

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet

Date: 13/05/2024

Subject: Old Laundry Yard site regeneration and construction of 40 affordable homes

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

Report author: Matt Rumble, Strategic Head of Regeneration & Development

Responsible Director: Bram Kainth - Strategic Director of Environment

SUMMARY

The Hammersmith and Fulham Industrial Strategy places clear emphasis on the role of affordable housing, sustainable and diverse employment opportunities, and vibrant placemaking in promoting inclusive economic growth. This report requests approval of a range of recommendations that will boost the supply of affordable housing across the borough and contribute towards the wider regeneration of Shepherds Bush.

The report seeks authority from Cabinet to enter into a Development and Land Swap Agreement (“the Agreement”) with *YC Shepherds Bush Limited* (“YCSBL”). The Agreement enables the development of 40 new affordable homes on the Council-owned Old Laundry Yard site (“OLY”). Under the Agreement, YCSBL will build the homes on behalf of the council in exchange for rights on OLY which will enable broader redevelopment. The Council has undertaken robust due diligence – detailed elsewhere in this report – to provide assurance relating to the commercial logic underpinning the Agreement.

All of the 40 new homes will be affordable; 24 of these new homes will be London Affordable Rent (LAR) and 16 will be Council Shared Equity. In line with the Council’s priority to maximise the provision of family sized housing across the borough, the Agreement requires that 93% of the new homes are family sized.

In addition, Cabinet is asked to authorise and note the necessary enabling budget for external legal, valuation and technical advisors in addition to internal fees.

RECOMMENDATIONS

That Cabinet:

1. Notes that Appendices 2, 3 and 4 are not for publication on the basis that they contain information relating to the financial or business affairs of any person (including the authority holding that information) and information in respect of which a claim to legal professional privilege could be maintained in legal

proceedings as set out in paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 (as amended).

2. Approves the terms of the acquisition and disposal of the Developer's Land based on the heads of terms attached at Exempt Appendix 2 ("Heads of Terms"). This constitutes an agreement to:
 - (i) enter into the Heads of Terms and Land Swap and Development Agreement and any associated agreements with YCSBL or any subsidiary company guaranteed by YCSBL, which are required to facilitate the delivery of the transaction envisaged in the Heads of Terms;
 - (ii) approve the procurement strategy for the award of the Land Swap and Development agreement to YCSBL by way of an award under the negotiated procedure without prior publication of a contract notice;
 - (iii) approve the award of the Land Swap and Development agreement to YCSBL;
 - (iv) delegate authority to the Strategic Head of Regeneration and Development, in consultation with the Cabinet Member for the Economy and the Arts and the Assistant Director of Legal Services, to finalise and complete negotiations with YCSBL in order to give effect to the decision in (ii and iii) above;
3. Authorises the Assistant Director of Legal Services, or an authorised delegate on their behalf, to settle and execute on behalf of the Council all the necessary documents and public notifications required to implement the recommendations in this report.
4. Approves an additional £755,000 capital budget required to cover the remaining professional fees and Stamp Duty Land Tax. This budget will be financed by HRA borrowing, unless S106 or other external funding is available to fund these costs.

Wards Affected: Shepherds Bush Green

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	These homes will help to accelerate the delivery of genuinely affordable housing in a key part of the borough, enabling more residents on low or medium incomes to access affordable housing and benefit from growth in the borough.

Our Values	Summary of how this report aligns to the H&F Values
Creating a compassionate council	These homes 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. The inclusion of 16 Council Shared Equity will enable residents or people working in the borough on the Home Buy register to purchase affordable homes and meet the 2022 manifesto.
Being ruthlessly financially efficient	The acquisition of these homes will be at a minimum cost estimated at £2m (stamp duty and fees excluding land transfer). This supports the Council's commitment to obtaining homes at best value and being ruthlessly financially efficient while and at the same time, increasing the availability of genuinely affordable homes to residents.
Taking pride in H&F	The homes are well designed and incorporates, considered, clear managed and accessible areas in the overall block, between the tenure of the affordable homes. This will enable efficiencies in terms of delivery of service and will also enable residents to take pride in where they live, contribute and feel part of a community.
Rising to the challenge of the climate and ecological emergency	The design approach for the scheme follows the GLA's energy hierarchy i.e., being 'lean, clean and green' to achieve the following targets: A 10% and 15% reduction against domestic and non-domestic developments, respectively, compliant with Part L 2021 of the Building Regulations through energy efficiency measures alone (be lean); A benchmark 50% reduction in regulated carbon emissions beyond Part L 2021 for residential development through on site measures; Zero carbon target for domestic and non-domestic areas of development, with 35% on-site reduction beyond Part L 2021 and proposals for making up the shortfall to achieve zero carbon, where required.

Financial Impact

Details of the financial impact of this report are set out in the exempt Appendix 4.

Ariana Murdock, Finance Manager, 6th March 2024

Verified by James Newman, Assistant Director – Finance, 8th April 2024

Legal Implications

The Council has been advised by Lewis Silkin LLP on the negotiation of the Heads of Terms and the real estate aspects of the proposed transaction. The Council is entitled to rely on their advice in considering how to proceed. Legal comments on the procurement aspects are set out in exempt Appendix 2.

(i) STATUTORY POWERS TO DISPOSE OF LAND AND BEST CONSIDERATION

Section 1(1) of the Localism Act 2011 confers a general power of competence on the Council and provides that a local authority may do anything that individuals generally may do, even though they are in nature, extent or otherwise;

- a) unlike anything the authority may do apart from subsection (1): or
- b) unlike anything that other public bodies may do.

Further, Section 111 of the Local Government Act 1972 provides that a local authority shall have the power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

The Old Laundry Yard is held for the purposes of Part II Housing Act 1985 (“**1985 Act**”) and accounted for in the Housing Revenue Account (“**HRA**”).

Under section 32 of the 1985 Act, the Council is empowered to dispose of land held in the HRA subject to consent of the Secretary of State. However, by a statutory instrument (General Housing Consents 2013), the Secretary of State has granted a general consent (subject to certain limitations not relevant in this case) which enable a local authority to dispose of HRA land for a “consideration equal to its market value.” “Market value” is equivalent to “best consideration” as stated in section 123 of the Local Government Act 1972. For these purposes, “best consideration” has been described by the Court as those “elements of the transaction of commercial or monetary value to the local authority”, and “the price payable for the land”, which may consist simply of the “sum of money offered for the land”, or that sum plus “other elements such as rights in the nature of easements or a right to re-purchase provided that such elements have a commercial or monetary value which is capable of being assessed by those expert in the valuation of land”. What amounts to “best consideration” is a matter of professional valuation judgement based on an expert assessment supported by evidence. Paragraphs 19 and 20 below confirm that the recommended transaction is considered best consideration.

Further the recommended transaction is considered to provide wider regeneration benefits to the area as set out in paragraphs 5 and 6 below.

Legal Implications completed by Lewis Silkin and verified by Afshan Ali-Syed, Senior Property Solicitor, Property and Planning Team 07887651197 on 18th March 2024.

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Proposals and Analysis of Options

Background

1. The Council owns the Old Laundry Yard (OLY) site that sits to the east of the Shepherds Bush Market (SBM). The only access to OLY is via Pennard Road and is restricted by the fact that a residential dwelling is built over the accessway so that large vehicles are not able to access OLY directly from Pennard Road. The extent of the Council's ownership is shown coloured yellow on the plan at Appendix 1. The properties along Pennard Road form part of the Shepherds Bush Conservation Area and those along Lime Grove are designated as part of the Coningham and Lime Grove Conservation area. Pennard Road mansions and the former Shepherds Bush Library to the north and south of the site are both identified on the Council's Register of Buildings of Merit.
2. In July 2019 Cabinet approved a budget of £1.3m for professional fees so that the Council could, in partnership with U+I – the then owners of SBM – work up a scheme for planning at the OLY site and adjacent sites in U+I ownership. The proposed scheme was a mix of private and affordable homes, commercial uses and improvements to the market. The council would pay for the construction of a mix of private and affordable homes on OLY with U+I acting as Development Manager. Additionally, Cabinet approved in principle to appropriate the site for planning purposes. However, following a change in the ownership of SBM and the adjacent land, this scheme did not proceed.
3. In September 2020 the ownership of SBM changed. U+I Plc (LON:UAI) formed a joint venture (JV) with Yoo Capital owning 75.5% and U+I Plc (LON:UAI) retaining 24.5%. The JV wished to continue with the proposals to redevelop the council's OLY site and the adjacent sites in the JV ownership, as well as to make significant improvements to the market.
4. The proposals have evolved following the Covid pandemic and an uncertain economic outlook. The council and YCSBL considered whether the existing delivery structure, as described in paragraph 2 above, was still suitable for the scheme. Following consultation with the market traders the design has been

developed further and a fresh approach was designed to better meet the objectives of both organisations.

5. The revised structure of the deal between YCSBL and the council has changed from a partnership whereby both parties fund their own development on their own land with a development agreement, to a land swap and development agreement. This revised structure makes a more efficient use of the land through the equitable land swap. It results in a design that creates a new community that has clearly delineated zones for homes for the Council and commercial uses for YCSBL, within a shared public realm.
6. The Council benefits as YCSBL will build the 40 affordable homes to the Council specification in lieu of a land receipt, therefore there will be no call on the Council for a capital investment or the need to develop market sales homes to cross subsidise the affordable homes. The affordable homes provide a mix of tenures; with both London affordable rent and shared equity offers.
7. The new team have worked up the proposals in consultation with the Council and the local community since 2020, culminating in a new planning application in Spring 2023.
8. The sites adjacent to the market (including the OLY) have been used for meanwhile uses – shipping containers used for creative and affordable workspace and ancillary storage. The relationship with the existing market traders was critical to the success of the proposal and YCSBL has worked with the traders to ensure that the new proposal has been designed with their input, helping them to grow and sustain their businesses.

Proposed Development and Planning Approval

9. Following the evolution of the new structure the proposed mixed-use development within the planning application includes the following which will deliver economic, social and environmental wellbeing benefits to the borough, including:

- 40 new, high-quality affordable homes for the London Borough of Hammersmith and Fulham ownership, with 24 as London Affordable Rent and 16 as Council Shared Equity, the proposed mix is outlined below.

Property Types				Total Homes
1b2p	2b3p	2b4p	3b5p	
4	20	13	3	40

- An improved market that enables traders to attract and sustain long-term custom while respecting its history and culture;
- Long-term security for existing Market traders and space for new, complementary traders;

- A new incubator space operated by Imperial College London providing affordable dry lab workspace for start-ups and SMEs in life sciences;
 - Co-working space for local businesses and people;
 - Commercial office space designed with health and wellbeing in mind;
 - A greener, cleaner public realm with planting, play space and biodiverse destination.
10. The Council as landowner will benefit as the use of the OLY site will be optimised and used for much needed affordable homes for local residents. The Council will also be part of the economic regeneration of the sites, providing much needed new opportunities for the market traders and new businesses to thrive.
 11. Securing genuinely affordable rented homes in the OLY site ensures the accelerated delivery of social housing to meet the needs of applicants on the Council's housing register.
 12. In addition, the Council will also deliver a shared equity product (generally known as Discount Market Sale) aligning with a manifesto commitment to deliver an H&F Shared Equity model. This product offers a demonstrably affordable and sustainable home ownership option for key workers and local residents on the Council's Home Buy register, as there will be no rent payable on the unsold share. This distinction is important because existing models such as shared ownership for example, have a rent on the unsold share that increases year-on-year in line with inflation.
 13. The scheme has maximised the number of family sized homes, to meet the objectives of the Council's emerging Family Housing Strategy.
 14. On the 19 December 2023, the planning committee resolved that, subject to there being no contrary direction from the Mayor of London, the Director of Planning and Property be authorised to grant planning permission upon the completion of a satisfactory legal agreement.
 15. An indicative timetable for the development is provided below.

Milestone	Date
Exchange Contracts	October 2024
Enabling Works	December 2024
Start on site	January 2025
Practical Completion	November 2027

16. The Heads of Terms for the Development and Land Swap Agreement are appended at exempt Appendix 2. They were drafted following advice from the council's legal advisors, Lewis Silkin LLP and will be used as the basis for the negotiation of the final Development and Land Swap Agreement between the Council and YCSBL. The Heads of Terms sets out how the land swap will

work to enable construction of the affordable housing together with the public realm and shared public areas. In addition, it includes the development obligations that YCSBL will be obliged to comply with through contractors and a professional team who will owe a duty of care directly to the Council.

Development and Land swap Agreement Heads of Terms

17. A summary of the benefits to the Council in the Heads of Terms is set out below.

- The transaction will provide the Council with 40 affordable high-quality homes with nil capital cost as part of the new development;
- The affordable homes are a mix of London Affordable rent and Council Shared equity, offering a choice of tenures for residents;
- The scheme complies with the Local Plan Strategic Policy WCRA (White City Regeneration Area);
- The land swap between the council and YCSBL is equitable, provides best value for the Council's land at OLY, and enables a more efficient use of our respective land;
- The land swap retains the Council's control over the access way from Pennard Road and the common areas of the new development;
- The OLY site will be brought into use, making the best of an underutilised asset;
- Residents will be protected from high service charges and energy bills through careful sustainable design;
- The homes will be retained in the Housing Revenue Account that receives a long income stream from rent & shared equity homes' capital receipts without any capital outlay.

Valuation advice

18. The independent valuation has been carried out for the Council by Radice Chartered Surveyors (Andrew Radice MRICS ACIM RICS) Registered Valuer. His full report is at exempt Appendix 3.

19. In his report of September 2023, Andrew Radice has valued the land based on industry standard variables against a discounted cashflow (for the affordable housing) and the Argus Developer appraisal model (for the commercial units). When compared with the value of the proposed land deal whereby construction of 40 affordable homes creates a positive net present value, the recommended transaction is considered Best Consideration under Section 123 of the Local Government Act (1972).

Jonathan Skaife – Head of Corporate Property Services

Analysis of options

20. Following the change of ownership, YCSBL and the Council considered if they wished to continue with the original proposal as outlined in paragraph 2 above. Several options were appraised by the Council in these discussions examining the best way the new homes could be developed on the OLY site.
21. The site is currently being use for meanwhile uses under licences. This is not a long-term use and is underutilising the Council's land asset. The options appraised were:

Option 1

22. 'Do nothing' and retain for current meanwhile use. This option would require the Council to renew the lease for the meanwhile uses and obtain a renewal of the temporary planning permission for 'meanwhile' uses. This is not an attractive long-term solution for the Council as it does not make effective use of the land holding and foregoes the opportunity for new housing. This option is not preferred.

Option 2

23. Dispose of the OLY site on the open market. The Council could market the site based on a title restriction for income from meanwhile uses subject to the temporary planning permission. Or it could dispose of the site once the meanwhile uses licenses have expired. The disposal would result in a relatively low capital receipt and may not unlock wider delivery of new homes, modernised market stall accommodation and new business space. The value and development potential of the OLY site would also be severely impacted by the restricted access from Pennard Road, which would restrict any future development without the cooperation of YCSBL as owner of the adjoining land. This option is not preferred.

Option 2b

24. Dispose of the OLY site to other adjoining owners. The Council has considered whether it's land interest could be acquired by the other adjoining landowners for development purposes but have concluded that this is extremely unlikely.
25. The reason for this is that the Council's land is a triangular shape and YCSBL own or control the adjoining land along 2 of the 3 boundaries. The adjoining land interests along the third boundary are made up of private residential homes running between the Council's land and Pennard Road, and so it is impossible to see how all the private owners would have any interest in acquiring the Council's land for residential purposes (even if it were possible).

26. In addition, the OLY site is also land locked, and only has a very restricted access to Pennard Road (which is the only public highway that it has access to) which runs underneath an existing residential home at 15 Pennard Road and which it would be impossible for any type of construction traffic to gain access through. As a result, it is impossible to assess how an adjoining landowner apart from YCSBL could acquire the Council's land.
27. If YCSBL did acquire the land from the Council, and re-develop the OLY site itself, it could not achieve the requirements of the Local Plan Strategic Policy WCRA (White City Regeneration Area) which gives a strong direction for the two sites to be developed together to achieve the Council's wider drive for a mixed-use development, and the Council would lose a critical element of control over the development of the affordable housing on its land. This option is not preferred.

Option 3

28. Council to redevelop the OLY site. 15 Pennard Road has restrictions both spatially, from a planning point of view, and poor access/egress from a highway stance that would make it impossible for any large construction vehicles to gain access to the OLY site during the construction period. In the unlikely event planning permission was obtained, then the logistics of developing out the site would be impossible to satisfy.
29. The approvals necessary for more than one emergency access during construction would require consent from YCSBL to use their land. Construction traffic access in Pennard Road would likely to be restricted as per the temporary planning permission, therefore the only other access would be through the YCSBL land or by craning over the homes in Pennard Road which is very unlikely to be acceptable to planning. This option is not preferred.

Option 4

30. Develop OLY site in partnership with YCSB. This option will enable a joint planning permission that creates a wide scale regeneration of the market and adjacent land holdings. The proposal is to swap land between the Council (at OLY) and YCSBL (adjacent market land) to create separate residential and commercial zones while benefiting from shared access and public realm. The value of the land swap has been assessed by an independent valuer and YCSBL have agreed that they will build out 40 affordable homes on OLY in lieu of a land payment.
31. The Council will benefit from this long-term asset with no requirement to cashflow the construction. The only cost to be borne by the Council will be the associated enabling on-costs. This option will also address the access issue that would otherwise prevent any significant development taking place on the OLY site, as it would benefit from the access over the YCSBL adjoining land, which would greatly facilitate significant development on the OLY site.

Valuation advice has confirmed that this land swap represents best consideration for the Council. This is the preferred option.

Option 4(A)

32. The Council could develop the affordable housing out itself within the partnership arrangement as described above. This has been considered and the Council has tried to bring forward the development of its land previously – but has never been successful in doing so due to the site constraints as in Option 3 above. This experience has shown that this would not be beneficial to the Council in terms of value for money and practicalities. An overarching development agreement will bring economies of scale and access to the wider YCSBL supply chain. In addition, the practicalities of two lead contractors working on a very tight site would require shared access protocols that will be costly and challenging from a health and safety perspective.
33. The affordable housing could be built out within a joint venture arrangement with YCSBL, this option has been considered, however as the Council and YCSBL will retain their own land holdings there is no benefit from this arrangement. A joint venture is usually considered where the parties want to share risks.
34. The heads of terms negotiated as in Option 4 above mitigate and transfer construction risk (cost inflation, quality and time) to YCSBL, and the 40 affordable homes provide excellent value for money for an underutilised site. In addition, it will take longer to set up the joint venture and incur significant additional legal and governance costs. This option would also not take full advantage of YCSBLs experience and track record of delivering mixed-use development schemes and would mean that management and delivery risk of the affordable housing remains with the Council. It would also require financial outlay by the Council that will not be required in the preferred option. This option is not preferred

Option 4(B)

35. The Council could carry out the land swap with YCSBL, and access via Goldhawk Road, then use the land receipt to partially fund the construction of the affordable housing, in parallel with YCSBL building out their commercial units. This option will require the Council to find additional capital funding as the land receipt will not be adequate and there is considerable pressure on the Housing Revenue Account's available cash. This option as in Option 4(A) above requires parallel building contracts which introduces interface risks and reduces efficiencies, will not provide either party value for money and the risk is retained in the Council. This option is not preferred.

Option 4 (C)

36. The Council could lead and procure the development on behalf of YCSBL as a single construction contract for the affordable housing and YCSBL's commercial units with post completion handover of the completed works to the YCSBL. Given the Council's experience of having unsuccessfully tried to bring

forward the development of its land, it is felt that the Council will struggle to deliver a development of the combined site. This option does not make use of YCSBL's experience of delivering mixed-use developments, and in particular their commercial experience which the Council has less experience in. This option is not preferred.

Recommended Option

37. **Option 4** - provides the Council with a development and land swap agreement that optimises the Council's land holdings with nil capital input for construction and overcomes the restricted access that would otherwise prevent significant development taking place on the Council's OLY site. The only costs will be the associated fees. This is the preferred option as it will provide the economic and physical regeneration of the area, create long term viability for the market and provide 40 much needed affordable homes.

Reasons for Decision

38. The reason for the recommendations in this Report is to facilitate 40 new affordable homes and commercial space as well as improving the Shepherd's Bush Market in line with the Local Plan Strategic Policy WCRA (White City Regeneration Area)

Equality Implications

39. A completed Equalities Impact Assessment is appended at Appendix 5.

Risk Management Implications

40. The final Land Swap Agreement and Development Agreement will have considered all the main risks to the Council and will be mitigated through negotiation, where possible. Below are set out the main risks and mitigations:

Risk	Impact	Mitigation
Heads of Terms/Land Swap and Development Agreement issues cannot be resolved or agreed	Delay to overall scheduled timescales. Council's interests not appropriately protected or indemnified	Continuous dialogue and communication to progress negotiations. Appropriate legal, finance and insurance input will be provided for the draft Land Swap and Development Agreement
The development is delayed after completion of the Land Swap and Development Agreement	Councill's site is underutilised and not income producing	The agreement will have long stop dates to ensure the land is developed out. If they are not achieved then the land swap will be reversed.
PR and Consultation	Potential risk of disruption to PR process, disgruntled market traders and local residents	Continuous dialogue and input into the consultation process and style of the communication messaging in partnership

		with YC
Construction costs escalate	Potential delay and request for additional funding	Any delay is dealt with by longstop dates Additional costs to be borne by YC
Challenge received on the planning consent and/or Contract Award Notice	Challenge to the consent & notice	The contract will not complete until expiry of the challenge periods after publication
Design quality	The new affordable homes will be designed to the Council's high-quality standard	The Land Swap and Development agreement will include the Council's design brief and provision for the council's representative to inspect throughout construction and approve sign off at practical completion

Jules Binney, Risk and Assurance Manager, 01st February 2024

Climate and Ecological Emergency Implications

41. This decision relates to a land transaction to a wider redevelopment within the vicinity of Shepherds Bush Market and so this decision does not deal directly with the specification or design of the redevelopment and therefore has no direct climate or ecological implications.
42. The redevelopment will be subject to future decisions including a development agreement that will set out the specific criteria to follow to ensure the redevelopment is in line with the Council's wider Climate and Ecological commitments.

Approved by Hinesh Mehta, Assistant Director Climate Change, 06th March 2024

Procurement implications

43. The procurement of the Land Swap and Development Agreement as detailed in this report forms the basis of the procurement strategy. It proposes a direct award of the contract further to regulation 32 of the Public Contract Regulations. The has been approved by the Contract Assurance Board on (13th March 2024) as a waiver to contract standing order (18-21).
44. Procurement comments in exempt Appendix 2 legal section.
45. A contract shall be created in the contract register and signed copy of the contract uploaded to ensure compliance with statutory transparency requirements.
46. Contract Award Notice shall be published on exchange of contracts. An award notice is required on Contract Finder.

Jacqueline Rutherford, Category Specialist 11th March 2024

Commercial

47.No additional commercial implications other than in the valuer's report demonstrating Best Consideration for the land swap.

Property

48.Paragraphs 19 and 20 of the main report detail how the Council has met its duties regarding to Best Consideration under Section 123 of the Local Government Act (1972).

Consultation

49.There was substantial local consultation as part of the planning application, however this was not directly relating to the Land Swap and Development Agreement being considered in this report.

LIST OF APPENDICES

Appendix 1 – Site plan

Appendix 2 – Heads of Terms summary and Legal advice (**Exempt**)

Appendix 3 – Valuation report (**Exempt**)

Appendix 4 – Finance Considerations (**Exempt**)

Appendix 5 – Equalities Impact Assessment