

Report for: **Special Overview and Scrutiny Committee on 29th July 2019**

Title: **Call-in of Cabinet’s decision relating to Disposal of Red House Yard, West Green Road, N15**

Report
Authorised by: **Dan Hawthorn, Director of Housing, Regeneration and Planning**

Lead Officer(s): **Steve Carr, Interim Assistant Director of Economic Development & Growth and Alan Benson, Interim Assistant Director, Housing**

Ward(s) affected: **St Ann’s**

Report for Key/
Non Key Decision: **Key Decision**

1. DESCRIBE THE ISSUE UNDER CONSIDERATION

- 1.1. The purpose of this report is to provide further information to support the Overview and Scrutiny Committee’s consideration of the issues raised in the ‘call-in’ of the Cabinet decision of 9th July 2019 in relation to the disposal of Red House, 423 West Green Road N15, to Magic Living (part of the Paul Simon Magic Homes Group).

2. CABINET MEMBER INTRODUCTION

- 2.1. My introduction to the original report considered by Cabinet on 9th July 2019 set out the case as I see it for that decision. This report deals with the specific points raised in the call-in, and I would simply and clearly confirm my view that nothing raised in the call-in or set out in this report changes my view that the decision taken on 9th July 2019 was the right one.

3. RECOMMENDATIONS

- 3.1. It is recommended that the Committee take into account the information in this report when considering its decision on this matter.

4. BACKGROUND

The decision and the call-in

- 4.1. At its meeting on 9th July 2019, Cabinet made a number of decisions relating to the Disposal of Red House, 423 West Green Road to Magic Living/Paul Simon Magic Homes Group and acquisition of homes in the proposed site redevelopment for retention as social rented Council housing. The decisions and the report are published on the Council’s website and are accessible at the link provided in Section 10 below.
- 4.2. Following the publication of the draft minutes of the meeting on 9th July 2019, a ‘call-in’ of the decision was received and deemed valid in line with the criteria set out in

Part Four, Section H of the Council's Constitution. Accordingly, the matter is now to be considered by the Overview and Scrutiny Committee.

Reasons for the call-in

4.3. The call-in form gives six primary reasons for the call-in and several sub-reasons:

1. Outside the policy and budget framework and non-compliance with priorities outlined in the Borough Plan:

The proposal is not compliant with the current DPD brief which envisages the inclusion of the Mitalee Community Centre in SA57.

2. Value for money/OJEU:

The proposal, to dispose of this significant council asset to a private interest by private treaty (i.e. without marketing it, inviting other interests to bid and evaluating/comparing alternative bids), appears contrary to procurement guidance.

3. Non-Compliance with the Borough Plan:

Priority 1 of The Borough Plan states: "*One of our very highest priorities is to start a new era of council housebuilding in the borough, particularly using our own land. We will set and publish clear standards for the quality and design of these homes, and ensure every subsequent new council homes meets those standards*". The proposed sale of Council-owned land to Paul Simon seems not to align with this very high priority.

4. Alternative Options:

There has been an inadequate exploration and evaluation of alternative courses of action that appear more in line with the council's current stated policy preferences. The case for a less risky development plan that could deliver more social housing units needs further consideration.

5. Due Diligence on the Developer

There appears a lack of due diligence carried out on Paul Simon Magic Homes (PSMHG) and any assessment of risk to the council.

6. The Cabinet Report

The report to the cabinet meeting is not thorough enough and could prove misleading because it includes assumptions and assertions that have, on subsequent questioning and investigation, found to be either erroneous, or inadequately supported by facts.

4.4. The form lists these as the six primary reasons for call-in each with sub-reasons. This report provides an officer response to the given reasons for call-in, and the proposed variations to the decisions made by Cabinet on 9th July 2019. The report of the Monitoring Officer and Section 151 Officer, which is also presented as part of this item, makes recommendations about whether any of the decisions fall outside the financial and policy framework.

4.5. **REASON 1**

Outside policy/budget framework.

Reason 1a

“Planning: The proposal is not compliant with the current DPD brief which envisages the inclusion of the Mitalee Community Centre in SA57.”

Response

- 4.6 These planning matters were considered both as part of the planning application and the Cabinet report (Part A, para 6.10). The land agreement with Paul Simon Magic Homes as set out in the Cabinet Paper was based on the assumption that the project would be compliant with planning policy. Planning Committee on 8th July resolved to grant the planning application and the s.106 agreement is being finalised prior to the decision notice being issued. The background planning factors taken into consideration and summarised in Part A para 6.10 in the land disposal report to Cabinet are as below.
- 4.7 Policy DM55 of the DM DPD states that, where development forms only part of a larger site allocation, a masterplan must be submitted with the application in order to demonstrate to the Council’s satisfaction that the proposal would not prejudice the future development of other parts of the site allocation, or frustrate the delivery of the wider site allocation requirements. The applicant has provided an indicative masterplan for the entirety of SA57, within the submitted Design and Access Statement (Appendix A). The masterplan includes the community facility located immediately to the south of the application site (Mitalee Centre), which is located within the boundary of SA57 but is unable to form part of this development proposal as it is being rented on a long lease.
- 4.8 The indicative schematic submitted with the application shows how potential future development on the Mitalee Centre site can be achieved, with a similar building scale, massing and layout to Block C of the proposed development. The proposed development has been designed without windows on the southern side of Block C so that the potential masterplan can be completed without adversely affecting the living conditions of future occupiers of that block at a later date. This arrangement is considered an appropriate potential design for the remaining part of SA57 and demonstrates that the approved proposed development does not result in a reduction in capacity on the site.
- 4.9 The masterplan would not prejudice any of the site-specific requirements or development guidelines of SA57. As such, it is considered that the applicant has submitted a logical and workable masterplan that is acceptable as it complies with the requirements of Policy DM55.
- 4.10 The Secretary of State has considered two appeals in the borough, Cross Lane in 2017 and the Goodsyard Site, Tottenham in 2019, which involved the development of only part of a site allocation. The Secretary of State granted planning permission in both and confirmed that the sites in a site allocation do not need to be delivered in one planning application to be acceptable.

Mitalee/Planning

- 4.11 The Council is the freeholder of the land where the Mitalee Centre (which is also known as the West Green Community Centre) is situated and which is leased to the Bangladeshi Women's Association in Haringey Ltd (BWAH) on a long lease term as set out in **Part B**, the exempt part of this call in report.
- 4.12 – 4.13 The response on this is set out in **Part B**, the exempt part of this call-in report.

Reason 1b:

“The Pub is also not part of SA57 and contravenes policy DM50 on Public Houses (paragraphs 7.19 and 7.20). Insufficient evidence has been provided on the non-viability of the existing pub as per paragraph 7.21 of DM50”.

Response

- 4.14 This was fully considered as part of the Planning Committee consideration of the planning application on 8th July. From a Planning point of view the inclusion of the former pub was considered to be a benefit of the scheme given the opportunity to improve the Locally Listed Building in particular. The planning issues were also considered in the Cabinet report Part A, Para 6.10.
- 4.15 The application site includes the 'Golden Sands' bar and restaurant, which was formerly the Duke of Cambridge public house. The building is locally listed. Policy DM50 Part A of the Development Management DPD 2017 states that the Council will resist changes to the use of public houses unless it can be demonstrated that: (a) the public house is no longer viable financially; (b) all feasible options for re-provision of a public house on site have been explored; or (c) redevelopment of the site would secure an overriding public benefit. All these tests were satisfied in the planning process.
- 4.16 The proposed development would refurbish and extend the former public house to enable its conversion to a church, including a street-facing café at ground floor and nursery at rear which would both be operated by the church.
- 4.17 The existing building has ceased operations as a traditional public house (Use Class A4) and instead now operates as a bar-restaurant (Use Class A3/A4). Bar-restaurant operations appear to have been active on this site since at least 2009. As such the viability limb of DM 50 is not considered to be engaged. The community element of the use is replaced in the street facing café which is proposed.
- 4.18 The relocation of the existing Derby Hall Church and associated nursery into an extended and renovated former public house building 'frees up' existing land adjacent to the former care home, which enables the remainder of the site to be redeveloped on a more comprehensive basis for residential purposes. This includes the provision of more than 50% social rented housing, plus other benefits including improvements to the size and landscaped quality of the adjacent park and an improved public realm.
- 4.19 The proposed development would also facilitate the refurbishment of the locally listed building, which has been significantly damaged and unsympathetically altered by unauthorised development over the years. The refurbishment would incorporate

improvements to important elements of the building's external fabric, with features such as the ground floor window openings reverting to their original design and appearance. Unauthorised extensions such as the visually dominant street-fronting awning would also be removed.

- 4.20 Although an informal community meeting place would be replaced, there are several other public houses and bar-restaurants on West Green Road and elsewhere in the vicinity, including on the nearby Green Lanes. Furthermore, the church would incorporate a self-contained café at ground floor level thereby replacing the existing bar-restaurant space, which would provide an alternative community space as well as enabling and retaining an active frontage on this part of the site.
- 4.21 Therefore, in any event, the proposed extension, renovation and conversion of the former public house into a church and nursery would facilitate the restoration of a visually prominent and locally listed heritage asset and would also enable the comprehensive development of this allocated site for housing including a substantial and policy-compliant provision of low-cost affordable rental housing. As such, it is considered that the change of use of the former public house as proposed would secure an over-riding public benefit and would therefore be acceptable in principle in accordance with Policy DM50 (A)(c).
- 4.22 There is also no policy restriction on the development containing parts outside of the site allocation. As set out above, there are a number of public benefits arising from including the former public house within the development and the change of use is acceptable in planning terms.

Reason 1c

“There is a lack of clarity on the ownership of 435 West Green Road and lack of evidence around the rights the church holds to land or access to land. Councillors are concerned to receive clarity over this ownership of the pub and the church and whether the Council should have considered opening up negotiations with the other interested parties to the red line site. A call-in of the decision would enable clarity and further investigation into this matter”.

Response

- 4.23 These issues were covered in Part A, Section 6 giving the background on the site. The history of the Council's relationship with the church is set out in the Cabinet Report of February 2013 and February 2015 cited as background documents for the July 2019 Cabinet report. The Council has no current direct relationship with the owners of the church or the owner of the pub. The Council's previous attempts to assemble this wider site and reach agreement with the church did not reach a satisfactory conclusion. The current development is therefore in response to a land assembly by Paul Simon Magic Homes and the proposed land agreement with Paul Simon Magic Homes will be contingent on PSMH securing these two land interests as part of the development of the wider site.
- 4.24 The Land Registry shows that the registered proprietor (title absolute number MX464250) of the public house known as 435 West Green Road is Violet Holdings

Ltd, a company incorporated and registered in Cyprus. As above, the Council does not have a direct relationship with the owner of the pub and will have an agreement in respect of the Red House site with Paul Simon Magic Homes.

4.25 **The background to the church interest in the car park is set in part B of the Cabinet Report and is further addressed in Part B, the exempt part of this report.**

4.26 **REASON 2:**

Value for Money/OJEU:

Reason 2a

“The proposal, to dispose of this significant council asset to a private interest by private treaty (i.e. without marketing it, inviting other interests to bid and evaluating/comparing alternative bids), appears contrary to procurement guidance”.

Response:

4.27 The interpretation in the Reason given on the form is not correct. The nature of the transaction is clearly described in the Part B of the Cabinet Paper, Section 6.27 onward. The main object of the contract between the Council and Paul Simon Magic Homes is not an obligation to carry out works for the Council but is rather a standard property transaction. This is an agreement for a land disposal and an acquisition of residential units after they have been completed. The Council will buy the new units if they comply to certain standards but the design and specifications of the development are not those of the Council and the Council has not procured or commissioned the scheme from Paul Simon Magic Homes.

4.28 As the Cabinet Paper clearly stated, the Council is disposing of its land interest, the sale of land and/or the acquisition of properties do not fall within the Public Contracts Regulations 2015. The Council can dispose of a land interest as long as it meets both its legal and fiscal duties. The sale of the Red House site is compliant in both these respects as it has satisfied s.123 Local Government Act 1972.

Reason 2b

4.29 *“The purchasing of 46 units of housing on the site suggests this is more than a land disposal as Haringey Council will (a) receive an economic benefit from the site (the 46 units) and (b) be involved in specifications of those units to meet Homes for Haringey standards (see Cabinet Report 6.14 and Borough Plan below).”*

Response:

4.30 The nature of the proposed agreement with Paul Simon Magic Homes is as set out above and in Part B, Heads of Terms, section of the Cabinet Report. As stated in the Cabinet Paper, the Council is disposing of its land interest, the sale of land and acquisition of properties do not fall within the Public Contracts Regulations 2015. The Council can dispose of a land interest as long as it meets both its legal and fiscal duties. The sale of the Red House is compliant in both these respects as it has satisfied s.123 Local Government Act 1972.

Reason 2c

“The report states officers consulted a QC for assurance and councillors would like more clarity about the nature of that QC advice on whether the land disposal with the purchase of housing requires procurement/tender under OJEU procurement law. Calling in this decision would provide OSC with a chance to satisfy councillors that the absence of a bidding process for the development was value for money and transparent”.

Response:

- 4.31 This is set out in **Part B**, the exempt part of this call-in report.

REASON 3

Non-Compliance with the Borough Plan:

“Priority 1 of The Borough Plan states: ‘One of our very highest priorities is to start a new era of council housebuilding in the borough, particularly using our own land. We will set and publish clear standards for the quality and design of these homes, and ensure every subsequent new council homes meets those standards’. The proposed sale of Council-owned land to Paul Simon seems not to align with this very high priority”.

Response

- 4.32 The Cabinet report cited the policy context under “reasons for decision” at paragraphs 4.1 - 4.3. Part of the recommendation was that two blocks of flats comprising the 46 new-build homes are to be constructed within the proposed development on the land which the Council is selling to Paul Simon Magic Homes, the freehold of these new build units will then be acquired (by the Council) when completed. These 46 new homes will directly contribute to the Council’s target of a 1,000 new homes.
- 4.33 The various means for delivering the 1,000 new homes target in the Borough Plan were fully set out in the report on the Council’s Housing Delivery Programme considered and approved at July 2019 Cabinet. The primary focus is on bringing forward direct delivery by the Council on its own land. But it was noted and approved that the Council will need to make full use of other opportunities as they arise that will enable the delivery of Council homes at greater pace and volume than might be possible through the direct delivery route alone. This includes entering into contracts with developers to acquire homes on new developments. Sometimes this will be homes that were already identified as affordable homes to rent through planning, sometimes homes that were shared ownership that the Council can convert to social rent and sometimes homes that were originally intended for market sale. And sometimes this approach will be used on schemes where Council land has been brought together with other land ownerships in order to achieve a better overall outcome. Homes acquired in this way will all come at different price points and will all have corollary benefits including supporting the delivery of overall housing numbers and supporting wider Borough Plan objectives.

- 4.34 Red House is just such an opportunity. The Council did consider the option for this site to be developed directly by the Council rather than acquiring them through the contractual relationship with Paul Simon Magic Homes. That option was not pursued for the reasons set out in answer to question 4 (alternative options) below.

REASON 4

“Alternative Options: *There has been an inadequate exploration and evaluation of alternative courses of action that appear more in line with the council’s current stated policy preferences. The case for a less risky development plan that could deliver more social housing units needs further consideration.*

The option for building/contracting directly has not been adequately addressed. The alternative of an in-house option lacked costings and denied councillors a proper assessment of the viability of this course of action. The possibility of more social housing units, better control over the speed, quality and timing of delivery by developing the site ourselves has not been taken fully into account. The risks of a private partner failing is also not adequately addressed.

There have been contradictory reports given to councillors over the council’s capacity to develop the site. The report appears to have drawn its recommendations a priori without providing a detailed account of risks or advantages of the Council developing the site. There is an unwarranted assertion that Paul Simon could develop the site more quickly than the Council. The only evidence available suggests the reverse. Paul Simon applied for planning permission which expired after three years (in 2018) with no development taking place.

We would like the decision paused at this stage to allow further exploration and investigation of both the alternative options and to fully clarify the recommended decision is within the budget framework.”

Response

- 4.35 The alternative delivery options were carefully considered, as set out in the Cabinet Report paragraphs 5.1 - 5.4, Options A – C. In summary, these are the factors which informed the Cabinet report consideration of options and were material to the recommendations and content of the report approved by Cabinet.
- 4.36 The option to provide grant funding to a Housing Association in order to deliver affordable homes on the Red House was discounted because of the Council’s stated aim to deliver its own Council housing. This option would have also had many of the disadvantages if the direct delivery option, discussed below. The option not to acquire any homes on the Red House site at all was also discounted because this would have resulted in a lower level of affordable housing and no Council rent homes.
- 4.37 The alternative option given the most consideration was the one alluded to in this reason for call-in, i.e. for the Council not to proceed with the disposal of the site to the Paul Simon Magic Homes entity Magic Living Ltd, but rather to develop the scheme directly. Cabinet decided not to pursue this option for the reasons set out in detail in the Cabinet report, that is:

- It would take significantly longer for the Council to work up an alternative scheme, achieve a planning consent and get a start on site, delaying the delivery of homes – including new Council homes – and delaying savings in the cost of Temporary Accommodation for the Council’s General Fund.
- There is a planning risk, because the planning status of the site requires that the whole site be brought forward together into a single development. There would be major challenges for the Council in trying to bring in the land it does not own (the pub and the church) and it might not be able to achieve planning permission if it tried purely on the part that it already owns.
- Fewer homes would be delivered in any scheme solely on the Council-owned land, which would be directly in tension with the Borough Plan objectives on delivering new homes. Issues such as rights-to-light and access requirements for neighbouring users would reduce the overall density of any stand-alone development.
- Any such Council scheme would also not deliver the other benefits - an improved church building, community space, and café and nursery provision - which the Magic Living scheme will achieve, and would lose the green space.

4.38 Therefore, while it was accepted that the overall costs per home of direct delivery could be less than the costs of acquiring the homes from Magic Living, this was outweighed in the balance by this range of factors, which meant that the arrangement being entered into with Magic Living represented the best option overall.

4.39 **REASON 5:**

Due Diligence on the Developer

Reason 5a

“There appears a lack of due diligence carried out on Paul Simon Magic Homes (PSMHG) and any assessment of risk to the council.”

4.40 Due Diligence was carried out on Paul Simon Magic Homes. This was set out in Part B of the Cabinet Report. The detailed response to the call-in question are set out in **Part B**, the exempt part of this report.

Reason 5b

“This is particularly important given the uncertainty in the UK construction sector over Brexit, general overheating in the London market and the collapse in the past month of Keir, Shaylor and (last week) Aspin. Councillors would like assurance that PSMH is sufficiently financially healthy to take on such a large development and whether there is any underwriting or collateral being provided by the Council. We believe that a call-in would allow time for scrutiny to assess what guarantees/liabilities the Council has in relation to any financial underwriting (advance deposits due to PSMHG) and whether that would fall outside the budgetary framework?”

Response

- 4.41 The Construction Sector Risks in relation to PSMH were considered in Part B of the Cabinet Paper. The more detailed response to this call-in question is set out in **Part B**, the exempt part of this report.

REASON 6:

The Cabinet Report

“The report to the cabinet meeting is not thorough enough and could prove misleading because it includes assumptions and assertions that have, on subsequent questioning and investigation, found to be either erroneous, or inadequately supported by facts. For example: the inconsistency with current planning brief for the site; the estimation of any likelihood of planning complications for alternative options brought by the Authority; assertions about presumed lack of organisational capacity within the authority and HfH; the lack of adequate comparisons of actual and likely financial costs and benefits and potential risks to the Authority”.

Response

- 4.42 Officers are satisfied that the report is thorough and covers all the relevant considerations at the necessary level of detail.
- 4.43 Officers are not aware of any erroneous claims in the Cabinet Paper.
- 4.44 The report addresses the compliance with the DPD planning brief and indeed since the report was written the development has received planning consent as compliant with current planning policy.
- 4.45 As set out above, alternative direct delivery options were considered and set aside because of the timing of delivery and the risk of achieving planning, and this is referenced in the report.
- 4.46 To take on a new mixed use development of a church and its community space as well as housing – including a land assembly exercise requiring new dialogue with the pub and church owners – would have a significant detrimental impact on the Council’s capacity to deliver other projects in the Council housing delivery programme and across its wider property function. The Council does have capacity to deliver housing on its own land (Red House only) and officers did carry out an indicative comparable assessment which concluded that such a direct delivery scheme would take longer for the Council to deliver through its own capacity than through the developer and therefore did not meet policy objectives of early delivery of Council homes, and would also likely deliver less good outcomes.
- 4.47 It is not correct to say that no comparison with a Council scheme was carried out. Whilst no direct comparison between a Council scheme and the proposed developer scheme are made in the Cabinet paper itself, the conclusions are based on an indicative assessment carried out by officers, the conclusions of which were discussed in the Cabinet Paper (Part B).

SECTION 2 of Call-In form: Variation of Action Proposed:

- 4.48 Officers have considered the proposed section 2 of the Call-in form: Variation of Action Proposed:

“Defer the decision at this stage” – Response: The deferral of the decision may have consequences for the draft terms of the agreement with Paul Simon Magic Homes. A significant deferral would mean that the developer could not start on site in the autumn as was planned and would thus put at risk the delivery of Council homes beyond the timeframe and longstop date given in the draft heads of terms approved at Cabinet.

“Refer the issue to the Relevant Scrutiny Panel” – Response: Were the project to be referred for full review by Scrutiny there would be such a delay in the implementation of the developer scheme as to make it possible that it will be unable to proceed under the same terms as approved at Cabinet and either new terms and timing would need to be negotiated and agreed at Cabinet.

5. CONTRIBUTION TO STRATEGIC OUTCOMES

- 5.1. The contribution of the decision in question to strategic outcomes was set out in the report to July 9th 2019.

6. STATUTORY OFFICER COMMENTS

Finance

- 6.1. The Section 151 Officer has been consulted in the preparation of this report.
- 6.2. The financial implications of the decisions taken by Cabinet were detailed in the July 9th 2019 cabinet report.

Legal

- 6.3. The Assistant Director of Corporate Governance has been consulted in the preparation of this report, and his views are as set out in his Monitoring Officer report.

Equalities

N/A

9 USE OF APPENDICES

10. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Report to 8th July Cabinet regarding the proposed disposal of Red House Yard 423 West Green Rd, N15 to Paul Simon Magic Homes Group and agreement to acquire homes within the proposed site development for retention as social rented Council housing
Cabinet’s decisions: <https://www.minutes.haringey.gov.uk>

