

Cabinet	 TOWER HAMLETS
25 March 2020	
Report of: Ann Sutcliffe, Corporate Director, Place	Classification: Unrestricted
Affordable Self-Build on Council Owned Land - Policy and Guidance Document	

Lead Members	Councillor Sirajul Islam, Statutory Deputy Mayor and Cabinet Member for Housing; and Councillor Rachel Blake, Deputy Mayor and Cabinet Member for Planning, Air Quality and Tackling Poverty
Originating Officer(s)	Mark Slowikowski, Strategy and Policy, Place
Wards affected	All wards
Key Decision?	Yes
Forward Plan Notice Published	29/10/2019
Reason for Key Decision	Significant impact
Strategic Plan Priority / Outcome	All

Executive Summary

The Mayor has committed to support up to 50 self-build homes over the period 2018-22. To facilitate this, officers have produced a self-build policy and separate guidance document.

The Self-Build policy sets out the Council's formal position on key aspects of the self-build delivery process and the guidance document assists the borough's self-builders in navigating the self-build system; particularly the self-build register.

Both documents have been subject to consultation with members of the Self-Build Forum and the wider public. At the same time, the first tranche of self-build sites were notified to forum members and the public.

RECOMMENDATION

The Mayor in Cabinet is recommended to approve:

1. The final Self-Build policy and guidance documents.
2. The sites at Lark Row and Christian Street to be put forward for marketing under the initial self-build programme.

1. REASONS FOR THE DECISIONS

- 1.1 Both documents, and a range of explanatory papers supporting the policy, were considered at divisional, corporate and lead member level as part of the pre-consultation approval stage in August 2019.
- 1.2 The formal consultation period ran for just over 6-weeks between Wednesday 16th October and Sunday 30th November 2019. Appendix 4 contains details of the consultation exercise.
- 1.3 The final versions of the Self-Build Policy and the Self-Build Guidance are appended to this report as Appendix 1 and 2, respectively. They include a number of amendments made as a result of the consultation exercise. These are summarised in Sections 3.3 to 3.15, below.

2. ALTERNATIVE OPTIONS

- 2.1 Not implementing a self-build policy may result in failure to deliver on the Mayoral commitment on self-build housing and disaffect the self-build community in the borough. Potentially, there could also be a breach of statutory duty in relation to the provisions of the Housing and Planning Act 2016 and the Self-build and Custom Housebuilding Act 2015. A recent planning inspectorate appeal in Leicestershire (25 June 2019) has upheld the requirement of local authorities to comply with this legislation.
- 2.2 Consideration has been given to an alternative purchasing option by prospective self-builders. Instead of disposing of the land by outright sale, the Council could grant the self-builder a long lease at a ground rent of between 4-6% of the land value, subject to a periodic review based on CPI. However, this option does not accord with the Council's Property Procedures for Disposals and Lettings 2019.
- 2.3 A further alternative option considered was for the Council to enter into a shared equity arrangement with the self-builder with the Council providing an additional "affordability discount" (of between 20% to 50%) by way of a retained equity stake. The comments provided by the Chief Finance Officer at the pre-consultation stage did not recommend this option.

3. DETAILS OF THE REPORT

Self-Build Policy

- 3.1 Appendix 1 – the self-build policy sets out the Council's position on self-build housing and covers nine key areas of the self-build process:
 1. Introduction
 2. Delivery of Affordable Housing
 3. Site Information and Pre-Planning Advice
 4. Site Evaluation and Disposal
 5. Site Marketing, Expressions of Interest and Allocation
 6. Consultation

- 7. Quality Control
- 8. The Community Infrastructure Levy and VAT
- 9. Equalities and Diversity

3.2 Each section was explained in more detail in the pre-consultation report.

3.3 Full details of the changes made following the consultation exercise are given in Appendix 4. The following is a summary of the changes made:

3.4 **General Recommendations**

Changes have been made to the policy so that we avoid the strict yes/no criteria as not to overly restrict proposals coming forward.

3.5 **Individual Self-Builders**

The policy and guidance clarifies the circumstances whereby individual self-builders can bid for a site. This was a key question raised at the Self-Build Forum on the 16th October 2019.

3.6 **Affordability**

We have explained in more detail the rationale behind the £90k household income cap for prospective bidders; through reference to set criteria for London shared ownership.

3.7 The policy makes clear the Council's aspirations for 100% affordable rented homes while clarifying that tenure and the number of affordable units proposed will be assessed by applying weighted criteria within the bid scoring methodology.

3.8 The policy states the safeguards the Council will take to ensure that what is proposed in the bid and subsequent planning application is then delivered.

3.9 **Borough Residents**

The requirement for bidders to have lived/worked in the borough for a minimum of 3 years is more clearly communicated as an **aspiration** of the Council and assessed within the bid scoring methodology.

3.10 **Rented properties**

The policy has been strengthened to make it clear that the Affordable Self-Build Programme is a site disposal programme and that the Council will not take any role in the future management or maintenance of self-build properties.

3.11 **Self-Build Guidance**

The self-build guidance document (Appendix 2) is intended to inform aspiring self-builders on key stages of the self-build process especially the operation of the self-build register.

3.12 Available support

The guidance document has been amended to make it clear that the Community Housing Fund, which has funding available to 2023, provides grant for both capital and revenue funding for groups to develop their ideas and deliver proposals.

3.13 Proposed Self-Build Sites

Appendix 3 contains details of the proposed sites. It is recommended that one of the larger and one of the smaller sites are put forward for the initial self-build programme. The two sites that officers are recommending to be released as the first tranche are Lark Row in E2 and Christian Street in E1.

- 3.14 Following the consultation exercise, the information provided to aspiring self-builders on the sites has been improved to include full due diligence information for each site as and when they are released for bidding.

Indicative Timeline

- 3.15 The indicative timeline for implementation of the policy, guidance and launch of the sites is outlined below:

Action	Date
Cabinet Approval	25 March 2020
Launch of Policy, Guidance and release of first Tranche Sites	April 2020
Bid Submission Deadline	June 2020
Notification of Award of site	September 2020

- 3.16 Subject to Cabinet approval, the policy and guidance documents will be reviewed upon completion of the first tranche of sites disposed to self-builders, to ensure any lessons learnt from the initial disposal are captured.

4. EQUALITIES IMPLICATIONS

- 4.1 An Equality Analysis Quality Assurance Checklist (EAQAC) has been undertaken and did not identify any negative impacts across the nine plus one protected characteristics. The EAQAC is appended to this report as Appendix 5.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This report seeks approval for the introduction of a new policy in compliance with the Right to Build requirement of the Housing and Planning Act 2016. The policy is state aid compliant and fulfils existing obligations in relation to best value and achieving best consideration in the disposal of Council owned land.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks approval of this policy and guidance documents. There are no financial implications directly emanating from this decision.

- 6.2 The report also seeks approval to put forward and market two sites at Lark Row and Christian Street for which there are financial considerations.
- 6.3 These sites are two of eight plots of land identified that the Council wishes to consider as part of a self-build/ co-housing pilot and these are detailed in Appendix 3. As outlined in that Appendix the Council has received £75,000 of GLA funding in order to carry out due diligence on these sites.
- 6.4 To reflect the additional duties falling on local authorities as a result of the need to establish and maintain the self-build register, New Burdens funding has been allocated to councils. A total of £90,000 will be allocated to local authorities over the period 2016/17 to 2019/20, of which £10,000 has been spent to date leaving a balance of £80,000. In addition, a total sum of just over £86,000 of Community Housing Funding has been received by the Council which is available for work undertaken in relation to this area.
- 6.5 The disposal of this land for self-build housing may not represent the best financial consideration for this land, with a larger rental or capital receipt available should other options be pursued, although this has not formed part of this report.
- 6.6 Financial consideration is not the only factor in determining this decision, with a mayoral recognition that there is a requirement for land to be made available for the self-build market within the Borough. Council legislation allows for a reduced consideration as long as there is an improvement in the well-being of the area as a result and that the financial loss not greater than £2m.
- 6.7 In order to minimise any loss and maximise return within the self-build market, the Self Build Policy proposes that Council-owned land identified for disposal will be subject to a closed bidding process, with bids being evaluated against the criteria of: value for money, community benefit, deliverability, design innovation and energy efficiency with land being sold to the highest scoring bidder.
- 6.8 Appendices to the policy set out a percentage cap on future sales and rental levels, should the winning bid result in land being disposed of at lower than the market value. This would essentially be the difference between the value of the completed development, and the development costs (including the reduced offer for the land), expressed as a percentage.
- 6.9 Any disposal policy will need to weigh up the benefits of sites being developed by a third party against the sales receipts that will accrue to the Council. As sites are considered for disposal and marketed, appropriate accounting treatment of the assets may need to be applied if the relevant criteria are met. Any capital receipts accruing from the sale of the site will be fully usable to support capital expenditure incurred by the Council.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The report seeks views on various options to drive affordable housing in the Borough, each of which would necessitate a disposal of land held in the Housing Revenue Account.

- 7.2 Disposal of housing land is governed by the Housing Act 1985 (the “1985 Act”). Section 32 of the 1985 Act provides that a local authority may not dispose of any housing land held by them without the consent of the Secretary of State. In order to facilitate disposals, the Secretary of State has issued a series of general consents (the “General Housing Consent 2013”) which provide such consent in limited circumstances. The circumstances, to the extent they are relevant to this paper, are:
- 7.2.1 Under para A3.1.1, where the disposal is for a consideration equal to the market value of the property, save for this does not apply where, the disposal is to a body in which the local authority owns an interest ; and
- 7.2.2 Under para A3.2, where the land is vacant. “Vacant” for these purposes means land on which no dwelling-houses have been built, or where they have been built, they have been demolished or are no longer capable of human habitation and are due to be demolished. Should this apply, the Council has the power to sell the land at any price it determines.
- 7.3 Wherever the Council has the power to exercise discretion on the price for which it sells land, it must be cognisant of its role as the guardian and trustee of public assets. As such, it must act reasonably and take into account all material information when forming a decision. This is likely to include an expert valuation of the land, together with other policies and statutory guidance.
- 7.4 The report goes on to explain the duties imposed on local authorities by the Self-build and Custom Housebuilding Act 2015 (the “2015 Act”). It should be noted that the legislation does not require the Council to depart from the position under the 1985 Act or the General Housing Consent, and nor does it permit the Council to do so. Rather, the 2015 Act requires the Council to have regard to the demand on the register of those wishing to build their own home on a serviced plot when exercising its functions, including its disposal function.
- 7.5 The Council has a wide general power of competence under Section 1 of the Localism Act 2011 to do anything that individuals generally may do. The existence of the general power is not limited by the existence of any other power of the Council which (to any extent) overlaps the general power. The Council can therefore rely on this power in due course to agree to any specific proposal for a Self-Build type scheme, subject to consideration by the Mayor in Cabinet of all relevant considerations which will need to be set out in any future report to Cabinet to agree any final proposal.
- 7.6 The Council is obliged as a best value authority under section 3 of 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 information within the report suggests that the proposed disposal will secure the objectives set out in the 1999 Act.
- 7.7 The Council is required when exercising its functions to comply with the duty set out in section 149 of the Equality Act 2010, namely to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity between those who share a protected characteristic and those who do not,

and foster good relations between those who share a protected characteristic and those who do not. The information within the report suggests the proposed disposals will help to secure these objectives.

- 7.8 Section 2 in Appendix 1 as stated at 3.2 of this report sets out how the Council will ensure that it achieves “affordability in perpetuity” i.e. through the use of restrictive covenants on the sale of land for self-build projects, reinforced by S.106 planning consents.
- 7.1 The Council may want to consider the possibility of entering into pre-emption rights or negotiating Buyback provisions in the event of failure to build or on subsequent resale.

Linked Reports, Appendices and Background Documents

Linked Reports

- None

Appendices:

Appendix 1 – Self Build Policy

Appendix 2 – Self Build Guidance

Appendix 3 – List of Proposed Self-Build Site under Consideration

Appendix 4 – Consultation Report

Appendix 5 – Equality Assessment Quality Assurance Checklist

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

- None.