn for example an option could be to use the units as temporary accommodation or to convert any vacant private units to affordable.
- 4.24 The Council will be obligated to pay guaranteed rent on a non-assignable basis (this means we cannot transfer the lease to a third party). Prior to planning permission being granted the Council will negotiate with the annuity funder the option to convert the units for alternative use should this ever be required. Any future changes to alternative use would require a capital sum as planning permission would be required.

4.25 Payments to the annuity funder will be fixed with annual indexation. The model shows a c.15-20% rent profit that can be held in a reserve to offset any shortfall in rent, this will provide security; the current model assumes 4.0% void rate.

4.26 The lease from the annuity funder will be deemed a finance lease all risk and reward with the asset sits with the authority from practical completion.

Insight

4.27 We have considered historic and recent data that illustrate how the residential rental sector has proven to be an effective hedge against inflation, even in the face of the recent turbulence in the national economy following the mini-budget of 2022. Links provided in section 15.

4.28 The financial viability of this project will be regularly reported on by the developer and the contract between the council and the developer includes threshold tests, for the avoidance of doubt and the management of risk.

Social Value

4.29 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.

4.30 Any contractors or parties involved in the development will be encouraged to provide opportunities for employment, training and apprenticeships for local people and use local suppliers where appropriate.

Note: The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Before commencing a procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders.

5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)

Finance

5.1 The structure will allow for the grant of a long lease to the annuity funder upon the agreement for lease becoming unconditional ('Financial Close'). At this point, the annuity funder will grant to the developer and its construction partner a building licence to deliver the construction of the project. The developer will draw down the funding from the annuity funder, to cover all development and construction costs and fees, and will pay a coupon to the annuity funder during the construction phase.

5.2 The Council takes no design, planning or delivery risk. However, following practical completion of the works, the Council will take a 50-year lease from the annuity funder. Under that lease, the Council will be obliged to pay an annual rental payment to be fixed at financial close, with index linked annual uplift with a collar of 0% and a cap to uplifts at 5%. An independent valuation will be commissioned to calculate the market rent from which the Landowner's rental commitment will be calculated. At the end of the 50-year lease the Council acquires the reversionary interest back for £1.00 and can continue to rent the properties, sale or refinance with a significantly enhanced asset value.

- 5.3 In addition, the ability to redevelop the Site for mixed use housing provides a long- term asset that would support future housing delivery objectives of the Council.
- 5.4 The 50-year leaseback with the annuity funder will be deemed a finance lease as all the risks and rewards associated with the asset are passing to the Council. This will result in the asset being recognised on the balance sheet with an equivalent liability recognising the payments to be made to the funder over the lease term.
- 5.5 Upon satisfaction of conditions, a lump sum will be payable to the Council. This is subject to the assumptions set out in the bidders' original submissions.
- 5.6 It is estimated for each affordable housing offered at the Site; this would lead to a £4,500 per unit indirect saving to the Council's temporary housing budget. This figure is based upon the last two months of data due to a temporary increase in the use of more expensive nightly paid accommodation.
- 5.7 The proposal from Stories & ACP includes the re-provision of public car parking spaces to be determined through the planning process. It has been estimated in the financial modelling parking revenue will remain at current levels, per space. The Council provided the annual revenues, these would be likely to change with the new car park facilities.
- 5.8 As per the original Muse offer, the Stories & ACP proposal and financial model has been thoroughly tested and analysed by the Council and its advisors.
- 5.9 Key points to note on this sensitivity analysis, carried out by the LBB project team on the Stories & Aviva offer, are:
- A drop in revenue of 20% still produces an income to the Council, but at a lower level (reduced by 70%).
 - Voids and bad debts would have to increase to 42% of the estate total for the scheme to not produce any return for the Council.
 - Similarly, residential revenue would need to drop by 33% to not give the Council a NPV return. This would equate to just over half of all the private rental homes being vacant.
 - A detailed red book valuation of rental values will be undertaken upon receipt of planning permission.
- 5.10 As per the financial modelling the expected split of gross rent revenues would be, c.58% income to an institutional funder (annuity funder) and 42% of the gross revenue received by the council. Of its share of gross revenue, the council will need to meet the costs of management and letting of the accommodation. Work is currently underway to confirm the council's preferred approach to management, but these costs could be between 23% and 25% of the gross revenue, leaving some 17-19% of gross revenue as net income to the council. Figure 5 illustrates this distribution.

Forecast distribution of gross income

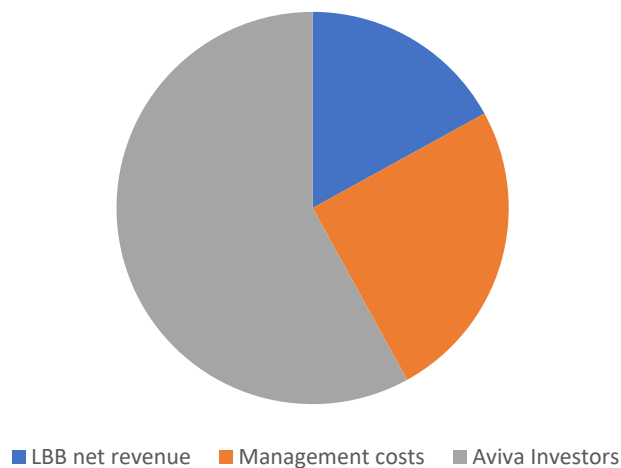


Figure 5: Forecast distribution of gross revenue

- 5.11 An exercise was undertaken to determine the average minimum rental inflation needed for the scheme to break even. It was discovered that at 3% (2% CPI + 1%) the minimum average annual rental increase will be 0.88%. At 4% (3% CPI + 1%) this would be 2.31% per annum. At 5% (4% CPI + 1%) this would be 3.62% per annum. In practice this would mean that residential rents would need to increase at a rate materially below wider market inflation for an extended period of time and this has proven not to be the case historically or more recently (see links in section 15).
- 5.12 When going to market to obtain an annuity funder, the market may demand a higher yield which can adversely affect Council income. During this time Red Book valuations by external advisors and further modelling take place to identify any risks.

Value for Money and Procurement

- 5.13 The Council placed an advert in the Estate Gazette for a period of four weeks seeking expressions of interest from potential private sector partners to deliver the Bunns Lane Car Park development. Bids that allowed the best possible assessment of delivery and financing options were invited. This marketing process confirmed that the sale and leaseback approach to the delivery of the Site is the preferred option.
- 5.14 The Council received ten expressions of interest from a range of organisations by the advert deadline of 25 September 2020. The evaluation and moderation process was as follows:
- Identification of eight organisations who could meet the Council's objectives for the Site.
 - Initial evaluation and moderation reduced the shortlist to five potential bidders taken forward to stage 2 of the evaluation.
 - These five organisations were invited to submit their design and innovation proposals for the Site along with their financial models.
 - The Council issued a financial model proforma based on the delivery of 128 units on the Site, for completion by the bidders, to enable a direct and fair comparison of the bids.
 - The five bids were individually evaluated, followed by a moderation scoring exercise to confirm the top three ranking bids who were shortlisted and taken forward to the

interview stage. This included post tender clarifications and due diligence work that included company health check reports, ratio analysis and stress testing.

- Initially an alternative proposal to the Stories bid met the best consideration test from a s123 perspective. Further detail is provided in the exempt report. Since the previous bidder was unable to proceed with the council, and Stories was the underbidder, they were re-engaged to test whether they could deliver against their initial commitments. Stories has committed to the commercial fixes first offered and can show strong financial resources in order to deliver the project. The financial terms of this proposal have been independently confirmed as offering best consideration for the council.

5.15 The primary purpose of the transaction is, one of a land transaction, as such it falls outside of the Public Contracts Regulations 2015.

Property

5.16 The Site development will be delivered by Stories in joint venture with Aviva Capital Partners. Once the long lease has been granted to Stories & ACP's funder, Aviva Investments, the funder will grant to Stories & ACP and its construction partner a building licence to deliver the project. Stories & ACP will appoint (with suitable covenant strength) a Design and Build Contractor. The construction contract will be competitively tendered, ensuring the most competitive price for the works. More detail on this arrangement is provided in Appendix A.

5.17 The Agreement for Lease which is conditional on the following conditions precedent being satisfied:

- Grant of satisfactory planning permission and signature of any planning agreement (free of challenge via judicial review).
- Vacant possession of the entire Site including satisfactory access which may require a stopping up order or car park closure.
- A viable development that is forecast to deliver the council an acceptable net revenue
- Satisfactory funding agreement between the Developer and the Annuity Funder (including satisfactory leaseback terms to the Council).

5.18 Upon practical completion of the development the annuity funder will grant to the Council a lease back of the entire Site. The funder will have enforceable rights to secure the performance of the developer's build obligations. The form of lease will be appended to the Agreement for Lease and will include the following key terms.

- Minimum 50-year lease term with option for the Council to buy back the entire Site for £1.00 at end of the term.
- An annual rental payment to be fixed at financial close (unconditionality / start on Site) at approximately 58% of the Council's projected gross annual income, with RPI linked annual uplift and a collar of 0% and a cap to uplifts at 5%. An independent valuation will be commissioned to calculate the market rent from which the Council's rental commitment will be calculated.
- London Borough of Barnet covenant in place for the duration of the 50-year term. Note that the lease is not assignable (except to statutory successors).

5.19 The Council will also appoint an external management company through a management contract to deliver the Sites day-to-day management service. That company will also take an underlease of the whole Site from the Council for a term of 50 years less 3 days (or similar term).

Residents will subsequently enter into residential tenancy agreements with the management company.

Pre-construction stage (RIBA Stages 1-4)

- 5.20 It is proposed that Stories & ACP will deliver the Site through a licence to build with the construction works being funded by the annuity funder, Aviva Investors.
- 5.21 Aviva Capital Partners will provide the Council with a guarantee for the equity required by the developer to prepare the site for forward funding of construction.
- 5.22 Stories & ACP will commit to work alongside the Council's appointed property manager, be this internal or external. They will work collaboratively with the relevant council representatives through the design and construction period to devise and refine an effective management solution that is fully operational on day one.
- 5.23 Stories & ACP aims to deliver the scheme to a high-quality design to minimise management and maintenance costs, whilst also maximising the marketability of the scheme. The concept design proposes a material palette, consisting primarily of hard-wearing brick and pre-cast stone, which places a focus on durability and sustainability. Such materials will ensure maintenance and service costs remain low throughout the lifecycle of the scheme and limit the frequency of future repairs and refurbishment. This will reduce the LB Barnet's annual operating costs which helps to maximise net annual income.

Construction (RIBA Stage 5)

- 5.24 This will be undertaken under a building contract between Stories & ACP and its procured construction partner, who will build and deliver the scheme in accordance with approved drawings.

Handover (RIBA Stage 6)

- 5.25 The handover process ensures a smooth transfer of the building from construction into operations. Working closely with the Council's appointed management team the developer will plan for logistics around pre-leasing, delivery of show apartment and production of marketing materials, equipment and systems training, etc.

Post Completion (defects liability)

- 5.26 Stories & ACP commits to providing underwriting the first year's net income to LB Barnet to help establish and stabilise the scheme to ensure optimal performance before handing over the long-term management responsibility.
- 5.27 Given the transaction structure proposed at Bunns Lane, whereby the Council will take ownership of the homes on practical completion, it is accepted that the long-term management of the estate will be the responsibility of LB Barnet. Stories & ACP recognises, however, that the onus will be on the developer to ensure robust procedures are put in place prior to completion to enable a seamless handover, that minimises any risk.
- 5.28 This management company will be a wholly owned company (WOC) of the Council with its own financial statements i.e., profit and loss. This is the optimal structure as it enables the Council (acting via that company) to create AST tenancies (Assured Shorthold or Assured Tenancies) which do not give rise to secure tenancies which in turn avoids the potential of any RTB interest being created. AST tenancies are commonly used by registered providers but cannot be granted directly by local authorities, the management company enables us to do so. Please see the

comment above as to possible reforms of the law. The proposed structure has been reviewed by KPMG from a tax and VAT liability perspective.

Staffing and IT

5.29 There are not considered to be any staffing or IT issues arising from this transaction.

6. Legal Implications and Constitution References

- 6.1 Under Table A of Part 41B of the Council's constitution, the disposal of property for less than best consideration, or for more than £500,000 (revenue) or £1 million (capital) must be reported to Cabinet.
- 6.2 Council Constitution Part 2D sets out the terms of reference of Cabinet which includes the following responsibilities:
- Development of proposals for the budget (including the capital and revenue budgets, the fixing of the Council Tax Base, and the level of Council Tax) and the financial strategy for the Council;
 - Monitoring the implementation of the budget and financial strategy;
 - Recommending major new policies (and amendments to existing policies) to the Council for approval as part of the Council's Policy Framework and implementing those approved by Council;
 - Approving policies that are not part of the policy framework;
 - Management of the Council's Capital Programme;
- 6.3 The financials are included in the exempt section as it contains commercially confidential information (relevant legislation - paragraph 3 of part 1 of schedule 12 A of the Local Government Act 1972 (as amended) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 6.4 Where land is subject to third party rights it may be prudent to appropriate the land for planning purposes to extinguish third party rights thereby engaging sections 203 and 204 of the Housing and Planning Act 2016 ("HPA 2016"). Section 122 of the Local Government Act 1972 ("LGA 1972") empowers a local authority to appropriate land held by it from one statutory purpose to another if it considers the land is no longer required for the purpose for which it is currently held and an appropriation is in the public interest. Such matters will be explored through the process of Site and legal review. The Council in contemplation of the justification of its use of planning appropriation powers will need to satisfy the same criteria as those set out for the use of its compulsory purchase powers, that is that the use of these powers is necessary to promote the social economic or environmental wellbeing of all or any or all resident persons in its area. There are particular considerations relating to the appropriation of public open space land which must be adhered to in reliance on section 122(2A) of the LGA 1972 which the Council will be required to adhere to and appropriate recommendations are contained in this Report.
- 6.5 Where land is held by the Council for planning purposes or, as contemplated here, has been appropriated to planning purposes, section 233 of the Town & Country Planning Act 1990 applies. This means the Council may dispose of the land. The Consent of the Secretary of State is not required if the consideration is the best that can reasonably be obtained. Disposal should be

to such person, in such manner and subject to such conditions as appear to them to be expedient as provided in such section, for the best use of the site or to secure buildings or works appearing to them to be needed for the proper planning of the area of the authority; and where the site or part includes public open space, the Council.

- a) shall publish a notice of their intention to do so for at least two consecutive weeks in a newspaper circulating in their area; and
- b) shall consider any objections to the proposed disposal which may be made to them.

6.6 Section 1(1) of the Localism Act 2011 bestows a general power of competence on local authorities which permits them to do anything that private individuals generally may do, but this is subject to the general principles of public law. The Council will need to have regard to the account in which any housing stock is ultimately to be held and the provisions of s 74 of the Local Government and Housing Act 1989 including any financial adjustments between the Councils General Fund and Housing Revenue Accounts which may be required to be made if stock were to be held by the Council direct (as opposed to through the proposed Manco).

6.7 Section 4 of the Localism Act 2011 enables the Council to do for a commercial purpose anything that it is empowered to do under section 1 of the 2011 Act, provided that they do so through a company.

6.8 Section 95 of the Local Government Act 2003 enabled the following regulations to be made. Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 allows a local authority to do for a commercial purpose anything which they are authorised to do for carrying on any of their ordinary functions, subject to the requirements of the Regulations.

6.9 The stock that is to be held by the Council will be mixed tenure. Where let directly by the Council to occupiers, any stock that is intended to be let as social rent housing, will be held for the purpose of Part II of the Housing Act 1985 and accounted for through the Housing Revenue Account as mentioned above with the required accounting adjustments to reflect the appropriate consideration/value of the land being transferred from General Fund to the HRA. In relation to other stock, where the Council is acting for a commercial purpose then as set out above it should do so through a company. As such the council will be creating a new wholly owned company with which to hold this asset.

7. Consultation

7.1 On the exchange of contracts with the council the developer will be engaging extensively with the local community in preparation of a planning application for the site.

7.2 There has been engagement with the local community and local stakeholders (including TfL) as part of the local plan making process.

8. Equalities and Diversity

8.1 The 2010 Equality Act outlines the provisions of the Public-Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.

- Advance equality of opportunity between people from different groups and foster good relations between people from different groups.

8.2 Any Equalities Impact Assessments will be undertaken on individual schemes as they are brought forward, and the proposals outlined will give appropriate consideration and where required consider any matters raised in these assessments. However, the proposals in this report are not considered at this stage to raise any negative impacts for equalities and demonstrate that the Council has paid due regard to equalities as required by section 149 of the Equality Act 2010.

9. Background Papers

9.1 Development Portfolio Programme.pdf (modern.gov.co.uk) Agenda for Housing and Growth Committee on Monday 6th July 2020, 7.00 pm (modern.gov.co.uk)

9.2 [Northway / Fairway Proposed Approach to Site - Housing and Growth Committee 14th June 2021](#)

9.3 [Watling Car Park Proposed Approach to Site - Housing and Growth Committee 14th June 2021](#)

9.4 [Bunns Lane Car Park Proposed Approach to Site – Housing and Growth Committee 13th September 2021](#)

9.5 Legal & General Investment Management July 2022 “Build to Rent – inflation hedging with local flavour?” <https://www.lgim.com/landg-assets/lgim/document-library/about-us/db-btr-hedge-appeal-article.pdf>

9.6 Savills UK Market build-to rent market update 2022, Feb 2023
<https://pdf.savills.com/documents/UK+Build+to+Rent+Market+Update+-+Q4+2022.pdf>

9.7 Savills UK Market build-to rent market update Q1 2023, Apr 2023
<https://pdf.savills.com/documents/UK+Build+to+Rent+Market+Update+-+Q1+2023.pdf>

9.8 Who Lives in Build to Rent? British Property Federation, 2021
<https://bpf.org.uk/media/3605/who-lives-in-build-to-rent-1.pdf>