

Please note Part 2 report is now confidential appendix.

London Borough of Enfield

Operational Report

Report of Sarah Cary in consultation with Fay Hammond

Subject: Acquisition, leaseback and settlement of compensation with Metropolitan Housing Trust for Freehold Property 63 Alma Road, Enfield

Executive Director: Sarah Cary

Ward Ponders End

Key Decision: **KD5316/U233**

Purpose of Report

1. To seek approval for the sale and leaseback arrangement to be entered into with Metropolitan Housing Trust (MTH) in relation to premises at 63 Alma Road affected by the London Borough of Enfield (Alma Estate Regeneration) Compulsory Purchase Order 2016 (CPO), confirmed in December 2017. This also reflects their entitlement to compensation payment of the agreed heads of compensation claim, due to Metropolitan Housing Trust (MHT) namely Market Value and Basic Loss as per CPO compensation legislation, due to Metropolitan Housing Trust (MHT) on acquisition of ahead of vesting pursuant to the Alma Estate Regeneration Compulsory Purchase Order (Alma CPO'). With a part payment to be made on contract and the balance to be released on Vacant Possession which will be no later than the end of the 2-year period, less 3 days.

Proposal(s)

2. To pay MHT in settlement under the CPO compensation legislation ,as outlined in Appendix 1 / Part 2 of this report.
3. To delegate authority to the Executive Director for Place in consultation with Director Law and Governance to enter into contracts with MHT on a sale and leaseback arrangement, whereby MHT continues to manage the properties, including repairs and maintenance, for a period of 2 years and at the end of that is obligated to return the property to the Council with vacant possession.
4. To approve part payment to MHT on completion of the sale and leaseback contract, with the balance to be paid on securing of vacant possession which will be no later than the 2-year period, following grant of the lease.

5. To approve the balance to be paid on Vacant possession in full and final settlement.

Reason for Proposal(s)

6. To pay CPO compensation to MHT in full and final settlement of the Council's acquisition of the property, which is critical to the wider regeneration of the Alma Estate and delivery of new affordable housing.
7. Notice of the General Vesting Declaration was made on 18 January 2021 to Metropolitan Housing Trust Limited, which means, on expiry of three months the Council will take possession. As the property is tenanted, it was anticipated that before notice expired, the Council would exercise its duty to voluntarily buy back the required land and property in the shadow of the Order on a sale and leaseback arrangement. The Council is therefore acquiring the Property prior to the Vesting Date to reduce the risk of a compensation claim and the cost of taking on nine tenancies to be rehoused in the next two years.
8. The February 2021 Better Council Housing Report (KD 5219) delegates to the Executive Director of Place, in consultation with Executive Director of Resources, to enter into development partnerships, award contracts for works and professional services and enter into or agreements for the acquisition or disposal of property for development schemes
9. Under the sale and leaseback arrangement, the Council will receive the property in 2 years time with vacant possession. The claim payment secures the transfer of asset.

Relevance to the Council's Plan

10. By enabling vacant possession (VP) of this site, the Alma Regeneration project is delivering on Enfield's commitment to provide its residents with good homes in well-connected neighbourhoods.

Background

11. 63 Alma Road, Enfield, is a freehold block containing 9 flats ('the Property'). The block sits with the boundary of the land cover by the London Borough of Enfield (Alma Estate Regeneration) Compulsory Purchase Order 2016 ('the Alma CPO').
12. The Alma CPO was authorised by;
 - a. Section 3.6 of the 22.01.2014 Cabinet Report (Authority for the CPO) – KD3880
 - b. Section 2.5 of the 10.12.201 Cabinet Report (Alma Estate Regeneration CPO and Additional Land) – KD4003
13. Notice of confirmation of the Alma CPO was published in February 2018. The Council's CPO powers are valid for 3 years and expired in February 2021.

14. The Council executed and served a General Vesting Declaration (GVD 8) on 15 January 2021 which will expire on 26th April 2021 (the Vesting Date).
15. On the Vesting Date ownership of the property and its associated land will automatically pass to the Council. This means the Council becomes the owner and landlord for the existing 9 social housing units who by default will become Council tenants. The implications for the Council and MHT are significant as the residents have not been consulted on their housing offer transferring and under Section 105 of the Housing Act, the current housing association will have needed to satisfy that their tenancies are “likely to be substantially affected by a matter of housing management”.
16. Additionally, this means the Council becomes responsible for securing vacant possession in the longer term to facilitate transfer to Countryside Properties UK. If the Council cannot meet this requirement it is liable for costs. By entering into a sale and leaseback arrangement, the risk is passed to MHT and the liability is discharged via them.
17. Using a GVD is a last resort under Compulsory Purchase Order legislation and therefore the Council has a duty to voluntarily buy back required land in the shadow of the Order. The Council is therefore acquiring the Property voluntarily prior to the Vesting Date.
18. Pursuant to the Development Agreement dated 13 November 2014 (DA) between the Council and Countryside Properties UK, the Council’s development partner (‘CPUK’), a CPO indemnity agreement was entered in to. This CPO indemnity agreement dated 19 January 2016 between the Council and CPUK, states that the Council is indemnified by CPUK against all compensation and costs required to acquire the interests in specific land in the Alma CPO boundary collectively named the Green Land of which the Property forms part. CPUK, in an email dated 14 January 2021 confirmed that they accept the agreed market valuation (refreshed in April 2021 in line with property procedure rules) and basic loss payment that the Council is proposing to pay MHT. CPUK further accepted an outline of other estimated heads of claim which are yet to be finalised. This has been recorded in minutes of subsequent project meetings.
19. Under the terms of the CPO Indemnity Agreement, CPUK are not obliged to reimburse these costs until the they are drawing down the land in the development programme. Start on site for this phase (3b) is currently listed as October 2026.
20. In assessing the compensation due, the Council has obtained an independent Red Book valuation from a qualified Royal Institute of Chartered Surveyors (RICS) Registered Valuer.

Main Considerations for the Council

21. The Council has utilised its CPO powers, at this point it cannot retract the actions taken and so the payments outlined in Appendix 1 are due under the compensation code for land taken by compulsory purchase
22. Should the Council let the Property vest on the Vesting Date, the Council would become responsible for removing MHT's 9 tenants in order to gain VP of the Property and would be obligated to assist these tenants by adding them to the Housing Register. The proposed entering into the leaseback with MHT avoids this burden for the Council
23. The Council has contractual obligations under the DA to give VP of Phase 3b (which includes the Property) to CPUK) by October 2026 and there are financial penalties and reputational risks if this deadline is not met.

Safeguarding Implications

24. None

Public Health Implications

24. None - There is health benefit to ensuring that households in priority need have good quality, appropriate secure housing.

Equalities Impact of the Proposal

25. As part of the CPO an assessment of potential interference with the Human Rights Act 1998 ('the Act') was undertaken including consideration of impacts. The CPO was confirmed by the Secretary of State for Communities and Local Government on 15th December 2017.

Environmental and Climate Change Considerations

27. None

Risks that may arise if the proposed decision and related work is not taken

28. The Council will become the owner of 63 Alma Road and the landlord for 9 tenants in situ. This would mean the Council becomes responsible for meeting the housing needs and securing vacant possession for transfer to CPUK. By entering into a sale and leaseback arrangement, MHT are liable for the management of the property

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

29. To mitigate the risk the sale and leaseback arrangement means the Council will have passed the liability for achieving vacant possession to MHT and therefore, the only risk arising from that is to ensure the terms of the lease

are satisfied and vacant possession is achieved in the agreed period.

Financial Implications

30. This report is proposing to make payment to MHT as part of the CPO compensation settlement for the acquisition of 63 Alma Road.
31. The payment to MHT is included within the HRA business plan and is fully covered by the Alma project budget, which has been approved at Cabinet.
32. As part of the Development Agreement it was agreed that the costs associated with this acquisition will be reimbursed to the Council from CPUK. This is estimated to be received in October 2026.
33. After completion of the compensation settlement, Enfield will enter into a leaseback agreement with MHT. As the Council acquired the block occupied by tenants managed by MHT, this agreement will enable the existing tenants to remain for a further 2 years and achieve vacant possession at the end of this period.
34. The leaseback agreement terms state that Enfield will receive 50% of the total rent collected from the tenants on a quarterly basis.
35. All other management and maintenance costs will be the responsibility of MHT.

Legal Implications

- 36 As mentioned in the body of this report, pursuant to the terms of the DA, the Council is contractually obligated to acquire and assemble the land comprising the Alma Estate redevelopment and has made and had confirmed by the Secretary of State the London Borough of Enfield (Alma Estate Regeneration) Compulsory Purchase Order 2016 pursuant to powers under section 226 of the Town and Country Planning Act 1990
- 37 Pursuant to section 3 of the Compulsory Purchase Act 1965 the Council has negotiated acquisition of the Property by agreement.
- 38 Arising from the Council's acquisition of the Property is a claim from the Owner for settlement of compensation pursuant to the Compensation Code which is the collective term for the principles, derived from both the Land Compensation Acts of 1961 and 1973 and case law relating to compensation for compulsory acquisition. The Council is legally bound to settle such claim.
- 39 Pursuant to an indemnity agreement with CPUK the Council is able to re-claim the compensation from CPUK.
- 40 The Owner is required to execute a form of undertaking in a form approved by the Director of Law and Governance that payment of the compensation is in full and final settlement of any claim pursuant to the Compensation Code.

- 41 The recommendation set out in the report is within the Council's duties and powers.

Workforce Implications

42. No implications arising from this transaction.

Property Implications

43. This matter relates to a HRA estate regeneration report and the implications are covered in the main body of the report. In relation to Corporate Property, The usual process will need to be followed with regard to recording a new acquisition within LBE's property records and databases.

Other Implications

44. None

Options Considered

45. The options available to the Council are i) to acquire with tenants and take on the management and responsibility or ii) agree a sale and leaseback arrangement, whereby MHT retain the management function for the period prior to land drawdown to CPUK. Given the tenants expected to remain as Housing Association tenants and the legal context, the preferred option is the acquisition by settlement of the compensation and responsibility for Vacant Possession falling to MHT.

Conclusions

46. The Council has a legal obligation to compensate MHT for the value of 63 Alma Road and further comply with the requirements of CPO legislation by making payment of the basic loss payment. The Council has obtained an appropriate valuation report provided by a suitably qualified Registered Valuer and has confirmed with CPUK that it will cover these cost in full as part of the indemnity agreement under the development agreement.

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Date of report 23/04/2021

Appendices Part 2 Exempt information

Background Papers

None

The following documents have been relied on in the preparation of this report:

- Cabinet Report KD3880 (Authority for the CPO) - 22.01.2014
- Cabinet Report KD4003 (Alma Estate Regeneration CPO and Additional Land)