



City of Westminster

Cabinet Member Report

Decision Maker: Councillor Matt Noble, Cabinet Member for Regeneration and Renters

Date: 28 August 2024

Classification: General Release

Title: Balmoral Castle Darwin House (BCDH) – Block B Truly Affordable Housing Amendment

Wards Affected: Pimlico South

Policy Context: The development contributes to Westminster City Council's (WCC) commitments to a Fairer Westminster, including: Fairer Housing (delivery of a range of Affordable and Specialist Housing to support the needs of residents) Fairer Environment (low energy, greener homes that help contribute towards Westminster Carbon Neutral target) and Fairer Communities (enabling our communities to live independently in their homes for longer and supporting and empowering the community and voluntary sector organisations through the delivery of Social Value) Fairer Council (demonstrated by engaging residents and local stakeholders in a comprehensive and transparent consultation process that has informed the Council's decision making).

Key Decision: Yes, due to significant expenditure.

Financial Summary: BCDH has an approved expenditure of £40.183m (£17.252m net) funded by the HRA budget allocation within the HRA business plan which was approved by CMR BCDH – Approval of the Full Business Case and the appointment of the Main Contractor (February 2023). This paper seeks approval to revise the approved expenditure to £41.020m (£16.641m net) to support a change of tenure and unit no.'s in Block B.

Report of: Debbie Jackson, Executive Director, Regeneration, Economy, and Planning

1. Executive Summary

- 1.1. Westminster City Council (WCC) is committed to maximising the delivery of truly affordable housing across the Council's housebuilding pipeline. This report seeks to amend the mix and tenure of Block B of the BCDH scheme to increase the delivery of larger family Council homes for social rent.
- 1.2. The recommendations in this report will deliver 10 new Council homes for social rent including 9 large family homes, 8 of which are 4 bed homes. This will contribute towards addressing the waiting list of more than 4,100 households registered for social housing and the 19-year waiting time for households waiting for larger family homes (4 or more bed homes), the longest waiting time for an affordable home.
- 1.3. This report also proposes converting the tenure of 1 affordable home within Block A, Community Supportive Housing (CSH) block to a private home for the purposes of providing onsite Scheme Manager accommodation in keeping with the management arrangement of the current Darwin House. Following the change of tenure recommended in this report, the Council will manage the unit including any future tenure changes e.g. back to affordable in accordance with the powers vested within it.
- 1.4. The site comprises the former Balmoral Castle public house, Darwin House and 23 garages (the Site). It is located adjacent to Churchill Gardens Estate and is part of the Churchill Gardens Conservation Area - bordered by Grosvenor Road to the south and Churchill Gardens Road to the north, directly overlooking River Thames.
- 1.5. The scheme is being delivered in four phases: Phase 1 comprises demolition of the Balmoral Castle public house and 23 vacant garages (complete), Phase 2 comprises 34 new 1 bed homes for Community Supportive Housing (CSH) (Block A) currently under construction, Phase 3 comprises the demolition of Darwin House and Phase 4 comprises construction of 18 new affordable homes for intermediate rent housing (Block B).
- 1.6. The decisions set out in this report will look to make an impact where the need is greatest. 79% of the 4,100 households registered on the waiting list for social housing require a family size home (2 or more bedrooms) and the current waiting time exceeds 19 years for larger family homes (4 or more bedrooms), whereas 76% of the 1,700 applicants for intermediate rent housing are for 1-bedroom properties.
- 1.7. The recommendations set out in this report will trigger the conversion of 18 consented 1 bed affordable homes for intermediate rent (Block B) into 10

Council homes for social rent, increasing habitable rooms from 36 to 46 and delivering 9 larger family Council homes for social rent.

2. Recommendations

That the Cabinet Member for Regeneration and Renters, in consultation with the Cabinet Member for Finance and Council Reform:

- 2.1. Approves the proposed change of tenure and units from 18 intermediate rent affordable homes to ten social rent affordable homes at the Councils Balmoral Castle Darwin House scheme.
- 2.2. Approves change of tenure to one affordable unit in the Community Supportive Housing block (Block A) from affordable to private, for use by the Scheme Manager in connection with the ongoing operation of CSH Block.
- 2.3. Approves increased expenditure of £0.837m (increasing the total approved expenditure from £40.183m previously to £41.020m).
- 2.4. Approves the use of Right to Buy receipts to increase the funding forecast. This will offset the additional expenditure requirements (see recommendation 2.2.3)
- 2.5. Delegates authority to the Executive Director of Regeneration, Economy and Planning (REP) to:
 - Approve any necessary terms to effect recommendations set out in this report.
 - Amend and implement planning as required to carry out the recommendations set out in this report.
 - In consultation with the Director of Law, to enter into and or amend any existing legal and financial documents and planning agreements to effect recommendations set out in this report.
 - Note that a Local Lettings Plan will be put in place prioritising new affordable homes for local residents.
 - Note that the Council may in the future change the tenure, dispose of or let the private unit within the CSH (Block A) at its discretion in accordance with the powers vested within it.

3. Reasons for Decision

- 3.1. The reason for the recommendations is to facilitate existing Scheme Management arrangements in Block A, secure expenditure and implement changes to Block B to deliver large family Council homes for social rent in line with the Councils Truly Affordable Housing and Fairer Housing vision which aim to improve the Councils response to addressing housing need.
- 3.2. A clear objective was provided to Council officers, who considering a range of options, have developed a preferred way forward presented by this report. By

revising the internal layout of the permitted scheme via the contractor under the Main Works Contract, the Council is able to increase its supply of hardest to find homes, delivering them sooner whilst minimising the risk of contractual delay cost.

- 3.3. The current planning permission does not allow for a residential Scheme Manager to be provided for onsite. The duties of the Scheme Manager include providing first responder support out of hours which can be readily achieved if accommodation is provided onsite. The recommendations in this report enable the support provision to continue, in line with the existing whilst ensuring the Council is able to change the tenure (e.g. to affordable) at its discretion in the future if required.

4. Background, including Policy Context

- 4.1. The site is located within the Churchill Gardens Estate and is part of the Churchill Gardens Conservation Area. It is bordered by Grosvenor Road to the south and Churchill Gardens Road to the north. It comprises Block A (under construction) which replaces the former Balmoral Castle public house and 23 garages, and the current Darwin House to be demolished (the Site).
- 4.2. Detailed planning permission was granted in June 2021 for the scheme, delivered on a phased basis with various associated works, whereby:
 - 4.2.1. Phase 1 – Demolition of 23 garages and former Balmoral Castle Public House.
 - 4.2.2. Phase 2 – Erection of a part seven storey, part six storey and part five storey building to provide Community Supportive Housing (Block A).
 - 4.2.3. Phase 3 – Demolition of Darwin House.
 - 4.2.4. Phase 4 – Erection of part five storey and part four storey building
- 4.3. The planning permission was considered against the City Plan 2019-2040, the London Plan and the National Planning Policy Framework (NPPF). It was noted that the proposal conflicted with policies in the development plan relating to impact on residential amenity, townscape and design. However, it complied with policies which seek to optimise housing delivery and new affordable homes and on balance was therefore recommended for approval.
- 4.4. The permitted scheme met the London Plan requirements to provide at least 50% affordable housing on site with at least 30% intermediate rent and up to 70% social rent products, notwithstanding the 2017 SHMA which demonstrates significant need in London for low-cost rental housing but recognises that the national funding programme limits the Mayor of London's ability to require a higher level of low-cost rental products.
- 4.5. The restrictions arising from the national housing fund will not apply to Block B which will be funded through a combination of the Councils Right to Buy (RtB) receipts and Affordable Housing Fund (AHF). In addition, the Council has reviewed local housing need for affordable homes (see 4.6 below).

- 4.6. The Councils affordable housing provision requires rebalancing to reflect need. The Truly Affordable Housing vision seeks to review aspects of the City Plan and bring it more into line with practise elsewhere in London. In Westminster there are over 4,100 households registered for social housing, with 79% of those requiring a home with two bedrooms or more and a waiting list time of up to 19 years for 4 or more bedrooms, whereas 83% of the 2,000 applicants for intermediate housing are eligible for a one-bedroom home with a waiting list time of 72 weeks.
- 4.7. The proposals set out in this report will result in the following changes:
- 4.7.1. Addition of 9 new affordable Council homes for social rent
 - 4.7.2. Of which, 9 new family sized Council homes for social rent
 - 4.7.3. Increase in habitable rooms from 36 to 46 (Block B)
 - 4.7.4. Adjustment of 18 units to 10 units (Block B)
 - 4.7.5. Conversion of 1 CSH affordable home to private, to provide Scheme Manager accommodation (Block A)

Table 4.7 - Tenure and Unit Change

	Private	Intermediate	Social	Total
Permitted	-	18	34	52
Proposed	1	-	43	44

5. Procurement

- 5.1. A rigorous and competitive procurement exercise was undertaken utilising the Crown Commercial Services (CCS) Construction and Associated Services Framework (RM6088) Lot 6.2, resulting in appointment of Wates Construction Ltd (BCDH Full Business Case and Approval of the Main Contractor Feb 2023). The Procurement Exercise was undertaken in line with the Public Contract Regulations 2015 and Procurement Code.
- 5.2. The Block B amendment will be carried out via the contractor under the Main Works Contract. The measured works are calculated in accordance with the existing contract and the contractor has carried out a competitive tender for the architect professional fees. The Council's Cost Consultant has reviewed the cost and supporting evidence and provided a report confirm Value for Money.
- 5.3. The variation to the main contract is within 10% of the Contract Value and accords with the Council's Procurement Code and applicable Public Contract Regulations. All works will be carried out in line with the existing contract and no programme extensions are anticipated.

6. Financial Implications

- 6.1 The Balmoral Castle and Darwin House scheme provides a 100% affordable scheme of 43 new homes plus Scheme Manager accommodation across two blocks. In February 2023, when the Business Case was approved, the total development costs were £40.183m (net £17.252m). The revised development costs presented in this paper are £41.020m (net £16.641m). This represents an overall increase in costs of £0.837m but a net reduction of £0.611m when the additional funding outlined in 6.2 below is considered. A breakdown of the increased expenditure is below:

Costs	Business Case £000's	Revised Costs £000's	Movement £000's
Main works construction	33,545	33,545	-
Block B amendments	-	868	868
Main work variation (excluding block B)	-	(31)	(31)
Professional Fees	4,960	4,960	-
Additional Professional Fees	-	215	215
Contingency	1,677	1,462	(215)
Total Costs	40,133	41,020	837

- 6.2 The approved budget of £40.183m includes capital funding of £22.931m consisting of Affordable Housing Fund (AHF), Greater London Authority (GLA) and a Westminster Housing Investments Ltd Capital receipt. The revised expenditure proposal presented in this paper totals £41.020m which includes a capital funding budget of £24.379m consisting of AHF and Right to Buy receipts. This represents an increase of £1.448m in capital funding and a reduction in borrowing of £0.611m, reducing the ongoing revenue costs related to these schemes. This will be forecast as part of the 2025/26 budget setting process. The below table sets out the funding changes:

Funding	Business Case £000's	Revised Costs £000's	Movement £000's
GLA Grant	(6,176)	(5,083)	1,093
AHF Funding	(13,000)	(13,000)	-
Right to Buy	-	(6,296)	(6,296)
Intermediate units receipt from WB	(3,755)	-	3,755
Total Funding	(22,931)	(24,379)	(1,488)

- 6.3 Due to the change in the Spring Budget allowing the council to spend up to 50% of the cost of construction on new social rented units, Block B is able to apply right to buy receipts against this scheme. However, the restriction that

other grants cannot be applied against the same scheme still remains, therefore, GLA grant cannot also be applied. Further to the change of tenure, from intermediate to social rent units these will no longer be transferred to Westminster Builds and therefore the Council will no longer receive a receipt as a result.

7. Legal Implications

- 7.1. The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness – the best value duty.
- 7.2. The Council also has a general power of competence under section 1 of the Localism Act 2011; this is the power to do anything an individual can do provided it is not specifically prohibited by legislation.
- 7.3. Under Section 111 of the Local Government Act 1972 the Council has the power to do anything incidental to the exercising of any of its functions.
- 7.4. Section 8 of the Housing Act 1985 provides the Council with a duty to consider housing needs in respect of its district. Section 9 of the Housing Act 1985 provides the Council with the power to provide housing accommodation.
- 7.5. If the tenant of a Council property “is an employee of a Local Authority and his contract of employment requires him to occupy the dwelling house for his duties”, then in accordance with Schedule 1, paragraph 2(1) of the Housing Act 1985 the tenancy will not be considered a secure tenancy. Otherwise, the Council could inadvertently allow the creation of a secure tenancy. Consideration should therefore be given by the Council as to who will occupy the unit in Block A referred to in paragraphs 2.2.7, 3.1 and 3.3 above.
- 7.6. The recommendations will require (as necessary) examination of planning consents and related legal agreements, existing contracts, proposed or new contracts relating to sale, leasing and licensing arrangements, whether consent from third parties is required (if applicable), design and construction documents, title documents and consideration of procurement for construction and design and sale and leasing arrangements amongst others are to be assessed, approval of which is provided for under delegated authority in accordance with the Councils constitution.
- 7.7. Contract documents should secure compliance with the terms of the existing legal agreements. Implementation of the recommendations may result in variations to the terms and conditions, changes to the specifications, design, construction briefs, increased costs, revised pricing mechanisms and structures, compensation payments for any potential termination of existing agreements and may require the agreement of any other parties to the legal agreements.

- 7.8. In determining a Council own planning application or amendments to any planning consents the Council (as Local Planning Authority) must assess the application as it would any other application in accordance with all statutory and policy requirements. In respect of all Council-own applications the law requires appropriate functional separation. It is therefore particularly important to ensure that throughout the process the development/corporate landowner function of the Council is kept separate from the local planning authority function.

Procurement and Contracts Legal Review

- 7.9. The report seeks authority to vary an existing construction contract between the Council and Wates Construction LLP. The original contract value is £41,020 million, with the proposed variation estimated at £837,000.
- 7.10. Regulation 72(5) of the Public Contracts Regulations 2015 (PCR 2015) permits the modification of contracts during their term without necessitating a new procurement procedure, provided the value of the modification is below the relevant threshold and less than 15% of the initial contract value (for works contracts). In this instance, the proposed variation value is less than 15% of the initial contract value and below the relevant threshold for works.
- 7.11. However, for the modification to be permitted under regulation 72(5) of the PCR 2015, the overall nature of the contract must not be altered.
- 7.12. The report indicates that the variation is necessary to finance costs associated with converting 18 consented one-bedroom affordable homes for intermediate rent (Block B) into 10 Council homes for social rent.
- 7.13. Changes in the scope of services required, contract charges/rates, resources required to perform the contract, or clarification of issues inadequately addressed by the original contract will not typically constitute a modification to the overall nature of the contract.
- 7.14. Consequently, the proposed variation is lawful and consistent with both the Council's Procurement Code and regulation 72 of the PCR 2015.
- 7.15. In accordance with paragraph 2.28.7 of the Council's Procurement Code, all Deeds of Variation and Variation Orders (building and civil engineering contracts) should be stored with the original contract in the Deeds Registry. Once agreed, all variations on contracts valued at £30,000 or more should be recorded on the Contracts Register.
- 7.16. Legal support should be engaged to implement the contract variation and extension.

8. Carbon Impact

- 8.1. The council has committed to achieve net zero carbon emissions from operations by 2030 and across the city by 2040.

- 8.2. The Climate Emergency Action Plan includes an action to embed carbon impact assessments into all capital-funded project proposals, to maximise the climate benefit of council investments and limit new sources of emissions wherever possible. The project team will complete the CIET as part of the annual budget setting process.
- 8.3. The scheme aligns with Westminster's City Plan - objective 7 which outlines WCC's commitment to reduce carbon by minimising detrimental impacts from developments. Policy 36 outlines the council's aim of promoting net zero developments and the means for doing so.
- 8.4. The scheme is designed to meet the AECB Building Standard. This is aimed at those wishing to create high-performance buildings using widely available technology. It is estimated that this low-risk option will reduce overall CO2 emissions by 70% compared to the UK average for buildings of each type.
- 8.5. The scheme does not include any fossil fuel and heating and hot water for the proposed amendment to Block B will be provided via air source heat pumps.
- 8.6. WCC policy currently focuses on net zero in operation, with the requirement that major developments should be net zero carbon but where it is 'not financially or technically viable to achieve zero-carbon on-site, any shortfall in carbon reduction targets should be addressed via off-site measures or through the provision of a carbon offset payment secured by legal agreement'. The policy also outlines that the energy hierarchy should be followed, as per the principles of the Mayor of London's energy hierarchy.
- 8.7. The Main Contractor is Wates Construction, and their carbon reduction strategy comprises of three sections: on-site, embodied carbon and performance evaluation. From a construction standpoint Wates have chosen materials with reduced carbon levels where practicable and have ensured that a large quantity of materials will be manufactured off-site. i.e. pre-cast columns will have less embodied carbon than concrete lorries. All plant and equipment are switched off when not in use, materials are managed efficiently so that there is minimal excess, and any surplus will be re-used in a different context where at all possible. In terms of site set up Wates use solar panel powered Eco-cabins and time lapse cameras which minimise the dependence on gas for fuel, all welfare lighting is on a sensor, fire points are battery powered. Wates manage travel distances to and from site when it comes to sub-contractor selection. Wates have a green travel plan which encourages people to source local labour and materials make them aware of public transport links wherever possible. The final part of Wates strategy is recording so that they can evaluate performance and identify areas for improvement. Wates record all deliveries and labour travel distances are recorded and fed into their internal reporting system EcoWeb. Wates's performance is captured monthly and displayed in the welfare and the community noticeboards.

9. Equalities Impact

- 9.1. As a public sector organisation, the Council has a duty under the Equality Act 2010 and the associated Public Sector Equality Duty (PSED) to ensure that the proposals do not lead to unlawful discrimination (direct and indirect), and that they advance equality of opportunity and foster good relations between those with a protected characteristic and all others. An Equality Impact Assessment (EIA) is often used by public sector organisations to demonstrate how this duty has been discharged. It is the Council's policy that EIAs are undertaken and updated for projects throughout their development.
- 9.2. The EIA has considered the potential benefits and negative impacts of the Proposed Development. The EIA has been updated at key milestones in the project and has due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act.
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.3. The Balmoral Castle Darwin House development will contribute to improvements for the Churchill Gardens Estate through a net increase in community supportive and affordable housing, new employment opportunities associated with the construction, as well as new landscaping and green space.

10. Consultation

- 10.1. Extensive community consultation and engagement took place in summer 2021 on the permitted scheme lead by the Council's Community Engagement team during the pre-planning submission period (whilst working on the planning application designs).
- 10.2. After planning permission was achieved in November 2021, the Council worked with stakeholders to keep them up to date and informed of the works. This engagement included Darwin House Residents, Churchill Gardens Residents, Grosvenor Road Residents, Churchill Gardens Residents Association and near neighbours (including schools and businesses).
- 10.3. In addition, the Council established a Construction Liaison Group in December 2021, with meetings with the CLG, project team and Wates colleagues taking place every 8 weeks. These meetings are now taking place every quarter as the Group is pleased with the progress made on the project with minimum disruption. At the meeting Group members are given updates regarding on site works, informed about likely disruptions and given the opportunity to feedback any suggestions or complaints they may have regarding noise, dust and vibration monitoring etc.

- 10.4. In preparing this report, the Council carried out a consultation on the proposed amendment to Block B. 1,855 invitation letters were issued which included the Churchill Gardens Estate, adjacent Grosvenor Road properties, Residents Association and Ward Councillors. The consultation was held over 2 weeks, four public exhibitions took place two at Darwin House (21 and 23 May) for Darwin House residents and CLG Group and two were held at the Church Hill Gardens Community Hall (29 and 30 May) for the wider community.
- 10.5. The consultation material explained the proposed changes to Block B and for residents to provide feedback on the proposals. A total of 22 people attended the exhibitions with feedback provided by 25 people. Summarising the feedback everyone supported or didn't mind large family homes for social rent. The majority were in favour natural play equipment / space for use by all ages. It was noted that there was sufficient good quality formal play provision available locally. Where formal play equipment was preferred it, security was a significant factor and should be considered as part of any design response. The majority of feedback provided felt the amendment should stay within the current consent.
- 10.6. The Churchill Gardens Residents Association wrote to the Council on 15 June 2024 setting out their preference to retain and refurbish the existing building (current Darwin House) and provide CSH homes for over 55's.
- 10.7. In preparing this report, officers have consulted with the Ward Councillors for South Pimlico. A summary of the report has been provided in the form of a briefing note on 23 July 2024. No objections were received from the Ward Cllrs. Their preference was noted that the new affordable homes should be made available to local residents first through a Local Lettings Plan (LLP).

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

James Bolton jbolton@westminster.gov.uk

APPROVED BY

Name and Title	Date sent	Date approved
SFM Commercial Corporate Finance	16 August 2024	21 August 2024
Legal		
Strategic Lead – Cabinet and Executive Governance	12 August 2024	20 August 2024

BACKGROUND PAPERS

- Cabinet Member Report (CMR) Balmoral Castle and Darwin House – Approval of the Full Business Case and the appointment of the Main Contractor (February 2023)

For completion by the **Cabinet Member for Regeneration and Renters**

Declaration of Interest

I have no interest to declare in respect of this report.

Signed: 

Date: 5 SEPTEMBER 2024

NAME: **COUNCILLOR MATT NOBLE**

For the reasons set out above, I agree the recommendation(s) in the report entitled Balmoral Castle Darwin House (BCDH) – Block B Truly Affordable Housing Amendment and reject any alternative options which are referred to but not recommended.

Signed: 

Cabinet Member for Regeneration and Renters

Date: 5 SEPTEMBER 2024