

Cabinet 16 December 2020	 TOWER HAMLETS
Report of: Ann Sutcliffe, Corporate Director of Place	Classification: Part Exempt
Land at Mantus Road – disposal to Tower Hamlets Community Housing	

Lead Members	Mayor Biggs. Councillor Bustin, Cabinet Member for Planning and Social Inclusion
Originating Officer(s)	Vicky Clark, Divisional Director Growth and Economic Development
Wards affected	Bethnal Green
Key Decision?	Yes
Forward Plan Notice Published	26 October 2020
Reason for Key Decision	Financial Threshold
Strategic Plan Priority / Outcome	1. People are aspirational, independent and have equal access to opportunities; 2. A borough that our residents are proud of and love to live in; 3. A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our borough.

Executive Summary

The Council owns a piece of land at Mantus Road to the south of, and parallel to, a railway line and which was formerly used as an access road ('the Land'). It is immediately to the north of the Bancroft Estate. A second strip of land between Mantus Road and the railway line is held on a long lease by Tower Hamlets Community Housing (THCH). THCH has planning permission for a residential development of the combined sites. The report proposes that the Land is sold to THCH on a long lease in order to facilitate its future development for housing.

Exempt Information

By virtue of section 100A of the Local Government Act 1972 and paragraph 3 of Schedule 12A of the Local Government Act 1972, an appendix in this report is

exempt as it contains Information relating to the financial or business affairs of any particular person (including the authority handling the information). Specifically, the appendix contains land valuation information; the premature publication of this information could prejudice the Council in negotiating the terms of transaction. In all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the appendix as it could jeopardise the Council's financial position when negotiating the transaction with the developer.

Recommendations:

The cabinet is recommended to;

1. Agree that the Land shown on the plan in Appendix 1, is surplus to the Council's requirements and approve disposal to Tower Hamlets Community Housing (THCH) on a long lease at a peppercorn rent, subject to a premium payment.
2. Agree the main terms of the transaction as summarised at paragraph 3.7 and at exempt Appendix 2.
3. Delegate authority to the Corporate Director of Place to agree minor variations to the terms and to agree any other terms necessary to conclude the agreement with THCH, including the grant of rights of access across the Council's retained land.
4. Delegate authority to the Corporate Director of Place to agree the grant of licences to THCH to carry out any works associated with the development on the Council's retained land and for the temporary use of the Council's land to facilitate the construction of a development.
5. Authorise the Corporate Director of Place to agree to any minor variations to the boundaries of the Land to be sold, in order to implement the recommendations above.
6. Authorise the Corporate Director of Place in liaison with the Corporate Director of Governance to enter into the necessary legal agreements required to implement the recommendations above
7. Agree to consider the information at Appendix 2 as exempt under the provisions of section 100A, and paragraph 3 of Schedule 12A of the Local Government Act 1972.

1 REASONS FOR THE DECISIONS

- 1.1 The transaction will enable a narrow strip of Council land, which would be difficult to develop in isolation, to be redeveloped for housing.
- 1.2 The Council will obtain a capital receipt in exchange for the transfer of its land

on a long leasehold basis.

2 ALTERNATIVE OPTIONS

- 2.1 The two main alternative options are to retain the Land in its existing state, or consider alternative uses for the Land in isolation from the adjoining THCH land.
- 2.2 In respect of the first option, no decision would need to be taken by the Council at this stage and future opportunities may arise. However, the current state of the Land is not benefiting the local environment, it has been subject to anti-social behaviour and is vulnerable to fly-tipping.
- 2.3 For the second option, the Land is vacant and could potentially be developed for a use supporting the neighbouring estate, such as amenity land or play space. However, there are no scheme proposals of this sort and any scheme would involve capital and revenue costs. The shape and size of the Land limits alternative uses, and it would be very difficult to take forward a built development in isolation.
- 2.4 In either alternative option, the current opportunity to facilitate new housing provision in partnership with THCH would be lost.

3 DETAILS OF THE REPORT

- 3.1 The Council owns the Land which is principally a strip of land at Mantus Road, of approximately 2,300 square metres in area (0.57 acres). A location plan is attached at Appendix 1. The main area of the Land was formerly used as a road, which ran along the northern edge of the Bancroft Estate. It is permanently closed at its eastern end and closed to vehicles with gates at its western end. The area has been subject to anti-social behaviour and is vulnerable to fly tipping and the Council has installed CCTV cameras covering the land. The Land runs parallel to land to the north owned freehold by Network Rail, which has been sold on long leases to THCH. The Land also includes a small area to the west of Malcolm Road, and is held in the HRA.
- 3.2 THCH plans to redevelop the combined sites for housing. Given the physical limitations of the THCH land alone, it was considered that a reasonable residential development scheme was not possible without the inclusion of the Council's land.
- 3.3 The whole development site (comprising both THCH and Council ownerships) is a strip of land, extending to around 4,700 square metres (1.17 acres) that runs along the southern side of the railway line. The site is split by Malcolm Road, which runs north to south and under the adjacent railway line.
- 3.4 A planning permission for a residential development was granted on 1 April 2016. The consent is for "redevelopment to provide 93 residential units in buildings ranging from three to six storeys including amenity space,

landscaping, disabled car parking and cycle parking.” An associated listed building consent was granted for use of the railway arches to provide the cycle storage. The scheme provides 33% affordable housing. The consent has been implemented in planning terms and therefore remains valid as confirmed by a lawful development certificate issued on 8 August 2019. THCH may choose to continue with developing out the permitted scheme, propose amendments or submit an application for a new scheme. A new application would be assessed against policies in the Council’s current Local Plan, adopted London Plan and emerging draft London Plan.

- 3.5 The development of the land has been under discussion and the subject of numerous proposals over a long period. THCH took two leases from Network Rail of its land in 2011. The planning application for the consented scheme was made in August 2012.
- 3.6 In 2014, the Council contemplated transferring the Land at nil value to THCH to enable a scheme to progress. However, this approach would not meet best value requirements and it did not proceed. Any scheme will have a high level of abnormal development costs due to the proximity of the railway line, ground conditions and design, because of the elongated nature of the site.
- 3.7 Negotiations with THCH in respect of the terms under which the Land is sold to facilitate a development have been substantially concluded, such that a formal decision is now appropriate. The main elements are set out below and key commercial points are included at exempt appendix 2.
 - **Tenure.** The Council will grant a 250-year lease of the Land to THCH.
 - **Premium.** THCH will pay a premium of the sum set out in Appendix 2, payable in two instalments. The first on completion of the lease and the second a year later.
 - **Affordable housing.** Any new or amended scheme for the site will include at least the same amount of affordable housing as in the consented scheme.
 - **Buy back.** If a development is not commenced within five years, the Council will have an option to buy back the Land for the purchase price, plus indexation and a proportion of the costs incurred by THCH in pursuing a development scheme.
 - **Pre-emption.** If THCH wishes to sell the site, the Council will have a right to match the offer and undertake the purchase.
 - **Clawback.** If THCH sells the site, the Council will receive a payment of a proportion of the uplift in value from a base figure, comprising the site purchase costs and costs incurred in taking forward the development of the site.
 - **Overage.** An overage calculation will be carried out on the completion of a development. The calculation will establish a figure representing any surplus that has been achieved, comparing the value of the completed scheme against the costs involved, including a return for the developer. The Council will then be paid a proportion of any such surplus.
 - **Costs.** Each party is to bear its own costs in the transaction.

- **Access rights.** Access to the development site will be required across the Council's estate to the south, for both vehicles and pedestrians. A number of estate access roads lead on to the site. The details of the rights involved remain to be agreed. The rights would need to be capable of change if the development scheme changes and, in the long term, should the Council wish to undertake any development on its land. The use of rights would be subject to a payment of a fair proportion of the costs involved in maintenance. It is proposed that agreement of the detailed provisions on this issue is delegated to the Corporate Director.
- **Underground refuse store (URS).** There is a small area of land to the west of Malcolm Road, separate from the main development site, which is proposed to be used for a URS. A tenure arrangement is proposed for this area allowing the Council an ability to move the location of the URS in the future, subject to meeting the costs involved.
- **Construction phase licences.** The development will require temporary use of the Council's retained land for a variety of possible purposes, including access, storage and site facilities. The details of these requirements will depend on a construction plan to be developed prior to that phase commencing. As such they are not known at this stage.
- **Works licence.** The consented scheme involves THCH carrying out certain work, mostly landscaping, on the Council's retained land. Licences will be required to allow THCH to take possession and complete these works, or any such works as may be linked to an amended or new scheme. It is proposed that future agreement of all the necessary licences is delegated to the Corporate Director.

3.8 In the negotiations of the terms, the Council has been advised by consultant valuers, Gerald Eve. The Land is held in the HRA and does not include any existing dwellings. By virtue of its ownership of adjoining land, THCH has the status of a special purchaser under the Council's disposal protocol. The Council's land has a higher value as part of the proposed scheme than it would have in isolation. On this basis, negotiations with THCH have proceeded on an exclusive basis. In accordance with the General Disposal Consent 2013, Council is able to sell the Land at any consideration that it wishes. A letter from Gerald Eve dated 16 November confirms that the terms agreed represent best consideration and are a reasonable basis on which to proceed.

3.9 On 26 July 2019, the Council wrote to the Chair of Bancroft TMO consulting on the transfer of HRA land to THCH to develop 93 flats. The TMO was given 30 days to respond to the consultation. The TMO's response of 14 August 2019 covered a number of areas, some of which have been dealt with and some of which will be dealt with once development gets underway. Examples included:

- Concerns about the perceived loss of land and playground to the development. This land is not being disposed of and will be landscaped.

- Car parking and monitoring of – the new scheme is car free. A Traffic Management Order can be introduced to ensure compliance.
- Play area – THCH will contribute funding for the upgrading of this.
- Upkeep of communal estate costs such as ground maintenance – this will be subject to further discussion between THCH and BTMO.

3.10 Prior to the start of work THCH, THH and the Council will meet BTMO to discuss estate management during and post construction covering matters such as site access, vehicle cleaning facilities, access for refuse vehicles etc. The details of this will be drawn up in conjunction with Planning to satisfy any planning conditions

3.11 Once the lease is granted, THCH will be able to take forward the implementation of the consented scheme in accordance with its programme or to pursue an alternative development strategy within the terms of the lease.

4 EQUALITIES IMPLICATIONS

4.1 There are no specific equalities implications arising from the decision to dispose of the land. The subsequent development will result in the provision of new residential accommodation, including affordable units. This accommodation will therefore help to meet the demand in the borough from people on the housing waiting list in recognised housing priority need.

5 OTHER STATUTORY IMPLICATIONS

5.1 Best Value. Asset Management officers confirm that this transaction represents market value for the sale of the Council land.

5.2 Risk Management. The risks surrounding this transaction for the Council will be managed through the detailed drafting of the legal agreements. The principal development risks are being borne by THCH and its contractors. The payment of overage to the Council is dependent on the outturn economics of the scheme and there is a risk that no payment may be triggered.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 The report is recommending the disposal of land at Mantus Road to THCH for development and the delivery of housing. The Council will receive a capital receipt from this land sale. The land is currently held in the HRA. Despite this there is no ringfence around the future use of the capital receipt received.

6.2 The sale price detailed in Appendix 2 is deemed to represent the best consideration for this land. The Council's consultant valuers, Gerald Eve have advised that the disposal price represents best consideration. In its current state the land has no existing use value and therefore it is recommended that this sale price is accepted.

- 6.3 The Council can offset all of its costs incurred in disposing of the land at Mantus Road against the capital receipt. There is no percentage cap within the HRA nor any rental stream that will be affected by the sale of this land. This disposal will therefore have no revenue implications.
- 6.4 The Council has negotiated clawback and overage payments should the site or any of the development be sold at future dates. These will require monitoring to ensure the Council claims any amounts owed in the future.

7 COMMENTS OF LEGAL SERVICES

Disposal Powers

- 7.1 The Council has the power by virtue of section 123 of the Local Government Act 1972 to dispose of land in any manner that it may wish, subject to the general requirement to obtain either best consideration or Secretary of State consent. Section 32 Housing Act 1985 states that a local authority may not dispose of any land held by them without the consent of the Secretary of State. In order to facilitate the disposal of land held for housing purposes the Secretary of State issued a series of general consents, which permit the disposal of land held for housing purposes without the need to obtain express consent. The consents are collectively known as The General Housing Consents 2013.
- 7.2 In accordance with paragraph A.2.2 of the General Housing Consents a disposal includes the grant of a lease of any duration. Paragraph A3.1.1 permit local authorities to dispose of land or dwelling at market value. "Market value" is **defined** in the General Consent as "the amount for which a property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm's-length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and where the market value is assessed not earlier than 3 months before the buyer applies or agrees to an offer in writing". A letter from Gerald Eve (referred to at para 3.9) and also comments from Asset Management Officers (para 5.1) confirm that this transaction represents market value. The letter uses the terms 'best consideration' and 'market value' interchangeably but the report is clear that the transaction represents market value '*along with representing the best consideration available to the Council for the property, the proposed terms of £1,300,000 plus overage represents the Market Value of the property – page 18*'. Therefore specific consent of the Secretary of State should not be required to effective the proposed disposal which will be at market value.
- 7.3 There will be provisions within the legal agreement to encourage development, including clawback, overage and an option for the Council to buy-back the land (where development has not commenced within a defined period).

Best Value Duty

- 7.4 Section 3 Local Government Act 1999 requires an authority "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").
- 7.5 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. 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. In this case, the land is subject to anti-social behaviour and fly tipping. The Council has installed CCTV at a cost to the Council and currently generates no income. By disposing of the site, the Council will receive a capital receipt from the sale and the land will be used to deliver a percentage of affordable housing.

Environment

- 7.6 The Council's land subject to anti-social behaviour and fly tipping, which will cease once redevelopment takes place. Any redevelopment will be of a high standard of energy efficiency and built to high environmental standards.

Equalities Implications

- 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. There are no direct equality implications arising from the proposed transactions.

Linked Reports, Appendices and Background Documents

Linked Reports

- None.

Appendices

- Appendix 1. Location plan.
- Exempt Appendix 2

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

- None.

Officer contact details for documents:

N/A