

London Borough of Hammersmith & Fulham

Report to: Cabinet

Date: 15/01/2024

Subject: Acquisition of Affordable Homes - Quayside Lodge

Report of: Councillor Andrew Jones, Cabinet Member for the Economy

Report author(s): Matt Rumble, Strategic Head of Regeneration & Development
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Responsible Director: Jon Pickstone, Strategic Director for the Economy

SUMMARY

Hammersmith and Fulham (H&F) Council has an ambitious target to see 3,000 new affordable homes built or underway in the borough over the coming 4 years. The council's development programme, at present, will contribute over 1,800 homes (65% affordable) through a combination of council-led schemes and partnership schemes with both housing associations and the private sector. In addition to this, the council is seeking to acquire homes within private developments that are currently under construction or have planning consent.

This report sets out an opportunity for the council to acquire 37 new affordable homes within 'Quayside Lodge' development, which is situated in the Sands End ward, to be completed in two phases from May 2024 to August 2024.

Cabinet authority is requested to enter into contract on the basis of the Heads of Terms attached to this report and secure the delivery of these much-needed homes.

The acquisition price meets the council's financial benchmarks and will make a positive contribution to the long-term financial sustainability of the Housing Revenue Account (HRA). The commercially advantageous price negotiated further demonstrates the council's commitment to being Ruthlessly Financially Efficient while still securing much needed affordable homes in the borough.

RECOMMENDATIONS

That Cabinet:

1. Notes that Appendices 1 and 2 are not for publication on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended)

2. Approves the council's acquisition of 37 homes and 4 disabled parking spaces in Quayside Lodge development funded by the HRA at the price set out in Appendix 2 (exempt) in line with the Heads of Terms set out in Appendix 1 (exempt).
3. Approves a capital budget envelope for this proposed acquisition, as set out in Appendix 2.
4. Authorise the Strategic Director for the Economy, advised by and in consultation with the Director of Finance and Assistant Director of Legal Services, to:
 - a. finalise an Agreement for Lease and other contractual terms (including minor amendments to the Head of Terms) and enter into binding contracts for the purchase of the 37 affordable homes;
 - b. enter into all necessary legal agreements including Agreement for Lease and arrangements around share of freehold;
 - c. Note the outcome of the due diligence process and proceed with the acquisition if it is materially beneficial to the council; and
 - d. Negotiate any modifications, alterations, or additions to the existing Planning permission and planning agreement which might be necessary or desirable, including conversion of affordable homes to more genuinely affordable tenures.

Wards Affected: Sands End Ward

Our Values	Summary of how this report aligns to the H&F Values
Building prosperity shared	The acquisition, if approved by Cabinet, will help to accelerate the delivery of genuinely affordable housing in the borough, enabling more residents on low or medium incomes to access affordable housing and benefit from growth in the borough.
Creating compassionate council a	The acquisition, if approved, will also enable the council to deliver more homes directly for residents awaiting permanent housing on the Housing Register as well as helping to reduce the number of residents in temporary or unsuitable accommodation.
Being ruthlessly financially efficient	Acquiring homes at commercially advantageous price with the possibility of external grant funding demonstrates the council's commitment to being ruthlessly financially efficient while, at the same time, increasing the availability of genuinely affordable homes to residents.
Taking pride in H&F	Ensuring parity between affordable tenants and private tenants in the same block/core in terms of having a

	say on how their block/core are managed and the services they have access to is an important factor enabling residents to take pride where they live and feel part of a single community.
Rising to the challenge of the climate and ecological emergency	Extensive energy efficiency measures along with Low and Zero Carbon applications have been incorporated into the development. These new homes were designed to achieve a minimum regulated carbon dioxide savings of 36.2% relative to other New-Build homes (Part L1A 2014), a Home Quality Mark '3 Star' rating and a BREEAM 'Excellent' rating for non-residential part of the development.

Financial Impact

The exempt Appendix 2 contains the financial appraisal of the proposed purchase options, including total acquisition budget and funding resources required.

The decision to proceed with the acquisition is subject to legal and financial due diligence checks and mitigation measures must be in place prior to exchange of contracts to prevent any financial risks, as detailed in Appendix 2.

Finance implications completed by Harun Guleid, Principal Accountant and Ariana Murdock, Finance Manager, 13 October 2023

Verified by Andre Mark, Head of Finance, 16th October 2023

Legal Implications

As per Section S.120 of the Local Government Act 1972, the Council may acquire by agreement with a third party any land whether situated inside or outside their area for the purposes of (a) any of their functions under this or any other enactment, or (b) the benefit, improvement or development of their area. There is no "best value" require per se in relation to an acquisition; however, there is an overriding duty for council decisions to be administratively and fiscally responsible and justifiable.

Section 1(1) the Localism Act 2011 (The General Power of Competence) allows the Council to do anything which individuals generally do even if:

- It is unlike anything else the authority may do
- It is unlike anything that other public bodies may do
- It is carried out in any way whatever, including:
 - anywhere in the UK or elsewhere;
 - for a commercial purpose or otherwise for a charge, or without charge; and
 - for, or otherwise that for, the benefit of the Authority, its area or persons resident or present in its area

Section 9 of the Housing Act 1985 grants the Council the power to provide housing accommodation (a) by erecting houses, or converting buildings into houses, on land acquired by them or (b) by acquiring houses.

Section 17 of the Housing Act 1985 grants the Council the power (a) to acquire land as a site for the erection of houses and (b) acquire houses, buildings which may be made suitable as houses, together with any land occupied with the houses or buildings.

Planning Permission ref:2017/03561/FUL permitted the construction of 110 dwellings at Quayside Lodge, William Morris Way, London subject to the provisions of 37 of such dwellings as affordable homes. This was secured by the Council, at the time planning permission was granted, under a planning agreement (“S106”) pursuant to a section 106 of the Town and Country Planning Act 1990 (“the Act”). The S106 sets out the tenure mix and other specifications for these affordable homes including when and how they should be transferred to a Registered Provider or the Council.

A deed of variation to the S106 under s106A of the Act would be required to enable the affordable homes to be provided as a more affordable product to the residents by the Council.

The necessary checks and safeguards will be put in place prior to acquisition and the transfer documents drafted so as avoid or mitigate the risks associated with acquiring properties prior to completion.

The due diligence required to proceed with the transactions will need to consider legal implications including contractual terms, warranties, VAT, SDLT liability and availability of any SDLT relief. These will be covered in the delegated report to be considered by the Strategic Director for the Economy, advised by the Director of Finance and Assistant Director of Legal Services before exercising their delegated powers.

The Article 12 of the Constitution sets out the decision-making principles of the Council and defines Key Decisions and the requirements in respect of Key Decisions. A Key Decision includes a decision that is likely to result in significant expenditure for the Council. The Cabinet Member for Housing and Homelessness has the portfolio for acquisitions and improvements to the Council’s housing stock and is tasked with making recommendations to the Cabinet on Key Decisions relating to matters within their portfolio. The Council’s Financial Regulation provide that decisions on acquisitions above £300,000 must be made by the Cabinet.

Mrinalini Rajaratnam, Chief Solicitor Planning and Property, 10 October 2023

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

1. The council’s development programme will deliver over 1,800 homes through a combination of council-led direct delivery schemes and partnership schemes with housing associations and private sector.

2. The administration of the Council has an ambitious target of securing 3,000 affordable homes (to be delivered or underway) within the next 4 years. Acquisitions, whether that of properties under construction or ready to occupy, are a vital element that complements the council's development programme and help support a timely realisation of the council's overall objective.
3. Where the council chooses to purchase properties under construction, it is able to negotiate financially advantageous terms meaning the cost per home would be far below the market value of completed homes on the open market as well as being able to specify or have a direct influence on tenures, affordability levels and property specification.
4. This proposed acquisition, which is likely to be the first of many to come, sets a strategic milestone in meeting the need for affordable homes in this borough as well as supporting the financial sustainability of the HRA.
5. The council will continue to explore further opportunities to increase the volume of affordable homes in the borough through its direct delivery programme complemented by acquisition and partnership developments.

Proposals

This development

6. The 37 homes that are the subject of this proposed acquisition are within a private development consisting of 110 homes in one building over multiple cores, spread over a ground floor and 10 storeys above ground. The ground floor will include commercial office space together with resident amenities. The development received planning permission on the basis that 37 of the 110 homes will be affordable homes of which:

21 Affordable Rent Homes	
• 3 x 1 bed apartments	To be rented at the lower of Local Housing Allowance levels or 80% of the market rent whichever is lower.
• 9 x 2 bed apartments	
• 9 x 3 bed apartments	

16 Shared Ownership Homes	
• 14 x 1 bed apartments	Shared Ownership allows residents to buy a percentage of a property and pay rent on the unsold share.
• 2 x 2 bed apartments	

7. The inclusion, in this acquisition, of family sized homes (9 x 3-Beds and 11 x 2-Beds) means it supports the council's objectives under the emerging family housing strategy. The aim of this strategy is to provide a response to the structural shift in household composition in the borough caused by a noticeable decline in households with school-age children, who may have moved out of the borough due to limited availability and affordability of family sized homes in

the borough. This structural shift in household composition has had an impact on use-dependant community infrastructure and facilities such as schools, childcare and libraries.

8. The supply of family sized homes catering for different affordability levels would, therefore, help create and sustain vibrant mixed-communities that in turn support use-dependant community infrastructure in the borough.
9. From a design perspective, the scheme, while mixed tenure, is designed to be tenure blind, meaning there are no differences in the quality of architecture or construction between market homes and affordable homes. The planning consent for this development located rental homes in one core. This will enable the council to manage the rental core directly which will in turn help ensure the long-term affordability of service charges for council tenants.
10. The affordable home ownership and market homes are mixed across other cores of the scheme. Owners of Affordable homeownership homes will have a share of freehold, and as a result they will have the same right to vote and participate in the running of their core as that of private homeowners in the same core. Affordable homeowners will also have the right to choose whether to access and pay for additional residents' services and facilities such as the use of a Gym, Cinema Room and a Resident Lounge.

Negotiated Price (subject to Cabinet approval and contract)

11. Officers have negotiated an acquisition price (Appendix 2 – exempt) for the 37 homes. This also includes four wheelchair parking spaces (for the four fully adapted wheelchair homes) and a share of freehold with the acquisition. This negotiated price meets the council's financial hurdles and is at a commercially advantageous level which will support the long sustainability of the Housing Revenue Account. See Appendix 2.

Programme - construction period

12. Construction commenced on 07 March 2022 and the overall programme spans 115 weeks. Scheduled handover of the completed affordable homes is set for August 2024, however the construction programme is running ahead of schedule and so some homes might be delivered as early as May 2024.

Summary of negotiated deal and transaction structure

13. The proposed structure of the transaction (timing of payments) is as follow:
 - 10% deposit to be paid on exchange of Contracts (estimated mid-December);
 - 88.5% on completion of each core (apportioned per core);
 - 1.5% retained, to be paid after 24 months of completion (after the defects liability period).

14. The agreed Heads of Terms (Appendix 1) includes provisions entitling the council to liquidated and ascertained damages if completion were to be unduly delayed. It also includes a Long Stop Date on which the council can terminate the transaction if homes are not delivered by that date.
15. The retention of 1.5% of the price minimises any immediate repair cost on the council during the 24 months defect period and incentivises the developer to resolve any defect or snagging issue immediately, failure of which entitles the council to use retained money to fix snagging or defects issues. Additionally, the council will benefit from new build home guarantee and warranties, further minimising the council's liability and exposure to any inherent defect in the construction.
16. This acquisition will be a "turnkey" acquisition meaning that while the council is entering into contract to acquire these homes while they are under construction, the actual acquisition only takes place once they are ready for occupation and so the council's deposit will be retained by the seller solicitor until completion. This also means that if delivery was to be delayed beyond the Long Stop Date and the council was to terminate the transaction, the council will get back its deposit in full as well as the liquidated damages mentioned above.

Due diligence

17. Officers have undertaken due diligence with the support of external technical advisors and Legal advisors and will continue to progress finalisation of contractual documents as well as carry out further independent verification of some elements such as fire safety to provide additional assurance.
18. This proposed turnkey purchase, at a late stage in construction, means it is in effect an "off the shelf" purchase of homes that have already been designed and are under construction. This also means the amount or extent of any design changes that could be implemented is limited and constrained by minor changes that can be implemented within the existing construction programme.
19. Further, implementable changes to specification of these homes, which were specified by a previous perspective buyer (Registered Provider), are also limited and as such internal housing services have been involved to examine the conformity of these specification to council's own specification as well as the council's ability to maintain these homes as part of the due diligence undertaken.
20. Therefore, the main focus of the due diligence, other than examining conformity of specification, was on compliance and fire safety. Following exchange of contracts, periodic inspection and testing will be undertaken to ensure compliance and build as per approved Fire Safety Strategy. Additionally, and as per Heads of Terms, completion and handover of these homes is subject to the council's Employer's Agents confirming that the development has received all necessary certification, warranties and insurance.

Revised tenures – Genuinely Affordable Homes

21. The negotiated price assumed a revised affordable tenure mix to make homes more affordable than the consented scheme by converting all the 21 rental properties to London Affordable Rent (Tenure Option 1 – Appendix 2) or Social Rent level subject to external funding (Tenure Option 2 – Appendix 2).
22. Conversion of affordable rental homes to genuinely affordable levels would allow these homes to be offered to residents on the housing register and/or potential for use to decant existing council residents in properties needing major works or complex repairs.
23. Therefore, the offer assumes all 21 rental homes will be London Affordable Rent or social rent including 9 large three-Bedroom family sized homes and 9 two-Bedroom also suitable for families.
24. The offer also assumes that ten out of the 16 Shared Ownership homes will be converted to H&F Shared Equity (formerly known as Discount Market Sale) to align with a council's commitment to deliver an H&F shared equity model.
25. H&F Shared Equity offers a more genuinely affordable and sustainable home ownership option for residents including key workers, as there will be no rent payable on the unsold equity that increases above inflation every year. This distinction between shared ownership where rent on unsold share increases year-on-year above inflation and H&F Share Equity where there's no rent; means that in the long run H&F Share Equity is a more sustainable genuine affordable home ownership product that supports creation of sustainable communities.

Objectives of acquisitions

26. Acquisitions are an important part of fulfilling key strategic priorities of the council to boost the overall volume of genuinely affordable homes available to residents as well as supporting the long-term financial sustainability of the HRA.

Analysis of Options

27. There are two main options available to the council:

Option 1 – Do nothing (not recommended)

28. This option would mean abandoning the acquisition of these homes and leave them to be acquired by a Registered Provider. There's a risk that the developer may not find a Registered Provider immediately and the homes will lay vacant for an indeterminate term. Additionally, the price the developer may seek for completed homes may well be in line with their market value as off-plan discount would not then apply.

29. If the council does nothing it will lose the opportunity to convert the 37 affordable homes to more affordable products for local residents. If these properties are provided by a Registered Provider, 12 of the 21 affordable rent homes will be rented out at the lower of the Local Housing Allowance levels or 80% of the market rent which may still be unaffordable for some local residents.
30. The shared ownership homes may also be unaffordable to some, due to the high value of homes in that locality and the rent on the unsold share. However, if the Council acquires these properties at the price negotiated, they will be offered to residents at a more affordable rent as well as the more affordable home ownership product, H&F Shared Equity instead of Shared Ownership.
31. Not proceeding with this decision will also mean that many of the financial benefits to the HRA associated with this acquisition will not be realised.

Option 2 – Approve this report’s recommendations (recommended)

32. This option would enable the council to acquire 37 homes including 21 genuinely affordable rental homes that would be made available to residents by the summer of 2024.
33. Approving this report’s recommendations would also help with the council’s strategic objective to accelerate the delivery and availability of much needed genuinely affordable homes in the borough.
34. Acquisitions of new homes under construction offer a demonstrably better value for money compared to acquisition of existing homes on the open market.
35. Additional analyses are discussed in Appendix 2 (exempt).

Reasons for Decision

36. The council is committed to maximising the supply of genuinely affordable housing and so this decision represents a significant step towards the council taking an active role in increasing the supply of affordable housing in the borough through the acquisition of homes in private developments. This acquisition will supplement the council’s development programme and will help in meeting the acute need for affordable housing.
37. Additionally, the provision of good quality modern secure homes that are better insulated, free from damp and mould would have a material positive impact on residents’ health and wellbeing.

Equality Implications

38. The proposed transactional acquisition is to increase the council’s housing stock and is not anticipated to give rise to any equality implication for any group with protected characteristics, under the Equality Act 2010. Indirect positive implications may arise from the acquisition of wheelchair adapted homes and 4 disabled parking spaces.

39. The allocation of these homes will be carried out in accordance with the council's existing allocation policies and procedures that were subject to Equality Impact Assessments. Consequently, undertaking a separate assessment for this acquisition or allocation of these homes would not be required as neither would give rise to any material difference on people with protected characteristics that were not considered under existing policies or procedures.

Risk Management Implications

40. There are some specific risks arising from acquisition of properties under construction including contractual defaults, disruption or interruption to the construction programme, properties not being of the required quality including not conforming to the granted planning permission or not complying with building and fire safety regulations. These risks would need to be mitigated by way of a detailed due diligence before entering into contract and incorporation of a handover mechanism that includes an acceptance procedure, i.e., the council as a buyer would only be required to acquire the properties on them receiving all necessary certification and being built and fitted out in accordance with council's specification and signed off by the council's Employer's Agent.
41. Additionally, and as part of any contractual agreement to acquire these homes, the council must obtain strong warranties from the main contractor and its sub-contractors and these new homes must come with insurances such as New Build Home Guarantee.
42. Officers have assessed the suitability and financial viability of this acquisition, which will provide units at a lower cost than if the Council were to undertake the construction itself, in line with the objective of being ruthlessly financially efficient. The acquisition of these homes will contribute to the Council's target for providing additional affordable housing in the borough.

David Hughes, Director of Audit, Fraud, Risk and Insurance, 13 October 2023

Climate and Ecological Emergency Implications

43. Climate change poses a significant risk to all of us and in recognition of this, the council has set a goal of achieving net carbon zero by 2030. Part of this goal will be achieved through the development programme that is building net zero homes as well as the acquisition of new homes that are better insulated producing lower carbon emission.
44. This report seeks approval to acquire homes in a building that is designed to achieve BREEAM 'Excellent' Certification. BREEAM provides a best practice framework in sustainable building design, construction and operation and allows for the assessment and benchmarking of new and existing property assets of several different use classes including mixed-use developments incorporating residential accommodation. It uses recognised measures of

performance to evaluate a buildings specification, design construction and use across:

- Energy and water use
 - Internal environment (health & wellbeing)
 - Management processes
 - Pollution
 - Transport
 - Materials
 - Waste
45. The BREEAM assessment consists of two stages - Design and Post Construction, with an optional Post Occupancy stage. An assessor will gather evidence from the project team at each stage and compile this into a report to send to BRE, who will provide the final certification.
46. The design philosophy adopted by the developer in this development exceeds current Building Regulations Standards and BREEAM Evidence Tracker was inspected confirming the development to be on track to achieve projected 'BREEAM Excellent' rating.
47. Homes in this developer are to achieve a Home Quality Mark (HQM) 3-star rating. HQM assesses the quality and sustainability of the home itself, its surroundings and the construction. The assessment process is designed to ensure that homes meet high standards for running costs, health and wellbeing, and environmental footprint. This means lower energy bills, a healthier living environment, and a home that contributes to a sustainable future. The rating system runs from 1 star rating to 5 stars with 1 star meeting key baselines beyond minimum statutory standards and 5 stars being outstanding.

Approved by Hinesh Mehta, Assistant Director for Climate Change, 11/10/2023

LIST OF APPENDICES

Appendix 1 – Heads of Terms – Exempt

Appendix 2 – Financial Appraisals and Exempt Financial Comments – Exempt