

Subject: Development of housing at site 25 Beacon Park

Report to: Full Council

Report by: Robert Read, Director of Housing and Neighbourhoods

Date: 12th April 2016

Subject Matter and Recommendation:

This report sets out the case for the Council, through the establishment of a Local Authority Trading Company, undertaking the development of residential properties at site 25 Beacon Park. The report is accompanied by a business plan (confidential papers) which sets out the strategic objectives and financial detail of the investment. Cabinet has approved the Business Plan, the establishment of a Local Authority Trading Company and model of governance. Cabinet is recommending that Full Council approves the required addition to the capital programme, adjustment to the Treasury Management Strategy and release of necessary funds to undertake the development.

1.0 Background

1.1 Beacon Park Housing was one of the seven projects which formed the first stage of the Council's Transformation Programme. It is a key element of the Medium Term Financial Strategy as an income generator through the Council making the best use of a major asset in its ownership.

1.2 On 17th February 2015, Full Council approved a report containing the following recommendations;

- a) Planning permission is sought for a residential development of site 25 of Beacon Park;
- b) Work is also undertaken to prepare options for the Council to develop the residential element of site 23
- c) A wholly owned company is formed to develop the site;

- d) The capital programme, treasury strategy and medium term financial strategy reflect the financial implications contained in this report;
- e) A Project Board is established to lead the project and to manage the project budget of £650,000, and ultimately to form the LATC Board;
- f) Include the potential for the Council to increase borrowing by £6m in the Treasury Management Strategy
- g) That no capital funding is released to the LATC until the governance arrangements and the business plan are approved by Cabinet and Council;
- h) The Council commences procurement of a builder in compliance with OJEU requirements.

- 1.3** Since this report was agreed and following ongoing consultation with a Members Working Group, a masterplan for site 25 has been drawn up by the Council's appointed architects, ready for a submission for planning permission. The site has been divided into three development phases and in addition to requesting outline planning permission for phases 2 & 3 of the site, a scheme for phase 1 has been drawn up in preparation for a submission for detailed planning permission.
- 1.4** Pre-application consultation was held on 20th January 2016 and was well attended with many positive comments received. Planning submission is scheduled for the beginning of April 2016.
- 1.5** The Architect's plans have been drawn up to reflect the aspirations for the site expressed by the Members Working Group to provide a scheme of quality which will complement the neighbouring enterprise zone. In addition, a report was commissioned to understand the sales potential of the homes. An Employer's Agent has also been procured to provide advice on costs for developing the site, to procure builders and to manage the build programme.

- 1.6** A Business Plan (**appendix 1 – Confidential Papers**) which details the financial forecasts of the Council developing the land has been drawn up. The Business Plan and financial details relating to the development and site 25 have been kept confidential due to their commercially sensitive nature as, following approval; the Company would be tendering the contract for development of the site. Cabinet approved the Business Plan at its meeting of 4th April 2016.
- 1.7** Options have been explored in relation to the procurement of a builder in order to ensure best value for the Beacon Park build.

2.0 Recommendation from the Members Working Group

- 2.1** The Members Working Group has been asked to make a recommendation to Cabinet and Council as to whether the authority should continue to pursue the role of developer for the site, through the establishment of a Local Authority Trading Company, or whether it should sell the site for a capital receipt. To enable this decision, as part of the sales report, an up to date valuation of the site was undertaken.
- 2.2** Following a meeting of the Members Working Group on 13th October, at which presentations were given on the sales report, architects designs, costs and build options and the outline business plan as a whole, the Members Working Group agreed to recommend to Cabinet and Council that the Council sets up a Local Authority Trading Company to develop phase 1 of site 25 Beacon Park.
- 2.3** In addition to the homes for sale in phase 1, it is proposed to build six flats, as a contribution to the 10% affordable housing quota for the whole site. These would be fully funded from the Housing Revenue Account (HRA), including the use of retained Right to Buy receipts and following build would transfer to the Housing Revenue Account as part of the Council's rented housing stock. The cost of building and managing these properties would not therefore impact on the business plan for the Housing Company. Financial provision

has already been made for this development within the Housing Major Works Capital programme for 2016/17.

3.0 Relation to Corporate Priorities

- 3.1** The housing development at Beacon Park is consistent with the Council's corporate priority in relation to Housing. In particular, 'working toward an attractive mix of housing, which will be fit for purpose for all and meet both the borough's existing and future needs. There will be good quality housing for all sectors of the community and workforce.' The corporate plan also says, 'The Council is leading a mixed tenure housing development on land that it owns at Beacon Park. The construction of around 250 homes is due to begin in early 2016 and will include homes for sale and private rent as well as affordable homes. The Council will be setting up a wholly owned Housing Company to undertake the development which will happen in phases of 30-50 units of high quality housing.'

4.0 Setting up a Local Authority Trading Company

- 4.1** In order to develop the site itself, the Council would need to set up a Local Authority Trading Company (LATC). This is because the development of new homes for sale and rent would be considered a commercial activity and therefore under section 1 of the Localism Act 2011 it would need to be carried out through the vehicle of a limited company. Following legal advice on the appropriate company structure, Cabinet has agreed to set up a Company limited by shares.
- 4.2** Advice on governance of the company has been taken from a specialist firm of lawyers, Trowers & Hamblins (T&H). Following consideration and recommendation by the Beacon Park Housing Members Working Group, Cabinet have approved an Officer Board and shareholder committee model with the addition of one elected Member onto the Company Board. The composition of the Company Board will therefore be 5 Company Directors, made up of 1 elected Member, 2 Council Officers and 2 non-executive

Directors (to include an independent chair). All Directors will be appointed by Full Council.

- 4.3** The elected Member would receive no additional allowance for this role. The Officers of the Council will provide services to the LATC by agreement with the company or by secondment as appropriate and will receive no additional salary for these duties. It would be expected that any non-executive directors appointed for their specific skills and expertise would receive remuneration for their contribution to the Board.
- 4.4** Members will establish a committee (or sub-committee) to exercise the shareholder role. The Shareholder Committee will be established as part of the current review of Council governance.
- 4.5** Key to the future success of the LATC is ensuring a balance between Council influence and the ability to operate in the private market. The Committee will need to agree governance structures that safeguard the Council from excessive risk or poor performance whilst allowing the LATC Board the appropriate degree of autonomy and flexibility.
- 4.6** Central to striking this balance will be agreeing key documents, specifically, Articles of Association and contract.
- 4.7** The Articles of Association is a relatively standard document, essentially the LATC's constitution and defines the responsibilities of the directors, kind of business and the means by which shareholders exert control over the Board of Directors, specifically:-
- nature of the company i.e. limited by shares with 100% shares owned by the Council;
 - arrangements for the appointment of Board Directors by full Council;
 - powers of Directors and arrangements for Board meetings;
 - arrangements for the auditing of accounts;
 - insurance arrangements;
 - payment of dividends.

4.8 The Council will procure specialist advice in setting up a LATC and to draw up the documents required and to ensure compliance with regulations.

- a** The vehicle intended to be used is a company limited by shares and regulated by Companies House under the Companies Act 2006. This gives the advantage of limited liability (the council as shareholder can never be liable for any sum beyond the nominal value of the shares) and of transmissibility (shareholdings can be sold in whole or in part).
- b** As a wholly owned local authority company there is a residual regulation regime stemming from the Local Government and Housing Act 1989. This means that the stipulations set out in the following paragraphs are likely to apply. The Secretary of State has long had the power to repeal these restrictions but this has not happened.
- c** A regulated company must have mentioned on all relevant documents (e.g. notepaper) the fact that it is a company controlled by a local authority and naming the relevant authority or authorities.
- d** A regulated company must not in respect of the carrying out of any relevant duty, pay to a director who is also a member of a relevant authority remuneration in excess of the maximum amount in respect of expenditure on travelling or subsistence payable by the authority.
- e** A regulated company must not publish any material which the relevant authority would be prohibited from publishing by section 2 of the Local Government Act 1986
- f** Where a director becomes disqualified for membership of a local authority (otherwise than by being employed by a local authority

or a controlled company), the company shall make such arrangements as may be necessary for a resolution to be moved for his removal.

- g** A regulated company must provide such information to the authority's auditor as that person may require for the purposes of the audit of the local authority's accounts.
- h** A regulated company must provide to a member of a relevant authority such information about the affairs of the company as the member reasonably requires for the proper discharge of his or her duties except where to provide information would be in breach of any enactment, or of an obligation owed to any person.
- i** A controlled company shall, before it first appoints any person as auditor of the company, obtain the Audit Commission's consent to the appointment of that person.
- j** A controlled company which is not an arm's length company must, until the expiry of the period of four years beginning with the date of the meeting, make available for inspection by any member of the public a copy of the minutes of any general meeting of the company except for any disclosure which would be in breach of any enactment, or of an obligation owed to any person.

5.0 Financial Arrangements between the Council and the LATC

- 5.1** Following establishment of the LATC, the Council would borrow the money required to undertake the development and would lend it to the LATC at a commercial rate of interest.
- 5.2** The company would repay the loan plus interest and on sale of the housing, would pay the capital receipt for the value of the land.

5.3 The Council would then receive the profit in a post-tax dividend, plus any rent from properties let. Alternatively it could leave the profit in the company to fund future phases or other developments.

5.4 Advice on tax liabilities is that the transfer of land would be exempt from Stamp Duty land Tax (SDLT). In terms of the new build, VAT would be zero rated, however, there may be VAT on future repairs and maintenance if carried out through third parties. The company would be subject to corporation tax on surpluses.

6.0 Alternatives Considered

6.1 The Council could choose to sell the site with planning permission to a developer. This would bring in a capital receipt for the site and would avoid taking on the risk associated with being the developer.

6.2 However, by selling the site, the authority would not achieve the return that it could as the developer.

6.3 In addition, by selling the land to a developer, the council will have less control over how the site is developed. This is particularly significant given its strategic importance as part of the Beacon Park growth area.

6.4 The Council can continually reduce the risks of the development by incremental management of the project, for example, reconsidering its position again following the receipt of post tender prices and further consideration at that stage of property market forecasts. The Council should also ensure that it maintains up to date advice on tax liabilities and valuations.

7.0 Cabinet Decision

At its meeting of 4th April Cabinet resolved to;

- a.** Approve the establishment of a Local Authority Trading Company limited by shares

- b.** Approve the model of governance and Board appointments as recommended by the Members Working Group and set out in 4.8 of this report

- c.** Approve the first Business Plan for the company, including the development of phase 1, site 25, Beacon Park

- d.** Recommend to Council that the capital programme, treasury strategy and medium term financial strategy reflect the financial implications contained in the confidential report

- e.** Recommend to Council that it approves the release of Capital Funding for the project as detailed in the confidential report and business plan

- f.** Recommend to Council to Include the required borrowing in the Treasury Management Strategy

- g.** Delegate to the Director of Housing and Neighbourhoods, in consultation with the Cabinet Portfolio Holder for Transformation (and after May to the relevant Committee), the Deputy Monitoring Officer and the s151 Officer, the power to make any decisions in order to establish the Local Authority Trading Company.

8.0 Recommendations

8.1 Full Council resolves to

- a. Approve the adjustment of the capital programme, treasury strategy and medium term financial strategy to reflect the financial implications contained in the confidential Business Plan
- b. Approve the release of Capital Funding for the project as detailed in the confidential business plan
- c. Include the required borrowing in the Treasury Management Strategy

List of Appendices

- **Appendix 1 – LATC Business Plan 2016/17 to 2020/21**

Does this report raise any legal, financial, sustainability, equality and diversity, crime and disorder, human rights or Every Child Matters issues, and, if so, have they been considered?	Issues	
	Legal	Yes, and addressed in report
	Financial	Yes, and addressed in report
	Sustainability	No
	Equality and Diversity	No
	Crime and Disorder	No
	Human Rights	No
	Every Child Matters	No