

REPORT TITLE: WINNALL FLATS – APPROVAL OF OUTLINE BUSINESS CASE & PROCUREMENT PROCESS

23 DECEMBER 2019

REPORT OF CABINET MEMBER: COUNCILLOR KELSIE LEARNEY, PORTFOLIO HOLDER OF HOUSING AND ASSET MANAGEMENT

Contact Officer: Andrew Palmer Tel No: 848293 Email apalmer@winchester.gov.uk

WARD(S): ST BARTHOLOMEW

PURPOSE

This report seeks approval of the outline business case for the Winnall Flats new homes project, to submit a planning application and to use the Southern Construction Framework to obtain tenders to construct the scheme. In addition, the report seeks authority for steps to be taken in relation to the disposal of HRA land under the scheme. The scheme will consist of 75 new homes and improvements to the environment around the existing Winnall flats. Included within these proposals are a realigned road, redistributed parking and the demolition of existing garages with the objective of improving general area. The more effective use of space will allow the provision of the new housing whilst retaining car parking for existing residents and will provide an improved external environment for both existing and new residents.

RECOMMENDATIONS:

That Cabinet:

1. Authorise the Strategic Director - Services to sign up to and use the Southern Construction Framework to seek Tenders to enter into a contract with a building contractor for the construction of the Winnall Flats site.

2. Authorise the Strategic Director - Services to settle the price/quality split for the purposes of the mini competition tender to be carried out under a Framework.
3. Authorise the Strategic Director - Services to prepare and submit a planning application to the Statutory Planning Authority to obtain planning permission for the project.
4. Approve public consultation, which includes an advertisement, of the intention to proceed to dispose of the Open Space land.
5. Approve disposal of the land and built units to Pocket Living as the preferred partner to acquire the discounted market sale flats, subject to Pocket Living achieving best consideration.
6. Authorise the Strategic Director – Services in consultation with the Service Lead to seek the consent of the Secretary of State for Housing, Communities and Local Government for the disposal of the land referred to in recommendation 5, should it not be possible after making enquiry with MHCLG to rely on the 2013 General Consent.
7. Authorise the Strategic Director – Services to approve the appropriation of the land to be built upon from HRA to planning purposes or general fund if required.
8. Authorise the expenditure on the pre-construction costs of up to £800,000 in accordance with Financial Procedure Rule 7.4 financed by Housing Revenue Account Contributions to Capital and that this work proceeds at a financial risk to the Council.
9. Agree that a Full Business Case report is brought back to Cabinet in 2021 when the final tender price is known to seek authority to enter into a build contract with the successful Tenderer and the draft contractual heads of terms with Pocket Living.

IMPLICATIONS:1 COUNCIL STRATEGY

- 2 The emerging Council Plan (considered by Cabinet in October 2019 and currently subject to consultation) includes the priority of "Homes for All" which seeks to encourage more homes for young people working and living in the district as well as a commitment to build significantly more homes, both traditional council homes and also through the Council's wholly owned Housing Company.

3 FINANCIAL IMPLICATIONS

- 3.1 The estimated total scheme cost is £15,309,000, however the budget required to reach the next stage of the development process before committing to the full scheme is £800,000 which consists of pre-planning and detailed design fees. The scheme will be developed within the Housing Revenue Account. Budget provision for the total scheme cost (including the pre-construction fees) has been included in the existing HRA Budget. If the scheme does not proceed the pre-planning and pre-construction expenditure would not be able to be recovered.

- 4 Approximately £1,500,000 of the scheme cost is required for environmental improvements to the area surrounding the existing flats. An application for CIL funding could be appropriate. Alternatively, some or all of this work could be funded from the HRA Estate Improvement programme.

5 LEGAL AND PROCUREMENT IMPLICATIONS

- 5.1 The site is currently held in the Housing Revenue Account and being used for parking, garaging, or as open space. The Council wishes to see the site developed for housing, with a block being sold on to a third party, Pocket Living. The remaining units will be retained in the HRA (or possibly held by the Council's Housing Company). The Council will commission the construction of all 72 units and 3 houses.

Housing Act consents

- 5.2 Section 32 of the Housing Act 1985 provides that the Council may only dispose of land held for HRA purposes if it has the consent of the Secretary of State, unless a general consent issued under the relevant legislation (the Housing Act 1985) may be relied on.
- 5.3 The General Consent issued in 2013 enables the disposal of land for a consideration equal to its market value, subject to exceptions. The Consent also enables the disposal of vacant land without specific consent to be obtained from the Secretary of State. On the basis that the site is an existing large surface car park and an adjacent garage land in the Council's

ownership, this vacant land General Consent may be relied on. However, it is recommended that this be further explored with the relevant department for confirmation as it is open to interpretation (Ministry of Housing, Communities and Local Government (MHCLG)).

- 5.4 If, after making enquiry, it is concluded that a specific consent is required from the Secretary of State, this report seeks authority to make an application on the basis that the disposal is justified, involving a scheme initiated on vacant land. It is envisaged that such consent would be granted. It would not be prudent to defer this step until the Final Business Case is brought back to Cabinet given the time that it may take to obtain consent and the uncertainty this would introduce.

Financial Assistance

- 5.5 In addition, Cabinet are advised that the scheme is to be on “best consideration” terms. As such, it does not involve any financial assistance to Pocket Living, as would be the case if the disposal of the land was at an under-value.
- 5.6 Were the scheme to involve financial assistance to a third party (in this case Pocket Living), this would require consideration of the Local Government Act 1988, and a potential need to seek further Secretary of State consent. However such consent is only available where the financial assistance is towards housing intended to be privately let (rather than sold).

Procurement

- 5.7 It is proposed that delivery of the Scheme is through the Southern Construction Framework under an approach involving going to tender at RIBA Stage 2 to contract a building contractor. As such, the Council will be procuring construction prior to completion of the freehold transfer (or grant of long lease) to Pocket Living of the block they will take in at completion of construction.
- 5.8 The relevant housing legislation, anticipates that a disposal may be effected in any manner, including by way of grant of an option, and therefore by entering into a conditional sale agreement with Pocket Living whilst the land is vacant, the “Vacant land” consent under the 2013 Consent may apply.
- 5.9 Subsequently, this is a Council delivered development under which:
- a) The Council will be acting as the “Developer”, and therefore assuming the development risks; and
 - b) Construction risks will be passed down to the contractor appointed from the SCF Framework, and as such meeting procurement law requirements in respect of “works” (see below).

- 5.10 The terms of the conditional sale agreement do not amount to a works contract, or otherwise raise a procurement concern, since that will be a land/property sale agreement not regulated by procurement law. Assuming that the works contract for the development will specify the design (and with an internal specification provided by Pocket Living in relation to the flats they will acquire), this will need to be procured on an OJEU compliant basis – in this instance through the framework.
- 5.11 As the site may be considered to be “open space”, s123 (2A) of the Local Government Act 1972 requires that prior to disposal land consisting of open space the Council must advertise the intention and consider any objections to the proposed disposal. Consequently it may prudent to advertise the disposal of the open space following the determination of the planning application with the results of this consultation to be considered by Cabinet as part of the Full Business Case report.

State aid

- 5.12 If the land were to be disposed of at an under-value, this would also engage potential state aid and a need to consider whether the aid is unlawful. Again, as the disposal will be based on best consideration, and with the benefit of external valuation advice, no such state aid concern arises. Further advice on State Aid implications will be required should the valuation indicate that a disposal at under-value is likely to be necessary (and if that approach is being recommended at Full Business Case stage).

Appropriation

- 5.13 In addition, the Council’s powers of appropriation may need to be exercised. Appropriation is the statutory procedure to change the purpose for which land is held from one statutory purpose to another provided that the land is no longer required for the purpose for which it was held immediately before the appropriation. Appropriation has the benefit of overriding the rights of third parties (such as rights of light and rights of access) to the extent that they become an entitlement to compensation rather than a right to obtain an injunction to prevent the scheme happening.
- 5.14 Therefore, and if necessary, the area being sold to Pocket Living could be appropriated for planning purposes under section 122 of the Local Government Act 1972 and subject to the powers provided by section 237 of the Town & Country Planning Act 1990.
- 5.15 The use of appropriation power needs to be justified by a clear ‘public interest’ case that overrides the individual rights of potential affected third party owners and occupiers of nearby properties. Moreover, the Council would, if using these powers, need to also consider the position under the Article 1 and Article 8 of the First Protocol to the European Convention on Human Rights. The Council would need to satisfy itself that in all the circumstances a fair balance would be struck in the present case between the protection of rights of individuals and the public interest.

- 5.16 Finally, section 19 the Housing Act 1985 covers the appropriation of housing land. Local authorities are required to seek consent from the Secretary of State to appropriate HRA land which has housing on it (even part of a housing unit). That is not the proposal here but is relevant going forward in relation to the retained units, should appropriation be contemplated.

6 WORKFORCE IMPLICATIONS

- 6.1 Within existing Service Plan for New Homes team, external appointments have been made for specialist legal and valuation advice in addition to the funding provided by the HRA for Officers in Planning, Legal and Landscape & Open Space Teams all of whom have been consulted or involved in the Project Team to date.

7 PROPERTY AND ASSET IMPLICATIONS

- 7.1 The Council will benefit from the development of 75 new homes, which it has the choice of whether to sell to a third party (Pocket Living), transfer to the Housing Company or keep within its asset base.
- 7.2 The land is HRA land and therefore subject to requirements in relation to consent for disposal (see Legal and Procurement Implications).

8 CONSULTATION AND COMMUNICATION

- 8.1 An initial consultation event was held in July 2018 where residents of the existing flats were invited to comment on the potential development of the existing car park and surrounding area. The principal comments raised by residents were who was going to be living in the new flats and to ensure adequate car parking was provided. Residents comments have been taken into account during the development stage. In order to assist residents and maintain open communication, further events and newsletters have been produced to keep residents informed on the evolving plans. All newsletters include contact details at the Council so residents have a contact point. The last such update event was held on the 24 October 2019 with local Members and the Cabinet Member for Housing available to answer questions and obtain feedback from residents on the latest Council proposals as set out in this report.

9 ENVIRONMENTAL CONSIDERATIONS

- 9.1 The scheme will be developed to meet the Local Plan policy CP11 requirements of the equivalent of Code level 4 for water and energy. External consultants (Green Box Associates) have been appointed as green energy specialists to consider energy and design options including any recommendations where further improvements can be made. The objective for the consultants will be to produce options that meet the Council's zero carbon target.

10 EQUALITY IMPACT ASSESSEMENT

- 10.1 The Council's Housing Strategy was subject to an Equality Impact Assessment which has been considered by Officers in the preparation of this report and project and no update is required.

11 DATA PROTECTION IMPACT ASSESSMENT

- 11.1 None required

12 RISK MANAGEMENT

- 12.1 At this stage the main risk is limited to the pre-construction fees of £800,000. The Council may choose not to proceed with the development after the final tender price is obtained. The Council will however have a planning consent and own the worked up design which it could choose to re-tender through another route (or sell)

Risk	Mitigation	Opportunities
<i>increasing construction prices</i>	Using the two stage D&B route final price certainty is achieved before committing to the scheme development	Other contractual routes were considered however the financial risk to the Council would be greater using either traditional or single stage D&B
<i>Community Support</i>	Consultation events held and newsletters have been produced at various stages as the plans have evolved. The disposal of the open space will be advertised and available for the public to comment on.	The wider public realm around the existing flats will be improved alongside the development of the new properties. Outline agreement has been agreed with Tesco's for additional land to be brought into public use under licence in mitigation for the land required for development.
<i>Timescales</i>	Project plan has been produced and details shared with key stakeholders	
<i>Project capacity</i>	Within existing team capacity	
<i>Financial / VfM</i>	Initial viability assessments have been conducted which show that the scheme meets the Councils criteria. There is an expectation that CIL funding will contribute	Pocket Living have been identified as a suitable partner, if their offer does not meet "best consideration" opportunities arise for the Council's Housing

	towards the wider environmental improvements	Company or other housing providers
<i>Legal</i>	Appropriate advice has been sought from specialist Solicitors	Scheme could be developed within the legal parameters.
<i>Innovation</i>	Energy consultants Green Box have been appointed to review energy strategy within the buildings	Scheme Could be developed using Passivhaus principles, however there would be significant cost implications.
<i>Reputation</i>	Key corporate project to provide new homes to residents	Opportunity for the project to demonstrate Councils commitment to its climate change objectives
<i>Other</i>		

13 SUPPORTING INFORMATION:

- 13.1 The Council has been investigating the possibility of developing new homes at the Winnall Flat complex. The site was identified in the 2003 John Thompson and Partners report on land in the Councils ownership with Development potential.
- 13.2 The development proposal that has evolved in conjunction with local residents, local and Cabinet Members is for a scheme of 72 x 1bed flats (in two blocks) on the existing large surface car park and a further 3 x 2 bed houses on adjacent garage land in the Council's ownership.
- 13.3 The flats will be 38 – 40 square metres aimed primarily at younger working singles and couples to address the shortfall of this type of accommodation in the City area. The size of the flats are smaller than would normally be developed by the Council but within national space standard guidelines as they are aimed at new households (without children) as an entry point on the housing ladder. It is proposed that one block of 32 flats will be discounted (80%) market sale through Pocket Living, a London based specialist provider of this type of accommodation. Pocket Living have been developing this type of housing in London for 14 years supported by the Mayor of London. Their aim is to create affordable housing for local 1st time buyers, more details can be found on their web site <https://www.pocketliving.com/about/pocket>. The Pocket units will be classed as affordable housing and designated as such in the S106 agreement which will accompanies any planning permission for the site. In line with public sector legal and procurement regulations Pocket Living will offer "best consideration" for their site. Legal advice has been provided to the Council by Browne Jacobson and JLL have been providing valuation advice specifically addressing the issue of "best consideration".

- 13.4 The Council has identified Pocket Living as a suitable partner for this scheme due to their track record in delivering low cost home ownership affordable housing in London. Pocket have worked in partnership with the Mayor of London and Local Authorities on schemes similar to Winnall where land is owned by public bodies. Their experience in designing, developing and delivering low cost home ownership schemes will provide useful learning points for the Council to apply to future developments.
- 13.5 The Council will retain ownership of the remaining flats and houses with a choice of whether to develop within the Housing Revenue Account (HRA) or potentially through the Housing Company. Feedback from the consultation events with existing residents have indicated support for a mixed tenure scheme for the client group set out in para 12.4. Developing outside of the HRA (and via the Housing Company) would allow the Council greater flexibility in terms of rent levels and tenure type to facilitate resident's aspirations. However, this would require the necessary steps to obtain consent from MHCLG (if it is not possible to rely on a general consent), and further consideration of appropriation.
- 13.6 Three initial financial appraisals have been undertaken (details in appendix 1) which show a positive Net Present Value and payback periods of approximately 30 - 32 years. The development models tested include full Council development within the HRA, a joint Housing Company HRA development and a partnership approach with Pocket Living. JLL have provided advice on prospective rent and sales values within the viability model and have shared these with Pocket Living as part of on-going negotiations.
- 13.7 With regard to procurement of the scheme and the partnership arrangements with Pocket Living, it is recommended that the Council will procure the construction of the scheme through the Southern Construction Framework (SCF) using their two stage Design and Build Contract. This is the same Framework and approach used by the Council for the Leisure Centre project and The Valley new homes scheme. The advantage of using this approach is that it is a fully compliant OJEU process and provides full cost certainty before having to finally commit to the construction of the scheme. The weighting for the competition process through the SCF is typically 70% quality and 30% cost, with a minimum percentage of 50% for quality. The Council proposes the weighting to be 50%/50%. The design specification for the interior layout of the 32 units will be produced by Pocket Living and passed down to the contractor as part of the specification for these units.
- 13.8 The Council will be the client for the construction contract and pursuant to a conditional sale agreement (or equivalent), will sell Pocket Living the 32 completed flats in one block for them to onward sell to individuals (subject to agreed criteria between the Council and Pocket). Terms will be agreed with Pocket before entering into the build Contract and will be subject to Member approval at Full Business Case stage.

- 13.9 The estimated cost of the scheme is £15,309,000, the pre-construction cost that the Council will have to commit to, at risk, in order that the scheme can be developed sufficiently to proceed to planning and tender is £800,000. Negotiations are underway with Pocket Living to develop a cost sharing model for this and other on-costs being carried by the Council in association with this development. If the Council proceeds with the Housing Company option appropriate on-costs will be paid and accounted for within the Company.
- 13.10 If Member approval is obtained to proceed to planning application stage and tender with the SCF the budget provision required will be £800,000. If planning consent is granted the successful contractor selected through the SCF will seek firm prices from sub-contractors for the build works. There is no commitment from the Council to enter into final contract until full cost certainty is achieved and Member approval is agreed (or not) if the build price is no longer viable. At this stage it is planned to report back to Members with full details of the price and Pocket Living contractual arrangements in August 2021. As part of this work a planning application will be made in July 2020.

14 OTHER OPTIONS CONSIDERED AND REJECTED

- 14.1 The Council is committed to building new homes for all groups, the most cost efficient method is building on land within the Councils ownership. The land (with or without planning consent) could be sold on the open market however opportunities to obtain other land is limited and expensive.
- 14.2 The Council could choose to develop the whole site without Pocket as a partner however it would then be taking the sales risk for 32 flats. Working with a specialist provider allows the Council to minimise risk and learn for future developments.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None

Other Background Documents:-

None

APPENDICES:

Appendix1 – Detailed viability assessments for various options

Appendix 1

Winnall Flats – Financial Viability Assessment

a) Option 1 – Sell 35 Units for Shared ownership & retain 40 units for Sub Market Rent

Heading	Analysis	Criteria
Units	32 x 1 bed flats (SO) 3 x 2 bed houses (SO) 40 x 1 bed flats (SMR)	
Total Scheme cost	£15,308,000	
Market Value of dwellings	£17,910,000	
Total scheme cost as a % of market value	85.47%	< 95%
Net present value	£1,493,320	> £0
Interest Cover	107.50%	>= 105%
Loan repayment year	32	
Rent as % of open market rent	SMR at 95% of Market Value. SO at 2.75% of remaining equity	Sub Market properties less than 100% of Market Rent
Rents per week based on 52 week year (Sub Market)	1 bed flat £202.79	
Rents per week based on 52 week year (SO)	1 bed flat £72.73 2 bed house £142.30	

b) Option 2 – Sell 32 Discount Market Sale Units to Pocket Living, Sell 3 Units for Shared Ownership & retain 40 units for Sub Market Rent

Heading	Analysis	Criteria
Units	32 x 1 bed flats (DMS) 3 x 2 bed houses (SO) 40 x 1 bed flats (SMR)	
Total Scheme cost	£15,308,000	
Market Value of dwellings	£17,910,000	
Total scheme cost as a % of market value	85.47%	< 95%
Net present value	£1,294,274	> £0
Interest Cover	108.60%	>= 105%
Loan repayment year	30	
Rent as % of open market rent	SMR at 90% of Market Value. SO at 2.75% of remaining equity	Sub Market properties less than 100% of Market Rent
Rents per week based on 52 week year (Sub Market)	1 bed flat £192.11	
Rents per week based on 52 week year (SO)	2 bed house £142.30	

c) Option 3 Sell 35 Units for Shared Ownership & retain 40 Units for affordable rent

Heading	Analysis	Criteria
Units	32 x 1 bed flats (SO) 3 x 2 bed houses (SO) 40 x 1 bed flats (AFF)	
Total Scheme cost	£15,308,000	
Market Value of dwellings	£17,910,000	
Total scheme cost as a % of market value	85.47%	< 95%
Net present value	£958,873	> £0
Interest Cover	114.13%	>= 105%
Loan repayment year	33	
Rent as % of open market rent	AFF at 70% of Market Value. SO at 2.75% of remaining equity	Affordable properties maximum 80%, subject to not exceeding LHA
Rents per week based on 52 week year (AFF)	1 bed flat £149.42	
Rents per week based on 52 week year (SO)	1 bed flat £72.73 2 bed house £142.30	