

Report for: Cabinet 10 December 2019

Title: The acquisition of freehold and homes at 1A Ashley Gardens

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

Lead Officer: Alan Benson, Interim Assistant Director for Housing
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Ward(s) affected: Tottenham Hale

Report for Key/

Non Key Decision: Key

1. Describe the issue under consideration

- 1.1. The purpose of this report is to seek approval for the acquisition from Berkeley Square Developments ARS Limited (“BSD”) of the freehold interest of a block of flats to be known as 1A Ashley Gardens. Subject to approval from the Planning Authority, to valuation and to contract, this will incorporate a new development of 108 homes and two commercial units. This site is being developed as part of a wider Berkeley Square Developments scheme across the whole of Ashley Gardens sites comprising 423 homes in Tottenham Hale.
- 1.2. The developers currently have planning consent for 97 homes and two commercial units on the site. On 4 October 2019, BSD submitted an application to amend this planning consent. If approved by the Planning Authority, that application would have the effect of increasing the number of affordable homes from 97 to 104; increasing the number of three and four-bedroom affordable homes whilst reducing the number of one-bedroom affordable homes; and introducing four additional homes for market sale. The Council would acquire the freehold of the whole block, which, subject to approval from the Planning Authority, would therefore comprise 108 homes and two commercial units.
- 1.3. The terms for the acquisition are set out in the draft Heads of Terms attached as Appendix 2. As agreed, BSD will retain through lease back the two commercial units and the four market sale homes contained within the block at 1A Ashley Gardens. The Council would therefore be acquiring the 104 Council homes for Council rent in that block.
- 1.4. Through the acquisition of the new homes on the 1A Ashley Gardens site, the Council will be able to meet the needs of local people by maximising the delivery of council homes at Council rents in Tottenham Hale. It will be a significant part of the Council’s commitment to deliver a thousand new council homes during this administration, with a start on site expected in April 2020 and practical completion by May 2022.

2. Cabinet Member Introduction

- 2.1. 1A Ashley Gardens will provide 104 high quality new Council homes at Council rents by May 2022.

3. Recommendations

3.1 Cabinet are asked:

- a) To approve the acquisition of the freehold of the property known as 1A Ashley Gardens, Tottenham Hale (shown edged red on the plan attached as Appendix 1) from Berkeley Square Developments ARS Limited for a sum of [EXEMPT], subject to a Red Book valuation and final Heads of Terms. The acquisition will comprise of the development of 108 new build homes, of which 104 will be Council homes for Council rent, plus two commercial units. Four homes and the two non-residential units will be leased back to BSD on 999-year leases. There are nine car spaces also included as part of the proposed package. The acquisition will be based on the draft Heads of Terms (subject to the final version) attached at Appendix 2. The total costs for the acquisition are [EXEMPT] which include SDLT and legal and property costs as set out in the Finance comments at section 8 of this report.
- b) To delegate authority to agree the final Heads of Terms and the final documentation, including the Development Agreement, to the Director of Housing, Planning and Regeneration after consultation with the Cabinet Member for Housing and Estate Renewal and the Cabinet Member for Finance and Strategic Regeneration, and with advice from the Director of Finance and the Assistant Director for Corporate Governance

4. Reasons for decision

- 4.1 The freehold acquisition of the 1A Ashley Gardens site will allow the Council to secure the rapid delivery of Council homes at Council rents.
- 4.2 This responds to local aspirations to see an increase in the number of new social rented homes delivered. By delivering ten per cent of the Borough Plan target of one thousand Council homes at Council rents by May 2022, it helps meet a key commitment of the Administration. It also delivers an improved mix of affordable housing within the scheme and in Tottenham Hale, which better meets the needs of local people.

5. Alternative options considered

- 5.1 **Not to acquire the homes.** This would require Berkeley Square Developments ARS Limited (BSD) to dispose of the homes to a Private Registered Provider on the basis of the current consented scheme which comprises 64 Shared Ownership homes and 33 homes at London Affordable Rent. This option was dismissed for three reasons:
- The borough would lose 64 homes for social rent because they would be sold on a Shared Ownership basis as per current planning permission.

- If the Council does not acquire these properties, the developer may delay the delivery of this scheme significantly until it could dispose to a registered provider.
- The Council would lose the benefit of having negotiated a revised mix that includes a reduction in one-bedroom flats and an increase in family-sized two- and three-bedroom homes. This is a need for those within the borough on the Housing Register.

5.2 **Acquiring the 33 rented homes and 64 Shared Ownership homes as approved by the Planning Authority.** This option was dismissed because it would not allow the Council to address as effectively the urgent need for more affordable rented accommodation; and the council would need to remodel to achieve the desired mix of housing size. It would also adversely affect progress towards meeting the Council's target of delivering 1,000 new Council homes by 2022.

6. Background information

- 6.1 The 1A Ashley Gardens site is shown edged in red on the plan attached at Appendix 2. The site will comprise a single block, building 1A, that forms part of the detailed planning permission (ref HGY/2017/2045, granted on 8 June 2018). The Ashley Gardens, Ashley Road scheme comprises a total of 423 residential units to be constructed on a larger site of which this is part. This scheme is in turn part of the Ashley Road Masterplan that will deliver 826 new homes and a mix of retail and office space. The site to be acquired is 200 metres from Tottenham Hale Station and part of the wider regeneration of Tottenham Hale Housing Zone.
- 6.2 Berkeley Square Developments ARS Limited (BSD) has planning permission on 1A Ashley Gardens for two commercial units and 97 affordable homes. In the current planning permission, these affordable homes comprise 64 shared ownership and 33 London Affordable Rent homes.
- 6.3 BSD invited bids for the affordable homes in May 2019 after the withdrawal of the Registered Provider that had agreed to purchase the affordable housing. On this basis the Council offered to acquire these homes subject to required changes to the unit sizes to create family homes, and to its own due diligence including valuation.
- 6.4 The Council negotiated with BSD in order to acquire the freehold of the entire block rather than acquiring the affordable homes on a leasehold basis. Not only does this comply with the Council's commitment to develop Council homes on our own land, but it is also prudent in management and maintenance terms. Acquiring the freehold interest of the whole site means the Council will own and manage the entire building and avoid complex service charge arrangements and management issues with third parties.
- 6.5 The Council wishes to maximise the number of homes for social rent and to meet housing need and therefore stipulated that BSD should seek to improve the number and mix of affordable homes at 1A Ashley Gardens. As such, on 4 October 2019 BSD submitted an application to the Planning Authority to vary the existing planning permission. Whereas the 97 homes currently consented

comprise 44 one-bedroom, 38 two-bedroom and 15 three-bedroom homes, the revised application, for 108 homes, increases the number of affordable homes from 97 to 104, and adjusts the mix of bedroom sizes to 37 one-bedroom, 39 two-bedroom and 28 three-bedroom homes. The size of all the three-bedroom homes also increase from four-person to six-person homes. The proposal also includes nine car spaces located on the development site.

- 6.6 In the application to vary the planning consent, BSD proposed four flats for private sale on the top floor of 1A Ashley Gardens. The four flats will be kept by BSD through leasing them back from the Council on 999-year leases.
- 6.7 Initial advice on the value of the acquisition has been provided by the Council's property advisers, Carter Jonas which confirmed that the package price proposed was in line with market expectations. A formal, confirmatory, RICS Red Book valuation is in preparation which is expected to support the package price proposed as best value for the Council. The delegated authority sought by the Director of HRP to sign off the final documentation and package price will be based on advice following the red book valuation. Further details are incorporated in the Finance comments in section 8 of this report.
- 6.8 The Council has been awarded an allocation of Building Council Homes for Londoners (BCHfL) grant from the Greater London Authority (GLA). It is intended that grant funding from this allocation is utilised towards the cost of the acquisition. The application of this funding is dependent on agreement with the GLA to ensure no double counting with Housing Zone funding which has already been applied to the 33 homes initially consented for London Affordable Rent. The final amount of BCHfL grant to be applied is therefore not confirmed but is expected to be [EXEMPT] depending upon the approved scheme.
- 6.9 The terms for the acquisition are contained in draft Heads of Terms attached in the exempt Appendix 2 which when agreed will allow the Council to enter into contract. The Council will enter into an agreement with BSD which will be subject to two main conditions precedent. These are for BSD to: (1) obtain a revised planning permission and (2) enter into a construction contract for the works. The draft Heads of Terms also includes other key conditions that will be captured in the agreement including key dates for delivery, the payment provisions, collateral warranties and step in rights. Once these two conditions are satisfied the Council will acquire the freehold and BSD will carry out the development within the agreed time frame and in accordance with the planning permission and agreed Council specification. The payments are as set out in the exempt part of the report.
- 6.10 The Council's Arm's Length Management Organisation, Homes for Haringey (HfH), will be responsible for the management and maintenance of the homes following their practical completion.
- 6.11 BSD's detailed specification of the homes is being checked by HfH and the Housing Delivery Team to ensure that they are commensurate with HfH's property and housing management operations, align with manageable life-cycle costings, and meet the Council's insurance requirements. Council officers and Homes for Haringey are content that the designs meet the standards the Council expects for new Council homes.

- 6.12 The approved planning submission designs and strategies cannot be amended at this stage. However, the draft specification and defects procedures attached to the application to vary that planning permission have been developed and contain design amendments to reflect the change of the building's use. The Council has supplied Employer's Requirements and specification criteria to BSD and BSD has agreed that these standards will be met.
- 6.13 Work on site to construct the homes is scheduled to commence in April 2020, with practical completion scheduled by May 2022. Key dates and a long stop date will be captured in the development agreement and are reflected in the draft Heads of Terms attached.
- 6.14 Subject to the development of a viable business case, the Council intends to let a number of the homes at 1A Ashley Gardens as supported housing.

Risks

- 6.15 The proposed deal structure does involve the Council taking on some of the development risks in the development. These include financing the works from start to finish and ensuring the building is constructed to the agreed specification and standard. The Council will set up a monitoring and payments process to ensure that payments are made only for the work undertaken and that they are made to the correct standards. A retention will be held until practical completion for each payment.
- 6.16 The Council will be acquiring the freehold in the land initially and then will be funding the costs of development as the building is constructed. The development agreement will need to ensure that the Council's commercial position is protected in the event of developer default through its step-in rights, appropriate payment arrangements and other mechanisms such as acceptable performance bonds and parent company guarantees being provided. The price agreed for the development reflects the structure agreed in the draft Heads of Terms.
- 6.17 Delegated authority is being sought from Cabinet for the Director of Housing, Planning and Regeneration (subject to the agreement of the draft Heads of terms) to agree the final documentation including the Development Agreement after consultation with the Leader of the Council and the Cabinet Member for Finance and Strategic Regeneration, and with advice from the Director of Finance and the Assistant Director for Corporate Governance.

7. Contribution to strategic outcomes

- 7.1 The recommendations in this report will support the delivery of the Housing Priority in the new Borough plan, which sets out in its first outcome that *"We will work together to deliver the new homes Haringey needs, especially new affordable homes"*. Within this outcome, the Borough Plan sets the aim to *"Ensure that new developments provide affordable homes with the right mix of*

tenures to meet the wide range of needs across the borough, prioritising new social rented homes”.

- 7.2 In particular, the recommendations in this report are explicitly about delivering the aim *“to deliver 1,000 new council homes at council rents by 2022”*. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.

8. Statutory Officers comments

Finance

- 8.1 The total cost of this acquisition represents the purchase price of 104 units. There is planning permission for 97 units at present with a revised planning permission for 104 units having been submitted. The price reflects the revised planning permission.
- 8.2 The cost of the acquisition, the estimated associated cost, and the potential GLA grant are set out in the exempt report.
- 8.3 The net unit cost is in line with the HRA financial plan.
- 8.4 The total cost of acquiring these 104 social rented homes, with potential GLA grant, is in line with the HRA financial plan which is still subject to cabinet approval.
- 8.5 There is a potential to make an initial payment of £1.7m in this financial year. This cost will be met from the existing new homes acquisition budget as revised in September 2019.
- 8.6 This remainder of the cost of this scheme has been built into the current HRA financial plan which will underpin the budget/MTFS 2020/21-25 currently being prepared for Full council approval in February 2020.
- 8.7 The current update of the current HRA business plan is identifying that the viability of the Council delivering the level of its new housing intentions will be dependent on achieving the assumptions of the HRA business plan. The proposal for this scheme is for 104 properties to be acquired and provided on a social rent basis. This has been recognised in the update to the HRA financial plan and the mix of subsequent schemes in the HRA financial plan will need to be designed taking this into account.
- 8.8 There are other risks to the council associated with this development as highlighted above. These will be adequately monitored, and mitigations inserted into the contract where applicable.

Procurement

- 8.9 Strategic Procurement note the contents of this report. The Council has to comply with the Public Contracts Regulations 2015 when entering into

agreements of this nature. Please refer to the Legal comments contained in this report.

Legal

- 8.10 The Council has the power under section 120 of the Local Government Act 1972 for the purposes of any of its functions under that Act or any other enactment, or the benefit, improvement or development of their area, to acquire by agreement any land, whether situated inside or outside its area.
- 8.11 The property will be acquired for housing purposes and therefore will be held in the Housing Revenue Account. Under section 17 of the Housing Act 1985 the Council as a local housing authority may for housing purposes acquire land as a site for the erection of houses, or acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings.
- 8.12 For further comments, please see the exempt report.

Equalities

- 8.13 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 people who do not.
 - Foster good relations between people who share those characteristics and people who do not.
 - 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.
- 8.14 The purpose of this report is to seek approval for the acquisition of the freehold interest at 1A Ashley Gardens. This is for at least 97 homes and two commercial units that will be constructed on the site by Berkeley Square Developments (BSD) as part of the Tottenham Hale regeneration programme.
- 8.15 The objective of the decision is to increase the supply of Council housing in Haringey. The groups that the decision is most likely to directly affect are Haringey residents living in temporary accommodation and Haringey residents who are at risk of homelessness. Data held by the Council suggests that women, young people and BAME communities are over-represented among those living in temporary accommodation. Individuals with these protected characteristics as well as those who identify as LGBT+ and individuals with disabilities are also 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

- Appendix 1 – Red Line Drawing
- Appendix 2 – Exempt Appendix: Draft Heads of Terms
- Appendix 3 – Exempt Report: Financial and Legal Information

10. Local Government (Access to Information) Act 1985

10.1. Appendices 2 and 3 are NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

10.2. Planning permission for the site (ref HGY/2017/2045) granted on 8 June 2018 can be viewed on the Council's website:

<http://www.planningservices.haringey.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=314494>

10.3. The Section 73 application for minor material amendments to the approved scheme (HGY/2019/2804) can be viewed on the Council's website:

<http://www.planningservices.haringey.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=381026>