

Cabinet Member Report

Decision Maker:	Cllr Acton – Cabinet Member for Communities and Regeneration Cllr Swaddle – Cabinet Member for Finance and Smart Cities
Date:	12 December 2021
Classification:	For General Release save for Part B be declared as exempt from publication.
Title:	Disposal of Intermediate Rent Homes at Parsons North to Westminster Builds
Wards Affected:	Little Venice
City for All Summary:	This decision contributes to Vibrant Communities
Key Decision:	Yes
Financial Summary:	The report sets out proposals for the disposal of 9 intermediate units built by the Council to Westminster Builds. The disposal is at market value and details are included within Part B. 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.
Report of:	Debbie Jackson, Executive Director of Growth Planning and Housing James Green, Director of Development

1. Executive Summary

- 1.1. The Council's development Parsons North, on the Edgware Road, comprises 60 one-, two-, and three-bedroom homes, of which forty-one are private-sale homes and nineteen are affordable homes. Nine of the affordable homes are for intermediate market rent and it is proposed that they are disposed of to Westminster Housing Investment Limited (WHIL), commonly known by its trading name Westminster Builds (WB or "the Company") by way of a long lease, at a consideration equal to their market value. The acquisition cost will be financed through the provision of senior loan and quasi-equity by the Council as lender and shareholder to the Company.
- 1.2. 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. Pinnacle Managing Agents have also been appointed by the Council to manage the external area including landscaping, all internal plant rooms, car park and communal areas. These costs will be recharged to the Council and WB through Service Charge arrangements.
- 1.3. The Council intends to vary the section 106 agreement to provide, subject to the Council's approval, for the transfer of the intermediate rent homes to WB.

2. Recommendations

- 2.1. That Part B 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 it contains information relating to the financial or business affairs of any particular person (including the authority holding).
- 2.2. That the Cabinet Member for Communities and Regeneration:
 - 2.2.1 Notes Westminster Builds' Board decision of 4th November 2021 for the Company to acquire and then rent the 9 Intermediate rent homes at Parsons North.
 - 2.2.2 Delegation to the Executive Director of Growth Planning and Housing to agree on the terms and approval to enter into the Management Agreement on behalf of the Council to provide management services to the Company with approval to the Director of Law to facilitate and enter any legal documentation thereto.
 - 2.2.3 Approves a S106 modification application to be submitted to the local planning authority to enter into a new Unilateral Undertaking which will enable the Council to transfer the 9 Intermediate Rent Homes to Westminster Builds. As the Council cannot contract with itself, any variations required will be incorporated into the new Unilateral Undertaking rather than a deed of variation.

2.2.4 To delegate the authority to approve and enter into any Deed of Variation and legal documentation enabling the recommendation in 2.3.2 above to the Executive Director of Growth Planning and Housing.

2.3. That the Cabinet Member for Communities and Regeneration in consultation with the Cabinet Member for Housing:

2.3.1 Approves for the Council to dispose of the 9 Intermediate Rent homes at Parson's North to its subsidiary Westminster Housing Investments Limited (WHIL) for a consideration equal to its market value as per RICS Red Book valuation by way of a 125-year lease at a peppercorn rent.

2.3.2 Delegates the authority to approve and enter into any legal documentation ancillary to or required to facilitate the recommendation in 2.3.4 above to the Executive Director of Growth, Planning and Housing, the Executive Director of Finance and Resources and the Director of Law where appropriate

2.4. 2.4 That the Cabinet Member for Finance and Smart Cities:

2.4.1 Approval for the general fund to invest £2.345m into Westminster Builds, consisting of £1.524m of Debt and £0.821m of shareholder loans.

2.4.2 Delegation of the final negotiation of detailed terms and execution of financial documents to Executive Director of Finance and Resources

2.4.3 Delegates the authority to approve and enter into any indemnities if necessary as part of the disposal.

3. Reasons for Decisions

3.1. Westminster Builds (WB) is the trading name for the Council's subsidiary Westminster Housing Investments Limited (WHIL) and WHIL's subsidiary Westminster Housing Developments Limited (WHDL). WHIL is the active party in the proposed transaction and therefore references within this report to WB can be interpreted as references to WHIL.

3.2. Intermediate Rent housing cannot be efficiently held in the HRA and would normally be sold to a registered provider such as Westminster Community Homes. As WB's business plan sets out it is preferable for the Council to instead sell Intermediate homes to WHIL, retaining the long-term ownership within the Council group.

3.3. The drafted S106 for the development was completed in November 2019 and its current form does not enable WB to own and operate homes and therefore requires amendments. Officers have had informal discussions with the local planning authority as to suitable amendments to the s.106 agreement and an application will be made to the local planning authority

to make a variation to s.106 if the recommendation with this report is approved.

- 3.4. In addition to the approval for the Council to sell its assets, authority is required from the Council, acting as WB's shareholder, to authorise the company to acquire the homes. This acquisition is funded by debt and shareholder loans from the Council.

4. Background, including Policy Context

- 4.1. The Council's Parsons North scheme is a mixed-tenure development comprising of 60 one-, two- and three-bedroom homes within the HRA. The project will deliver 19 new affordable homes, 10 social homes retained in the HRA, and 9 intermediate homes proposed to be sold to Westminster Builds. The affordable homes are subsidised by the sale of 41 homes.
- 4.2. Following approval of the scheme Full Business Case in September 2019, the construction began in 2019 and is due to complete in December 2021.
- 4.3. To enable the intermediate rent homes to be let efficiently it is recommended that the Council dispose of them to WHIL. WHIL's Board approval to acquire the homes was obtained on 4th November 2021. It is proposed that the section 106 agreement be varied to reflect the transfer of the units by the Council to WHIL.

5. Proposed Disposal

- 5.1. The Council's development at Parsons North includes 9 Intermediate homes in a shared core with 10 social homes, which will be retained by the Council. The development also includes 41 private homes which are being marketed to private purchasers.
- 5.2. The 9 Intermediate homes are proposed to be sold to Westminster Housing Investments Limited (WHIL), who will rent them to households nominated by the Council, at rents payable set out in the S106 agreement and summarised below. These rents can be increased annually, from first letting, by CPI+1%.

Size	Initial Rent PW	No. of Homes	Total Rent Per Annum
1B 2P	£162	1	£8,440
1B 2P	£215	1	£11,202
2B 3P	£264	2	£27,509
2B 4P	£295	5	£76,848
	Total	9	£124,000

- 5.3. Previous disposals at Farm Street and West End Gate have set the principles for disposal, summarised below, and it is proposed that Parsons North mirrors these arrangements:

- Homes disposed to WHIL on a 125-year lease, with shared communal areas retained within the Council.
 - Tenancy management and maintenance provided by the Council to WHIL for an annual fee, with repairs recharged at cost
 - Financing provided by the Council as loans (65%) and equity (35%) at a rate supported by external state aid advice.
 - The Council instructed Savills to undertake a RICS Red Book valuation on the homes to provide a guide price for an arm's length transaction and satisfy 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 Parsons North, set out in Part B.
- 5.4. The Council has developed the homes within the HRA and there are statutory restrictions on disposal of HRA land to connected companies.
- 5.5. Officers received legal advice to confirm that the Council may rely on the 2013 General Consent where it makes a disposal from the HRA to its group company so long as the disposal falls within the first 5 disposals in the financial year (starting 1 April in each year).
- 5.6. In accordance with the 2013 General Consent which permits up to 5 disposals per financial year to the Council's group company without specific Secretary of State consent, the Parsons North Development disposal is number two of this financial year (the first being the disposal to the WHIL in relation to the development at West End Gate) and therefore within the disposal limit.
- 5.7. Officers have determined that the Council is acting within its powers to dispose of these units to WHIL and has notified DHLUC of the Council's reliance on this exemption.
- 5.8. MHCLG has responded to confirm that the Council must rely on its own legal advice in relying on the exemption.

6. Management

- 6.1. The Council has appointed Pinnacle Limited (Pinnacle) to provide overall estate management for Parsons North including providing ongoing management for the private homes. The Council's Housing Estate Services Team will remain responsible for the internals, including communal areas, of the affordable homes.
- 6.2. The Council will enter into a Management Agreement with WHIL, to provide and deliver Tenancy Management and maintenance services of the intermediate homes. The cost of the communal areas' services will be re-charged to the Company.
- 6.3. WHIL will contribute to the contract cost of services delivered by Pinnacle through a service charge. This has been provided by the WCC Divisional

Head of Housing Neighbourhoods and a cost has been allocated for management charge. The scope of Housing Management Services to be delivered to WHIL by the Council and Pinnacle are set out in Part B of this report.

7. Financial Implications

- 7.1. 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.
- 7.2. 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 cash flow or increase its capital financing requirement.
- 7.3. 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).
- 7.4. In September 2019 the Council agreed on the full business case for the construction of a mixed tenure scheme at Parsons North delivering 60 new homes. This includes 10 social, 9 intermediate and 41 private sale units. The social units will be held within the HRA whilst the 9 intermediate units will be disposed of into Westminster Builds based on a red book valuation.
- 7.5. Part B of this report states the full financial implications of the disposal against WHIL's appraisal, stating the source of the Company's figures.

8. Legal Implications

8.1. Planning Considerations

8.1.1. The Planning Permission was granted subject to the completion of the Section 106 Unilateral Undertaking (the "Unilateral Undertaking") which was completed on 2nd November 2018 and varied on 27 November 2019.

8.1.2. Paragraph 2 of Schedule One of the Unilateral Undertaking provides:

"The Owner shall not Occupy or permit Occupation of any of the Market Housing at the Development before or until the Owner has entered into a contract for the freehold transfer of Affordable Housing Units or grant of a lease for a term of not less than 99 years of all of the Affordable Housing Units at the Property to:

- i) a Registered Provider; or
- ii) other Approved provider of Affordable Housing; or

ii) to the City Council in their capacity as a social landlord”

8.1.3. The Unilateral Undertaking makes provision for the Affordable Housing Units (which includes the 9 Intermediate units) to be transferred to a Registered Provider or other Approved Provider of Affordable Housing.

8.1.4. It is understood that Westminster Housing Investments Limited (WHIL) is such an approved provider of Affordable Housing to which the disposal by Westminster City Council of the intermediate units is permitted under the Unilateral Undertaking, however, the existing Unilateral Undertaking does not include a definition of Approved Provider of Affordable Housing and therefore a variation of the unilateral undertaking is required to incorporate this definition for transparency.

8.1.5. Paragraph 2.2 of the Unilateral Undertaking provides that:

“The obligations in this Unilateral Undertaking shall be binding on the Owner together with its successors in title and assigns and those deriving title under it provided that no person shall be liable for any breach of any covenant or obligation contained In this Unilateral Undertaking after it has parted with all of Its interest in the Property or in the part of the Property to which the relevant obligation relates save in relation to any antecedent breach prior to parting with such interest.”

8.1.6. The legal effect of this provision is that the planning obligations contained in the Unilateral Undertaking pertaining to the intermediate units will be binding on WHIL following the disposal of the units to it as it will be a successor in title to the relevant part of the Property.

8.1.7. The Town and Country Planning General (Amendment) (England) Regulations 2018 came into force on 23 February 2018 with the effect that planning permissions granted by Local Planning Authorities to themselves will now run with the land, therefore the disposal of the intermediate units to WHIL will be with the benefit of the planning permission.

8.1.8. A further reason why a new Unilateral Undertaking is required is that the current Undertaking creates a potential conflict given that the Director of Housing is on the board of WB and therefore should not be approving the transfer of the intermediate units to WHIL. The references to the Director of Housing will be replaced with the Divisional Head of Housing Needs to prevent any potential conflict of interests.

8.2. Council as Landowner

8.2.1. The Council has the power to enter into the proposed arrangements under Section 1 of the Localism Act 2011 (the "General Power of Competence" or "GPOC"). This states that a local authority may do anything that a person generally may do. A local authority may

exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others i.e. this includes the setting up of a trading company.

- 8.2.2. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duties it owes to its rates and local taxpayers and to the public law requirements to exercise the general power of competence of a proper purpose).
- 8.2.3. A combination of powers (section 1 Localism Act 2011 as above, Section 95 Local Government Act 2003 and Section 111 Local Government Act 1972) permits the Council to lend monies to a trading company on a commercial basis.
- 8.2.4. Section 1 is qualified by Section 4 of the same Act which says that if a local authority wishes to do something for a commercial purpose, then it must do so through a company limited by shares (such as the Company). As such it is considered that the activities regarding the financial investment in this report are lawful.
- 8.2.5. Under section 32 of the Housing Act 1985, the Secretary of State's consent is required in respect of a disposal of land held for the purposes of Part II of that Act (subject to limited exceptions such as a letting on a secure or introductory tenancy which do not apply here). It is confirmed in this report that the homes are held in the housing revenue account.
- 8.2.6. The Secretary of State has issued a number of consents for the purpose of section 32, pursuant to powers in section 34 of the Housing Act 1985. General Consent A of the 2013 Consents was issued under those and other powers.
- 8.2.7. Paragraph 3.1.1 of General Consent A of the 2013 Consents gives local authorities in England consent to dispose of land held for the purposes of Part II for a consideration equal to its market value.
- 8.2.8. However, paragraph 3.1.1 of the General Consent A of the 2013 Consents is subject to the exceptions in paragraph 3.1.2. A relevant exception in this case, in paragraph 3.1.2(c)(ii) stipulates that the general consent does not apply to:
 - 8.2.9. (c) a disposal of land to a body in which the local authority owns an interest except -
 - (i) where the local authority has no housing revenue account; or
 - (ii) in the case of a local authority with a housing revenue account, the first 5 disposals in a financial year.
- 8.2.10. As the Council maintains a housing revenue account, the Council is limited to making only five "disposals" in any single financial year in reliance on this general consent.

8.2.11. According to the definitions in paragraph 2.2. of General Consent A:

"disposal" includes: "the grant of a lease of any duration".

and

"land" includes "buildings (which could include dwelling-houses, houses and flats) and any other structure...."

8.2.12. It is to be noted that the definition of "land" refers to the expression as potentially including "buildings", "dwelling-houses" and "flats" in the plural form. Based on those definitions it appears that it is envisaged that the "land" comprised in a lease may include more than one flat or other dwelling and the grant of a lease of land, which encompasses a number of dwellings would constitute a single disposal for the purpose of paragraph 3.1.2(c)(ii). Each lease granted to Westminster Housing Investment Limited would therefore count as one disposal for the purpose of the restriction in paragraph 3.1.2(c)(ii), even if that lease includes a number of individual flats or other dwellings.

8.2.13. Provided that there have been no (or no more than four) other disposals of Part II housing land to a body in which the Council owns an interest in the same financial year, the Council would be entitled to rely on General Consent A3.1.1 to dispose of by way of a long lease of the Intermediate Rental units to Westminster Housing Investments Limited at full market value. The report confirms that the disposal to the WHIL is the 3rd disposal to the WHIL in this financial year and therefore the Council is able to rely on General Consent A3.1.1

8.2.14. Internal Legal has been advised that the land which will be disposed to Westminster Housing Investments Limited does not consist or form part of public open space and so the requirements set out in section 123(2A) Local Government Act 1972 will not apply.

8.2.15. The selection of Westminster Housing Investments Limited ('WHIL') as a party to the transfer is not subject to the competitive tendering requirements of the Public Contracts Regulation 2020(as amended). WHIL is a wholly-owned subsidiary of the Council and thus regarded as a department of the Council for the purposes of procurement law to which direct awards of contract can be made under the Teckal ruling of the ECJ.

8.2.16. The Council may enter into the Management Agreement with the WHIL on suitable terms and conditions which also sets out the commercial arrangements as detailed in Part B of this report. Where the WHIL is wholly owned by the Council, the Council should ensure that it has sufficient powers to maintain exercise and control as a shareholder in any decision-making process of WHIL which will cover the period of the Management Agreement agreed upon.

9. Carbon Impact

9.1. The decisions required within this report does not further the Carbon impact of the project. The transfer of intermediate units from one entity to another is a desktop exercise and therefore it is not possible to calculate its immediate impact.

10. Equalities

10.1. The Equality Act 2010 created a single general public sector equality duty (“referred to below as “PSED”) under section 149 of that Act which requires the Council when taking decisions to have due regard to the need to:

10.1.1. eliminate discrimination, harassment, victimisation or other prohibited conduct;

10.1.2. advance equality of opportunity between persons who share a relevant protected characteristic and those that do not share it;

10.1.3. foster good relations between those who share a relevant characteristic and those that do not share it.

10.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex sexual orientation

10.3. The Council needs to pay due regard to the public sector equality duty when exercising its functions and making decisions with regard to Parsons North.

10.4. However, in the authors opinion, the decisions required in this report have no perceived impact on the PSED as the decisions relate to the accounting and transfer of residential units from one entity to another.

11. Consultation

11.1 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.

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

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