



Decision Maker:	Cabinet Member for Finance, Property and Regeneration
Date:	15 th October 2020
Classification:	General Release, apart from appendices B and C, exempt from publication
Title:	Westmead Development Proposals
Wards Affected:	Westbourne Ward
City for All Summary	<p>Development on the site will enable Westminster City Council (WCC) to meet the City for All commitments, specifically:</p> <ul style="list-style-type: none">➤ Greener and Cleaner This scheme has low energy targets that will help contribute towards Westminster becoming Carbon Neutral by 2030.➤ Vibrant Communities A mixed tenure scheme that will deliver good quality housing creating a place that people are proud to live in.
Key Decision:	Yes
Financial Summary:	<p>The report identifies a mixed tenure scheme with 35% affordable housing, as the preferred option and proposes the scheme to be delivered through Westminster Builds.</p> <p>The General Fund Capital Strategy includes a budget of £30.2m (a net income of £2.8m) for Westmead and to date £0.578m has been spent on the scheme. This report requests approval for a further £1.4m to progress design and procure a preferred contractor.</p>
Report of:	Debbie Jackson – Executive Director of Growth, Planning and Housing

1. Executive Summary

- 1.1 Westmead Care Home is a General Fund asset (red line boundary included in Appendix D) and is located on the western edge of the borough at 4 Tavistock Rd, London W11 1BA.
- 1.2 Residents of Westmead Care Home were consulted on the new care home in 2018, and the idea was well-received by current residents and their families. Planning permission was subsequently achieved to build a new 84 bed care home, Beachcroft in Maida Vale. Construction at Beachcroft began in 2019 and the new care home is due to be completed and available to residents of Westmead in September this year. The council has committed to ensuring no construction will happen on the site of Westmead until all residents have moved out of the building, when it is safe to do so, and that they will only move once, directly into Beachcroft.
- 1.3 The proposed redevelopment of Westmead Care Home is a mixed tenure housing scheme of 66 units, with a provision of 35% affordable housing, with the market units being progressed as rental.
- 1.4 The scheme is to be delivered via the council's wholly housing company: Westminster Builds (WB). WB consists of two companies, Westminster Housing Developments (WHDL) and Investments (WHIL) Limited.
- 1.5 Development on the site will enable Westminster City Council to meet the City for All commitments, specifically:
- Greener and Cleaner - This scheme has high energy efficient and environmental standards that will help contribute towards Westminster becoming Carbon Neutral by 2030.
 - Vibrant Communities - A mixed tenure scheme that will deliver good quality housing creating a place that people are proud to live in.
- 1.6 The below recommendations are required in order to confirm the tenure mix for the scheme prior to planning submission and allow the project to progress the design and procure a preferred contractor.

2. Recommendations

- 2.1 The Cabinet Member for Finance, Property and Regeneration is recommended to:
- 1) Approve the preferred option as detailed in Section 5 of this report for redevelopment of:
 - Mixed tenure scheme – minimum of 35% affordable housing.
 - Market Units to be progressed as rental.
 - 2) Approve in principle that Westminster Builds (WB) delivers the scheme as detailed in Section 5 of this report and note that additional Cabinet Member approval will be required for the financial and legal documents required to facilitate this delivery route.
 - 3) Authorise the Executive Director Growth Planning and Housing and the Bi-Borough Director of Law, to deal with all necessary legal arrangements to affect the recommendations set out in this report, including entering in to S106 agreement.
 - 4) Note expenditure on the project of £0.578m to date and approve additional expenditure of £1.4M to progress design and procure a preferred contractor.
 - 5) Note that Appendix B and C of this report be exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that these documents contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

3. Reasons for Decision

3.1 In May 2019, an Outline Business Case was tabled at Capital Review Group which confirmed the separation of Carlton Dene and Westmead in to two individual projects, with Carlton Dene progressing as a 100% affordable scheme consisting of extra care and general needs housing, whilst Westmead will be a mixed tenure general needs housing scheme including social rent, intermediate and market housing.

3.2 Officers have assessed a number of options for Westmead ranging from reinstatement through to redevelopment for general needs housing.

3.3 Reasons for Recommendation 1 – Preferred Option

3.3.1 The project team tested three options for the site:

- Option 1 – Reinstatement
- Option 2 – Mixed Tenure – 50% Affordable Housing
- Option 3 – Mixed Tenure - 35% Affordable Housing

3.3.2 All housing options were based on a scheme of 66 residential units. The affordable housing percentage was split by floor area in terms of provision but split by units in terms of distribution between Social Rent and Intermediate Rent units which was apportioned as per Emerging Policy – 60% Intermediate Rent and 40% Social Rent. The unit numbers are subject to design changes and will be confirmed in the planning application.

3.3.3 Following the economic, benefit and risk appraisal, it was concluded that the preferred option is a scheme which requires no affordable housing fund and can deliver a minimum of 35% affordable housing as per Westminster policy. In addition to this, the market units are to be progressed as rental with the opportunity for Westminster Builds to deliver the scheme and hold the units as a revenue stream.

3.3.4 In order to deliver the preferred option, a series of other recommendations have made to progress the scheme. These are outlined below.

3.4 Reasons for Recommendation 2 - Delivery Option

3.4.1 The following Delivery Options have been considered and assessed against the project objectives:

- Direct Development: Council self-delivers via a design and build contract (this may be through use of Westminster Builds).
- Development Partner: Council enters into an agreement with a development partner to deliver the overall scheme, with WCC taking back the affordable units.

3.4.2 Based on the delivery options set out above, the preferred option is direct development because it is more of a strategic fit than procuring a development partner and it allows the council to retain control as well as providing better value for money as the council can use its own resources to deliver the development.

3.4.3 Although direct development increases the construction and sales risk to the council, it also creates the potential for surplus of revenue and means the council maintains control on the development.

- 3.4.4 Direct development will be discussed further in the Financial Implications which will set out the opportunity for WB to deliver the scheme and hold the units.

3.5 Reasons for Recommendation 3 - S106 Agreement

- 3.5.1 A S106 agreement will be required for the proposal if planning consent is achieved in order to secure any planning obligations that the Local Authority wish to attach to the decision. Predominantly this will include the level of affordable housing provided by the scheme and what type. As mentioned above this will be 35% affordable housing or slightly more if GLA Funding is secured.

3.6 Reasons for Recommendation 4 – Expenditure

- 3.6.1 Recommendation 4 asks for approval of additional expenditure of £1.4M to progress design (including planning submission) and allow procurement to be undertaken to identify a preferred contractor for the scheme.

4. Consultation and Engagement

4.1 Residents of Westmead were consulted on the new care home in 2018, and the idea was well-received by current residents and their families. Planning permission was subsequently achieved to build a new 84 bed care home, Beachcroft House in Maida Vale. Construction at Beachcroft began in 2019 and the new care home is due to be completed and available for Carlton Dene and Westmead residents in September this year.

4.2 The consultation period for the development proposals on the Westmead site ran from January 2020 to July 2020 and consisted of two public consultations:

- The first consultation was made up of two drop-in sessions at the All Saints Notting Hill Church.
- The second consultation was held online and consisted of a four-week consultation period using a variety of engagement methods. This helped us to reach a much wider range of people and we had more than 350 unique interactions with residents from 22 June to 19 July 2020.

4.3 January Consultation

4.3.1 The first round of consultations was held in the form of two drop-in sessions one on Tuesday 21 January 2020 between 4pm - 7pm and the second on Thursday 23 January 2020 Between 4pm - 7pm.

4.3.2 The initial designs were presented to the public via exhibition boards. The boards included information on:

- How the new development might look
- How many homes the project will deliver
- New/additional community benefits the development will bring
- Considerate construction
- Project timescales

4.3.3 The sessions had good resident turnout with 20 attendees, and 15 completed comment cards.

4.3.4 Separate meetings with key stakeholders were also held, including the Ward Members and the Anglican Communion Office which operated the building adjacent to the site.

4.3.5 One of the key concerns from the first round of consultation was the height of the building which sat at six storeys above ground. As a result of the feedback the Project Team worked with the architect to minimise impact on surrounding properties. The proposals were therefore reduced in height from six storeys to five storeys above ground.

4.3.6 Another comment from a few of the residents was that the public open space to the west of the site was not well kept and whilst it was somewhere residents liked to use, it was not overly inviting. Following this feedback, the proposals have incorporated upgrades to this area that included:

- Improvements to the north/south pedestrian access through the open space, making a connection with Tavistock Road which currently does not exist.
- An accessible route for disabled visitors and pushchairs by increasing the size of the path.
- Whilst the removal of some of the trees for development is unfortunate, it will actually increase daylight and street lighting into the space making it feel safer.

4.4 Summer Consultation

- 4.4.1 For the second round of consultation, we reviewed our approach and developed a strategy which helped us to reach a much greater number of residents. We held an extended consultation period, for four weeks from **22 June 2020 to 19 July 2020**, and offered a wider range of ways for residents to engage with our proposals.
- 4.4.2 This consultation process included the following key engagement methods. Using this new approach, we reached more residents than ever before, achieving more than 350 unique engagements.
- **Consultation Website:** We launched a [bespoke website](#) which summarised the designs, provided a fly-through video of the proposed scheme and surrounding area and detailed CGIs, and a user-friendly online feedback form.
 - **Consultation Booklets:** These were sent to 162 households in the immediate vicinity of the development, this included Harford House, Leamington House and Fallodon House.
 - **Letters:** These were sent to the remainder of the consultation radius (1,275 households) and directed residents to the website for more information.
 - **Proactive Phone Canvassing:** Prioritising Fallodon House and Harford House, the blocks directly adjacent to the planned development, we telephoned residents to discuss the design proposals and gather feedback. The team called all 152 residents out of the total 178, an 85% success rate.
 - **Webinar:** We held a public webinar on 2 July 2020 (via Zoom) where the architects and development team presented the proposals and answered resident questions
 - **Reactive Phone Line:** Open from Monday to Thursday (11am to 3pm), residents could call a member of the consultation team to discuss the proposals or set up a one-to-one phone or Teams meeting with the Development Team.
 - **Dedicated Email Address:** We responded to all emails received to this inbox throughout, and after the formal consultation period.
- 4.4.3 Separate online meetings were held with key stakeholders including the Ward Members and the Anglican Communion Office.
- 4.4.4 At the request of residents after the webinar, the Project Team met with a group of residents via Zoom on 15 July 2020. At this meeting, residents were able to express their concerns about the development and ask detailed questions which were answered via email after the meeting. The main concerns raised were as follows, and also form the basis of a [petition](#) established by the same group of residents:
- Height of the proposals and impact on daylight/sunlight
 - Parking
 - Loss of trees and impact on air quality
- 4.4.5 Further to this, on the 4th August 2020, the Project Team attended an online video call that was organized by the Ward Members with key residents who had concerns regarding the proposals. A follow up email from one of the Ward Members summarized the key concerns to be:
- Parking
 - Loss of trees
 - Green space
 - Management of wider estate

- 4.4.6 The Project Team took these points away and investigated what more could be done to respond to some of these concerns with the design team. The Team also agreed to share the final daylight/sunlight reports with residents prior to a planning application and offered reassurances that the impact is not significant. Concerns about the distances between the new building and existing housing blocks were also addressed by sharing more detailed plans with the residents than show there is a significant distance between the proposals and all existing buildings.
- 4.4.7 In terms of the green space, the proposals were updated so it is now completely opened up to the public and the new development no longer includes a private garden, therefore giving the wider community a lot more outdoor space to enjoy. The ground floor units of the new development keep their terraces which will be bordered by fencing, a hedge and defensible planting to ensure the security of those units is not compromised. The design also includes some seating within the public open space as well as the improvements that were originally included following the January consultation.
- 4.4.8 The site already has a significant number of trees and whilst it is regretful that some mature trees will be lost through the development, the proposals look to re-provide seven new trees within the public open space and the development boundary. Fully mature trees are hard to replace as they require a lot more space and management. However, the re-provided trees in the public open space will be semi mature along the lines of a flowering cherry, plane or lime tree to ensure they provide as much benefit to the local community as possible. There is also the option for the scheme to provide a monetary contribution towards the planting of new trees in the wider area.
- 4.4.9 The request regarding parking was for the council to restrict new residents from applying for permits through the S106 agreement or tenancy agreements. Ward Members and residents were informed that the current policy in respect of car free developments in Westminster does not prevent future residents from applying for a residents parking permit either via a planning condition or a section 106 agreement. This would lead to an arbitrary two-tier system with some residents having parking rights that others do not, plus there are significant issues with enforcing of such a policy.
- 4.4.10 In terms of management of the wider estate, particularly Tavistock Crescent path and street lighting which was mentioned on the video call with residents, there is the potential that this could be part of the S106 payments whereby a certain amount of money is put towards the upgrade/fixing of these items. This will be negotiated as the application moves forward.
- 4.5 Consultation material and all of the above feedback and responses will be included in the Statement of Community Involvement in the planning submission.

5. Financial Implications

- 5.1 The Capital Strategy includes a budget for Westmead which assumes a 35% affordable self-delivery residential scheme. The project holds a gross capital expenditure budget of £30.2m and an estimated capital receipt of £33m, a net income budget of £2.8m.
- 5.2 Up to the end of 2019/20 a total of £0.578m has been spent on the project and this report requests approval to spend a further £1.4m to progress design and procure a preferred contractor.
- 5.3 The Outline Business Case (OBC) appended to this report (Appendix C) sets out the financial case for Westmead, exploring the delivery routes and tenure mixes which achieve the Council's strategic objectives whilst remaining affordable. The financial implications of the OBC are summarised in part B of this report.
- 5.4 The preferred option in the OBC is a 35% affordable scheme delivered through the development arm of the Council's wholly owned subsidiary, Westminster Builds. In this option the Council's general fund would act as landowner, leasing the land to Westminster Builds, and as lender through financing the development.
- 5.5 This report seeks approval for the preferred delivery route of Westminster Builds, however additional Cabinet Member and Westminster Build's board approval will be required for the financial and legal documents required to facilitate this delivery route closer to the time of an appointment of a contractor.
- 5.6 To date the project has spent £0.578m up to the end of 2019/20 and this report requests approval for a further £1.4m to take the project up to Full Business Case in summer 2021. The table below provides an estimated breakdown of the approval. The expenditure will be incurred in the general fund until the scheme progresses to a point where it can formally transfer to Westminster Builds through an agreement for lease and development agreement. The spend to date will be considered in calculation of the residual land value payable between WB and GF.

Cost	£'000
External Consultants	1,100
Surveys	175
Planning Fees	20
Internal Staff	130
Total	1,425

6. Legal Implications

6.1 The preferred option set out in paragraph 5.4 of this report includes a proposal for the Council to lease the land to Westminster Builds. Local authorities are given powers under the Local Government Act 1972, subject to applicable legal constraints, to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. However, a disposal must be for the best consideration reasonably obtainable, as set out in section 123 of the Local Government Act 1972 (except in the case of short tenancies), unless the Secretary of State consents to the disposal. A lease granted for a term of more than seven years is not a short tenancy for the purposes of section 123 of the Local Government Act 1972. Any disposal at an undervalue may constitute unlawful State Aid.

6.2 The Council has the power to establish and operate a company to develop homes to be let for rent on the market or for low cost home ownership using the general power of competence under section 1 of the Localism Act 2011. In exercising this power the Council is still subject to its fiduciary duty, and must exercise the power for a proper purpose. Under section 4 of the Localism Act 2011 where the general power is used for a commercial purpose, that commercial purpose must be carried out through a company.

6.3 Subject to Secretary of State consent the Council has the power to provide financial assistance by way of loan for privately let housing purposes under section 24 of the Local Government Act 1988 where the immediate landlord of the occupier is not a local authority. In this instance the landlord will be Westminster Builds. The Secretary of State has set out pre-approved consents in the General Consents 2010 (July 2011) and the General Consents 2014. The Council can provide financial assistance to Westminster Builds under Consent C of the General Consents 2010. Any housing made available for sale by Westminster Builds would not be covered by the 1988 Act. Lending to Westminster Builds should be on market terms to avoid state aid.

6.4 Teckal Exemption

6.4.1 The Council can lawfully enter into a design and build contract (as proposed in 3.4.1) with, its subsidiary, Westminster Builds for the construction works without undertaking an EU procurement provided the circumstances fit what is known as the 'Teckal exemption' in regulation 12 (1) of the Public Contracts Regulations 2015 as follows:

'(a) the contracting authority exercises over the legal person concerned [here, Westminster Builds] a control which is similar to that which it exercises over its own departments;

(b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and

(c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person....

(3) A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments...where –

(a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or

(b) the control is exercised by another legal person which is itself controlled in the same way by the contracting authority,...

6.4.2 The traditional model of Westminster subsidiaries gives the Council sole ownership and control of the subsidiary and any subsidiaries of the first subsidiary. Therefore, if that model has been adopted for Westminster Builds, the Teckal exemption will apply and the arrangement will not be treated as a contract for the purposes of the procurement regime.

6.4.3 The loan from the Council to WB will not be State Aid if it is made on the terms and conditions which would be acceptable to a private investor operating under normal market conditions (Market Economic Investor Principle under Communication on Government Capital Injections 1984) because the loan does not give WB an advantage.

7. Dependency

- 7.1 St Marylebone Bridge Special School (SMBSS) is an academy for 70 special needs places. The school is in occupation at Third Avenue on a temporary basis. The Council and Department of Education have agreed that the school should re-locate, and the Council identified Wilberforce Primary Academy as the most appropriate decant option.
- 7.2 The DfE imposed a condition that if the Council could not successfully obtain planning permission for the Wilberforce site, then Westmead Residential Care Home at 4 Tavistock Road London W11 1BA would be required for the special school instead.
- 7.3 Planning permission for the Wilberforce site was achieved in November 2019 and negotiations with the DofE to release Westmead of its condition are underway.

8. Staffing Implications

- 8.1 The current residential care home is managed on behalf of the Council by a third party. A key message from residents of the care home and their families was a reassurance that when they move to Beachcroft, care home staff will move with them.
- 8.2 At a staff meeting led by the Senior Care Home Managers supported by Westminster Officers this reassurance was given to staff and later reiterated during the consultation period.
- 8.3 There are no implications for redundancies for Westminster Council staff.
- 8.4 This project has been and will continue to be managed and delivered by the Development team in Growth, Planning and Housing. If planning consent is achieved, the Development team will be handing over to the Delivery team. Sufficient capacity exists within both teams for this project.

9. Next Steps

- 9.1 Stage 3 design will be progressed, and a planning application submitted for the scheme in September 2020. Stage 4 design will begin shortly after planning submission in order to keep to programme.
- 9.2 A Lettings Agent will be instructed to provide advice for the market rent units and to advise on the interior design aspect.
- 9.3 A procurement strategy will be analysed and taken through the correct approval procedures in order to start the process of identifying a preferred contractor.
- 9.4 Further conversations with Westminster Builds will be had in terms of the management strategy for the building.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

Emily Myers - Emyers@westminster.gov.uk

NB: For individual Cabinet Member reports only

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: _____

State nature of interest if any
.....

(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 **Westmead Development Proposals** and reject any alternative options which are referred to but not recommended.

Signed

Councillor Melvyn Caplan, 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 human 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 and Scrutiny Committee to decide whether it wishes to call the matter in.

Other Implications

1. **Resources Implications**
2. **Business Plan Implications**
3. **Risk Management Implications**
4. **Health and Wellbeing Impact Assessment including Health and Safety Implications**
5. **Crime and Disorder Implications**
6. **Impact on the Environment**
7. **Equalities Implications**
8. **Staffing Implications** (See Section 8)
9. **Human Rights Implications**
10. **Energy Measure Implications**
11. **Communications Implications**

Note to report authors: If there are particularly significant implications in any of the above categories these should be moved to the main body of the report.