



Cabinet Member Report

City of Westminster

Decision Maker: Cabinet Member for Finance, Property and Regeneration.

Date: 13th May 2019

Classification: General Release

Title: Westminster Community Homes – Agency Role and Funding for Renewal Areas Acquisitions

Wards Affected: All

City for All The proposed scheme will meet the City Council's three priorities ensuring '**Civic Leadership and Responsibility**' through the creation of early opportunities for leaseholders to relocate. '**Opportunity and fairness**' by having a range of relocation options bespoke to the needs of the community and a '**World class City**' through creating high quality homes and a healthier, greener environment that connects better to surrounding communities and the wider area.

Key Decision: Yes

Financial Summary: Budgets are included in the General Fund (GF) (£58.5m) and the Housing Revenue Account (HRA) (£178.7m) for the acquisition of properties as part of the Church Street programme. The intention of acquiring initially within the GF is for these to be used as Temporary Accommodation until they are required to be vacant for the start of development.

Report of: Barbara Brownlee Executive Director of Growth, Planning and Housing.

1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval to continue and extend the use of Westminster Community Homes (WCH) as the leaseholder engagement agent for the Church Street regeneration programme on the same basis as currently agreed on Ebury and Tollgate renewal areas.
- 1.2 To further assist with the process of acquiring leaseholder properties, this report also seeks approval for WCH to receive funding for the properties it directly acquires from the lessees at the point of acquisition. This will unlock WCH resources for acquisition of additional affordable homes outside the renewal areas and contribute towards the City Council's City for All housing target.

2. RECOMMENDATIONS

The Cabinet Member approves:

- 2.1 The revision of the existing leaseholder engagement agency agreement for Ebury and Tollgate estates with Westminster Community Homes (WCH) to:
 - a. Widen the scope of the agreement to cover all current housing renewal areas by including Church Street.
 - b. Provide WCH with funding to acquire property interests in renewal areas sold without vacant possession
- 2.2 Funding WCH in any existing or future acquisition of properties within renewal areas and the eight blocks in Church Street where the properties are tenanted and the tenants are protected by Assured Shorthold Tenancies.
- 2.3 Delegated authority to be approved to the Executive Director of Growth, Planning and Housing to acquire any properties in renewal areas that have been negotiated by WCH and can be sold with vacant possession.
- 2.4 Delegated authority to be approved to the Executive Director of Growth, Planning and Housing to take transfers of any properties that have been acquired by WCH under recommendation 2.2 and are subsequently capable of being transferred with vacant possession.
- 2.5 Delegated authority to be approved to the Executive Director of Growth, Planning and Housing to acquire any leasehold interests in the eight blocks known as Blackwater, Eden, Colne, Darent, Derry, Isis, Windrush and Mole Houses (the "Eight Blocks") at open market value with the addition of home loss and disturbance payments to the eligible leaseholders within the blocks.

- 2.6 That a delegated authority will follow requesting approval for the Executive Director of Growth Planning and Housing to make all-necessary arrangements to make use of any acquired Church Street properties in the short to medium term.

3. REASONS FOR DECISIONS

- 3.1 The approval requested in this report to appoint WCH as the leaseholder engagement agent will further facilitate the acquisition of leasehold interests across Church Street and all future Westminster City Council housing Renewal Areas.
- 3.2 Housing Renewal Areas cover estates or neighbourhoods where significant intervention and investment is required to remedy the conditions that prevail there. Renewal Areas will require the acquisition of some or all of the existing leasehold properties.
- 3.3 The proposed changes to the current funding arrangements on Renewal Area properties acquired without vacant possession will have a positive impact on WCH limited resources which results in stopping these funds being locked in for extensive periods when they should be used for acquiring additional affordable homes outside the renewal areas to grow WCH stock holding and contribute towards the 'City for All' housing target.
- 3.4 The Church Street Masterplan, which develops the initial regeneration proposals included in the 2011 Futures Plan, was subject to resident consultation in September and October 2017. The outcome of that consultation was presented to the Cabinet in December 2017. One of the December 2017 decisions taken was to provide the Executive Director of Growth, Planning and Housing with delegated authority to acquire all leasehold interests in the blocks proposed for demolition within sites A,B and C that are in addition to those identified in the Futures Plan where approval exists to offer the compensation policies within the City Council's Policy on Leaseholders in Housing Renewal Areas, designated as Church Street site 2, Blackwater house and Eden House, by agreement at market price.
- 3.5 The reference to the Futures Plan in the December 2017 Cabinet Report and specifically Church Street Site 2, Blackwater House and Eden House refers to the recommendation in Futures Plan Preferred Options Report dated January 2011 that homes in Blackwater, Eden, and Church Street Site 2 including Colne, Darent, Derry, Isis, Windrush and Mole Houses are redeveloped.
- 3.6 An independent test of opinion on the eight blocks in April 2011 and reported to Cabinet recorded there was a 'strong awareness' of the redevelopment proposals and that the views of residents to the Blackwater House, Eden House and Church Street Site 2 proposals were broadly positive.

4. LEASEHOLDER ENGAGEMENT SERVICES

- 4.1 WCH continue to successfully provide leaseholder engagement services on both Tollgate and Ebury estates. On Tollgate, they acquired 29 of the 30 units required. On the original Ebury estate they have acquired 54 units from the 66 units to be purchased prior to the previous regeneration scheme being reviewed.
- 4.2 The agreements on Tollgate and Ebury estates were both put in place before May 2018 when WCH became a wholly controlled City Council company. This change in status has changed the way in which WCH are viewed in terms of contracts awarded by the City Council. Legal advice has been obtained by both WCC and WCH and they concurred that for public procurement purposes WCH does not meet all the conditions required of a 'tekal' company (a company over which WCC exert a "decisive influence"). There is therefore the risk of a challenge to the award of this contract to WCH to provide leaseholder engagement services in Church Street but this can be significantly mitigated by the issue of a VEAT Notice (Voluntary Ex Ante Transparency Notice) in the Official Journal setting out the intention of WCC to appoint WCH. Following approval of this report WCC will issue a VEAT notice.

5 ACQUISITION PROCESS

- 5.1 WCH has been working extensively as agent for the City Council on the Tollgate and Ebury regeneration schemes to acquire properties in order to assist in the delivery of the City Council's regeneration proposals. Their wider acquisition programme has previously included 13 properties that are in blocks involved in the Church Street renewal area.
- 5.2 The current WCC acquisition process is that within Renewal Areas, where a property can be purchased with vacant possession, WCH negotiate the open market price and the City Council purchases the property. WCH receives a fixed fee for this work. This report does not propose any changes to this process.
- 5.3 In a small number of instances properties are offered for sale with tenants still in situ and subject to the time limited security of an Assured Shorthold Tenancy. If the City Council acquired the property with a tenant in situ, the tenant would become a Secure Tenant however as WCH is a Registered Provider it simply takes the property subject to the existing Assured Shorthold Tenancy (AST). Therefore, in these cases WCH negotiates the price and purchases the property. Upon expiry of the Assured Shorthold Tenancy, WCH obtains vacant possession at which point the property is transferred to the City Council.
- 5.4 After purchase and before the expiry of the AST the tenant management service is provided by WCH.

- 5.5 In a very small number of cases, the owner occupier who is selling their property needs to remain in the property until after completion in order to carry out works to their new home. This arrangement is not offered in normal cases but in exceptional cases WCH acquires the property and issues the former owner occupier with a maximum 6 months AST.
- 5.6 It is very difficult to accurately predict the number of cases that will fall into the circumstances of para 5.3 above. This is because although we think we know the number of leaseholders with tenants in situ, most leaseholder landlords know their way around the process and deal with the expiry of the tenancy periods thereby providing vacant possession. Secondly, the properties, which do come to WCH to acquire, both occupied by tenants or with vacant possession are all market driven, which means the timing of these sales, the size of the units and in turn, the values are entirely random.
- 5.7 The tenant in situ acquisitions as set out above have a significant impact as they lock in WCH resources and inhibit the full potential of the WCH acquisition programme. It is therefore proposed that for renewal area acquisitions where WCH acquire directly without vacant possession that the following process is applied:
- a. WCH negotiates the purchase of the property with the agreement of the City Council.
 - b. WCH requests the necessary funds from the City Council to pay for the acquisition
 - c. WCH completes the purchase of the property
 - d. WCH manages the property until the expiry of the AST and upon obtaining VP transfers the property to WCC
- 5.8 The Government has just commenced consultation on proposals to introduce a minimum three-year AST with a six-month break clause for landlord and tenant. Government propose giving a landlord the ability to recover the property if they are selling the property, this requires a minimum of two months' notice. With the proposed landlord sale timescales of two months the Councils regeneration area acquisitions in advance of clearance phases can proceed unfettered.
- 5.9 The Council will clearly need to carefully consider the Government proposals in respect of the use of any acquired properties WCC manages in the short to medium term. The Council may wish to make a submission to Government during the consultation period to cover properties affected in cases where we are making best use of scarce housing provision while awaiting regeneration and seek an exemption. These implications of the Governments proposals will also be covered in the use of acquired property delegated authority to follow.

6. USE OF ACQUIRED UNITS IN CHURCH STREET

- 6.1 In Blackwater, Eden and Site C (excluding Kennet House) there are 70 leaseholders (53 residential and 17 non-residential) included in the blocks. These leaseholders will be offered the statutory compensation in addition to the market value of their property should they wish to sell. This was a recommendation which formed part of the previous Futures Plan consultation and received an overall favourable response following that consultation.
- 6.2 In order to make best use of the units being acquired in Church Street a further report will be presented to the Cabinet Member covering the use of (i) studio and one-bed homes (ii) two bed homes and larger. Any use of temporary accommodation will be very carefully managed with the total numbers of properties used in each block in each renewal area monitored. On Ebury some properties may also be used for inter estate temporary rehousing.

7. FINANCIAL IMPLICATIONS

- 7.1 The recommendations of this report result in two different scenarios involving WCH and the acquisition of leasehold properties. The first is as agent to negotiate with leaseholders and the second is for WCH to directly acquire properties which have a tenant in situ. In the second scenario the Council would agree to provide financing in the form of a loan.
- 7.2 Where WCH act as agent and there is no tenant in situ, the Council will purchase the property directly from the leaseholder. The budgets available for this are outlined below from para 7.4.
- 7.3 Where WCH purchase a property with a tenant in situ, the Council will transfer the requisite funds to WCH in order for WCH to purchase and then hold the property until the existing tenancy expires. The property will then transfer back to the Council. As outlined in para 5.7 when WCH acquire properties with a tenant in situ this has the effect of locking in resources for that period of time. It is proposed the Council provide a loan to WCH for the value of the acquisition to reduce the impact on their finances. At the point the property becomes vacant WCC then acquire the property from WCH and the loan is repaid to WCC.
- 7.4 There are currently budgets within both the General Fund (GF) and Housing Revenue Account (HRA) capital programmes in an attempt to mitigate this impact as best as possible.
- 7.5 Budgets over the next 3 years (2019/20 – 2021/22) totalling £58.471m have been included in the GF Capital programme approved by Council in March 2019.

- 7.6 Budgets are then included within the HRA capital programme for the following 8 years (2022/23 – 2029/30) totalling £178.674m. This is for the HRA to buy back the properties when they are required as part of the regeneration process. There is no SDLT issue at this point as the transfer is within 1 entity (the Council).
- 7.7 Acquiring these properties initially through the GF will enable the Council to use them as Temporary Accommodation (TA) in the period before they are required to be used, thus generating a revenue return. If they had been purchased within the HRA they would have sat vacant for the period up to the commencement of development activity.
- 7.8 Average TA rates within the borough are c£333 per week for 1 bed properties and £493 per week for 2 bed properties. Therefore using an average of these a rental income per annum of c£21k could be expected per property. After accounting for WCH management fees and repairs costs they would generate a net return of c£14k. It should be noted the Council does not have to let these properties through WCH once any AST has completed.
- 7.9 A property acquired for £500k would therefore generate a return of around 3%.

8. LEGAL IMPLICATIONS

- 8.1 Section 120(1) of the Local Government Act 1972 (“the 1972 Act”) authorises the Council to acquire any land by agreement for the purposes of a) any of its statutory functions or b) for the benefit, improvement or development of its area. By virtue of Section 120(2) of the 1972 Act the Council may acquire by agreement any land for any purpose for which they are authorised by the 1972 Act or any other act to acquire land, notwithstanding that the land is not immediately required for the purpose; and, until it is required for that purpose, it may be used for the purpose of any of the Council’s functions.
- 8.2 Section 17 of the Housing Act 1985 authorises the Council to acquire
- land as a site for the erection of houses
 - houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings
 - land proposed to be used for any facilities provided in connection with housing accommodation
 - land in order to carry out on it works for the purpose of, or connected with, the alteration, enlarging, repair or improvement of an adjoining house.
- 8.3 Under Section 1 of the Localism Act 2011, the Council has a general power of competence to do anything that an individual may do subject to the

restrictions and/or limitations which are specified in the Act. In addition, section 111 of the Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

- 8.4 The public sector equality duty (s.149, Equality Act 2010) requires the Council, when exercising its functions, to have “due regard” to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited under the Act, advance equality of opportunity between those who share a “protected characteristic” and those who do not share that protected characteristic and foster good relations between persons who share a relevant protected characteristic and persons who do not share it (this involves having due regard, in particular, to the need to (a) tackle prejudice, and (b) promote understanding).
- 8.5 To mitigate the risk of a formal legal challenge being brought in respect of a new Agency Agreement provisions should be introduced into the Agreement, which gives either party the right to bring the Agreement to an end in the unlikely event that another service provider decided to object or bring a challenge. Termination in these circumstances should be on a “no fault” basis, and that neither party should have any claim against the other because of the termination.
- 8.6 To further mitigate the risk of a formal legal challenge being made in respect of a new Agency Agreement the Council will set out its intention to appoint WCH to provide the services in the Official Journal. Following the expiry of a 10 calendar day period, which runs from the date of publication of the VEAT Notice. The purpose of the 10-day “standstill” period would be to give other service providers in the market an opportunity to challenge WCC’s decision to appoint WCH without putting the services covered by the Agreement out to tender. If no service provider issued legal proceedings during the 10-day period to prevent WCC from appointing WCH, WCC could proceed to enter into the Agency Agreement.

For completion by the Cabinet Member for Finance, Property and Regeneration
Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

Councillor Rachel Robathan, Cabinet Member for Finance, Property and Regeneration

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **Westminster Community Homes – Agency Role and Funding for Renewal Areas Acquisitions** and reject any alternative options which are referred to but not recommended.

Signed

Councillor Rachel Robathan, Cabinet Member for Finance, Property and Regeneration

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the Executive Director of Finance and Resources and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made

aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy & Scrutiny Committee to decide whether it wishes to call the matter in.

