

**Report for:** Special Overview and Scrutiny Committee on 6<sup>th</sup> December 2016

**Item number:** 1

**Title:** Further information in response to “Call-in” of decision of Cabinet of 15<sup>th</sup> November 2016 for the Sale of land and retail unit at Kerswell Close, Tottenham.

**Report authorised by :** Lyn Garner, Director Regeneration, Planning & Development

**Lead Officer:** Jon McGrath, Assistant Director Property & Capital Projects

**Ward(s) affected:** St. Anns and Seven Sisters

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

**1. Describe the issue under consideration**

- 1.1 The purpose of this report is to provide further information to support the Committee’s scrutiny of the issues raised in the “Call-in” of the Cabinet decision of 15<sup>th</sup> November 2016 in respect of the sale of land and retail unit at Kerswell Close.

**2. Cabinet Member introduction**

- 2.1 The Cabinet’s most recent decision on the sale of land and retail unit at Kerswell Close has been referred to the Scrutiny Committee. Officers have carefully gone through the issues raised in the call-in and have set out a full response in this report.

**3. Recommendations**

- 3.1 Committee are asked to note and consider all details contained within this report when making a decision on the most appropriate course of action for the sale of land and retail unit at Kerswell Close.

**4. Reasons for Call-In**

- 4.1 “The decision is outside the policy framework. A) The Housing Strategy states a requirement in respect of intermediate housing affordability that housing cost (including mortgage costs and service charge) should not exceed 45% of net income received by a household; and that the households which should have priority in the provision of such housing are those with a gross income of £40,000 per annum or less, with the income range £30,000 to £40,000 given for households in ‘Band D’. In contradiction to this, the homes in the proposed development by Pocket Living would be unlikely to cost at or less than 45% of net income received by a household on £30,000 to £40,000.”

When Cabinet took this decision (on 15 November 2016), the Council's new Housing Strategy 2017-2022 had not yet been adopted by Full Council; this took place on 21 November 2016. As a consequence, for the purposes of the formal Policy Framework, the previous Housing Strategy 2009-19 was the strategy against which the Cabinet decision would have been tested.

The 2009-2019 Housing Strategy states (in section 1.1) that among the Council's priority actions will be to 'Develop and promote a range of flexible intermediate housing products'. Unlike the new strategy, the previous strategy does not go on to define affordability for intermediate housing or distinguish between different types of intermediate housing.

In the absence of a formally adopted local definition of intermediate housing, the default definition that would have to be applied would be that contained within policy 3.10 of the Mayor of London's London Plan, in line with the definition in the National Planning Policy Framework (see Appendix 1). That is that "*Intermediate housing should ... be homes available for sale or rent at a cost above social rent, but below market levels. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rent. Households whose annual income is [up to £90,000] should be eligible for new intermediate homes.*"

Therefore, the decision to dispose of the land to Pocket Living for the provision of affordable housing is consistent with the local, regional and national policy framework in place at the time that the decision was taken.

The terms agreed for the sale of the land are however consistent with the Council's new Housing Strategy 2017-2022, which has now been adopted as part of the Policy Framework. The call-in quotes the new Housing Strategy.

In particular, the call-in draws attention to two provisions (set out in Appendix D of the new Housing Strategy): first, that affordability should be defined as households paying up to 45% of their net income; and second that the Council's preferred intermediate provision is lower cost shared ownership affordable to households on gross incomes at or below £40k per annum. It is correct that Pocket homes are not targeted at – and for the most part would not be affordable (by the Housing Strategy definition) to – households on gross incomes of below £40k. Pocket homes are not therefore considered to fit the definition of the Council's preferred provision of intermediate homes.

However, Appendix D of the new Housing Strategy also clearly states the Council's commitment to supporting intermediate homes that are affordable to the group defined as 'Band 6' (on incomes between £40k and £90k per annum). The chart entitled 'Affordability of Housing Options' sets out the rented options and ownership options available to seven income bands. The key to this chart makes clear that the Council prioritises the rented and ownership options for bands 1, 2 and 5 but also supports the rented and ownership options for bands 3 and 6. As set out in paragraph 6.4 of the Cabinet report, Pocket homes (by targeting households earning up to £90,000 per year) clearly meet the definition of intermediate purchase homes for people in band 6. The Strategy does not set strict criteria for when the Council

should promote its 'prioritised' provision (for bands 1, 2 and 5) over its 'supported' provision (for bands 3 and 6), leaving such judgements to the Council's discretion.

This discretion enables the Council to promote other strategic priorities set out in new Housing Strategy, for example, encouraging mixed tenures as set out in section 5.3. Within this section, the new Housing Strategy in particular states that the Council will:

- Move towards a more diverse and balanced portfolio of housing tenures, including intermediate products in the private and public sectors and affordable home ownership
- Use council-owned land to increase provision of these homes, including by agreeing more flexible finance options with developers.
- Make it easier to accept innovative schemes which have a single tenure – for example, all homes are for affordable rent, or homes are all one size where a good affordable housing mix can still be achieved within the wider area, and it is appropriate to that particular site.

Given these factors, and the fact that the Pocket homes currently planned in the Borough (including on the Kerswell Close site) are part of a wider context of intermediate homes across the borough, there is no evidence to suggest that the Council would be acting inconsistently with the approach set out in the Strategy by promoting the provision of Pocket homes on the Kerswell Close site.

The promotion of Pocket homes by the Council for this site is therefore consistent with the terms of the new Housing Strategy 2017-2022.

**4.2 "B) The Unitary Development Plan (Saved Policies) gives reasons why open spaces should not in general be built on, and states (8.1) that "Existing open spaces should not be built on unless an assessment shows the open space to be surplus to requirements". The key objectives (8.3) include ensuring that flora and fauna with environmental value or amenity value is protected and encouraged.**

**Under OS17 the document states that the Council will seek to 'protect and improve the contribution of trees, tree masses and splines to the local landscape character' including by (d) 'ensuring that when unprotected trees are affected by development, a programme of tree replanting and replacement of at least equal amenity and ecological value and extent is approved by the Council.**

**The area for sale to Pocket Living includes open space, a footpath and a considerable number of trees including large mature trees. These form an important barrier and provide absorption and mitigation for the local people and pedestrians against the pollution and emissions from the adjacent extremely busy and congested road junction. In contradiction to the spirit and wording of the UDP, the proposal fails to protect the flora with its environmental and amenity value, or the open (green) space, and the latter cannot be assessed as surplus to requirements. Also, a programme of replanting and replacement as per (d) above which could replace the local amenity and ecological effect of the trees on the site has not been proposed, nor does there appear to be any scope for such a scheme."**

This aspect of the call in has two main points;

1) impact on open space which quotes supporting text but not policy grounds:

The actual policies to be considered that are relevant when assessing the open space grounds are as follows:

Policy SP13 of the Local Plan, which has superseded the UDP, provides the basis for protection of both designated and 'other' open spaces against inappropriate development. This space is undesignated and is therefore considered to be 'other' open space.

SP 13 sets out that 'New development shall protect and improve Haringey's parks and open spaces. All new development shall:

*Protect and enhance, and when and where possible, extend the existing boundaries of the borough's Green Belt, designated Metropolitan Open Land, designated Open Spaces, Green Chains, allotments, river corridors and other open spaces from inappropriate development;*

Emerging policy DM20 from the pre-submission version of the Council's draft Development Management DPD helps give effect to SP13. The Council is currently consulting on a Main Modification to this policy following the Examination in Public into the Plan to reflect the National Planning Policy Framework paragraph 74, which provides that existing open space should not be built upon unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements;
- or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

It would therefore be incumbent on any applicant to undertake an open space assessment in support of a development proposal, and where appropriate, set out how suitable replacement provision, if possible, would be delivered where a loss was proposed at the time of the planning application. The scope for a possible design solution to ensure no net loss of open space by way of site re-configuration would need to be investigated. Without these assessments, which would be expected at application stage, it is not possible to say whether the proposal is in line with Council planning policy.

2) impact on trees/biodiversity where the call in quotes the policy OS17:

The relevant policies to be considered when assessing the trees/biodiversity grounds are as follows:

Saved UDP Policy OS17, Local Plan policy SP13 and Draft Development Management Policy DM19.

At the current time all three policies have some weight. They set out the following:

*OS17 (C): when unprotected trees are affected by development, a programme of tree replanting and replacement of at least equal amenity and ecological value and extent is approved by the Council.*

*SP13: All development shall protect and improve sites of biodiversity and nature conservation, including private gardens through its: protection, management, and maintenance of existing trees and the planting of new trees where appropriate.*

*DM 19- B Development that has a direct or indirect adverse impact upon important ecological assets will only be permitted where the harm cannot reasonably be avoided; and it has been suitably demonstrated that appropriate mitigation can address the harm caused.*

All of these policies talk about the potential for loss of trees and biodiversity impact to be mitigated against by design or replacement trees/habitat. These considerations would be dealt with through any planning application process, and it should be noted that mitigation measures or appropriate replacement off-site through a contribution to a tree planting programme could be acceptable rather than replacement on-site. As such as we do not have a detailed scheme it is not possible to say at this time whether the proposal is in line with Council planning policy.

In any case Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and section 70 (2) of the Town and Country Planning Act 1990 sets out that proposed development that conflicts with the Development Plan should be refused unless material considerations indicate otherwise. As such if a proposal, when submitted for planning permission, is not in line with Planning Policy but has other sufficient material considerations in its favour, such as the provision of housing, and in particular affordable housing, Planning Permission may still be granted.

As such at the time of considering the planning application, material considerations regarding the optimal use of land in the Seven Sisters Rd Area of Change, particularly in helping to deliver the spatial strategy and delivering affordable housing, may be a reason to grant planning permission in any case notwithstanding any mitigation proposed. Therefore it is only at the time of considering the planning application with its supporting documents when it can be determined that any proposal was in line with Planning Policy or not.

**4.3 “There has been no consultation with or even information given to the local community, who should be given the opportunity to express their views given the importance of the issues.”**

The Council is not required to undertake consultation when selling a site. Consultation will be undertaken once a planning application is made by Pocket Living for the site. This will take the normal statutory process and residents will be able to express their views on the proposal which will be taken into consideration at Planning Committee. The sale is subject to planning.

**4.4 “The policy and presumption against building on open green space and removing trees requires very strong reasons to override, which have not been provided.”**

The land sale proposed to Pocket Living is subject to planning. The issue of building on open green space and the potential removal of trees will depend on the development proposed as part of the planning application. The policies that will apply when the planning application is considered have been set out above in section 4.2.

As set out above the mitigation to be proposed has not been discussed and this will take place at the planning application stage. Details of the mitigation is needed in order to make a decision as to whether the proposal is in line with planning policy.

**4.5 “The Pocket Living model fails to provide genuine affordability, as the 20% reduction from average market prices for a 1 bed flat which the company offers is achieved through the reduction of 24% in floor space below the London Standard for a 1 bed flat.”**

Units developed by Pocket Living do generally meet London Plan Space standards and exceed the standard for a 1 bed unit for 1 person by 1sqm. The model is acknowledged as an intermediate affordable home by the Mayor of London.

**4.6 “Given the 36 flats which are not genuinely affordable are to be built on the site, the proposed sale price of the land does not represent value for money for the Council.”**

The Council has commissioned an independent valuation which confirms that the price agreed with Pocket Living which is subject to planning represents best consideration under S123 of the Local Government Act 1972.

**4.7 “There has been no serious and thorough exploration of alternatives.”**

This is not correct. The Council intends (subject to Cabinet approval) to dispose of a portfolio of under-used infill sites to one of our preferred partner housing associations, following a tender exercise. This will enable development of up to 19 such sites for housing with a significant proportion of affordable homes including both affordable rented dwellings (with 100% nominations to the borough) and shared ownership homes. Kerswell Close was originally part of this portfolio of sites; it was considered that one site with a Pocket Living affordable sale product would provide a diversity of affordable tenure across the portfolio, addressing a wider market of Haringey first time buyers and supporting our strategic objective of increasing the supply of sale dwellings in the East of the borough where the balance of existing accommodation is predominantly rented.

The Kerswell Close site will yield (subject to planning) 36 Pocket homes (a provision of 100% affordable housing on the site). The separate Pocket development on the former Keston Centre site in West Green ward will yield a further 67 Pocket homes (along with 35 private homes for sale). This makes a total pipeline of 103 Pocket homes in Haringey, compared to an overall total of 407 intermediate rent and shared ownership homes completed in the last three years (with a further 154 given

planning consent over the same period) – all targeted at lower income households than Pocket homes or other discount market sale homes – over the last three years.

It should also be noted that the Council's disposal will include a requirement that the Council's Intermediate Housing Policy (approved for consultation at October Cabinet) would be applied. Whilst this policy is currently out to consultation and has not been adopted yet, it does in draft form include a cascade of 5 priorities for Council nominees to intermediate housing schemes. This includes within the first priority group, existing social housing tenants who – in taking up an intermediate home – would release a social rented unit for re-letting. The draft policy also states that, where there is more than one nominee in a priority group, the household on the lowest income will be preferred. Therefore, households in band 5 (rather than band 6) may be successful in securing homes in schemes such as that proposed at the Kerswell Close site.

**4.8 “Where Council owned land is built on, the priority should be for those most in need, which would be served by building Council homes or failing that, other homes at social rents.”**

The strategic priorities set out in new Housing Strategy 2017-2022 include encouraging mixed tenures as set out in section 5.3. Within this section, the new Housing Strategy in particular states that the Council will:

- Move towards a more diverse and balanced portfolio of housing tenures, including intermediate products in the private and public sectors and affordable home ownership
- Use council-owned land to increase provision of these homes, including by agreeing more flexible finance options with developers.
- Make it easier to accept innovative schemes which have a single tenure – for example, all homes are for affordable rent, or homes are all one size where a good affordable housing mix can still be achieved within the wider area, and it is appropriate to that particular site.

Given these factors, and the fact that the Pocket homes currently planned in the Borough (including on the Kerswell Close site) are part of a wider context of intermediate homes across the borough there is no evidence to suggest that the Council would be acting inconsistently with the approach set out in the Housing Strategy by promoting the provision of Pocket homes on the Kerswell Close site.

**5. Variation of Action Proposed**

**5.1 “Cancel the proposal to sell the area to Pocket Living.”**

The land has been identified as an area that could provide much needed affordable housing in the Borough. The proposal to sell the land to Pocket Living, subject to planning, is consistent with the Council's new Housing Strategy and will achieve best consideration. The sale reflects a wider strategy encouraging mixed tenures helping to achieve a balanced portfolio. Therefore it is deemed the best decision to sell the site to Pocket homes.

**5.2 “Explore alternative options, including building Council homes or failing that, working with a Housing Association to build social homes on part of the area**

**while protecting the trees and enhancing the attractiveness, environmental value and amenity of the green space. Options for the site of the building currently used as a shop should also be considered.”**

The site has been identified as one that fits with the Pocket Living model and will reflect the mix of tenures as set out in the Council’s Housing Strategy. A number of other sites in the Borough will be developed to reflect a mix of affordable homes including affordable rented dwellings and shared ownership homes. The shop is subject to a lease and as the site is being sold in its entirety to Pocket Living they will explore options for the building with the leaseholder.

**5.3 “The local community including residents of the estate/s, the residents’ association; and environmental and other relevant organisations should be informed, consulted and involved in decision making about the future of the area.**

The local community will be consulted by Pocket Living as part of the design and planning process. This will include proposals for site including infrastructure, green space and parking.

## **6. Background information**

**6.1** The Cabinet Report from November 2016 acts as background information for the decisions taken by Cabinet.

**7. Contribution to strategic outcomes**  
N/A

## **8. Statutory Officers comments**

**8.1 Comments of the Chief Finance Officer and financial implications**  
N/A

**8.2 Comments of the Assistant Director of Corporate Governance and legal implications**  
N/A

**8.3 Equalities and Community Cohesion Comments**  
N/A

**8.4 Head of Procurement Comments**  
N/A

**9. Use of Appendices**  
Appendix 1 –National Planning Policy Framework & Local Plan definitions

**10. Local Government (Access to Information) Act 1985**  
Background document





## **Appendix 1 – National Planning Policy Framework & Local Plan definitions**

### **NATIONAL PLANNING POLICY FRAMEWORK:**

#### **Annex 2: Glossary**

**Affordable housing:** Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision. [...]

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

### **LONDON PLAN:**

#### **Policy 3.10 Definition of affordable housing**

A Affordable housing is social rented, affordable rented and intermediate housing (see para 3.61), provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision

3.61: Intermediate housing should meet the criteria outlined in Policy 3.10 and be homes available for sale or rent at a cost above social rent, but below market levels. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rent. Households whose annual income is in the range £18,100–£66,000 should be eligible for new intermediate homes. For homes with more than two bedrooms, which are particularly suitable for families, the upper end of this eligibility range will be extended to £80,000. These figures will be updated annually in the London Plan Annual Monitoring Report. [Note: This was update to £90,000 in the last AMR]