

Cabinet 28 November 2017	 TOWER HAMLETS
Report of: Ann Sutcliffe, Acting Corporate Director, Place	Classification: Partially Exempt
Disposal of Land at Ailsa Street, Lochnagar Street and Bromley Hall Road E14	

Lead Member	Councillor David Edgar, Cabinet Member for Resources
Originating Officer(s)	Acting Divisional Director, Property & Major Programmes
Wards affected	Lansbury
Key Decision?	Yes
Community Plan Theme	One Tower Hamlets

By virtue of section 100A of the Local Government Act 1972 and paragraph 3 of Schedule 12A of the Local Government Act 1972, two appendices in this report are exempt as they contain Information relating to the financial or business affairs of any particular person (including the authority handling the information). Specifically, the appendices contain land valuation information and the terms of the disposal; the premature publication of this information could prejudice the Council in negotiating the transaction. In all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the appendices as it could jeopardise the Council's financial position when negotiating the transaction with the developer.

Executive Summary

The Council owns a number of assets that are currently vacant. These assets are both a financial burden at a time of fiscal constraint and an opportunity. There is a regeneration project within the Poplar Riverside Housing Zone, referred to as the Ailsa Wharf scheme. The scheme includes areas of vacant land owned by the Council.

In order to facilitate the carrying out of the scheme by the developer and to generate a capital receipt for the Council, it is proposed that the Council agrees to sell land to the developer on the terms set out in this report.

The land involved is situated in Ailsa Street, Lochnagar Street and Bromley Hall Road E14 as shown on the plan at Appendix A, where the Council land is shown shaded in a plum colour and the other land making up the development site is shown shaded in a lilac colour

Recommendations:

The Mayor in Cabinet is recommended to:

1. Agree that the land and buildings at Ailsa Street, Lochnagar Street and Bromley Hall Road E14, as shown on the plan at Appendix A, are surplus to the Council's requirements.
2. Having considered the valuation information set out in the exempt Appendix C, agree to the disposal of the Council's freehold interest in the land to Ailsa Wharf Development Ltd on the terms set out in the report and exempt Appendix B.
3. Authorise the Acting Corporate Director, Place, to agree to any non-material variations to the terms and the precise boundaries of the land to be sold in order to implement the recommendations above.
4. Authorise the Acting Corporate Director, Place, to enter into the necessary legal agreements required to implement the recommendations above.

1. REASONS FOR THE DECISIONS

- 1.1 It is important at a time of reducing funding and budgets in the public sector to ensure that efficiencies are driven through the running and/or disposals of the Council's assets to reduce revenue costs and/or generate capital receipts.
- 1.2 The decisions in this report will contribute to the continual review and rationalisation of the Council's assets, and help reduce the operational portfolio to the optimum required. The disposal will generate a capital receipt for the Council, which can be reinvested and directed to its principal expenditure priorities. It will also reduce revenue expenditure on upkeep, maintenance and security.
- 1.3 The proposed redevelopment of the land as part of a wider Housing Zone regeneration project will bring disused and environmentally poor sites in a prominent location into productive use. By taking constructive action in this way the Council is meeting its strategic enabling role in promoting regeneration. The redevelopment will have a potentially transformative effect on this area of the borough. The provision of a significant amount of affordable housing will help the Council to meet its targets and support people on lower incomes into quality accommodation.

- 1.4 The Poplar Riverside Housing Zone was established in 2016. The Housing Zone contains 10 potential development sites the majority of which occupy former industrial lands nearby or bound by the A12, A13 and River Lea The Council is focussed on ensuring a significant quantum and mix of affordable homes is delivered in the Housing Zone, alongside high quality and affordable workspace, open space, cultural facilities and community infrastructure. Poplar Riverside has the potential to emerge as London's new affordable district in which to both live and work. Utilising the rich asset that is the River Lea will be crucial to the regeneration of the Housing Zone, as well as the delivery of key infrastructure to significantly improve connectivity across the A12, A13 and River Lea, creating a network of walking and cycling routes and opening up Poplar Riverside to the rest of the Tower Hamlets and East London.
- 1.5 GLA funding for the housing zone has been split across two phases. The GLA has allocated £52m for the first phase (a mixture of grant and loans), which could rise to £78m in the second phase. Some of this funding will be used in support of delivery of the Ailsa Wharf scheme, notably to fund the potential pedestrian and cycle bridge and to support the potential acquisition of workspace, should this be necessary.
- 1.6 Key sites in the housing zone include Leamouth North (developed by Ballymore as City Island), Leamouth South (Ballymore), Leven Road (St William) Gillender Street (Peabody) and Ailsa Wharf. There are also two estate renewal schemes at Chris Street and Aberfeldy Estate (Poplar HARCA).
- 1.7 Over 15,000 homes are likely to be built in Poplar Riverside over the next 10 to 15 years, with the majority scheduled for delivery by the early 2020s. The development of Poplar Riverside will also provide up to 3,000 new jobs, a new 1 hectare local park, improvements to the wider Lea River Par and two new primary schools. The current regeneration of the Aberfeldy Estate is an example of the improvements to be delivered

2. ALTERNATIVE OPTIONS

- 2.1 The Council has the option of developing the land itself but the land consists of discrete areas, and the benefits of a comprehensive development within the Housing Zone framework would not be delivered through a piecemeal approach. In isolation the Council's land would deliver a restricted number of units compared to the contribution it would make to a wider scheme and the quality of the immediate environment would in any event make this an

unattractive alternative. The ability to produce a significant income from the land from a commercial letting is also affected by the environment. The likely interest would be from low value uses such as the vehicle salvage or waste processing operations that currently dominate the area.

- 2.2 In terms of the approach to the disposal, the land could be sold in the open market following a marketing programme. However the adjoining land making up the Ailsa Street scheme is being assembled by the developer. This puts the developer in the position of a special purchaser. Such a purchaser would be expected to offer terms to the Council more beneficial than those that other parties would be able to. The purchaser, by virtue of its site assembly, is in a position to take forward the wider development, which brings other benefits to the Council.
- 2.3 In line with the Council's Disposal Policy, agreed by Cabinet in April 2015, the Acting Corporate Director, Place has agreed that sale by negotiation is the most appropriate method of sale, for the reasons set out above.

3. DETAILS OF REPORT

- 3.1 The Council has a significant operational and commercial portfolio that it manages. Officers continually review the property portfolio and bring forward sites for direct development and/or disposal from time to time. The direct development options depend on the availability of funding and the size of the redevelopment opportunity. Disposal of surplus sites reduces the revenue costs for the maintenance and security of vacant buildings, while generating a capital receipt.
- 3.2 This report focuses on Council land that has been mostly vacant for a number of years. The security and other vacant property costs place a significant demand on a limited revenue budget. This is expenditure that has not provided any direct benefit to the residents of the borough. Reduction of these revenue costs by disposing of the land will allow the Council to focus revenue budgets on the services of higher priority.
- 3.3 The area in which the sites are situated is characterised by a poor environment and fly-tipping. Existing businesses include waste treatment and car scrapping. The costs incurred by the Council in securing and managing the vacant sites are significant. In 2016/17 the Council spent approximately £158,000 on security.
- 3.4 The Council, through the disposal of the land, will achieve the best consideration that can reasonably be obtained in accordance with its statutory

obligations and this is confirmed by the valuation advice attached at exempt Appendix C. The sale is conditional on planning permission being granted.

- 3.5 The disposal land consists of five separate areas. The Council's land represents around 30% of the total development site area. Part of the land to the west of Ailsa Street is subject to a lease to Poplar Harca, which has in turn granted an occupational tenancy to two individuals trading as City Wood Services. This tenancy will be brought to an end by Poplar Harca at the same time as the lease is surrendered. Officers are working with City Wood Services to identify relocation options within the borough. Two specific areas have been highlighted and discussions to take these forward will continue with the company
- 3.6 The two rectangular shaped areas of land to the north of Ailsa Street are subject to short term leases to a company, in respect of which the Council has given the required six months' notice to terminate by May 2018. The other areas of Council land to the west and south of Ailsa Street are vacant and being secured with a full time staffed security presence.
- 3.7 The location plan attached at Appendix A is for identification. The precise boundaries of the land to be sold are to be determined on site and by reference to the title documents. Authority is therefore sought for the Acting Corporate Director, Place, to determine the precise boundary of the land to be sold in order to implement the recommendations.
- 3.8 It is proposed to sell the land on a freehold basis, rather than through a 199 year leasehold interest, the latter being standard Council practice. This is because the Council land is being assembled with other land that is being acquired freehold. The proposed development will overlap existing ownership boundaries and for there to be different tenures would create significant difficulties for the development.
- 3.9 The development is being promoted by a company, Ailsa Wharf Developments Ltd (AWD), which wishes to acquire the Council land. Commercial Information about the stakeholders in and financial standing of AWD is included in exempt Appendix C.
- 3.10 Following the sale of the land to the developer, any redevelopment will be in accordance with planning permission. A planning application for the wider Ailsa Wharf scheme has been submitted and is being processed by the Council. In addition to the terms of sale, the planning process will give the Council, in its role as Local Planning Authority, some control over the nature of the development and in particular the delivery of priority affordable housing. It should be noted that this will be subject to viability in the usual way.

- 3.11 The planning application is for a mixed use scheme providing 785 residential units and 2,950 sm of commercial floor space, within a series of thirteen building blocks of between three and seventeen storeys. The grant of planning consent does not guarantee that a development will take place. The Council is able to include terms within the land sale that encourage development, within the constraints of procurement regulations. A summary of the terms provisionally agreed is provided in exempt Appendix B.
- 3.12 The Council appointed Gerald Eve to advise on the negotiations for the sale of the Council land. After negotiations, provisional agreement on heads of terms has been reached. The main commercial provisions in the heads of terms are summarised in exempt Appendix B. Gerald Eve advises that the terms represent best consideration for the Council as required under s123 of the Local Government Act 1972. The Gerald Eve advice is attached at exempt Appendix C.
- 3.13 The developer intends to implement the scheme in two phases. The first phase is to the east and north parts of the site and does not involve any Council land. The second phase is for the remainder of the site and contains the Council land along with other land to be acquired from third party owners. The two phase approach is reflected in the planning application.
- 3.14 One of the main reasons for the disposal is to facilitate the comprehensive redevelopment. The Council has introduced a number of measures to help secure delivery of the redevelopment, without creating an obligation to carry it out, which would have procurement implications. These are;
- Linking overages to both phases which will make selling on the site without development a less attractive option,
 - Including a clawback mechanism if part or all of the overall site is sold within a defined period and, Including a buy-back option for the Council to re-acquire its original freehold interest if development has not commenced within a defined period.
- 3.15 If the development is delivered the Council will have options, which are equivalent to rights of first refusal, to;
- Purchase private residential units within phase two, which it will use as affordable housing, above the level secured through the planning process, such that the resulting proportion of affordable is a minimum of 40% across the overall scheme.
 - To acquire the affordable housing units secured through the s106 agreement or to nominate a body to do so. This option applies separately to the various component tenures and the whole of the provision.

- 3.16 In terms of the workspace provision in the development, there is 2,950 sm of space to be distributed across five of the thirteen blocks. In comparable developments such commercial space has proved difficult to let, with the economic outcomes the Council seeks to achieve not being delivered in practice.
- 3.17 For this reason the Council has agreed terms to ensure that the workspace, if delivered and subject to completion of the units, is let as quickly as possible with an option to acquire workspace that is not let after a given period. There will be a jointly approved sales and marketing strategy for the units, which will be reviewed and updated on a quarterly basis. The developer agrees to fully implement the initial and future sales and marketing strategy advice until all the commercial units are occupied.
- 3.18 If after a year from completion of a commercial unit it remains unlet/unsold to an occupier, the Council will have the option to purchase that unit, via an unrestricted 125 year lease. The Council would pay a capital sum for the leasehold interest. The capital sum would reflect market value, taking into account the amount of space being acquired and the timing of the payment. The Council could use GLA repayable grant to facilitate any acquisitions.
- 3.19 On any letting of the units by the Council it is likely to be necessary to add VAT to the rent in order to protect the Council's financial position. The workspace will be fitted out to a shell and core specification. If the Council elects not to exercise its option it will be able to direct the developer to market the unlet/unsold commercial units at the average of the values set out within two valuations to be obtained.
- 3.20 The following benefits may arise from the Council's involvement in the workspace;
- Ensure the space is let at an early stage,
 - Generate economic activity, supporting jobs and businesses,
 - Support the establishment of a new 'place' through active use of non-residential elements of the scheme,
 - Signal a vibrant start to the anticipated wholesale regeneration of the Leaside in this part of the borough,
 - As far as is possible ensure that the workspace is let at reasonable rents.
- 3.21 Any acquisition by the Council of affordable housing units, private housing units or workspace will be subject to a further Cabinet report at the relevant time.

- 3.22 The developer is intending to bring forward a design proposal for a cycle and pedestrian bridge over the River Lea from Lochnagar Street. The scheme will require a planning application to both Newham and Tower Hamlets Councils. Land on the Tower Hamlets side has been secured for the structure but not land on the Newham side, which is in private ownership. If the development takes place, the developer agrees to prepare and submit a planning application for the bridge, in joint names. The bridge design documents will be transferred to the Council. The developer will safeguard land for the bridge foot print within the development and transfer it to the Council when required. The developer will support the Council to progress other aspects of the bridge proposal.
- 3.23 The developer has set a deadline for exchange of contracts, which is linked to the terms of options over other land in phase two. If this date is not achieved the developer has said that it will not proceed with the acquisition of the Council land or phase two of the development. On this basis the legal work on the disposal contract has been completed at risk, with the developer having agreed to meet the Council's reasonable legal costs subject to a cap.
- 3.24 Completion is conditional on vacant possession being provided and on planning permission being granted. A long stop date from exchange of contract to completion has been agreed.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks the approval of the Mayor in Cabinet to declare sites at Ailsa Street, Lochnagar Street and Bromley Hall Road, all located within the Poplar Riverside Housing Zone area, surplus to requirements, and for them to be sold by negotiation to Ailsa Wharf Development.
- 4.2 Other options for the sites have been considered, including the possibility of the Council redeveloping them itself, however officers are of the view that the opportunity to regenerate the whole area through the sale of the land to the other significant landowner is the preferred option in order to facilitate the redevelopment of the full site. On the basis of the information set out in this report the Chief Financial Officer is supportive of that approach.
- 4.3 The sale transaction is a disposal to a 'special purchaser' i.e. a sale to a purchaser for whom the land has a higher value than for anyone else. The Council appointed Gerald Eve LLP to act on its behalf in the valuation assessment and subsequent negotiations with the developer. The costs of this commission are estimated at £25,000.
- 4.4 Following negotiation, a guaranteed capital receipt will be realised if the disposal completes in accordance with the proposed timeframes. In addition to the payment, a number of additional clauses have been negotiated by the Council.

4.5 Affordable Housing

- 4.5.1 The Heads of Terms provide the Council with the option to acquire some or all of the affordable housing units secured through the section 106 agreement or to nominate a body to do so. The acquisition of affordable housing units offers very good value for money, particularly as the purchases can be part funded (up to 30%) from the significant levels of retained receipts that the Council is holding from disposals of properties sold under Right to Buy legislation. It should be noted however that at this stage the Council is not committed to purchase these units or any empty commercial workspace units that it will also have a right to acquire if they remain vacant after a twelve month period. Any purchases will be subject to a detailed assessment of the financial viability of the properties and will be subject to further approval by the Mayor in Cabinet.
- 4.5.2 In addition to the affordable housing provided under Section 106 agreements, the Council will have an option to purchase private residential units for use as affordable housing. This will mean that the proportion of affordable housing across the overall scheme will exceed 40%. Again the Council is not entering into any commitment at this stage.

4.6 Overage and Claw-back

- 4.6.1 Planning and Sales overage conditions have been incorporated into the Heads of Terms to protect the Council's interests. Both of these overage options are dependent on future market events and are not quantifiable, however the inclusion of the provisions protects the Council's interests in the event that market values or construction densities on the site increase in future years. A claw-back arrangement is also proposed whereby the Council will receive an element any increase in land value in the event that the site is sold prior to development.

4.7 Buyback Provision

- 4.7.1 In order to encourage the development to take place in a timely manner, the Council has secured a buy-back provision. If this option does arise, a full assessment of the implications of repurchasing the site will be undertaken, with ultimate approval by the Mayor in Cabinet.
- 4.8 Capital receipts accruing from the sale of the site will be fully usable to support capital expenditure incurred by the Council. The property is held under General Fund powers and therefore any receipt is 100% usable. No potential receipts have been assumed as resources available to finance the capital programme, and as outlined above, future decisions in relation to this site will be the subject of further reports to the Mayor in Cabinet. All decisions on use of the capital receipt will be considered in accordance with the priorities identified within the Council's capital strategy.

- 4.9 Any costs that the Council incurs in relation to the sale can be met through the 'top-slicing' of up to 4% of the receipt value. These costs have been forward funded in advance of the capital receipt being generated, and will be abortive if the sale does not proceed for any reason. In these circumstances the costs would need to be met from revenue.
- 4.10 The sites have been empty for several years and generate no income for the authority. Disposal will mean the Council is no longer liable for any upkeep of the land on which it is currently incurring revenue costs in order to ensure that the sites are secure. These costs totalled approximately £158,000 during the 2016-17 financial year and disposal of the sites will avoid the need for this expenditure to be incurred in future and will therefore reduce potential budgetary risks. A growth bid to set aside revenue funding for the costs of holding vacant buildings will be considered as part of the 2018-19 budget process.
- 4.11 The Housing Zone area attracts significant levels of potential funding from the GLA, with elements relating specifically to the Ailsa Street area. Financing is available as repayable grant, if necessary, to support both the acquisition and fit out of workspace within the development and to 'top up' other possible funding from the CLG Housing Infrastructure Fund for the proposed River Lea pedestrian and cycle bridge. Decisions in relation to these projects will be sought within future reports to the Mayor in Cabinet.
- 4.12 The eventual redevelopment of the full site will generate resources through Section 106 or Community Infrastructure Levy obligations, or affordable housing liabilities. These will be controlled by the Council. The housing units within the development will also increase the Council's entitlement to New Homes Bonus which is currently assessed at approximately £1,900 per annum per additional housing unit. There are approximately 800 new housing units proposed within the development area which would equate to an additional New Homes Bonus entitlement of £1.5 million based on current rates. Following changes to the system the funding for each new property is now paid for a four year period rather than the original six years. The Council will also generate additional Business Rate income from the commercial workspace units.
- 4.13 VAT**
- 4.13.1 The position in respect of the Council's option to elect to tax the property will need to be fully considered against its partial exemption position particularly in the light of the comments at para 14 of this report. Such an election would impact on both the sales receipts and any future income streams.
- 4.14 Details of the disposal terms and further financial comments are included within the restricted appendix to this report.

5. LEGAL COMMENTS

- 5.1 The report seeks the decision to declare the Council's land identified as surplus to requirements and to dispose of the freehold interest based on the terms summarised in exempt Appendix B.
- 5.2 The land is held in the General Fund and, therefore, the Council has the power by virtue of section 123 of the Local Government Act 1972 to dispose of it in any manner that it may wish. Absent Secretary of State consent, the disposal, however, must be for the best consideration that can reasonably be obtained.
- 5.3 As confirmed at paragraph 3.12 above and by independent external advice set out within the exempt Appendix C, the terms of the disposal satisfy the legal duty to obtain the best consideration.
- 5.4 The land is being sold by direct negotiation with the developer, rather than on the open market. The Council's Disposal Policy, agreed by Cabinet in April 2015, permits such a transaction in circumstances where the disposal could enable a marriage value to be realised. This is the case in situations where, as here, the buyer has a legal interest in the adjoining land.
- 5.5 The Council must consider, when disposing of land in circumstances where, in return, it may also be receiving the benefit of "works", whether the transaction gives rise to a public works contract. If it did, then the contract would need to be awarded in accordance with the Public Contracts Regulations 2015. The law is clear, however, that where the developer does not have an obligation to carry out the works, the transaction shall be treated as an exempt land disposal. As explained in the report, there is no such obligation in this situation.
- 5.6 There will be provisions within the legal agreement to encourage development, including financial clawback (triggered when the land is sold on within a defined period), sale overage (which will disincentivise any on-sale without development) and an option for the Council to buy-back the land (where development hasn't commenced within a defined period).
- 5.7 Where the developer does build out the scheme, the Council has the ability to exercise options to acquire property, as set out in the exempt Appendices. Should it wish to exercise any of those options, a further Executive decision will be required at the appropriate time.
- 5.8 The Council's best value duty requires it to manage its asset portfolio in an efficient and effective way. Disposing of land for the best consideration obtainable together with reducing revenue expenditure discharges this duty.
- 5.9 The Council is required when exercising its functions to comply with the duty set out in section 149 of the Equality Act 2010. Given the current usage of the land, there are no direct equality implications arising from the proposed transaction.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The public sector equality duty under section 149 Equality Act 2010 arises where the Council exercises its functions. The Council proposes to use the capital receipt generated by the sale for priority projects. Such schemes primarily benefit persons who are the intended beneficiaries of the equality duty. The affordable housing to be provided will benefit those in housing need and on lower incomes.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The arrangement proposed in this report supports the council's best value duty. The proposal represents an efficient and effective use of the Council's estate.
- 7.2 Where an asset has been identified as surplus to requirements, the Council has the option to retain the asset for future use (and in the meantime to pay any costs associated with maintaining and securing the asset) or to sell the asset for a capital receipt.
- 7.3 In this case, the land is in poor condition and has a history of squatting and vandalism. It is guarded on a 24/7 basis at a cost to the Council and currently generates no income.
- 7.4 The Council will receive a capital receipt from the sale and facilitate the development of the wider Ailsa Wharf scheme generating new affordable residential units and workspace providing employment opportunities.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The Council's land and the surrounding area are in poor environmental condition and the area is subject to extensive fly-tipping, which will cease once redevelopment takes place. Any redevelopment will be of a substantially higher standard of energy efficiency than the current arrangements and built to higher environmental standards.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The key risks are set out below.
- 9.2 Vacant possession - the disposal is delayed leading as a result of squatting or failure to achieve vacant possession.

- 9.3 *Mitigation* – Asset Management will ensure that the site is continuously secured until completion. Active management of the process for securing possession.
- 9.4 Development not started – the site is not developed as anticipated by the Council.
- 9.5 Mitigation – a series of measures are built in to the sale terms designed to encourage development to be carried out.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Vacant land attracts anti-social behaviour, including vandalism and squatting. The area around the Council land is subject to considerable fly tipping, which the redevelopment will address in the future. The Council is expending significant funds in ensuring that the land is secure. However there are still attempts to enter in order to squat and/or vandalise.
- 10.2 The subsequent redevelopment of the land will remove these problems and help to deal with a number of unattractive sites within the borough.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no immediate safeguarding implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix A – Site Plan
- Appendix B – Exempt information – summary of disposal terms
- Appendix C – Exempt valuation information

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

- Richard Chilcott, Acting Divisional Director, Property & Major Programmes