

## **Committee: Cabinet**

**Date: 19<sup>th</sup> June 2023**

Wards: All

## **Subject: Housing Delivery Programme First 93 Units**

Lead officer: Lucy Owen Executive Director of Housing and Sustainable Development

Lead member: Cllr Andrew Judge, Cabinet Member for Housing and Sustainable Development

Contact officer: Martin Baker Interim Housing Development Manager

### ***Exempt or confidential report***

*The following paragraph of Part 4b Section 10 of the constitution applies in respect of information within the appendix and it is therefore exempt from publication:*

*Information relating to the financial or business affairs of any particular person (including the Authority holding that information).*

*Members and officers are advised not to disclose the contents of the appendix*

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### **Recommendations:**

- A. That Cabinet provides approval to enter into a Collaboration Agreement with L&Q carry out the development management and delivery of 93 Council Homes for the Council.
- B. To delegate the decision on the final terms of this Collaboration Agreement to the Executive Director of Housing and Sustainable Development, in consultation with the Cabinet Member for Housing and Sustainable Development, and for the Council to enter into this final form of the Collaboration Agreement.
- C. That Cabinet approves expenditure of up to £176,500 to cover the reasonably incurred costs in implementing project activity to tender stage.
- D. That Cabinet notes the ambition to create exemplar, sustainable, low or zero-carbon homes. This will include a materials-led approach to assure sustainability and reduced energy costs for residents. Various options will be investigated in terms of innovation, value for money and best practice from other councils and house builders.
- E. That Cabinet notes the update on the creation of a strategy for the remainder of the housing delivery programme, with the aim of a sustainable pipeline, either self-funding or minimising capital subsidy.
- F. That Cabinet notes that no arrangement has yet been made for the future letting and management of the completed units. This will be the subject of a future report and recommendation.
- G. To delegate to the Executive Director of Housing and Sustainable Development, in consultation with the Cabinet Member for Housing and Sustainable Development,

authority to enter into agreements documenting the planning obligations for the four sites on such terms as are considered reasonable to the Council as landowner.

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

1.1. The Council has set an ambitious target of 400 genuinely affordable homes on Council owned land underway by 2026.

1.2. Four sites have been identified for early delivery of 93 homes and in October 2022, Cabinet elected to use them for affordable housing, either delivered directly by the Council or via a disposal to a Registered Provider. The four sites are: Elm Nursery Car Park, Mitcham CR4 3TA (21 units); Raleigh Gardens Car Park Mitcham CR4 2JB (36 units); Land at Canons, Madeira Road, Mitcham CR4 4HD (18 Units); and Farm Road Church, Farm Road, Morden SM4 6RA (18 units).

1.3. Since that time a number of different delivery mechanisms have been explored. Given the limited internal resources available to the Council, it is considered that the most cost effective and quickest delivery route would be to enter into a Collaboration Agreement with a third party to deliver these homes. To this end, officers have been in discussion with L&Q, a highly experienced registered housing provider. Entering into a collaboration agreement with them on a cost only basis has been identified as the recommended approach.

1.4. Under a collaboration agreement, the Council and L&Q would agree a division of responsibilities between them on a project-by-project basis within the overarching agreement. In essence, this would involve L&Q acting as development and project managers under the direction of the Council. Their role would be to procure and manage the professional team, manage the programme of delivery, procure the building contracts on behalf of the Council and project manage the quality and costs control of the development activities. It will be necessary to ensure that services pursuant to the Collaboration Agreement originate from both parties, and that the parties carry out those services in the collaborative pursuit of a common objective – in this case increasing the overall supply of affordable homes.

1.5. The report also requests approval from the Cabinet to the expenditure of £176,500 being the reasonably incurred costs of L&Q in progressing the work required to deliver the first 93 units to tender stage should the Council decide not to proceed at that Gateway decision point.

1.6. This report also updates on the work to create a pipeline for an ongoing housing delivery programme, for which a further report will be provided to Cabinet in the autumn.

## **2 DETAILS**

### **BACKGROUND AND PROGRESS SINCE LAST REPORT**

2.1. The Council has an ambitious target for its housing delivery programme - for 400 genuinely affordable council homes to be underway by 2026. To help establish if a pipeline of deliverable opportunities exists within the Borough, Savills have been appointed to carry out a comprehensive asset review.

2.2. This review will inform a strategy to optimise the use of Council owned assets within the Borough and also determine if the establishment of a Housing Revenue Account (HRA) would be a viable option for the Council moving forward, or if there are other delivery options to support the council homes programme.

2.3. Waiting for the outputs from this report extends the period for the construction of new homes. In order to expedite the delivery of much needed affordable housing stock and to reduce the impact of construction industry inflation resulting from delays, 4 initial sites have been identified to deliver as a first early stage.

2.4. The 4 sites listed at paragraph 1.1 above were originally taken to a 'Minded to Grant' status in July 2020, subject to a 106 Agreement being entered into. The units were designed for the private sale and private rental market and were to be brought forward by Merantun Developments Ltd, a Council established Property Company, which has since been wound up.

2.5. Merantun Developments Ltd as the original applicant would have been required to enter into a Section 106 Planning Agreement to obtain the issue of the Planning Consent. As the Council is also the Planning Authority and is now the applicant for planning purposes it cannot sign a Section 106 agreement with itself therefore a unilateral undertaking will be necessary to replace the S106. The work to put this unilateral undertaking in place is currently being progressed.

2.6. In December 2021, Cabinet agreed to the disposal of these sites and delegated the decision for disposal for private or affordable development to the Director of Environment and Regeneration.

2.7. At its meeting in October 2022, the Council agreed not to proceed with the private sale option but elected to ensure that the sites are used for affordable housing, either delivered directly by the Council or via a disposal to a Registered Provider.

2.8. Following further discussions with officers, the Cabinet Member for Housing and Sustainable Development, alongside the Leader and Cabinet Member for Finance and Corporate Services requested work to be done to deliver these initial sites as 100% social rent which may, in the future, form part of an HRA. It should be noted that the wider Asset Strategy review noted at paragraph 2.1 above is being carried out in parallel to identify the options to deliver this ambition either in a self-funding way, or to minimise the amount of capital subsidy required.

2.9. The architects appointed by Merantun Developments Ltd have been reappointed to amend the drawings. This is to ensure they meet recently updated Building Regulations. This is necessary to do so there are up to date drawings ready to be used to tender for contractors to deliver the homes. The architects have also been appointed to look at a potential redesign for the Cannons site, as an additional plot of land adjoining this site has recently come available, so there is a potential for additional units to be delivered.

2.10. The Architects are also tasked to scope the work required to deliver the homes to meet Passive House principles as an exemplar for low carbon development in the Borough, as part of the Council's response to the Climate Emergency. The current QS estimate of costs for delivering all 93 units to full Passive House principles is around £1.4m.

2.11. We will work with the architects, L&Q and experience from other councils and housebuilders who have recently delivered exemplar zero-carbon homes to assess the best and most cost-effective way to deliver sustainable, low or zero carbon homes. We will look to specify a materials-first approach to ensure excellent sustainability credentials and to lower energy costs. It is possible full Passive House certification may not be the best value for money given the costs and time implications of securing this, but rather using the principles to inform specifications.

## **POTENTIAL DELIVERY OPTIONS AND RECOMMENDED ROUTE**

2.12. A number of delivery mechanisms have been investigated including delivering via an existing RP with retained nomination rights, appointing remunerated RP development managers, appointing remunerated private sector development managers, a Collaboration Agreement and direct delivery by the Council.

2.13. The Council currently lacks internal resources and experience to manage direct delivery itself. However, in recognising the desire of the Council to maintain control of delivery and develop experience in its internal team, a recommendation is made to negotiate and enter into a Collaboration Agreement with L&Q, a highly experienced RP. L&Q has existing internal resources with capacity and experience which can be applied to delivering these projects on a no profit basis on behalf of the Council. L&Q has a history of providing these services to small RPs as part of its desire to see the overall supply of affordable homes increased and is keen to work more closely with Local Authorities also.

2.14. A Collaboration Agreement is a Public Sector partnership mechanism allowing parties to work together, providing no profit arises to either party from the Agreement. A schedule of roles and responsibilities will be established to set out the input of each party, but it is agreed in principle that L&Q will take the lead on delivery with the Council retaining a monitoring role to ensure quality and timeliness of delivery. Governance Gateway approvals will be established as part of the Collaboration schedule to ensure sound financial management.

2.15. As part of this agreement L&Q will also undertake to provide upskilling to members of the Council's Housing and Sustainable Development team to build experience for future direct development activity.

2.16. The original design for the majority of these units was for Market Rent, rather than affordable homes. We will work with L&Q to see what minor modifications can be made to the designs in order to create cost savings. However, it is considered that the costs of a major redesign, including the delays to delivery, and potentially requiring new planning applications would erode any cost savings through redesigning these specifically for affordable.

2.17. It should be also noted that the development proposals will be subject to officers concluding all legal, financial and site due diligence and addressing any impediments to delivery of development such as dealing with third party rights for light, car parking closure etc.

2.18. The construction market is still experiencing instability. Securing a fixed price contract may prove challenging without a risk premium which may be unaffordable L&Q are likely to recommend tendering on an open book approach which recognises reasonable additional cost where justifiable.

2.19. Cabinet will be required to approve the more detailed costs once tenders for the construction works have been received and adjudicated and the proposal will contain a decision gateway at that point.

2.20. In order to maintain momentum, there will be some costs incurred by L&Q in taking the project to tender which the Council will need to underwrite and could be non-recoverable should the Council choose not to proceed at that Gateway stage. These are estimated to be £176,500

2.21. GLA have already expressed a willingness to provide some Grant Funding and for the purpose of this exercise the sum of £150,000 per unit has been adopted which amounts to £15.95m but this will be the subject of further discussion with GLA.

2.22. Based on updated costs, even with the Grant contribution, it is not unexpected that there remains a need for the Council to contribute to the development of 100% social rent units. This can be covered by capital contributions from the Council's funds. The current assessment of the additional capital subsidy or other source of funding required by the Council to deliver these first 93 homes is estimated to be between £14.3m to £22.8m.

2.23. The subsidy from the Council should be seen in the light of the significant housing pressures in the Borough and the urgent need to provide truly affordable homes for local families. The provision of these homes could also relieve pressure on the demands for and cost of temporary housing, enabling some families currently in temporary accommodation the opportunity to move into a permanent home. The benefits of good quality, secure housing also link to health and wellbeing, as housing is an important social determinant of health, and a lack of housing or poor quality housing can negatively affect health and wellbeing.

2.24. Additionally this initial subsidy is seen to "pump prime" the Council's delivery of affordable homes, accelerate the delivery programme, start building capacity and experience internally, and provide the initial contribution to a future HRA should the Savills report establish such potential.

#### **UPDATE ON WIDER HOUSING DELIVERY PROGRAMME**

2.25. As noted at paragraph 2.2 above Savills have been appointed to examine the options for how the Council might best deliver its housing delivery ambitions of 400 genuinely affordable homes in a viable way. Options being looked at are whether it is viable to reopen an HRA. Savills are also carrying out a review of Council owned assets to identify a future pipeline of housing development sites. This work will be used to create a strategy for the housing delivery programme which aims to be self-funding, or to minimise the amount of capital subsidy required. The strategy could include mixed tenure housing and site disposals to generate capital receipts for investing in the delivery of social rented council homes.

2.26. Emerging findings from this work suggest that there is potential for the Borough to reopen an HRA however more work is needed to establish the likely timescale for the delivery of sufficient units to make the HRA viable. Early findings also show that an HRA based on the first 93 units would be sustainable, but only with additional subsidy from the council to enhance the assumed GLA grant. The asset review work needs to be finalised and inputted to the early work to see how the Council's assets can be used to minimise this subsidy and create a self-funding programme. Once financial appraisals and options have been finalised, the strategy and potential programme will be brought back to Cabinet in the Autumn for agreement.

### **3 ALTERNATIVE OPTIONS**

3.1. In October 2022 Cabinet agreed not to dispose of the first four sites for private sale and instead allocates the sites for affordable homes, delivered either by the Council or a Registered Provider (Housing Association).

- 3.2. A number of RP housing providers have been approached to consider buying the sites and delivering 100% social rent affordable housing.
- 3.3. Concern was expressed by those parties about the small-scale of development and the viability of delivering at a period of turbulence in the construction market with escalating labour and material prices.
- 3.4. Although there was one serious expression of interest there was concern about the capacity and experience of the RP to deliver across the 4 sites on an accelerated timescale
- 3.5. Approaches were made to other larger RP's to request interest in providing Development Management services on a remunerated basis. Early expression of interest however fell away owing to a lack of capacity in those parties to accommodate the additional workload.

#### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. None for the Purpose of this report

#### **5 TIMETABLE**

- 5.1. This proposal envisages that the Collaboration agreement will be entered into between the parties by 1<sup>st</sup> July.
- 5.2. L&Q will prepare an overarching project programme utilising their routes to procurement and use their in-house team to manage the building contract thereby minimising the risk of any SME failure which has been a feature of the current market.
- 5.3. There will be Gateway approval milestones included in the Collaboration Agreement schedules for Governance purposes which will provide the Council with key decision points such as approval of the Construction Contract tender.
- 5.4. Cabinet will have the opportunity to review and approve reports at these key Gateway Milestones.
- 5.5. Delivery of the RIBA tender packages is expected to be at the end of this Calendar year.
- 5.6. The expectation for a start on site would be during Q4 in the current financial year, although this is still subject to further refinement by L&Q and subject to tendering exercises.

#### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

##### **Capital**

- 6.1 The approved capital programme 2023-27 contains the following budgetary provision for the delivery of the first tranche of the affordable housing programme:

##### **Capital Programme as at Outturn 2022-23**

<b>Scheme Description</b>	<b>Budget 2023- 24 £m</b>	<b>Budget 2024- 25 £m</b>	<b>Budget 2025- 26 £m</b>	<b>Budget 2026- 27 £m</b>

Affordable Housing Fund*	5	5	10	9
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\*This scheme is funded in part by £4.6m Affordable Housing S106 contributions which must be spent on the delivery of housing units. However, if the scheme is not progressed to a stage where balance sheet assets are generated the abortive/sunk cost would need to be charged to revenue and a revenue funding source would need to be identified. The Affordable Housing S106 could not be used to fund these abortive/sunk costs.

6.3 x

6.8 The work undertaken by L&Q can be capitalised. The Collaboration Agreement requires that the services of L&Q are provided at cost only without any profit element.

6.9 If this scheme is deemed a legacy scheme by Members CHAS capital receipts could be utilised to fund it.

### Revenue

6.10 Cabinet (31 August 2022) set aside the sum of £300k to update the approved plans for four Council owned sites; bringing them up to current building regulations and sustainability standards prior to the development of affordable housing. In addition to this the Authority has received £216k from the GLA, giving a total revenue funding of £516k. As at 31 March 2022 the Authority had spent £44,674 of this scheme on consultancy and legal expenses.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

7.1. The Council has power to provide social housing by virtue of Part II of the Housing Act 1985. If it does so, then the provisions of section 74 of the Local Government and Housing Act 1989 which relate to the establishment of a housing revenue account (HRA) apply. Put shortly, if the Council wishes directly to provide housing either by building it or by purchasing land or buildings for that purpose it will need a direction from the Secretary of State permitting it to do so. If the number of homes provided is 200 or more, then the Council will also need to apply for permission to reopen an HRA. In order to do the latter, it will likely be necessary to produce at least an outline business plan.

7.2. The Council has applied for and received consent from the Secretary of State under the Direction to Build

7.3. Any decision regarding the reopening of an HRA will be for a future meeting following the development of a comprehensive Asset Strategy Review.

7.4. The Council has the power to enter into a collaboration agreement with L&Q by virtue of Regulation 12(7) of the Public Contracts Regulations 2015 (the Regulations). This regulation allows local authorities to enter into agreements without going out to tender where certain conditions are met. The first such condition is that the contract is between two contracting authorities with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives they have in

common. This condition would appear to be met. L&Q are a contracting authority for these purposes.

7.5. The second condition is that the implementation of the arrangement is governed solely by considerations of public interest. Guidance issued on this condition requires that no profit be derived from the arrangements, although it is permissible for either party to recover its costs. In order to ensure that this condition is met, the terms of the collaboration agreement will require L&Q to operate on an open book basis.

7.6. Third, no more than 20% of the activity carried out under the collaboration arrangements must be performed on the open market. There is currently no intention to perform any of the activity on the open market or to “trade” so this condition would also appear to be met.

7.7. The Council has taken external legal advice on the use of a collaboration agreement to assist in delivering these (and possibly future) affordable homes. That advice is that the proposed arrangements should fall within the scope of regulation 12(7). However, the advice also recommends that in order to mitigate against any risk of challenge, the Council should publicise its intention to enter into these arrangements by way of a Voluntary Transparency Notice (a VTN) prior to the parties entering into the agreement, followed by the publication of a Contract Award Notice (a CAN) once the agreement has been entered into.

7.8. A VTN provides a defence against a claim that the agreement was improperly entered into without prior publication and a CAN provides a secondary protection, should a claim succeed against the Council, by capping the time limit during which a claim may be brought to 30 days from the date of publication of the CAN, as opposed to from the date when any challenger knew or ought to have known that grounds for challenge had arisen. In all the circumstances, it would seem prudent for the Council to take both these precautionary steps.

7.9. If the form of the collaboration agreement means that although L&Q manage the procurement and other processes, but the actual construction contract is between the Council and the building contractor, then in relation to that and any other direct contract, the procurement process must comply with the Public Procurement Regulations and the Council’s contract standing orders.

7.10. In terms of the planning agreement to facilitate the grant of planning consent for the four sites, a unilateral undertaking may be entered into pursuant to powers in section 111 of the Local Government Act 1972 which empowers local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1. None for the purpose of this report

## **9 CRIME REGISTERED PROVIDER (SOCIAL LANDLORD) AND DISORDER IMPLICATIONS**

9.1. None for the purpose of this report.

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1. The first 4 sites provide acceleration of the delivery of the affordable homes programme however in isolation as designed and specified for market rent they may



not be considered best value for money for the intended purpose should the overall programme not proceed, or not be able to provide enough cross subsidy to create a self-funding pipeline.

10.2. The viability gap of the first 4 sites will require the Council to fund the shortfall from other Capital. This will need to be managed by the future programme. A mitigation for this could be to consider mixed tenure to allow the Council's housing programme to cross subsidise the Social Rent. This could, however, slow the pace of delivery of Social Rented accommodation.

10.3. The construction market is still uncertain and while there are signs of inflationary pressures easing external factors can still impact on the costs of delivery. This is mitigated by using the experience and suppliers of L&Q to minimise any such impact

10.4. Fixed price construction contracts are difficult to secure in the current inflationary climate and it may be necessary to enter into a contract that recognises justifiable cost increases on an "open book" basis. Although this opens the Council to inflation risk, a fixed price contract may be considerably more expensive. These risks are again mitigate by using the experience of L&Q to help monitor costs and manage the contractors.

10.5. It is proposed that a multi-disciplinary Employer's Agent is appointed to represent the Council's interests in respect of compliance and quality assurance to help mitigate the risks of issues arising with quality as the homes are delivered.

10.6. In addition to the EA it is recommended that LBM appoint a monitoring QS to review the project financial expenditure on a Quarterly basis to ensure the DM services are delivering good value.

## **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

Appendix 1 – Exempt - Viability Assessment of Proposed 93 Houses

## **12 BACKGROUND PAPERS**

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