


<b>Individual Mayoral Decision</b>  11 <sup>th</sup> October 2023	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Stephen Halsey, Interim Chief Executive	<b>Classification:</b> Unrestricted
<b>Cancellation of Cabinet Approvals Regarding Disposal of Council Sites for Self-Build</b>	

<b>Lead Member</b>	<b>Councillor Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housebuilding</b>
<b>Originating Officer(s)</b>	Karen Swift, Director of Housing Niall McGowan, Megan Rourke (Housing Regeneration)
<b>Wards affected</b>	Whitechapel, Bethnal Green West, Mile End
<b>Key Decision?</b>	Yes
<b>Reason for Key Decision</b>	Concerns a programme potentially affecting sites in three (multiple) wards.
<b>Forward Plan Notice Published</b>	N/A
<b>Exempt information</b>	N/A
<b>Strategic Plan Priority / Outcome</b>	<b>2. Providing homes for the future</b> By working with developers and housing associations to deliver a minimum of 1000 social homes for rent each year.

### Executive Summary

This report explains that the Mayor has reviewed the Council's previous decision to set up an Affordable Self-Build Programme ("the Programme") for affordable community-led self-build and to dispose of up to four small Council-owned sites for the purposes of enabling self-build by selected community groups.

Approval was granted by the Mayor in Cabinet on 21 September 2021, for sites at Lark Row E2, Christian St E1, Smythe St E14 and Pigott St E14 ("the Sites"), to each be disposed on a long lease for self-build, in accordance with the Self-Build Policy and Guidance ("the Policy") approved on 25 March 2020.

After due consideration of all the implications the Mayor has asked officers to halt the Programme, and instead to prioritise use of the Sites for the direct delivery of Council homes for rent, or to pursue alternative delivery routes that will maximise affordable / social rented units on the sites.

## Recommendations:

The Mayor is recommended to:

1. Declare that the Sites are not surplus to requirements.
2. Cancel the following Mayoral / Cabinet approvals:
  - a. For an Affordable Self-Build Programme, made by [the Mayor on 25 March 2020](#) (An executive decision was necessary due to Cabinet not meeting following the outbreak of Covid-19).
  - b. For the disposal on a long lease of four Council-owned sites (Lark Row E2, Christian St E1, Smythe St E14 and Pigott St E14), made by the Mayor in [21 September 2021, Cabinet](#), for Self-Build in accordance with the previously approved Self-Build Policy and Guidance.
3. Confirm the cancellation of the Programme in its current format, to avoid further abortive work by Council officers, the three community-led housing groups (Squeezed London, Platform Homes and RODE Housing) (“the Groups”) and the advisory group (Community Led Housing London), noting this affects the following sites in order: Lark Row E2, Christian Street E1 and Pigott Street E14 (See Appendix A). Smythe Street was not marketed for disposal.
4. Authorise Council officers to hold discussions with the Groups, with grant funders (e.g. GLA), and the support agency (Community Led Housing London), to explain this decision to them; to explore the purchase of existing scheme designs; and to discuss and negotiate the reasonable costs incurred by the Groups to date.
5. To note the Equalities Implications as set out in Section 4.

## 1. REASONS FOR THE DECISIONS

- 1.1. The Mayor does not wish to pursue the granting of a long lease of the Sites for the self-build Programme delivering intermediate type tenures (i.e. discounted market sale), but instead wishes the Sites, like other Council-owned land, to be brought forward to deliver, if possible, social housing for rent, in line with his strategic priority to deliver social homes.

## 2. ALTERNATIVE OPTIONS

- 2.1. **Option A – Proceed with current policy/programme:** The Mayor has reviewed the Programme and the Policy in its current format and has advised that this would contradict his strategic priority to deliver social homes.
- 2.2. **Option B – Deliver the three sites marketed:** Whilst wishing to halt the self-build programme, the Mayor has considered disposal of the Sites marketed to date for self-build, to the selected Groups, in line with the Policy and Cabinet Decisions. However the Mayor has advised, as per Option A, that this would contradict his aim to deliver social homes.
- 2.3. **Option C – Deliver more social rented homes through the self-build programme :** At present the three schemes would collectively deliver 13 mostly intermediate homes for discount market sale, with up to two social rented units.

However the delivery of providing more affordable rented tenures, on the scale the Mayor would wish to see, is difficult for small self-build groups to deliver because they are not registered providers and therefore this approach is not viable.

### **3. DETAILS OF THE REPORT**

#### **3.1. Background & Current Status of Self-Build Schemes**

- 3.1.1. An LBTH Self-Build Register was established in 2016 as a statutory requirement in response to the Self-Build and Custom Housebuilders Act 2015 and Self-Build and Custom Housebuilding (Register) Regulations 2016. There are currently 433 individuals and groups registered as interested in self-build.
- 3.1.2. External grant funding (see Appendix B) enabled the Council to kick-start a Programme. The Programme was devised to make it easier for potential Community-led housing groups and individual self-builders to access land which at that time was not being developed by the Council, to self-build affordable homes in the borough. The schemes which emerged through the bidding process were predominantly for affordable ownership, i.e. discounted market sale.
- 3.1.3. In 2021/22, three (of four possible) Council sites were put forward as pilot self-build opportunities. The Smythe Street site was not marketed due to complex land rights issues. Bids were invited from groups interested in doing self-build. A total of 28 bids were received across these sites. To be selected, successful bidders for the three pilot sites had to prepare proposals to meet detailed assessment criteria including: governance and management, local connection, community benefit, value to the council, scheme design, deliverability, financial model and receipt offer. Submissions were reviewed by a panel of LBTH council teams (Planning, Viability, Housing Regeneration and Urban Design), Community Led Housing London and the GLA.
- 3.1.4. Lark Row E2 and Christian St E1 were open for bidding on the GLA Small Sites Portal from 29th January to 16th April 2021. Squeezed London (Lark Row) & Platform Homes (Christian St) were notified as highest scoring bidders in August 2021.
- 3.1.5. The bidding for Pigott Street was launched on the GLA Small Sites Portal on 8 February 2022, with a deadline on 20 April 2022. RODE Housing were notified as the highest scoring bidders in July 2022.
- 3.1.6. The selected Groups from these competitive processes (selected subject to conditions precedent, such as eligibility criteria, funding criteria and planning consent) have since been progressing their designs, meeting with the council and grant funders on a regular basis, attending pre-application meetings, engaging with neighbouring residents, organising public consultations, and employing consultants and legal advisors to deliver approx. thirteen homes across the three sites, largely of intermediate tenure (i.e. mostly discount market sale).
- 3.1.7. The Groups have liaised closely with a dedicated Council officer and with the Council's lawyers, to seek advice and help to resolve matters around land rights, planning concerns and lease arrangements for disposal.

- 3.1.8. While heads of terms were agreed, these were subject to contract and the parties have not entered into an agreement for a lease, or lease.

### **3.2. Previous Decisions under review**

- 3.2.1. Approval for an Affordable Self-Build Programme was made by [the Mayor on 25 March 2020](#) (An executive decision was necessary due to Cabinet not meeting following the outbreak of Covid-19).
- 3.2.2. On [21 September 2021, Cabinet](#) approved four council owned sites (Lark Row E2, Christian St E1, Smythe St E14 and Pigott St E14) to be disposed on a long lease for Self-Build, in accordance with the previously approved Self-Build Policy and Guidance.

### **3.3. Reason for the Decision Review**

- 3.3.1. Mayor Rahman has requested that all disposals be paused whilst he considered each matter on a case-by-case basis.
- 3.3.2. After due consideration, the Mayor has informed officers that he does not wish to pursue the disposal of the Sites for self-build projects delivering intermediate type tenures, but instead the Mayor wishes the Sites, like other Council sites, to be brought forward, if possible, for direct delivery by the Council of social housing for rent, in line with his strategic priorities.
- 3.3.3. In reviewing progress to date, the Mayor has acknowledged the work done by the Groups, LBTH Officers and colleagues from other agencies. However the Mayor has advised that his priority is to utilise Council-owned land, even on challenging sites, to pursue the development of new social housing for rent for local people in most need, i.e. who are on the Council's Housing List.

### **3.4. Next Steps**

- 3.4.1. To formalise the Mayor's decision, in line with his instructions to officers, to wind up the self-build workstream, as set out in the Recommendations.
- 3.4.2. The Council will need to communicate this decision, and the rationale, swiftly to a number of external stakeholders, including (but not exhaustive of):
- Community Led Housing London;
  - The Groups;
  - GLA / DLUHC;
  - Council's self-build website;
  - Members of the self-build register;
  - Any other press statements.

3.4.3. Officers will then engage with the funding bodies and the Groups, in line with further legal advice to discuss and negotiate the reasonable expenses incurred by the Groups to date.

3.4.4. The Council will explore, subject to legal advice and discussion with the Groups and affected parties, whether it would be possible to negotiate the purchase of the designs developed by the Groups.

#### **4. EQUALITIES IMPLICATIONS**

**4.1.** Any subsequent development on these sites, whether delivered directly by the Council or via an alternative delivery route, will be expected to maximise affordable rented units on the sites. Such accommodation will help to meet the demand in the borough from people on the housing waiting list in recognised housing priority need.

#### **5. COMMENTS OF THE CHIEF FINANCE OFFICER**

5.1 The report is seeking approval to cancel the affordable self build programme at four sites within Tower Hamlets that had previously been approved and to declare these pockets of land not surplus to requirement.

5.2 As indicated above, it is likely that the Groups may be entitled to some reasonable financial remedy, subject to evidenced qualifying costs. Officers are seeking legal advice on this.

5.3 Appendix B details the external funding received for the self build programme from DLUHC and the GLA. It may also be necessary to refund some or all of these grants paid to date to the Council and/or to the Groups, subject to legal advice and negotiation around terms and conditions.

5.4 There is no HRA budget to meet any revenue costs resulting from the cancellation of the programme and budget managers will need to identify resources from within existing budget provision to meet any costs.

5.5 The decision to cancel the Programme will result in the Sites being retained rather than disposed of and for council led development schemes to be brought forward for approval through the capital governance process for inclusion in the capital programme, subject to affordability and funding being available.

#### **6 COMMENTS OF LEGAL SERVICES**

6.1 Officers have taken advice from LBTH legal and from external counsel on (a) whether the Groups have a contract that is enforceable as against LBTH, (b) whether the Mayor is obliged to make the Sites and other land available in order to comply with LBTH's obligations under the 2016 Act, (c) what potential challenges are available to the Groups and (d) to what (if any) compensation the Groups are entitled.

6.2 While the content of legal advice is privileged, Officers are advised that –

6.2.1 There is no enforceable contract as between the Groups and LBTH.

- 6.2.2 There is no obligation to make the Sites – or any Council-owned land available for self-build in order to comply with the obligations in 2016 Act. The obligation is to maintain a register and to grant sufficient planning consents to meet demand under that register; the Act does not require those consents to be made in respect of Council-owned land.
- 6.2.3 While there are potential challenges to any public law decision, by way of judicial review, those challenges are subject to a high threshold and to a test for permission.
- 6.2.4 In the absence of an enforceable contract, there is no entitlement to damages under the contract. However, the Council may have to cover some of the reasonable losses incurred by the Groups to date.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report (Previous Decisions)**

- [Cabinet Report : Affordable Self-Build on Council Owned Land - Policy and Guidance Document \(25 March 2020\)](#)
- [Cabinet Report: Affordable Self-Build on Council Owned Land – Disposal and marketing of sites \(22 September 2021\)](#)

### **Appendices**

- Appendix A: Pilot Self-Build Site Details (Attached below)
- Appendix B: Grant Funding to the Council (Attached below)

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

- NONE.

Contact details for documents: [self-build@towerhamlets.gov.uk](mailto:self-build@towerhamlets.gov.uk)

## APPENDIX A – Pilot Self-Build Site Details

### Pigott Street

Site area: Approx. 300 m<sup>2</sup>, Location: E14 7DN



Image: Existing site

### Lark Row

Site area: Approx. 350 m<sup>2</sup>, Location: E2 9JA



Image: Existing site

### Christian Street

Site area: Approx. 65m<sup>2</sup>, Location: E1 1AY



Image: Existing site

## **APPENDIX B – Grant Funding to the Council**

1. **New Burdens Fund** (was **DCLG**, then **MCHLG**, now **DLUHC**) – one-off instalment received **June 2016 (£5,850)** with further instalments totalling **£90,000** on **2016/2017, 2017/2018, 2018/2019, and 2019/2020**. Funding brought in as part of the new burdens assessment ‘to provide support to the Council towards expenditure lawfully incurred by [the Acts] in relation to the requirement for authorities to give suitable development permission to enough suitable plots of land to meet the demand for Self-Build and custom housebuilding in their area’.
2. **Small Sites Fund (GLA)** – received **March 2019 - £75,000**. Funding brought in to provide public landowners with an alternative mechanism to bring small sites forward for development and provides funding for site identification, due diligence, and capital funding to unlock otherwise unviable sites. The funding was used to carry out this work on ten small sites across the Borough that the Council had deemed as potentially suitable for Self-Build and/or cohousing.
3. **Community Housing Fund** (was **DCLG**, then **MCHLG**, now **DLUHC**)– initial instalment received **December 2016** with further instalment received early 2017- **£86,063**. Funding brought in to support community-led housing developments in areas where the impact of second homes is particularly acute, and to enable local community groups to deliver affordable housing units of mixed tenures on site which are likely to be of little interest to mainstream housebuilders and thereby will contribute to the overall national effort to boost housing supply.