

# Cabinet Member Report

<b>Decision Makers:</b>	Cabinet Member for Finance and Smart City and Cabinet Member for Communities and Regeneration
<b>Date:</b>	July 2021
<b>Classification:</b>	For General Release save for Appendix [1] and [2] be declared as exempt from publication
<b>Title:</b>	Disposal of Intermediate Rent Homes at West End Gate to Westminster Builds
<b>Wards Affected:</b>	Little Venice
<b>City for All/Policy Context:</b>	See below
<b>Key Decision:</b>	Yes
<b>Financial Summary:</b>	The report sets out proposals for the disposal of 37 intermediate units acquired by the Council from Berkeley Homes to Westminster Builds. The disposal is at market value and details are included within Appendix 1. The report also sets out details of debt and shareholder loans to be made by the Council to the company to finance the acquisition value and associated costs.
<b>Report of:</b>	Debbie Jackson, Executive Director of Growth, Planning and Housing

## 1. Executive Summary

- 1.1. Westminster Builds (“WB”) is a trading name for the corporate entities of Westminster Housing Investments Limited (“WHIL”) and Westminster Housing Developments Limited (“WHDL”). The Council owns 100% of the shares in WHIL which in turn owns 100% of the shares in WHDL. For the purpose of this report, WB is used interchangeably with WHIL, as it is the only active company in this arrangement.
- 1.2. In November 2018, the Cabinet Member approved the Council’s purchase of 130 new affordable (section 106) homes from Berkeley Homes (Central London) Limited (“Berkeley”), as part of Berkeley’s wider development at 1 Newcastle Place, London W2 1BW (“West End Gate”). The property was acquired by way of leases with Berkeley undertaking the building works. As at the date of this report, the affordable homes are due to reach practical completion in three phases, the first phase in October 2021, the second in December 2021 and the third in September 2022.
- 1.3. Within the 130 affordable homes, there are 37 intermediate rent homes, which are proposed to be disposed of by the Council to its housing company WHIL following practical completion. WHIL’s acquisition will be financed by loans and quasi-equity from the Council, repaid by net rents generated from letting the homes to qualifying tenants.
- 1.4. The disposal is subject to Berkeley’s prior consent, as the Council’s direct landlord. Berkeley’s consent will be in the form of a license which is currently being drafted by Berkeley’s solicitors. Although the disposal is of housing land from the Housing Revenue Account (“the HRA”), further approval by the Secretary of State is not required, as detailed in section 8.
- 1.5. It is proposed that the Council will provide housing management services to WB through a management contract. For an agreed fee, the Council will manage the tenancies and homes alongside the social rented homes retained by the Council. The estate and structure of the buildings will be managed by Berkeley with the cost of which will be recovered through service charge arrangements.
- 1.6. It is recommended that approval to enter into a Housing Management Services Agreement with WB is delegated to the Executive Director of Growth, Planning and Housing.
- 1.7. The Council intends to vary the section 106 agreement to provide for the transfer of the intermediate rent units by the Council to WB subject to approval by the Council.

## **2. Recommendations**

- 2.1. That Appendix [1] and [2] 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 they contain information relating to the financial or

business affairs of any particular person (including the authority holding that information).

2.2. That the Cabinet Member for Communities and Regeneration:

- 2.2.1. Approves the disposal of 37 intermediate rent homes at West End Gate by the Council to Westminster Housing Investments Limited (“WHIL”) for £9.1m on the terms set out in Appendix 1 of this report;
- 2.2.2. Delegates authority to the Executive Director of Growth, Planning and Housing to approve and authorise any and all legal documentation that may be required to facilitate the recommendation in 2.2.1, in one or more transactions;
- 2.2.3. Delegates authority to the Executive Director of Growth, Planning and Housing to approve and to authorise the Housing Management Services Agreement, subject to agreed terms, between the Council and WHIL as set out in section 7 of this report and to approve the necessary legal documentation to be executed on the Council’s behalf thereto; and
- 2.2.4. Delegates authority to Executive Director of Growth, Planning and Housing to approve and to authorise entry into a deed of variation (or any future deeds of variation in relation to the site) by the Council as a landowner to the planning agreement to enable the intermediate housing units to be transferred to WHIL.

2.3. That the Cabinet Member for Finance and Smart Cities:

- 2.3.1. Approves for the general fund to invest £9.1M into WHIL consisting of £5.915M of debt and £3.185M of shareholder loans to fund the purchase and associated costs; and
- 2.3.2. Delegates authority to the Executive Director of Finance and Resources to agree final detailed terms with WHIL in respect of the investment and entering into all related legal agreements including loan documentation.

### **3. Reasons for Decision**

- 3.1. Intermediate rent housing once built, cannot be held efficiently in the HRA. This is because the Council is unable to grant assured shorthold tenancies and the Council tenancy agreement always includes a right to buy. Therefore, an option is for the Council to dispose of intermediate units to a party who can arrange for appropriate intermediate tenure tenancies, such as a registered provider. It is considered preferable for the Council to consider disposing of these types of units to WB, ensuring the long term value of the homes is retained within the Council’s group. This is why the disposal to WHIL is proposed.

3.2. To enable the acquisition by WHIL to proceed, it is proposed the Council provides loans to WHIL covering the acquisition price and capitalised costs associated with the acquisition.

3.3. As the intermediate rent housing is already owned by the Council under leases, this means there is an additional requirement to seek freeholder consent. The Council and WHIL as the proposed purchaser also need to consider the section 106 requirements around disposal.

#### **4. Background, including Policy Context**

4.1. In November 2018, the Cabinet Member approved the Council's purchase of 130 new affordable (section 106) homes from Berkeley at their West End Gate scheme for £32M. The Council acquired these from Berkeley at 'golden brick', on leases that completed in January 2019. The Council has a development agreement with Berkeley for the construction of the affordable homes.

4.2. As well as 93 social rented homes, the Council's acquisition includes 37 intermediate rent homes of which 29 homes in Block B are expected to be practically complete in October 2021 and 8 homes in Blocks E/F expected to be practically completed in September 2022.

4.3. To enable the intermediate rent homes to be let efficiently it is proposed that the Council dispose of them to WHIL. WHIL's Board approval to acquire the homes was obtained on 16<sup>th</sup> September 2021. It is proposed that the section 106 agreement is varied to reflect the transfer of the units by the Council to WHIL.

#### **5. Disposal of Intermediate Homes to Westminster Builds**

5.1 The Council holds the units in Block B under a single lease. The Council holds the leases in Blocks E/F under individual leases.

5.2 It is proposed the Council makes a disposal of the intermediate units by granting underleases following practical completion, retaining the communal areas in the Council. The proposed leases are comprising these units:

- 29 apartments in Block B.
- 8 apartments in Block E/F.

5.3 The Council requires the consent of Berkeley to dispose of the units, this consent is usually recorded by way of a licence to underlet, completed by way of deed. The Council is applying for a licence to underlet.

5.4 The scheme's section 106 agreement was varied in January 2021 to provide 93 social rent units and 37 intermediate rent units (comprised in Blocks B, E and F) as set out in the table below. The chargeable rents are set by the Section

106 agreement, with a provision for annual increases of CPI+1% from first letting.

Block	Size	Initial Rent Per Week	No. of Homes	Total Rent Per Annum	Practical Completion (target)
B	2 Bed	208	15	162,500	October 21
				98,100	October 21
B	2 Bed	269	7		
				118,900	October 21
B	2 Bed	326	7		
E/F	1 Bed	235	3	36,700	September 22
E/F	1 Bed	309	5	80,500	September 22
<b>Total</b>			<b>37</b>	<b>496,700</b>	

5.5 The Council instructed Savills to undertake a Red Book valuation on the homes to provide a guide price for an arm's length transaction and satisfying the Council's requirements to achieve market value. Savills' Red Book valuation is based on standard industry assumptions which require adjustments to reflect the nature of West End Gate.

5.6 Officers submitted details of the confirmed management and maintenance costs that are specific to West End Gate to produce the red book valuation. The red book valuation received from Savills supports the proposed disposal value set out in Appendix 1 for the transfer of the first tranche of 29 units. A further red book valuation will be commissioned at the point of the disposal of the second tranche of 8 units in 2022.

## 6. Commercial Arrangements

6.1. It is proposed that the Council provide finances to WHIL through debt and shareholder loans (reflecting a 65% debt, 35% equity split) to enable the company to purchase the homes through leases from the Council.

6.2. As the payments under the leases and loan documents will be concurrent, i.e. netting off against each other, it will not impact the Council's cashflow or increase its capital financing requirement.

6.3. As per the s.106 Agreement the Council will retain 100% nomination rights to the completed intermediate rent units and will work with Westminster Housing Investment Limited to enable those units to be occupied by a qualifying tenant on an assured shorthold tenancy (AST).

## **7. Management**

- 7.1. Berkeley has estimated a service charge for the estate management costs, detailed in Appendix 2, at West End Gate to include the energy centre, estate and building structures. It will cover the significant life cycle costs associated with the blocks including roofs and windows as well as the wider estate costs. WHIL and the Council will remain responsible for the internals of their buildings throughout the length of the lease.
- 7.2. It is proposed that the Council's Housing Services manages both social and intermediate homes, including tenancy management, in-flat repairs, cleaning and maintenance of the communal areas and redecoration.
- 7.3. To facilitate this arrangement, it is proposed that the Council and WHIL enter into a Housing Management Services Agreement. The Council will charge a fixed annual fee for tenancy management and communal cleaning and will recharge the cost of repairs as they arise.

## **8. Engagement with DLUHC**

- 8.1. The Council has acquired the homes at West End Gate through its HRA and the leases are held as HRA land. There are statutory restrictions on disposal of HRA land by councils to their connected companies which is a consideration here.
- 8.2. Officers have approached DLUHC informally about the Council's ability to rely on a limited exemption under the General Housing Consents.
- 8.3. The limited exemption is that each underlease could be granted to WHIL using up 2 of the 5 'deemed' consents in the financial year (starting 1 April in each year).
- 8.4. Officers have determined the Council is acting within its powers to dispose of the intermediate housing to WHIL and have confirmed there are sufficient disposals remaining in the relevant financial years to facilitate it.
- 8.5. Given the imprecise nature of the General Housing Consents, the Council has notified DLUHC of the Council's reliance on the exemption.

## **9. Financial Implications**

- 9.1. In November 2018 the Council agreed to purchase 130 new affordable units from Berkeley as part of a wider development at West End Gate. The 130 new homes include 37 intermediate rent properties and 93 social rent units. The social rent units will be held within the HRA whilst the 37 intermediate rent units will be disposed from the HRA to WHIL based on a red book valuation.
- 9.2. Payments under the development agreement for West End Gate will continue to be made by the HRA, who will then dispose of the completed homes to WHIL. The payments under the development agreement are

fully budgeted, however the receipt from WHIL has not been including in the HRA business plan resulting in a positive variance to budget.

**9.3. Appendix 1 of this report states the full financial implications of the disposal.**

## **10. Legal Implications**

The following legal implications apply to this report:

10.1 In disposing of the lease(s), arranging for different types of loans and undertaking interaction with other parties, the Council can rely on its general power of competence under section 1(1) of the Localism Act 2011 (the LA 2011):

- a. Section 1(1) of the LA 2011 introduced the “general power of competence” for local authorities, defined as “the power to do anything that individuals generally may do” and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area.
- b. The generality of the power conferred by subsection (1) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

10.2 Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.

10.3 Section 32 of the Housing Act 1985 (“HA 1985”) enables the Council to dispose of the property for a consideration equal to its market value. Officers have confirmed that the properties at West End Gate are currently held by the Council for housing purposes (under Part II of the HA 1985). The Ministry of Housing, Communities and Local Government’s (“MHCLG”) consent is required under section 32 of the HA 1985 in respect a disposal of land held for housing purposes. The power to dispose of the property is under Section 32 of the HA 1985 subject to consent:

- a. DLUHC has issued a number of consents for the purpose of section 32, pursuant to powers in section 34 of the HA 1985. The General Housing Consent 2013 (GHC 2013) is the relevant consent.
- b. Paragraph A3.1.1 of the GHC 2013 states that a local authority may, subject to paragraph A3.1.2, dispose of land for a consideration equal to its market value. However paragraph A3.1.2 does not apply in a situation where there is a disposal to a body in which the local authority owns an interest except the local authority may dispose of up to 5 properties to

such a company, if it is within the first five disposals in a financial year (starting on 01 April in any year).

- c. The Council intends to rely on GHC 2013, paragraphs A3.1.1 and A3.1.2(c) to grant two separate underleases to WHIL over two consecutive financial years, each at full market value, on the basis that it intends that each disposal is one of the first five disposals in a financial year.
  - d. It should be noted that to comply with the GHC 2013, to demonstrate 'market value' the Council requires a valuation report of market value dated not more than three months before the disposal, so prior to each underlease transaction.
  - e. It should be noted as a legal implication that if the Council is unable to rely on the exemption (if the number of intercompany disposals relying on the exemption exceeds the threshold of five in each financial year, or for some other reason) the arrangements between the Council and WHIL are potentially void. This risks invalidating the grant of the leases and the loans.
  - f. The GHC 2013 is in some instances open to interpretation, therefore in line with the advice from the legal advisors, the officers are contacting the DLUHC to notify DLUHC of the proposed disposals, reliance on the exemption and to discuss the proposals in further detail if required.
- 10.4 The grant of the underleases (as HRA land) shall need to be in the basis of full market value, with receipts spent on affordable housing, regeneration or the paying off of HRA debt.
- 10.5 The provision of funding by the Council must comply with the UK's subsidy control regime. This regime superseded EU state aid law following the implementation of Brexit on 31 December 2020. The Bill to provide for the new UK subsidy control regime is currently in progress through Parliament and may therefore be subject to amendment and there is little regulatory guidance as to how it will operate in practice. As advised by the Council's treasury advisors Link, when entering into the proposed loan agreement the Council will need to ensure that it is on arm's length open market terms in order to comply with the "Market Economy Investor Principle".
- a. The Council has power to enter into the loan agreement under section 12 of the Local Government Act 2003 (investment power). In making this investment it must ensure that it complies with its investment strategy and it is also recommended that the Council complies with the provisions of HM Treasury's Circular 162 of 26 November 2020. In order to comply with this, the Council's section 151 officers should confirm that the Council is (a) not borrowing in advance of need, and (b) does not intend to buy investment assets primarily for yield.



- 10.6 Section 24 Local Government Act 1988 also gives the Council the power to provide financial assistance relating to the acquisition, construction or management etc of any property as privately let housing where the Council will not be the landlord.
- a. The Council will need to obtain the Secretary of State's consent under Section 25 Local Government Act 1988 ("Section 25" consent) to exercise this power. The Council will also need Section 25 consent if it wishes to use any other powers (including the General Power of Competence) for the purposes set out in Section 24.
  - b. In addition to this however the Council will need Section 25 consent if it uses the power in Section 24 or any other power for the purposes of or in connection with the matters listed in Section 24(1) to provide any person with a "gratuitous benefit". There are general consents available for the use of these powers which avoid the need for a specific application.

## **11. Equalities**

- 11.1 The Equality Act 2010 requires the Council when taking decisions to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and those that do not share it;
  - (c) foster good relations between those who share a relevant characteristic and those that do not share it.
- 11.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex sexual orientation
- 11.3 The Council needs to pay due regard to the public sector equality duty when exercising its functions and making decisions with regard to West End Gate.

## **12. Consultation**

- 11.4 Since WCC Housing services will manage the Intermediate units, there has been robust consultation with the Housing teams to ensure the relevant teams have a clear understanding of the management responsibilities.
- 11.5 The Church Street relocations team have also been consulted heavily throughout to ensure the housing needs of the tenants being relocated from Site A were being met.

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

Ashton Dean, Senior Development Manager

## **APPENDICES**

**Appendix 1 – Exempt – Financial Implications**

**Appendix 2 – Exempt – Freeholder service charge breakdown**

## **BACKGROUND PAPERS:**

Link Asset Management State Aid Report for West End.

