

Cabinet

12 NOVEMBER 2012

**CABINET MEMBER
FOR HOUSING**

*Councillor Andrew
Johnson*

**DISPOSAL OF 282-288 GOLDHAWK ROAD
AND ELIZABETH FINN HOUSE**

**Ward:
Ravenscourt
Park**

Recommending that the above properties be disposed of for redevelopment and that appropriate arrangements are approved for the use of the net capital receipts and for the appropriation of 282-288 Goldhawk Road to the Housing Revenue Account.

A separate report on the exempt Cabinet agenda provides exempt information in connection with the financial implications of the proposals.

CONTRIBUTORS

EDHR
EDTTS
EDFCG
DoL

**HAS A EIA BEEN
COMPLETED?
YES**

**HAS THE REPORT
CONTENT BEEN
RISK ASSESSED?
YES**

Recommendations:

- 1. That approval be given to dispose of 282-288 Goldhawk Road and Elizabeth Finn House to Firstwood Investments Lux S.A.R.L, subject to conditions set out in the Heads of Terms.**
- 2. That the resident engagement to date and proposed programme of resident consultation as set out in this report be noted.**
- 3. That authority be delegated to the Cabinet Member for Housing, in conjunction with the Executive Director of Housing and Regeneration and Director of Building & Property Management, to finalise the terms of the land sale agreement with Firstwood Investments Lux S.A.R.L.**
- 4. That approval is given to appropriate 282-288 Goldhawk Road, which is currently held as General Fund Account Land to the Housing Revenue Account .**
- 5. That net capital received in the Housing Revenue Account from this disposal be used to cover costs incurred and**

reinvested (so far as lawfully possible) into the provision of housing in the borough or estate improvement, specifically:

- **To fund capital expenditure on area-based improvements that help the Council achieve its corporate objectives**
- **To develop or acquire new affordable housing to meet identified housing needs, including where appropriate extension of properties**
- **To fund tenant incentive initiatives (qualifying as capital expenditure) that free up council housing which is in demand for those in housing need (e.g. for larger family accommodation)**
- **Subject to the Council ensuring that its statutory housing responsibilities to meet housing needs are met, to use receipts to reduce HRA or General Fund debt where this is identified as a priority, and where repayment of the debt is of net financial benefit to the Council's HRA or General Fund**
- **To invest in capital expenditure on planned maintenance of the current LBHF Housing Stock until this is fully funded by the HRA revenue account.**

1. BACKGROUND

- 1.1. On 6 July 2007 Cabinet agreed to declare both 282-288 Goldhawk Road (currently General Fund) and Elizabeth Finn House (Housing Revenue Account) surplus to requirements. Cabinet authorised H&F Homes Ltd to commission consultants to prepare tender and marketing documentation to dispose of the sites by means of an open market tender based on a planning feasibility study. An OJEU procurement process was carried out and resulted in Cabinet on 6 October 2008 selecting Places for People (PfP) as the preferred development partner. In 2009 PfP secured planning permission to build out a development in a form which was considered by local residents to be sub-optimal. Through negotiation, the Council and PfP agreed not to build out this planning permission but instead to work together to produce a scheme which was considered to better meet local aspirations.
- 1.2. Subsequent discussions with PfP were on the basis that they would acquire the neighbouring land owned by Metropolitan Housing Trust (MHT) at 290-292 Goldhawk Road (see Appendix 1 for the site plan). In addition to there being potential for a significant marriage value being achieved by putting the two sites together, it was considered that this arrangement would lead to a more comprehensive and higher quality development which would benefit from a greater level of support from the local community. The Council and PfP negotiated Heads of Terms for a Collaboration Agreement on the basis that PfP would acquire 290-292 Goldhawk Road from MHT.
- 1.3. However, in February 2012 PfP advised the Council that they had been unable to agree terms with MHT for 290/292 Goldhawk Road, and in the absence of being able to progress a joint scheme across both sites they decided to withdraw from the acquisition and development of the Council's land at 282-288 Goldhawk Road & Elizabeth Finn House.
- 1.4. Following this, MHT agreed to sell its site to Firstwood Investments Lux S.A.R.L, which is a company formed between First Base Limited and their equity funder Starwood Investments. They expressed an interest in acquiring the Council owned land in order to bring forward a comprehensive and high quality development.
- 1.5. A Cabinet Member Decision in June 2012 authorised officers to negotiate terms for sale of the site with First Base and to consult residents about the proposals. A further Cabinet Member Decision gave approval to appoint Savills to assist in the negotiations about the land sale.

2. PROPOSED SCHEME

- 2.1 A Planning Brief for the comprehensive site was developed in consultation with Ashchurch Residents Association (ARA) in October 2011. This sets out the acceptable development quantum and the desired approach to design/massing given the local Conservation Area

context of the site. First Base have proposed a comprehensive development scheme consistent with the Planning Brief requirements.

- 2.2 Two pre-application discussions have taken place with First Base and planning officers. The current proposal is supported in planning policy and design terms. The Principal Planning Officer (Urban Design) was on the evaluation panel for the architect selection to undertake detailed design. The proposed approach to development density and architectural style was also welcomed by residents and ward members at a residents meeting on 27 September 2012.
- 2.3 First Base have extensive experience of developing high quality residential schemes across London. Their proposals for the site (see Appendix 2 for the indicative architectural design sketches) are consistent with the density set out in the Planning Brief, and would produce a high quality and high value family housing development which would be in keeping with the surrounding Conservation Area. The previous proposals developed by PfP were to a far greater density and were in a more contemporary architectural style which was not in keeping with the local character. First Base have proposed the following housing mix:

Bedsizes	Property type	Tenure	Number
1	Flat	Social rent	3
3	House	DMS	7
4/5	House	Private	15
Total			25

- 2.4 It should be noted that in accordance with the Planning Brief, the proposal shows three social rented homes at present. These are intended to meet the needs of the three tenants who were decanted a number of years ago from the site and who expressed an interest in returning to a new development on the site. These tenants received a letter at the time offering them an option of moving back to a new development on the site, but their needs and views may have changed in the intervening time. Officers will be liaising with these tenants and re-assess their interest in moving back to the new development. If it is agreed that any of these properties are not needed for this purpose, they will be converted to a Discounted Market Sale (DMS) home.
- 2.5 The appropriation of 282-288 Goldhawk Road to the Housing Revenue Account, means the HRA has to effectively 'reimburse' the General Fund the certified market value for the property as set out in the exempt report. In accordance with guidance, this is achieved by adjusting the Capital Finance Requirement (CFR) debt totals of the General Fund and the HRA by this market value. In effect, the General Fund CFR will reduce by this amount and the HRA CFR will correspondingly increase. The overall debt of the General Fund and HRA will remain unchanged. This also means that the final capital receipt from the sale will be entirely due to the HRA. Such appropriation allows the capital receipt to be used for the purposes set out in recommendation 5 of this report

3. HEADS OF TERMS

- 3.1 Firstwood Investments Lux S.A.R.L, who have recently completed the purchase of the adjoining site at 292 Goldhawk Road, have offered a purchase price as set out in the exempt report, for the Council's site at 282-288 Goldhawk Road and Elizabeth Finn House, subject to conditions set out in the Heads of Terms (see the Appendix to the exempt report.), and assuming an affordable housing content of 40% (7 Discount Market Sale and 3 Social Rent units).
- 3.2 The site comprises 0.90 acre, excluding No 292 which is circa 0.29 acre.
- 3.3 The Planning density of First Base's proposed residential scheme would be in accordance with the density parameters understood to be acceptable to local residents.
- 3.4 The open market value of the freehold site, with vacant possession, has been appraised by the Council's advisers Savills as set out in the exempt report, assuming the planning density and affordable housing criteria above. The Savills report includes three specific examples of prime residential development sites recently sold in nearby comparable locations.
- 3.5 In taking forward the disposal of the site, given the site's recent history, the Council has sought to ensure that the developer will work with the local community to produce an acceptable design and that this will then be built out. Therefore, the land sale would be conditional upon:
 - (a) *Condition one - Satisfactory Planning*

The parties will enter into a sale contract conditional upon the Purchaser securing a satisfactory residential planning consent (detailed) free from legal challenge.
 - (b) *Condition two - Letting of Building Contract*

The Purchaser entering into a binding building unconditional contract in a JCT form with a contractor to carry out the works required for the Development on the Property required for implementation of the Planning permission referred to under the first condition.
- 3.6 The freehold of the site would be transferred once these conditions have been satisfied. In addition, a restrictive covenant will be placed on the site to the effect of "The Property will not be used for any other purpose other than the construction and habitation of no more than 30 high class individual residential dwellings".
- 3.7 When disposing of land the Council does not have complete control over the development, in that the transaction is being progressed by way of a land sale not a development agreement, and the Council cannot force the developer to build anything. However, officers have sought to

mitigate risks as much as possible of the proposed development not happening, but the Cabinet should be aware that there are some limitations given legal procurement rules.

4. RESIDENT ENGAGEMENT

- 4.1 The site has been the subject of local resident consultation over the last couple of years. ARA agreed the Planning Brief at their AGM in November 2011.
- 4.2 In order to satisfy procurement rules, the Council would not be able to set out a requirement for extensive resident consultation (i.e. over and above the required level for planning purposes) as part of the disposal. However, First Base have engaged positively with residents and have proposed a detailed resident involvement programme. A key part of this programme in the pre-planning application stage is the selection of architects. Following a selection process on which residents and the Council were represented, PTEA have been appointed as architects for this scheme. First Base are currently discussing with ARA a process for resident and wider community involvement which will lead to the submission of a planning application in Spring 2013.

5. INDICATIVE PROGRAMME

- 5.1 First Base have proposed the following indicative planning and development programme:

Event	Timescale
Signing of contract for land sale	16 th November 2012
Submission of planning application	February 2013
Planning determination	May 2013
Let building contract	June 2013
Start on site	July 2013
Complete on site	September 2014

6. RISK MANAGEMENT

- 6.1 First Base Limited have given officers an outline viability report that demonstrates that the scheme is viable on the basis set out above. Necessary due diligence has been carried out to ensure that Firstwood Investments Lux S.A.R.L are capable of successfully undertaking the development.

- 6.2 The Council has produced a Planning Brief based on local consultation which sets out the key design principles. First Base has appointed an experienced design team and has had very positive discussions with Council planners and residents to date.
- 6.3 The Council has sought to mitigate against the risks of the design not being acceptable to local residents and not securing planning through the conditions set out in the Heads of Terms.
- 6.4 Risks associated with the project are noted in summary in the Housing and Regeneration Department's Risk Register and any necessary adjustment to the risk register will be made as the scheme develops.

7. EQUALITY IMPLICATIONS

- 7.1 An Initial Screening has been completed. The main implications are positive as they will lead to an increase in housing opportunities locally for sale and low cost home ownership. In addition, there will be a positive impact on disabled people as 10% of the properties are currently planned to be wheelchair adaptable and 100% will be developed as lifetime homes.

8. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE AND CORPORATE GOVERNANCE

- 8.1 The appropriation of 282-288 Goldhawk Road to the Housing Revenue Account, means the HRA has to effectively 'reimburse' the General Fund the certified market value for the property as set out in the exempt report. In accordance with guidance, this is achieved by adjusting the Capital Finance Requirement (CFR) debt totals of the General Fund and the HRA by this market value. In effect, the General Fund CFR will reduce by this amount and the HRA CFR will correspondingly increase. The overall debt of the General Fund and HRA will remain unchanged.
- 8.2 While the process for reapportioning CFR debt is clear, there is no clear prescription on the transfer of actual loans between the General Fund and HRA loan pool. These two pools were created following HRA Refinancing earlier in 2012. Guidance from the Council's external advisers suggests that the Council has a choice to either reapportion the split of actual loans or leave things unchanged. Where the loan pool is not re-aligned the HRA will effectively take-on 'internal' borrowing. This borrowing can, in the first instance, be funded by (or backed-by) the HRA's working balance, however were the internal borrowing to exceed the HRA working balance, the HRA would effectively be borrowing from the General Fund. This would previously have been accounted-for through the statutory Item 8 calculation; however this no longer applies with the demise of the HRA subsidy. Accordingly, to avoid cross-subsidisation where the HRA is borrowing internally in excess of its working balance, there will need to be a suitable interest charge from the HRA to the General Fund.

- 8.3 When the land sale completes it will then generate a Housing capital receipt which will be caught by capital pooling regulations. Pooling can be avoided where it can be demonstrated that the receipt will be 'recycled' into affordable housing or regeneration expenditure or used to reduce debt. It should be noted that there is no option to tax for VAT purposes on this sale and that there is £35k of VAT associated with this project which normally would be reclaimed under the Council's VAT partial exemption. This will need to be considered in the context of the other transactions associated with the partial exemption rules.
- 8.4 It should be noted that the land sale agreement is conditional upon the Purchaser securing a satisfactory residential planning consent (detailed) free from legal challenge and on the purchaser entering into a binding building unconditional contract in a JCT form with a contractor to carry out the works required for the Development on the Property required for implementation of the Planning permission referred to under the first condition. This risk to the final capital receipt is addressed in Section 6 above.

9. COMMENTS OF THE DIRECTOR OF LAW

- 9.1 282 Goldhawk Rd can be appropriated under section 19 of the Housing Act 1985. This allows a local housing authority to appropriate for the purposes of Part II of that Act any land for the time being vested in it and the authority will then have the same powers in relation to land so appropriated as it may have in relation to land acquired by them for the purposes of Part II of that Act. The power conferred by Section 19 includes the power to acquire land for the purpose of disposing of houses provided or to be provided on the land or, as in this case, disposing to persons who intend to provide housing accommodation on it
- 9.2 Elizabeth Finn House, held under housing powers, and, once appropriated 282 Goldhawk Road, will not be subject to an application for Secretary of State's consent for disposal under section 32 of the Housing Act 1985 where the disposal is at market value. This is because the General Consent for the disposal of land held for the purpose of Part II of the Housing Act 1985 2012 permits a local authority to dispose of housing land for a consideration equal to its market value.

10. COMMENTS OF THE DIRECTOR FOR PROCUREMENT AND IT STRATEGY

- 10.1 The provisions of the Public Contract Regulations 2006 do not apply to land transactions. However, they do apply in circumstances where the contract is considered to be a public works contract. This would be the case where the Council seeks to impose its own requirements on the developer as a condition of allowing the development to proceed. Recent case law has indicated that it is less likely that a public works contract will be inferred to exist where:

- a. the proposed development is to be undertaken at the initiative and autonomous intention of the developer;
- b. the development obligations are ancillary or incidental to a transfer or lease of land or property from the authority to the developer;
- c. the development agreement is based on proposals put forward by the developer, rather than requirements specified by the contracting authority;
- d. there is no 'pecuniary interest' passing from the contracting authority to the developer as consideration for undertaking the development, either directly or indirectly;
- e. the development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement);
- f. the development does not consist of or contain works for the direct economic benefit of the contracting authority; and/or,
- g. the involvement of the contracting authority consists only in the exercise of statutory land-use planning powers.

10.2 It is considered that the proposals in this report meet these requirements and will therefore not be considered to be a public works contract, which would need to be competitively tendered in accordance with the 2006 Regulations.

10.3 It should be noted in the event that the proposals were deemed to be the award of a public works contract, the Council would be at risk of challenge under EU procurement rules.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Cabinet 6/10/08: Selection of preferred and reserve bidder for the disposal of council owned land at 282-288 Goldhawk Road and Elizabeth Finn House (published)	Neil Kirby x 1722	HRD
2.	Cabinet 16th July 2007: Disposal of 282-288 Goldhawk Road and Elizabeth Finn House (published)	Neil Kirby x 1722	HRD
3.	Cabinet Member Decision (published)	Neil Kirby x 1722	HRD
4.	Cabinet Member Decision (published)	Neil Kirby x 1722	HRD
CONTACT OFFICER:		NAME: Neil Kirby EXT. x 1722	