

Birmingham City Council

Report to Cabinet Committee – Property

8th August 2024



Title:	APPROPRIATION OF PLOT 9 PERRY BARR RESIDENTIAL SCHEME TO THE HRA
Lead Cabinet Portfolio:	Cllr Sharon Thompson – Deputy Leader of the Council
Relevant Overview and Scrutiny Committee:	Cllr Katherine Iroh - Economy, Skills and Culture Overview and Scrutiny
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Authorised by:	Philip Nell, Strategic Director for Place, Prosperity, and Sustainability
Is this a Key Decision?	Yes
If this is a Key Decision, is this decision listed on the Forward Plan?	Yes – Forward Plan Reference 013136/2024
Reason(s) why not included on the Forward Plan:	Not Applicable
Is this a Late Report?	No
Reason(s) why Late:	Not Applicable
Is this decision eligible for ‘call in?’	Yes
If not eligible, please provide reason(s):	Not Applicable
Wards:	Perry Barr

Does this report contain exempt or confidential information?

Yes

Exempt Information

Appendices 2, 3 and 5 are exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act, 1972 as amended:

Paragraph 3 - Information relating to the financial or business affairs of a particular person (including the authority holding that information).

Has this decision been included on the Notification of Intention to consider Matters in Private? No

Reasons why not included on the Notification:

If yes, list reason(s). If no, insert 'Not Applicable'.

Exempt Appendices 2, 3 and 5, contains sensitive commercial information on the purchase price and valuation. Exempt information 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)

1 EXECUTIVE SUMMARY

- 1.1 The appropriation of Plot 9 of the Perry Barr Residential Scheme to the Housing Revenue Account was approved by Cabinet on 23 July 2023. This report seeks to provide assurance that the assumed open market value of the property utilised for the appropriation is appropriately evidenced and independently validated, as set out in the Section 123 marketing completion report provided by the Council's sales and marketing agent.

2 COMMISSIONERS' REVIEW

- 2.1 Recommendations supported.

3 RECOMMENDATIONS

That Cabinet Committee Property

- 3.1 Note that Cabinet on 23 July authorised and approved the appropriation of Plot 9 for this value to the HRA and authorised the City Solicitor (or their delegate) to prepare, negotiate, execute, and complete all relevant legal documentation required to give effect to the above.
- 3.2 Note the disposal value provided in the Section 123 marketing and completion report – Exempt Report Appendix 3, for the Perry Barr Residential based on an independent market valuation carried out by the Council's appointed sales and marketing agent.
- 3.3 Note that the independent valuation is consistent with the assumed open market value for the purpose of the appropriation

4 KEY INFORMATION

- 4.1 Below is a brief history to the Council's development at Perry Barr and a fuller update will be provided to Cabinet in September.2024. Alongside this report, a report on the disposal of Plots 6, 7 & 8 at the Perry Barr Residential Scheme is being presented to Cabinet Committee Property on 8th August for approval and provides additional information on the scheme.
- 4.2 Perry Barr, situated three miles north of Birmingham City Centre, is a vibrant and evolving area, home to a young and diverse community. It is an area with high housing demand and is earmarked for regeneration investment in the Big City Plan 2030.
- 4.3 The Perry Barr Regeneration Scheme is a comprehensive initiative aimed at revitalising the area and has been backed by significant amounts of public sector investment. This investment has focussed on enhancing public transport infrastructure, new schools, providing new homes, and creating community spaces. Birmingham securing the right to host the 2022 Commonwealth Games in December 2017 also served as a catalyst for regeneration in this part of the city.

- 4.4 The Perry Barr Residential Scheme (PBRs) is a large, multi-phase residential development with Phase 1 originally planned to operate as the Games-time athletes' village to accommodate c. 6,500 athletes and officials within a series of apartment buildings and townhouses delivered to "games-specification" on the former Birmingham City University (BCU) Teaching Campus at Aldridge Road.
- 4.5 The regeneration scheme consists of 3 phases of development in the vicinity of the Perry Barr railway station and the Council acted as developer for Phase 1. The land for phases 2 and 3 was acquired for future development.
- 4.6 Phase 1 received detailed planning consent in 2018 for a total of 1,414 homes across 11 development plots which included 1,146 residential homes (use class C3) and 268 Extra Care homes (use class C2) allocated to Plot 6. The planning consent required 312 of the 1,414 to be affordable homes. These affordable homes were subsequently allocated to plots 7-9. Outline planning consent was also obtained for phase 2, identifying the potential for the provision of a further 400 homes with a greater focus on family housing than was the case for phase 1.
- 4.7 Demolition works commenced in 2018 and initial authority was granted to develop eight of these plots (Plots 1, 3, 4, 5, 6, 7, 8, and 9) providing 1,151 residential units, with Plots 2, 10 and 11 planned for development or disposal post-Games.
- 4.8 The Council was in contract via a Construction Development Agreement (CDA) with Lendlease Construction Europe Ltd (Lendlease) in June 2019 for the development of the eight plots. Lendlease had awarded contracts to Tier 1 contractors for the development to Games-specification of Plots 6, 7, 8, and 9. The contract for the delivery of Plot 1 was in negotiation and the delivery approach for Plots 3, 4 and 5 was being reviewed to ensure those plots could be delivered as part of the programme and within budget.
- 4.9 In March 2020, the World Health Organisation declared COVID-19 as a global pandemic. In response to the emerging working environment the Council, in consultation with the Commonwealth Games Federation, Birmingham 2022 Organising Committee and Government undertook a review into the deliverability of the PBRs for Games-time accommodation for the athletes from both a programme, risk and value for money perspective.
- 4.10 An early outcome of this review was to cease design works (RIBA Stage 4 design partially complete) on Plot 1 and to omit it from the scope of the Games-time development. This decision was taken following a review into the development timescales, commercial viability and affordability of Plot 1.
- 4.11 Following further review into the deliverability and affordability to the Council of the remaining plots under construction, and when considering the additional costs required to accelerate and de-risk the programme for Games-time, and in response to COVID-19, a decision was confirmed by the Commonwealth Games Federation (CGF) to omit the PBRs from Games-time usage in August 2020. This

created an opportunity for the Council to omit certain previously planned elements of Games-time specification and to refocus the programme on the delivery of homes ready for occupation.

- 4.12 The development of Plots 3, 4 and 5 was also removed from the scope of the Lendlease CDA via change control approved by Programme Board in 2020 following a review into the optimal development and delivery approach.
- 4.13 Plot 6 was completed to shell and core in September 2022, with Plots 7, 8 and 9 completed to turnkey standard by February 2024. The public realm was substantially completed in February 2023, with the exception of the Aldridge Road element which was scheduled to be completed after the Games and it is expected these works will cost up to £0.5m based on pre-tender estimate prepared by the Council's advisor. The Council will incur the costs of this work and seek approval through its normal Governance process at a later date.
- 4.14 The original strategy for post-Games disposal of the accommodation involved retrofitting to a "legacy specification", made ready for occupation for a variety of tenures including, owner occupation, private rented and affordable housing, with the houses proposed for plots 3, 4 and 5 earmarked for appropriation to the HRA. This would bring forward the regeneration of Perry Barr and act as a catalyst to generate further development opportunities and deliver future growth in the area.
- 4.15 Following appointment of the Council's property sales agent in June 2020 a revised strategy for post-Games disposal with the wholesale disposal of Phase 1 was considered and soft-market exercises were undertaken. This confirmed there was no appetite in the market due to the peerless nature of the development (there were no other large, multi-storey residential apartment buildings in Perry Barr) in an untested and long-under-invested area of the city (the area suffered from negative perceptions). In addition, the narrow product offering (the scheme consists of just 1- and 2-bedroom apartments) caused concern that absorption rates (how quickly new homes could be let or sold) would be low once the market saturation for 1- and 2-bedroom new homes had been met. The strategic mitigation was to reconstitute the disposal strategy to focus on plot-by-plot disposals and to broaden the tenures for sale and rent in order to appeal to the widest possible market seeking to live in the new place. This would seek to underpin values and optimise the receipt for the Council serving as developer.
- 4.16 To mitigate the risk of oversupply, the revised plan included:
- Plot 6 - mixed tenure. Disposal to a specialist extra care operator (without finishing the building to "legacy-specification" as this would not coordinate with acquiring party's branding).
 - Plot 7 - rental tenure. Refinance/disposal via income strip (lease-and-leaseback) to institutional investor.
 - Plot 8 - sale tenure. Disposal via sale to institutional investor.

Plot 9 - sale tenure. Direct sales of long-leasehold apartments via DLUHC First Homes programme, with the balance of remaining homes unsold and the long-leasehold of the block to be sold to an institutional investor.

- 4.17 The Council received interest from third parties for the wholesale acquisition of Plot 8 and Plot 9, however, the advice of the sales agent was these were uncompetitive and unrealistic, and could not be recommended as representing best consideration.
- 4.18 Plot 6 was marketed formally in November 2022, and while this garnered a response from the market, no offers were deemed commercially beneficial to the Council to proceed - many required significant further investment and continued commercial risk to be borne by the Council.
- 4.19 Market conditions have been challenging since the beginning of 2020, and while the direct impacts of the pandemic on the project have fallen away, the impact of macroeconomic challenges has directly impacted the disposal of plots and homes across the project.
- 4.20 The Council engaged a residential sales agency to help administer the sales and marketing process for First Homes to qualifying members of the general public and was successful in attracting interest in the programme. However it was impossible to complete sales due to the impact that the mini budget in September 2022 had on the mortgage and lending markets, and the subsequent challenges for sales valuations. Therefore, the strategy was again refocused on business-to-business institutional disposals.
- 4.21 While interest was established in Plots 7, 8 and 9 the option of appropriating Plot 9 into the HRA was explored, and a proposal to follow this approach was considered and approved by Cabinet on 23rd July 2024. Plots 7 and 8 were remarketed alongside Plot 6 due to no credible interest in the extra care due to the size of the development and the still-untested location. Interest was established from institutional investors for plots 6, 7 and 8 with the proposal for removing the extra care planning condition from plot 6.
- 4.22 The Council then reverted back to marketing the development plots to institutional investors for all the plots and the bulk purchase approach for plots 6, 7 & 8 was agreed as the appropriate route to maximise capital receipts on a timely basis from the sales of the plots.
- 4.23 With the issuing of a S114 notice in September 2023, the Council have considered the options for disposal of the nearly complete plots 6 to 9 and have received offers for plots or combinations of plots which are being considered in Cabinet Committee – Property in August 2024. Alongside this consideration, Cabinet on 23rd July 2014, approved the appropriation of one block (plot 9) into the HRA to use as general needs social housing, in order to meet the needs of residents waiting for available social housing.

- 4.24 The HRA will take on the 213 units in Plot 9 at Perry Barr Phase 1, and offer as Social Housing, reducing the reliance on new build programmes planned to commence during the financial year.

5 Proposal and Reasons for Recommendations

- 5.1 Proceed with the proposed transaction. It is recommended to proceed with the transaction outlined in this report, in line with the external advice obtained to support the Disposal Strategy, to bring the process to its most beneficial conclusion by enabling prompt availability of social housing for occupation, reducing the debt burden to be borne by the General Fund and remove ongoing Council liabilities and associated costs associated with continuing to hold vacant properties. The Council is under obligation to ensure that any appropriation is undertaken at open market value. The continued holding costs to the Council are significant.

Other Options Considered: -

- 5.2 Do Nothing. The consequences of this would be to retain the vacant properties and continue to maintain the building at expense to the Council while we undergo a sales and marketing exercise to dispose of the plot on the open market. Do Nothing has been discounted as we need to remove the liability and ongoing costs to the Council including reputational damage of vacant properties and bring properties into use to address housing need across the city.
- 5.3 Commence individual apartment sales. The consequences of this would be to retain the vacant properties and continue to maintain the buildings at significant expense to the Council. Whilst the gross disposal proceeds may be enhanced by this approach, the holding costs would be incurred until all the apartments are sold which could take 5 years+ and will be dependent on market conditions (thus exposing the Council to continued commercial risk).

6 RISK MANAGEMENT

- 6.1 The risk of not providing a market valuation would undermine the Council's ability to demonstrate the appropriation of Plot 9 achieved best value for the Council. .

7 CONSULTATION

- 7.1 Deputy Leader – the Deputy Leader was pleased the Council was independently validating the value of the plot 9 appropriation.

8 MEMBER ENGAGEMENT

Ward Councillor(s)

- 8.1 There is ongoing dialogue with Ward Councillors for Perry Barr Cllr John Hunt and Cllr Morriam Jan to keep them informed of the Disposal Strategy, the associated transport and place making activity, and the regeneration of the wider

area. When presented with the appropriation of plot 9 to the HRA, councillors were comfortable with this use as social housing.

Overview and Scrutiny

- 8.2 The Economy and Skills Overview and Scrutiny Committee carried out pre-decision scrutiny of this report on 22nd July 2024. Key points and a response are provided in Exempt Report Appendix 5.

Other

- 8.3 The report has been presented to the Deputy Leader to ensure they were comfortable with the approach taken to ensure best value for the city and residents as well as any risks to the Councils financial recovery plan.

9 IMPACT AND IMPLICATIONS

Finance

- 9.1 The proposed appropriation of plot 9 to the HRA will result in the effective transfer of debt to the value of the property from the General Fund to the HRA. This will directly reduce costs to the General Fund representing the MRP / interest on this level of debt, with the costs instead borne by the HRA (and funded through the rents generated by the letting of the apartments).

Legal

- 9.2 Section 122 of the Local Government Act 1972 authorises the Council to appropriate for any purpose for which the Council are authorised by that or any other Act to acquire land by agreement any land which belongs to the Council and which is no longer required for the purpose for which it is held immediately before the appropriation.
- 9.3 Section 120 of the Local Government Act 1972 authorises the Council to acquire by agreement any land for any of their functions or for the benefit, development or improvement of their area.
- 9.4 Section 17 of the Housing Act 1985 authorises the Council to acquire by agreement for the purposes of its functions under part II of that Act houses, which includes flats, together with land occupied with the houses, and section 19 of that Act authorises the Council to appropriate for the purposes of part II of that Act any land vested in them or at their disposal.
- 9.5 The rules governing the HRA are set out in Part VI of the Local Government and Housing Act 1989 (the 1989 Act). Under Section 74(1) of the 1989 Act local housing authorities must keep in accordance with proper practices an account called a Housing Revenue Account. "Proper practices" are required by Section 88(1)(d) of the 1989 Act to be construed in accordance with Section 21 of the Local Government Act 2003. Section 21 of the Local Government Act 2003 empower s the Secretary of State to issue regulations and guidance to be followed by local authorities.

- 9.6 Section 75 of the 1989 Act requires that HRAs must be kept in accordance with Schedule 4 of the 1989 Act. This prescribes, in paragraph 5 of Part 3 (Special Cases), that on an appropriation into (or out of) the HRA adjustments to the council's revenue accounts must be made in accordance with any direction by the Secretary of State.
- 9.7 The Secretary of State's power to make directions is set out in Section 78 of the 1989 Act. The Housing Revenue Account (Accounting Practices) Directions 2016 (the 2016 Directions) – describe the information, to be disclosed in notes to the HRA; they do not make specific provision for appropriations. Instead local housing authorities need to account for appropriations as debits (or credits) as set out in Part 2 (and Part 1) of Schedule 4 to the 1989 Act. The relevant item is item 8, i.e. "Sums to be determined by the Secretary of State".
- 9.8 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 disposal and acquisition of property.

Equalities

- 9.9 An update to the Equalities Appraisal for the Perry Barr Regeneration Scheme (PBRs) was undertaken as part of this report and this determined there was no detrimental impact.

Procurement

- 9.10 There are no procurement implications with the recommendations of this report. However, it should be noted there are outstanding works to be completed to the public realm as noted in 4.12. The procurement of these works will be undertaken in accordance with the Council's Constitution and Procurement and Contract Governance Rules.

People Services

- 9.11 There are no additional staffing implications for this report.

Climate Change, Nature and Net Zero

- 9.12 An Environment and Sustainability Assessment is not included in this report as the existing buildings in the plots will be disposed of, but it should be noted that the disposal of the buildings will redistribute their resulting carbon emissions from scope 3 council emissions to city wide emissions.

Corporate Parenting

- 9.13 There are no corporate parenting implications for this report.

Other

- 9.14 All report authors should consider if there are any additional implications arising from this report and provide information here. Examples of other implications could include (but is not exclusively) community safety; digital and technology, health and wellbeing or social value.

10 APPENDICES

- 10.1 Appendix 1 – Site Plan
- 10.2 Exempt Appendix 2 – Report
- 10.3 Exempt Appendix 3 – Sales Report
- 10.4 Appendix 4 – Updated Equalities Assessment
- 10.5 Exempt Appendix 5 – Report Overview and Scrutiny Recommendations

11 BACKGROUND PAPERS

- 11.1 Joint Cabinet Member Chief Officer Report approved 6 June 2019 - Perry Barr Regeneration Scheme Full Business Case.
- 11.2 Report to Cabinet approved 11 February 2020 – Commonwealth Games – Athletes Village Update (Contracting of Plot 7)
- 11.3 Report to Cabinet approved 17 March 2020 – Birmingham 2022 – Revised Perry Barr Regeneration Scheme FBC (RFBC)
- 11.4 Report to Cabinet approved 21 July 2021 – Birmingham 2022 – Revised Perry Barr Regeneration Scheme FBC (RFBC)
- 11.5 Report to Cabinet approved 23 July 2024 – Perry Barr Plot 9 Appropriation