

**Report for:** Cabinet 2<sup>nd</sup> April 2019

**Report Title:** Acquisition of the Welbourne site to maximise the delivery of genuinely affordable homes in Tottenham Hale and Novation of the Argent Related Development Agreement and Funding Agreement.

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**Ward(s) affected:** Tottenham Hale

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

### **Describe the issue under consideration**

1.1. Cabinet agreed on 11<sup>th</sup> December 2018:

- 1 To the in-principle acquisition by the council for housing purposes of 131 homes and a ground floor non-residential space to be constructed at the Welbourne site for a maximum total sum as set out in the exempt part of the report and based on the draft Heads of Terms (attached in Appendix A) subject to the council's budget setting meeting on 12<sup>th</sup> February and Full Council on 25<sup>th</sup> February 2019
- 2 To note that a further Key Decision will be taken at a later date to agree the final purchase price and the final contract for the acquisition.
- 3 To agree that (following the council's budget setting meeting on 12<sup>th</sup> February 2019 followed by Full Council on 25<sup>th</sup> February) the unallocated General Fund capital receipts, as set out in the exempt part of the report, are retained corporately.

1.2. [paragraph is contained in the exempt part of the report]

1.3. By securing control over the new homes on the Welbourne Centre site, the council seeks to maximise the delivery of council-rented homes at Tottenham Hale that meet the needs of local people, as part of the council's commitment to secure the delivery of 1,000 such homes by 2022.

- 1.4. As the development moves into delivery, Argent Related (the developer) have finalised their company structure for the delivery of the obligations in the Development Agreement, including the outturn dwellings (the homes to be unlocked through the Housing Zone funding). This requires the Development Agreement and the Funding Agreement to be novated from the TH Ferry Island Limited Partnership entity to TH DM Limited. Both novations will also include TH Welbourne Ltd as a party as it is the entity that will be taking the long lease of Site 2 (Welbourne Site) directly from the council.
- 1.5. The purpose of this report is to confirm the final purchase price and final contract for the Welbourne Site acquisition, and to note that the developer will take forward the SDP sites (including the Welbourne Site) under a revised company structure, requiring the novation of the Development Agreement and Funding Agreement.

## **2. Cabinet Member Introduction**

- 2.1. In December 2018, Cabinet agreed to the principle of the acquisition of the Welbourne Centre site. This report clarifies a number of supplementary issues that surround that decision.
- 2.2. Securing homes for Haringey's residents is central to what this administration has set out to achieve. The acquisition of the Welbourne site delivers 131 council homes - or 13 per cent towards our overall target of delivering 1000 new council homes. Furthermore, this acquisition also helps to secure the delivery of a district health centre that has been long fought for locally. The council is proud to be playing its part in bringing forward this critical facility that will significantly improve healthcare facilities and health opportunities for Tottenham residents.
- 2.3. Delivering a new town centre at Tottenham Hale is important for old and new residents alike. There is the new state-of-the-art health centre with the capacity to support 30,000 patients, new jobs and new workspace. There are improvements to the public realm and additional investment in our green spaces, improved infrastructure for cycling and walking. This will create a new heart to Tottenham Hale that will serve existing residents, those using the transport interchange, while also attracting new businesses and residents.
- 2.4. This report also sets out the final company structure under which the developer will deliver these outputs. We have also already received funding from this partnership which has allowed us to facilitate the delivery of 167 much-needed affordable homes and infrastructure. This is a very significant outcome for residents in the east of the borough and I look forward to the rapid delivery of these homes and the much-needed health centre on this important site.

## **3. Recommendations**

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### 3.1. Cabinet agrees:

- 3.1.1 To the council proceeding with the acquisition for housing purposes of 131 homes and a ground floor non-residential space from Argent Related, to be constructed at the Welbourne site, for a total sum plus expenditure for acquisition process costs and on-costs, as set out in the exempt part of the report.
- 3.1.2 To the final terms of the Contract for the acquisition attached at Appendix B and based on the Heads of Terms previously approved by Cabinet and attached at Appendix A.
- 3.1.3 To give delegated authority to the Director for Housing, Regeneration and Planning to agree any future amendments to the contract, in consultation with the Director of Finance.
- 3.1.4 To the novation of the Development Agreement and Funding Agreement from TH Ferry Island Limited Partnership to TH DM Limited as set out in the Deed of Novation for the Development Agreement attached at Appendix C and the Deed of Novation for the Funding Agreement attached at Appendix D.

## 4. Reasons for decision

### **Acquisition of Affordable Housing on the Welbourne Site**

- 4.1. As detailed in Paragraph 1.1 above, on 11<sup>th</sup> December 2018 Cabinet agreed (subject to the council's full budget setting meeting in February 2019) to the in-principle acquisition of the homes and ground floor non-residential space to be constructed at the Welbourne site for a maximum total sum; to unallocated General Fund capital receipts being retained corporately and to note that a further Key Decision will be taken at a later date to agree the final purchase price and contract for the acquisition.
- 4.2. [contained in the exempt part of the report]
- 4.3. [contained in the exempt part of the report]
- 4.4. The acquisition of the residential premises on the Welbourne Site will allow the council to secure the rapid delivery of 131 council-owned homes (13 per cent of its 1,000 target) and a district health centre using the existing Development Agreement with the developer as the delivery agent. The district health centre will be delivered under the Development Agreement rather than under the Contract to be entered into.

- 4.5. The council has a time-limited window to acquire the 131 homes to be constructed on the Welbourne site under the terms of the s106 agreement. If this option is not exercised, the developer will dispose of these homes to a Registered Provider of affordable housing and these will revert to shared ownership dwellings.
- 4.6. Officers have been negotiating with the developer on the contract for the purchase and build of the homes and this has now been agreed (with the exception of the VAT clauses which were added to the draft Contract by Argent Related late in the process and are being reviewed by the Council's specialist VAT advisers.) The Contract is based on (and is in accordance with) the Heads of Terms attached at Appendix A.
- 4.7. Under the terms of the Development Agreement, entered into on 21<sup>st</sup> March 2017 with the council, Argent Related is entitled to novate the Development Agreement and Funding Agreement to other Group Companies. The council has an obligation to act reasonably through the Agreement with Argent Related and not withhold consent to the novation of the Development Agreement and Funding Agreement.
- 4.8. As is typical in situations such as this, the detail of this company structure was not finalised when the original Development Agreement was entered into, resulting in provisions being included in the Agreement to allow for the novation at a later date. Now that resolution to grant planning permission has been secured and the project is moving into the delivery phase this structure has now been finalised.
- 4.9. The company and land ownership structure proposed by Argent Related is typical for a development of this nature which is split across separate buildings and involves differing delivery timescales, mixed tenures and use-types. The novation of the Development Agreement and Funding Agreement allows the development costs to be accounted for in the correct developer entity. The proposed changes are not considered to represent a material change in risk to the council as all the terms and principles of the Development Agreement are retained. Though the delivery entity has changed the Argent Related Group retains all the same obligations in relation to delivery.
- 4.10. As detailed in the Deeds of Novation, the incoming party (TH DM Ltd) would assume all obligations of the outgoing party (TH FI Ltd) under the terms of the Development Agreement. The Development Agreement already contains step-in rights for the council, providing an additional security provision should the developer not be able to complete the development for unforeseen reasons. These terms are reflected in the Funding Agreement.

## **5. Alternative options considered**

### **Alternative options for recommendation 3.1, 3.2, 3.3 – Acquisition of the Welbourne Site**

- 5.1. A series of options for the acquisition (recommendation 3.1) were considered by Cabinet at its meeting of the 11<sup>th</sup> December 2018. These were:

**Option A:** The council acquires the Welbourne site in its entirety. This was the preferred option as it allows the council to control the tenure for all homes, set the rent levels, negotiate an appropriate specification for affordable homes and service charges. This option achieves the most affordable outcome for the homes to be delivered. This option also results in surplus land receipts being returned to the General Fund, as set out in the exempt part of the report.

**Option B:** The council could provide grant funding to a Housing Association in order to deliver more genuinely affordable homes on-site. This option would involve the council providing grant funding to secure the delivery of lower cost affordable housing. This option was discounted on the basis that the council is moving towards a position of prioritising the delivery of council owned homes on its own land, in order to maximise the delivery of safe, stable and affordable homes.

**Option C:** The council could decide not to proceed with either acquiring the Welbourne site in whole or in part, or funding a third party at this or other locations in Tottenham Hale to increase the amount of affordable housing delivered. This would result in the Argent Related scheme proceeding with 25% Shared Ownership homes on the basis of its SDP affordable housing contribution.

- 5.2. If the contract for the acquisition of the new build units is not approved, the Developer will still be able to proceed with the development of the Welbourne site under the terms of the Development Agreement. In this scenario the site would be delivered as per Option C above which would achieve poorer outcomes for the council.
- 5.3. Ultimately, this council is serious about securing the delivery of council homes using a variety of tools. Building through partnerships can deliver homes while we build up our own capacity to do more ourselves. This scheme alone will deliver 13% of our overall target and will deliver within the lifetime of this administration. This scheme also delivers a health centre that the local community and GPs have been campaigning for years. This scheme not proceeding will result in the funding secured by the CCG expiring, with no obvious alternative means of delivering a new fit-for-purpose health centre.

#### **Alternative options for recommendation 3.4 – Novation of the Development Agreement and Funding Agreement**

- 5.4. The alternative option would be to not novate these agreements, however, under the terms of the Development Agreement the council is required to not unreasonably withhold its consent to the novation of the Development Agreement and the Funding Agreement. Should approval not be given the developer will have the option of proceeding with the development as the developer for all of the sites within the Development Agreement or seek to challenge the council's refusal to give consent which will lead to delay in the delivery of both the development (including the affordable housing) and the outturn dwellings.

## **6. Background information**

- 6.1. Since May 2018, the council has taken a very different view on its objectives in relation to the delivery of key regeneration areas, and in particular has focussed on how the council can facilitate the delivery of homes for Haringey's residents first and foremost and contribute to the delivery of 1,000 new council homes over the next 4 years at council rent – a manifesto commitment included in the Borough Plan.
- 6.2. This includes a very significant focus on the delivery of council homes on council land as a first priority. In the context of the SDP, this has meant looking afresh at the scheme and what can be done at this very late stage to secure the delivery of council homes, especially on the only significant piece of council land going into the scheme (the Welbourne Site). The approach outlined in this report would deliver 131 council-rented council-owned homes against the 4-year target of 1,000.
- 6.3. The Development Agreement was entered into on 21<sup>st</sup> March 2017 and the scheme was designed and submitted for planning in May 2018. It is implausible that the council would be able to successfully renegotiate the commercial deal at this point in the development process and Argent Related need only secure planning in order to draw down the land (resolution to grant planning permission was secured in December 2018 at LBH Planning Committee). The council's role as Planning Authority is distinct and independent to this process and any decision on planning is for the Planning Authority to make.
- 6.4. The council has commissioned an independent valuation report from external advisors in connection with the transaction. The basis of the valuation reflects the planning proposals for the site by Argent for 60% shared ownership and 40% private sale. This is the basis agreed with the council in order to acquire the site as Argent would have undertaken the development with a registered provider on this basis.
- 6.5. The council are acquiring the 131 residential units in order to utilise grant funding and to provide social rented units. The valuation report also reflects the commercial unit being provided on the ground floor. Given the current market value of the property to be acquired as set out in the exempt part of the report, this is considered to represent the best terms reasonably obtainable in the current market.

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- 6.6. The 131 homes and commercial unit are to be constructed on the Welbourne Site as part of its redevelopment being carried out by the Argent Related entity called TH Ferry Island Limited Partnership ("Developer") under the Development

Agreement dated 21<sup>st</sup> March 2017 and made between the council and TH Ferry Island Limited Partnership (“DA”).

- 6.7. At its meeting on the 11<sup>th</sup> December 2018, Cabinet considered the background to the Welbourne site’s inclusion in the Tottenham Hale SDP, the change of tenure within this site and its implications and benefits across the area, and concluded to support in principle the acquisition of the Welbourne site by the council (subject to a further decision being taken to confirm the final price and terms of the contract).
- 6.8. The main provisions of the contract include:
- Process for agreeing variation to works
  - Process and provisions for managing risk to the council, including step-in rights, a parent company guarantee and warranties from the contractor and professional team
  - In the event of a breach the land and building (to the extent it is constructed) would be returned to the council
  - Annexures including an agreed specification that is in line with Homes for Haringey’s requirements.
- 6.9. The acquisition of the residential premises on the Welbourne Site will allow the council to secure the rapid delivery of council owned homes utilising the existing Strategic Development Partnership with Argent Related as the delivery agent.
- 6.10. Critically, it also supports the delivery of the district health centre, which offers a once in a generation opportunity to enhance the way in which local primary health care services are delivered.
- 6.11. This responds to local aspirations to see an increase in the amount of new affordable homes delivered. In so doing it meets a key commitment of our Administration; to deliver council homes at council rents. It delivers an improved mix of affordable housing in Tottenham Hale, which better meets the needs of local people.
- 6.12. The emerging Borough Plan prioritises the delivery of safe, stable and affordable homes for everyone, whatever their circumstances. This deal represents 13% of the council’s objective to deliver 1,000 council homes at council rents over the lifetime of the current administration.

### **The Welbourne Health Centre**

- 6.13. The Developer will, under the SDP Development Agreement, also deliver a new 1,500sqm health centre at the Welbourne Site to shell & core. The council will also acquire this unit as part of the buyback of the Long Lease under the Contract. The cost for this unit is already part of the land price calculation in the Development Agreement. The Health Centre will then be let on a long lease after

practical completion to the Clinical Commissioning Group's partner Healthlink to fit out the premises as a GP practice.

- 6.14. The NHS business case for the Welbourne Health Centre sets out a clear need for change to address the challenges in the delivery of primary healthcare in Haringey. The new facility serves a critical need in providing a wide range of services closer to home. These services will be delivered within modern, fit for purpose facilities, offering extended access to GP appointments, working within multidisciplinary teams whilst improving the patient experience. This facility will have the capacity to serve up to 30,000 patients and will create a health and wellbeing hub, working with the emerging Care Closer to Home Integrated Network (CHINS), and providing a range of wrap-around community services and care closer to home, whilst ensuring that primary care is at the centre of service delivery from this site.
- 6.15. In order to do this, a greater proportion of patients' care needs to be provided in the primary and community setting along with a shift to a greater focus on preventing ill health and deterioration at every level of need. A different type of building will be needed to facilitate this way of working, with greater flexibility and more space for a wider range of services. The proposed new centre will deliver this.

### **The Strategic Development Partnership (SDP) with Argent Related and the reason for novation**

#### **Development Agreement**

- 6.16. On 12<sup>th</sup> July 2016 Cabinet approved the decision to enter into a Strategic Development Partnership Agreement with Argent Related and on 21<sup>st</sup> March 2017 the council entered into a Development Agreement ("DA") with TH Ferry Island Limited Partnership ("TH FI Ltd") the council's developer partner in respect of the core district centre area sites. This Development Agreement is a conditional land sale and development agreement which documents the transfer by the council of the various sites to deliver the outturn dwellings (as agreed with the GLA as a condition of GLA Housing Zone funding) and wider vision for the heart of the district centre.

#### **Funding Agreement**

- 6.17. On 2<sup>nd</sup> May 2018 the Director of Housing Regeneration and Planning (after consultation with the Cabinet Member for Housing, Regeneration and Planning, the Director of Finance and the Assistant Director of Corporate Governance) gave approval for the council to enter into a Funding Agreement with TH FI Ltd for the delivery of bus station and infrastructure enabling works and the outturn dwellings, funded by the Housing Zone funding. The Funding Agreement was entered into on 22<sup>nd</sup> June 2018.
- 6.18. The funding includes an agreed package of GLA Housing Zone funding, borough contributions and Argent Related's developer contributions, as set out in the exempt part of the report.

6.19. It should be noted that the contract sum for the bus station and infrastructure enabling works is now significantly higher than the total agreed funding package. Argent Related have committed to provide any funding over the amount identified in the exempt part of the report out of their own funds.

6.20. The Funding Agreement between the council and TH FI Ltd, as signatory to the Development Agreement, sets out the terms under which the Works are to be carried out and the funding may be drawn down by the council from the GLA, and in turn by the developer from the council, provided certain conditions have been met.

### **Novation of the Development Agreement and Funding Agreement**

6.21. Under the terms of the Development Agreement, Clause 37.1.2 (a) and (c) the developer is entitled to novate the Development Agreement to a Group Company of the developer (with the approval of the council, such approval not to be unreasonably withheld).

6.22. This novation would mean that the Development Agreement would now be between the council and TH DM Ltd, rather than between the council and TH FI Ltd as it is now.

6.23. It follows that the Funding Agreement will also be novated from TH FI Ltd to TH DM Ltd and TH Welbourne Ltd. Clause 22.2 of the Funding Agreement states that 'the Developer will not be entitled to assign, transfer or novate its rights and obligations under this Agreement other than by way of a permitted dealing as set out in Clause 37.1.2 (a) and (c) of the Development Agreement, as referenced above.

6.24. The total value of the novated Funding Agreement is set out in the exempt part of the report.

## **7. Contribution to Strategic Outcomes**

7.1. The resolutions outlined in this report will contribute towards the following strategic priorities outlined in the Borough Plan:

- *Housing - a safe, stable and affordable home for everyone, whatever their circumstances.* By securing the delivery of 13 per cent of the council's target of delivering 1,000 council homes on council land.
- *Place - a place with strong, resilient and connected communities where people can lead active and healthy lives in an environment that is safe, clean and green:* By delivering high quality new affordable homes for local people, a new district health centre and local retail facilities, set in a high quality, open and inclusive urban environment that contributes to the creation of a place for all of Tottenham Hale's communities to be proud of.

- *Economy - a growing economy which provides opportunities for all our residents and supports our businesses to thrive: By contributing to the delivery of the heart of a new district centre at Tottenham Hale and unlocking opportunities for the local community to gain access to learning, skills and employment.*

## **8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### **Finance**

- 8.1. The report is seeking approval to conclude the acquisition of 131 council homes. The financial implications of this are set out in the exempt part of the report.
- 8.2. [contained in the exempt part of the report]
- 8.3. [contained in the exempt part of the report]
- 8.4. [contained in the exempt part of the report]
- 8.5. The report is also seeking approval to novate the development agreement and funding agreement from TH FI Ltd to TH DM Ltd. Under the terms of the development agreement Argent Related are entitled to do this and the council cannot unreasonably withhold its consent. The value of the funding agreement is set out in the exempt part of the report.
- 8.6. The novation has no financial effect on the council.

### **Procurement**

- 8.7. Strategic Procurement notes the contents of this report; however, comments are not applicable for property and land transactions as they sit outside of the Procurement Contract Regulations.

### **Legal**

- 8.8. This report seeks authority to acquire affordable housing units that are yet to be built as well as a ground-floor commercial unit. The council has authority pursuant to Section 120 of the Local Government Act 1972 to acquire for the purposes of any of its functions under the 1972 Act or any other enactment, by agreement any land, whether situated inside or outside its area. The properties will be acquired for housing purposes held within the Housing Revenue Account.
- 8.9. The properties are yet to be constructed, the Contract has been negotiated and is now in an agreed form and is based on the Heads of Terms agreed by Cabinet

on 11 December 2018. All further legal comments are set out in the exempt part of the report.

8.10. [contained in the exempt part of the report]

8.11. [contained in the exempt part of the report]

8.12. [contained in the exempt part of the report]

8.13. [contained in the exempt part of the report]

8.14. [contained in the exempt part of the report]

8.15. [contained in the exempt part of the report]

## **Equality**

8.16. The council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and those people who do not
- Foster good relations between people who share those characteristics and people who do not.

8.17. The three parts of the duty applies to the following protected characteristics: age disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status apply to the first part of the duty.

8.18. It is not expected that this decision will have any negative impacts on individuals or groups who share the nine protected characteristics. The council will ensure that new housing stock acquired by this decision will be subject to the Housing Allocations Policy, which has been subject to an [Equalities Impact Assessment](#) as part of the homelessness strategy.

8.19. This decision will increase the supply of homes which are genuinely affordable to local residents by delivering new build council-rented homes. This is likely to have a positive impact on individuals in temporary accommodation as well as those who are vulnerable to homelessness. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics, as well as those who identify as LGBT+ and individuals

with disabilities are known to be vulnerable to homelessness, as detailed in the [Equalities Impact Assessment of the council's Draft Homelessness Strategy](#). As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

9. **Use of Appendices**

[appendices are noted and attached to the exempt part of the report]

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

Appendices A, B, C and D are NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Part of this report is not for publication as it contains information classified as exempt under Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).