

# Birmingham City Council

## Report to Cabinet Committee – Property



28 March 2024

**Subject:** Disposal of 8 Sites for Affordable Housing

**Report of:** Strategic Director: Place, Prosperity & Sustainability Directorate

**Relevant Cabinet Member:** Cllr Jayne Francis, Housing and Homelessness

**Relevant O &S Chair(s):** Cllr Mohammed Idrees, Homes  
Andrew Howells

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Bartley Green, Brandwood & Kings Heath, Bromford and Hodge Hill, Erdington, Soho and Jewellery Quarter, Moseley, Yardley East, Tyseley and Hay Mills		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 012445/2024		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential: Schedule 12A of the Local Government Act 1972 (as amended): Paragraph 3. Information relating to the financial or business affairs of any particular person (including the Council). Commercially confidential information included in Appendices 2, 3 and 4.		

## **1.0 Executive Summary**

- 1.1 This report sets out the detail of the transaction for the sale of eight Council-owned sites for delivery of affordable housing. The approach reflects the parameters and constraints of the HRA Business Plan (2024) and Asset Management Strategy 2024 - 2029, whilst also taking into account the high demand for good quality affordable housing in the City.
- 1.2 This report follows the report to Cabinet in May 2023 which sought to approve the disposal of eight sites for affordable housing and establish the principle for the sale of the Council's freehold interest in identified surplus land to Registered Housing Providers and / or Developer Partners.
- 1.3 This report builds on that approval and identifies the preferred bidder as part of a tender exercise. The sites for housing development were identified in the May 2023 report and are shown on the plans at Appendix 1, comprising land that can accommodate approximately 230 homes.
- 1.4 The recommendations contained in this report are fully in line with the Council's Housing Strategy 2023-2028 presented to Cabinet on 13<sup>th</sup> December 2022, that provides the strategic platform and direction for the Council to increase the number of affordable homes delivered through partnership routes such as disposal to Registered Providers. This package of sites for disposal will provide much needed quality, energy efficient accommodation for the citizens of Birmingham.

## **2.0 Recommendations**

- 2.1 To agree to the freehold disposal of the sites listed in Appendix 1 to a developer as detailed in Exempt Appendix 2.
- 2.2 Approve the principle that the General Fund sites will be sold unconditionally after a period of due diligence from the developer, and the Housing Revenue Account sites will be sold conditional on planning.
- 2.3 Note the land assets have been identified for sale from both the Council's General Fund and Housing Revenue Account (HRA) to provide affordable housing across the city, with the Council retaining Nomination Rights for those on its housing register. General Fund receipts will be paid into the General Fund (minus disposal costs) and HRA receipts will be paid into the HRA.
- 2.4 Delegate authority to the Strategic Director for Place, Prosperity, and Sustainability (or their delegate), the Interim Director of Finance (s151 Officer), (or their delegate), and the Interim City Solicitor & Monitoring Officer (or their delegate) to approve any non-material variance to the terms in this approval and to agree the final terms of the Sale Agreement.

- 2.5 Note that the purchaser will engage with the local community and Ward members via the planning approval process.
- 2.6 Authorise the Interim City Solicitor and Monitoring Officer to prepare, execute, and complete all relevant legal documentation to give effect to the above.

### **3.0 Background**

- 3.1 The demand for affordable housing across the city and surrounding areas is extremely high, with over 20,000 households on the housing register and over 6,000 in temporary accommodation. With a higher than national average waiting list and increased numbers of families in temporary accommodation, it is a key priority and objective of the City Council over the coming years to accelerate affordable housing delivery.
- 3.2 The Housing Strategy 2023-2028 approved by Cabinet on 13<sup>th</sup> December 2022, provides the strategic platform, and clear direction for the Council to increase the number of affordable homes. Affordable housing is delivered through a variety of routes including planning gain, direct delivery by the City Council and through Registered providers. Whilst the Council has an established programme of direct delivery by the HRA, the delivery through this route alone cannot meet the city's need. This report is set in this context as well as the financial position of the City Council/resource available in the HRA.
- 3.3 The recommendations above will enable the Council to accelerate the delivery of affordable homes on the identified sites and assist the city in meeting its housing target (as detailed in the Birmingham Development Plan (BDP) Policy PG1) of 19,400 affordable dwellings over the BDP period (2011 to 2031). Therefore, it is a strategic aim to speed up delivery of affordable homes. As finances are constrained, as detailed in the HRA Business Plan, this route allows for delivery without immediate impact on the HRA finances.
- 3.4 It has been agreed by the purchaser that the Council will benefit from being able to nominate new tenants into all new homes developed on these sites (called nomination rights) for a minimum of ten years.
- 3.5 As sites are being disposed of without planning consent and therefore without final known development proposals, an Environment and Sustainability Impact Assessment cannot be completed at this stage. Any development outputs arising from the recommendations of this report will be monitored as part of the Affordable Housing Delivery Programme and via the planning process.
- 3.6 The package of 8 sites were tendered as part of a two-stage process from November 2023 to January 2024 and concluded with the selection of the bidder

considered to be most compliant with objectives of the disposal. The under bidder has been notified and will be notified if necessary.

3.7 The sites to be disposed:

Site name	Ward	Approx site capacity	HRA or General Fund
Bromford Lane	Pype Hayes	12	HRA
Cadine Gardens	Moseley	7	HRA
Clissold Street	Soho & Jewellery Quarter	8	General Fund
Illeybrook Square	Bartley Green	52	HRA
Key Hill, Hockley	Soho & Jewellery Quarter	45	General Fund
Olton Boulevard West	Tyseley & Hay Mills	21	HRA
Partons Road	Brandwood & Kings Heath	23	HRA
Station Road, Stechford	Yardley East	70	General Fund

4.0 Options considered and Recommended Proposal

4.1 **Option 1 – Do Nothing.** The Council is not meeting the current demand for affordable housing through its existing delivery and needs to bring in additional providers to help meet the demand (90% of all new housing units would need to be affordable to meet current demand). The Council has a General Fund disposal target of £0.5 billion and the sale of General Fund sites is necessary and will contribute to meeting this target. Constraints on the HRA finances have resulted in the need to identify other routes to deliver new affordable homes. Doing nothing would not address this issue as the demand is not being met and the Council's finances are not sufficient to develop the homes itself. If nothing is done this vacant land will remain in its current state and the opportunity to bring investment into the City and potential affordable housing delivery will be lost, whilst still incurring holding costs and liabilities. The temporary accommodation bill is placing a significant pressure on the General Fund and not providing additional affordable housing is exacerbating the issue. The financial impact of not doing anything therefore is not being able to reduce the temporary accommodation liabilities which are a direct cost of not having enough affordable housing.

4.2 **Option 2 - Development sites through a sale to a Registered Provider to accelerate affordable housing delivery.** The Housing Strategy 2023 – 28 highlights the need to accelerate affordable housing delivery. The route of disposing of some of the Council's surplus land to Registered Providers/ Developer Partners/ other public sector bodies is just one of the key ways the Council can accelerate the delivery of affordable housing.

This route will enable stakeholders to secure additional inward private investment and Homes England grant funding into the city. It also speeds up development because the developer partner will be responsible for design and planning of schemes; this puts less pressure on our planning resources by reducing planning

amendments after a contractor is engaged. It will also facilitate the ability to offer different tenure types such as Shared Ownership and Rent to Buy. Registered Providers (RPs) and their contractor partners have large development portfolios and a variety of different specialisms from sheltered housing to supported accommodation; their stock makes up just over 40,000 units in the city. The Council is already committed to be 'Open for Business' and has welcomed several partners and investors into the city. There are also private RPs/ pension fund investment models that can be explored within this option, again bringing investment into the city.

This option includes both land sales and land disposal via the ability to draw partners to deliver new affordable housing at BCC's specification/timescales.

**4.3 Option 3 – Accelerate Direct Development of sites.** BCC is directly delivering some sites. However, due to the current financial constraints and pressures on the HRA budget, this is not a viable option to continue with direct delivery in its existing form.

**4.4 Option 4 – Sale of sites for a policy compliant mix of tenures.** The sites can be sold on the open market for a planning policy compliant mix where 35% of the homes are affordable on sites of 15 dwellings or more. The Council is seeking to dispose of surplus sites and these sites could contribute to that. However, many of these sites are below the threshold of 15 units, and being brownfield may not achieve 35% affordable housing due to site constraints and viability challenges without housing grant. The Cabinet approval in May 2023 was for the disposal of these sites for 100% affordable housing. Therefore, for this reason, this option has been discounted.

**4.5 Recommended Option:** The recommended option is Option 2 which will see the acceleration housing delivery whilst reducing build cost and risk to the Council and generating a land receipt to the Council. The General Fund sites will be sold unconditionally to minimise financial risk to the Council.

## **5.0 Consultation**

5.1 Engagement with Ward Members took place prior to the May 2023 Cabinet paper and included some site visits with Ward Members in the lead up to Cabinet approval. As part of the development process there will be a requirement on the developer to undertake appropriate local engagement at key stages, which will include Ward Councillors.

## **6.0 Risk Management**

6.1 The approach recommended in this report seeks to mitigate a number of risks, including financial, that the Council is experiencing.

## 6.2 Risk and Issues Register:

Risk No.	Risk description	Risk mitigation	Residual/current risk			Additional steps to be taken
			Likelihood	Impact	Priority	
1	Land receipt is reduced due to abnormal site conditions – developer seeks to re-negotiate contract.	Developer to undertake due diligence prior to contract exchange	Low	Medium	Medium	Not required.
2	Scheme costs rise and developer doesn't have the funds to continue with the development.	Developer has provided proof of funds for delivery.  Developer has Homes England grant funding and are a Strategic Partner.	Low	Low	Low	Not required.
3	Sites do not gain planning consent.	This risk that all eight sites do not gain planning consent is very low, as they had been earmarked by BCC for direct housing delivery and have all been subject to a planning pre-application process. There is a risk that one or two of the sites either have a reduction in planned unit numbers or are unable to get planning consent.	Low	Low	Low	Developer has agreed to buy three of the sites unconditionally and therefore assumes the planning risk. Those sites which are sold conditionally on planning will not transfer to the purchaser if planning is not gained, and can be auctioned at a later date.
4	Capacity within the Council to manage process.	Review capacity and skills within existing team and consider how efficiency can be made in process with colleagues in property.	Low	Medium	Low	Monitor situation

		Include a % allowance to fund resourcing on each transaction.				
5	Outcome of poor-quality schemes which don't meet the needs of City.	Developer has previously delivered schemes of good quality and provided examples of completed schemes.	Low	Medium	Low	Work with providers who build high quality stock and consider this as part of selection process.

## 7.0 Compliance Issues

### 7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The site disposals are fully aligned to the Housing Strategy 2023- 28 which aims to increase the supply of affordable housing up to a Local Plan policy requirement of over 1,000 new homes per annum. These sites for development help meet that requirement.

7.1.2 These Schemes are in accordance with the objectives of the housing revenue account (HRA) Business Plan 2023+. These Schemes will make a direct contribution and are consistent with The Council's Corporate Plan 2022 to 2026 main priorities (as updated in December 2022) priorities and outcomes as outlined below:

- A Bold Prosperous Birmingham: Making sites available for development to Registered Providers and their Partners will allow the Council to capitalise on inward investment, increase the supply of affordable housing and enable successful development to help regenerate communities.
- A Bold Healthy Birmingham: the provision of new affordable housing types will improve the health of citizens by ensuring safe, sustainable, and suitable homes are delivered.
- A Bold Green Birmingham: the provision of new homes will go some way to meet the City's commitment to route to zero.
- A Bold Inclusive Birmingham: the new affordable homes will be allocated under the council's policy and help families affected by the cost-of-living crisis as the homes will be built to new higher quality and EPC standards saving money on energy bills.

### 7.2 Legal Implications

- 7.2.1 Sections 120 - 123 of the Local Government Act 1972 authorise the Council to hold, appropriate and dispose of land. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Assistant Director of Investment and Valuation will monitor the sales process to ensure it complies with legislation and, in the event an under value transaction is recommended under 2.6 above, will seek to comply with Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained, or seek specific consent from the Secretary of State to proceed, if required. Any disposal at an undervalue may amount to a subsidy which is regulated under the Subsidy Control Act 2022 and will need to be made in accordance with the provisions of that Act.
- 7.2.2 Section 1 of the Localism Act 2011 contains the Council's general power of competence, which is circumscribed only to the extent of any applicable pre-commencement restrictions, and any specific post-commencement statutory restriction of the power, and Section 111 of the Local Government Act 1972 contains the Council's ancillary powers in relation to the discharge of its functions including the expenditure or borrowing of money and the disposal and acquisition of property.
- 7.2.3 Sections 32 to 34 of the Housing Act 1985 contain the Council's powers to dispose with the consent of the Secretary of State of land held for the purposes of the provision of housing accommodation under part 2 of that Act. The General Housing Consents 2013 (issued March 2013 and corrected July 2013) set out the circumstances where such disposals can take place without the need for specific consent.
- 7.2.4. Sections 24 to 26 of the Local Government Act 1988 govern the matter of provision of assistance by local authorities to any persons in connection with property intended to be privately let as housing accommodation and the circumstances in which the consent of the Secretary of State may be required for such assistance. The General Consents under Section 25 of the Local Government Act 1925 (Local Authority Assistance for Privately let Housing) 2010 set out the circumstances where such assistance may be given without the need for specific consent.

### **7.3 Financial Implications**

- 7.3.1 The recommendations in this paper allow the authority to generate land receipts to reduce general fund and HRA borrowing, while increasing the potential for supply of affordable housing across the City.
- 7.3.2 Disposal of General Fund sites will progress the Council towards its strategy of capital receipts generation, while encouraging development from external sources, which will benefit residents through greater supply of affordable housing in the



future. It should be noted that there is currently a General Fund asset disposal target to raise £500m of capital receipts by the end of 2024. It is acknowledged that any General Fund sites referenced in this paper which are sold will have a direct contribution to this objective.

- 7.3.3 Receipts generated from sale of HRA assets are ringfenced to the HRA and will fall in line with the HRA Business Plan priority of investing in existing Housing stock to meet Decency Standards. Partnership working will ensure the ongoing development of certain sites is in recognition of that Business Plan's secondary priority of replacement of stock lost through Right to Buy.
- 7.3.4 The General Fund sites will also be sold on an unconditional basis in order to support delivery of capital receipts within the timescale required.
- 7.3.5 The bidder has considered whether the General Fund sites can be developed for a mixed tenure housing and if so whether the value would be greater. They have confirmed that the highest land value is for 100% affordable housing, due to the ability to draw in grant funding.
- 7.3.6 It is Government policy that local authorities should dispose of surplus land wherever possible. Generally, it is expected that land will be sold for the best consideration reasonably obtainable. However, there is recognition that there may be circumstances where an authority considers it appropriate to dispose of land at less than the best consideration that may be available under the circumstances. The consequential costs to the Council of non-delivery of sufficient affordable homes needs to be considered and therefore there needs to be a balance between generating capital receipts and ensuring sufficient delivery of affordable homes. The temporary accommodation budget is significant and the need to reduce the expenditure on the General Fund, along with any other factors that impact the Council's financial consequences needs to be factored in when considering the s123 Best Consideration confirmation. These factors will be considered in the Options Appraisal presented to Cabinet Committee Property for each site.
- 7.3.7 VAT advice will be sought for each disposal to ensure the most tax efficient method is being used for each disposal transaction.
- 7.3.8 The purchaser will pay a contribution towards the Council's professional costs.
- 7.3.9 **Spend Control**
- Spend Control Approval was given in September 2023 for the use of external solicitors to expedite the transaction.

## 7.4 Procurement Implications

7.4.1 There are no procurement implications with the recommendations of this report as this is a sale of land exempt from the Public Contracts Regulations 2015. The sites are being disposed of as a land sale and no standards or specifications beyond planning and housing adopted policy are being sought. Therefore, the sale is being undertaken via a Sale Agreement.

## **7.5 Human Resources Implications (if required)**

7.5.1 None have been identified; internal staff resource is being used to deliver this workstream.

## **7.6 Public Sector Equality Duty**

7.6.1 An Equality Impact Assessment (EIA) has been undertaken (reference EIA000108, dated 11<sup>th</sup> January 2024) and identifies no adverse impacts on any groups protected under the Equality Act 2010. The Equalities Impact Assessment is included in Appendix 5.

## **8.0 Appendices**

Appendix 1 – Site Plans

Exempt Appendix 2 – Recommendation for Sale - Terms of Transaction

Exempt Appendix 3 – Best Consideration Report

Exempt Appendix 4 – Valuation Report

Appendix 5 – Equalities Impact Assessment

## **9.0 Background Documents**

Affordable Housing – Sites for Disposal Report to Cabinet May 2023

HRA Business Plan – Cabinet report 16 January 2024 report ref 010770/2023

Building Birmingham – Cabinet Report 16 January 2024 report ref 011496/2023