


<p align="center"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p align="center"><b>CABINET</b></p> <p align="center"><b>8 MAY 2017</b></p>	
<p align="center"><b>DEVELOPMENT OF AFFORDABLE HOUSING AT EMLYN GARDENS, W12 9UG</b></p>	
<p><b>Report of the Cabinet Member for Housing, Councillor Lisa Homan and the Cabinet Member for Economic Development and Regeneration, Councillor Andrew Jones</b></p>	
<p><b>Open report</b></p> <p>A separate report on the exempt part of the Cabinet agenda provides exempt financial information.</p>	
<p><b>Classification - For Decision</b></p> <p><b>Key Decision: Yes</b></p>	
<p><b>Consultation</b> Legal, Finance, Housing Options, Property Services</p>	
<p><b>Wards Affected:</b> Askew</p>	
<p><b>Accountable Director:</b> Jo Rowlands, Director of Housing, Growth, and Strategy</p>	
<p><b>Report Author:</b> David Burns Head of Housing Strategy</p>	<p><b>Contact Details:</b> Tel: 020 753 6090 E-mail: david.burns@lbhf.gov.uk</p>

## 1. EXECUTIVE SUMMARY

- 1.1. Emlyn Gardens, Warple Way, W12 9UG is a Council owned housing estate in the West of the Borough, south of the Uxbridge Road. The tenants' hall on the estate has been identified as poor quality and requiring significant investment. It is currently not in use due to its condition and so cannot serve the community or generate income. Shepherd's Bush Housing Group, working with Yarrow Housing, have secured planning permission to redevelop the tenants' hall and provide with 14 affordable rented units, 8 of which will be for people with learning disabilities and on-site support will also be provided. A new fit for purpose tenant's hall and function room will be re-provided as part of the re-development.

## **2. RECOMMENDATIONS**

- 2.1. To transfer the land at Emlyn Gardens to Shepherd's Bush Housing Group under a land sale agreement on a 250-year lease.
- 2.2. To delegate authority to the Lead Director for Regeneration, Planning and Housing, the Director of Finance & Resources and the Director of Building and Property Management in consultation with the Cabinet Member for Housing and the Cabinet Member for Economic Development and Regeneration to complete negotiations with Shepherd's Bush Housing Group and complete a land sale agreement for the transfer of the land, and associated leases, based on the agreed heads of terms.
- 2.3. To delegate authority to the Lead Director for Regeneration, Planning and Housing, and the Director of Building and Property Management in consultation with the Cabinet Member for Housing and the Cabinet Member for Economic Development and Regeneration to confirm that disposal of the land will be covered by General Consents under s123 of Local Government Act 1972 and seek advice under Housing Act to dispose of the Housing land at Emlyn Gardens or to seek the necessary consent from the Secretary of State should it be required.
- 2.4. To delegate authority to the Lead Director for Regeneration, Planning and Housing, in consultation with the Cabinet Member for Housing and the Cabinet Member for Economic Development and Regeneration to enter into a funding agreement with SBHG for the use of right to buy receipts in support of this scheme, should this be required.

## **3. REASONS FOR DECISION**

- 3.1. The Council is committed to maximising the supply of genuinely affordable housing and the Council's Housing Strategy 'Delivering the Change we need in Housing' identifies working with housing providers as a key route to achieving this. The development of this land at Emlyn Gardens for this purpose fits clearly within these objectives. In addition, it will provide much needed specialist housing for people with a learning disability.

## **4. PROPOSAL AND ISSUES**

- 4.1. Emlyn Gardens Tenant's Hall is on Housing Land situated in the West of the Borough south of the Uxbridge Road. The site has been identified as suitable for development previously, as it is outdated and no longer meets modern expectations for the quality of community spaces expected, and it does not make efficient use of the space available.
- 4.2. Shepherd's Bush Housing Group (SBHG) are a locally based housing association with a strong record of accomplishment of affordable housing delivery. They have a strong presence in the borough, with over 4,000 mixed tenure homes already and are committed to working with the Council to deliver more affordable housing.

- 4.3. Given the scarcity and value of land in the borough, working with SBHG on local authority owned land provides an opportunity for the partnership to be used in delivering more affordable housing and a new tenants' hall.
- 4.4. SBHG have progressed and gained planning consent for (subject to completion of a section 106 agreement) 14 affordable rented units including 8 specialist housing units and associated management space. The replacement of the tenants' hall is for community use.
- 4.5. The specialist housing units will be for people with learning disabilities, and will be managed by Yarrow Housing, a specialist housing provider of standing.
- 4.6. On completion, SBHG will return the new community centre to the Council for ownership and management. The Council intends to work with local community groups to develop a community management proposal for its ongoing use by residents.
- 4.7. The Council will retain 100% nomination rights to all properties, under the terms of the planning consent.
- 4.8. During the development by SBHG, part of the car parking will be temporarily closed. On completion, the car parking area will return to the Council for management. Two 'blue badge' bays will be provided in the courtyard adjacent to the new block, and additionally, blue badge holders may park in any of the available estate parking bays or on the adjacent highway. The final property documents will be aligned with the planning conditions and the s.106 obligations.
- 4.9. **Land Exemption from Public Procurement Regulations**
- 4.10. Under the public procurement regulations, the Council does not have to complete a public procurement exercise for the disposal of land under the land exemption. This provides for the council to dispose of land without competition where it does not obtain from the developer an enforceable obligation to carry out works to the specification of the Council. Instead the Council is reliant on commercial incentives to ensure that the site is developed.
- 4.11. While not being able to specify works, the Council can specify:
  - i) The types of building to be developed
  - ii) The disposal would be by way of the 250-year lease rather than a freehold disposal with appropriate break clauses in the event of works not being commenced or completed within agreed timescales
  - iii) That Council will have nomination rights to all homes if they are built on the land
  - iv) The replacement of the community centre is a planning obligation, rather than a specification of the Council
  - v) Input into the design of the development

vi) A long stop date for development.

4.12. Full heads of terms are included in Appendix 2, in the exempt part of the Cabinet report

### **Proposed Development**

4.13. SBHG have obtained planning consent, subject to completion of s.106 agreement, for

Bed Size	General Needs Rent	Specialist Learning Disability Rent	Total
1 bed	2	8	10
2 bed	4	0	4
Total	6	8	14

4.14. There will be 14 affordable rented apartments. Of these, 8 will be specialist housing for people with learning disabilities, to be managed by Yarrow Housing, who are a specialist provided. Three of the Yarrow dwellings are for wheelchair users.

4.15. Yarrow has been supporting people with learning disabilities for over 26 years in Hammersmith and Fulham. It has been rated as outstanding for care twice by the Care Quality Commission.

4.16. The flats approved will allow people with learning disabilities to live independently. They will have support by a team of qualified support staff on duty for 24 hours a day. The service will have a dedicated manager and deputy manager who will be on site 38 hours a week.

4.17. In addition to the affordable housing, the proposals will create a brand new community centre for the use of existing residents of the estate. This will replace the previous tenants' hall which is not in use, due to its condition

4.18. The development will also provide a new playground to replace the existing one, which again is currently not in use. This will be available for existing residents and managed by the Council.

4.19. The high-quality design of the development will enhance Warple Way and provide an attractive outlook for residents. The increase in passive surveillance will improve security and help to reduce antisocial behaviour.

4.20. SBHG expect to start on site in Summer 2017 and complete the development within 18 months.

## **5. OPTIONS AND ANALYSIS OF OPTIONS**

5.1. The housing service considered several options for this site.

- 5.2. Emlyn Gardens Tenant's Hall and playground is currently closed due to its poor condition. In addition, the site is not efficiently used and it can provide a new community hall and additional affordable housing.
- 5.3. The Council could choose to develop this site directly, under its direct delivery programme. However, this programme is currently running at capacity in terms of both staff resources and the capital resources required to develop this site. To develop this site directly, the Council would need to wait several financial years before capital resources became available.
- 5.4. The Council could choose to run an open competition for the development of the land to obtain the maximum possible land value. However, this would negate two opportunities:
  - a) To obtain the most possible affordable housing on the site (currently proposed as 100% affordable); and
  - b) The opportunity to provide specialist housing for people with learning disabilities would not emerge in the collaborative way it has with Yarrow Housing.
- 5.5. It would also mean giving up the strong partnership arrangements that are proposed by SBHG, whereby the Council will be involved in the detailed design and the future operational arrangements of the community hall. This method of delivery is being considered as a pilot to help shape future use of assets to deliver affordable housing.
- 5.6. Disposing to SBHG directly provides the best overall value to the Council and delivers the outcomes that align most closely with the Council's agreed housing strategy.
- 5.7. There is also a shortage of housing for people with learning disabilities in the borough. Because of this, many young people with learning difficulties are forced to move out of the borough, having to leave their friends and families.
- 5.8. In addition the provision of new affordable housing and the provision of specialist housing for people with learning disabilities satisfies the requirements under the Council's general disposal consent, that the disposal must provide economic and social wellbeing.

## **6. CONSULTATION**

- 6.1. Consultation with local residents has been completed as part of the planning process. This will continue with a clear communications plan by SBHG and housing services to keep residents informed during construction. Housing services will specifically consult with residents on how they would like to be involved in the operation of the new community hall, with a view to promoting resident control of the hall.

## **7. EQUALITY IMPLICATIONS**

- 7.1. The creation of new genuinely affordable housing provides opportunities to address income inequality. As there is a strong element of specialist housing to meet the needs of learning disabled people, so provide an opportunity for disabled residents to access appropriate housing.

## **8. LEGAL IMPLICATIONS**

- 8.1. A procurable public works contract is likely to exist where the Council obtains from the developer an enforceable obligation to carry out works to the specification of the Council. Conversely, a public procurement competition may not need to be run where the arrangements provide for a looser relationship with more optionality on the part of the developer or with less specification on the part of the Council.
- 8.2. The disposal would be by way of a 250 year lease rather than freehold with a user restricting use to social housing. This would prevent private sales. The lease would also provide for provision for surrender in the event of the works approved under the Planning Permission not having been commenced or completed by agreed dates
- 8.3. Activities which are permitted under the land exemption include:
- i. A developer engaging with the Council in respect of the type of buildings they might want to provide (so long as there is not a legally binding obligation to deliver the works to a specification);
  - ii. A developer pursuing planning applications in respect of the site (and the land sale or lease could include a provision that the site would be developed in accordance with planning permission and planning policy);
  - iii. Including a provision (which would need to be appropriately worded) that the Council could re-purchase a site in the event of non-construction (which should be defined as not starting the works) by the developer.
  - iv. Agreeing that if the developer constructed the housing then the Council would have nomination rights into those dwellings.
  - v. Including overage (profit-sharing payments) within the sale contract provided that this is not accompanied by any legal obligation on the developer to carry out any works;
  - vi. The Council attending design meetings and provide input and opinion into those design meetings, as long as the Council cannot be said to be exercising a "decisive influence" over the design development process in a context where the developer is committed to building the development
- 8.4. As the land is housing land within the HRA Secretary of State consent would be required for its disposal under S.32 of the Housing Act 1885. Such consent can either be a specific consent or in certain cases by way of a General Consent. General Consent A3.1.1 provides that a local authority may

dispose of land for a consideration equal to its market value so no such specific consent would be needed if that is the case with this disposal.

- 8.5. "Market value" in this context means the amount for which the property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm's-length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and where the market value is assessed not earlier than 3 months before the buyer applies or agrees to an offer in writing.
- 8.6. In this case the value for this land is being assessed on the basis of the restricted use for this scheme, rather than a full open market value, and so this general consent would not apply.
- 8.7. There is also a further general consent A3.2 permitting the disposal of "vacant land" which is defined -
  - i. "vacant", in relation to land means land on which –
    1. no dwelling-houses have been built or
    2. where dwelling-houses have been built, such dwelling-houses have been demolished or are no longer capable of human habitation and are due be demolished"
- 8.8. The disused community centre building would fall within this definition and so no specific consent under S.32 of the Housing Act 1985 should be required
- 8.9. The requirement under S.123 of the Local Government 1972 that property be disposed of at best value applies, although there is a general consent (The Local Government Act 1972: General Disposal Consent 2003) which permits disposal at an undervalue provided the "undervalue" (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2,000,000 or less. If the undervalue is greater than this, then secretary of state consent would be required.
- 8.10. It is a requirement of this general consent that the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of:
  - i) the promotion or improvement of economic well-being;
  - ii) the promotion or improvement of social well-being; or
  - iii) the promotion or improvement of environmental well-being of the area
- 8.11. *Implications verified/completed by: Dermot Rayner Senior Property Solicitor 0208 753 2715.*

## **9. FINANCIAL IMPLICATIONS**

9.1. The Housing Capital Programme does not have the resources to directly develop Emlyn Gardens Tenants' Hall within the next few years. This agreement will allow for the site to be developed to provide affordable rented homes much more quickly than the Council could.

### **9.2. Operation of the Community Centre**

9.3. The return of an operational community centre will require expenditure on ongoing reactive repair obligations, utility bills and other revenue running costs. TRAs across the borough typically cover these running costs with the income they generate. Therefore, the community management organisation running the Community Centre should produce a simple business plan to ensure the ongoing viability of the Community Centre.

### **Impact on Housing General Fund Budget**

9.4. The 6 new affordable rented homes will free up temporary accommodation and reduce costs for the General Fund. Considering 6 additional general needs homes provided, this represents an estimated B&B cost saving with a present value of up to £0.4m over 40 years, if using the current Treasury Discount rate of 3.5%.

9.5. The nominations agreement should be set up to ensure the council gets good access to the homes. It should specify that if SBHG uses any of the homes covered by the nominations agreement for management transfers, replacement homes should be within the Borough unless specifically otherwise agreed by the Council, and that they must be at rents similar to or lower than those proposed for this development.

9.6. This will contribute towards existing MTFS savings plans and the containment of risks to the Housing Solutions budget (up to £14.1m by 2021/22)

9.7. *Implications verified/completed by: Firas Al-Sheik, Housing Financial Strategy Accountant, 020 8753 4790*

## **10. IMPLICATIONS FOR BUSINESS**

10.1. The development of new affordable housing will create opportunities within the construction supply chain and thus benefit businesses in the borough.

## **11. OTHER IMPLICATIONS PARAGRAPHS**

### **11.1. Risk Management**

11.2. The key risk is that SBHG will not carry out the development within an agreed timescale. However, there are provisions within the heads of terms and proposed leases that require return of the land should they not proceed.



**11.3.** The return of the community centre to Council ownership will lead to ongoing management and maintenance liabilities for the Council. Housing Services will develop a management plan for the centre in partnership with local residents, with the intention of maximising income from the building and full resident use

**11.4. Health and Wellbeing**

11.5. New affordable housing will be of a higher standard than that which potential social tenants are currently housed and so presents opportunities to improve the health of our residents. Stable housing for those in temporary accommodation has also been shown to have positive effects on mental health.

**12. BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

None

**LIST OF APPENDICES:**

Appendix 1 – Land at Emlyn Gardens