

## **London Borough of Enfield**

### **Operational Report – Part 1**

**Report of** Nnenna Urum-Eke, Head of Development

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**Subject:** The disposal of HRA leasehold interests on three small sites

**Acting Executive Director:** Joanne Drew

**Ward** Grange Park |Ponders End |Southgate

**Key Decision:** 5440

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#### **Purpose of Report**

1. This report sets out the case to obtain authority for the Council to market the disposal of three HRA sites via the Greater London Authority (“GLA”) small sites portal, uploading documentation on the portal, with the intention of inviting bids for each site and thereafter entering into legal agreements with winning bidder(s).
2. By marketing the sites through the GLA small sites portal the Council will target small developers, housing associations or community led organisations to develop the sites and invite bids for the development of these sites.

#### **Proposal**

3. To approve the marketing of the three HRA sites via the GLA Small Sites portal;
4. To authorise the Council to upload to the GLA small sites portal the due diligence reports, surveys and draft form of agreement in preparation for the disposal of these sites.
5. To note the draft form of agreement and lease is annexed to the Part 2 confidential appendix at Appendix 2. The agreement will be conditional on planning permission and funding and upon satisfaction of these conditions the Council will grant a build lease for 250 years. The lease will be contracted out of the Landlord and Tenant Act 1954 if the proposed development is for mixed use or commercial purposes.
6. To delegate authority to the Executive Director Place to finalise the terms of the agreement, subject to valuations.
7. To note that market appraisals have been carried out for each of the sites by Avison Young (“AY”) with private tenure as annexed in the Part 2 confidential appendix at Appendix 1.

#### **Reason for Proposal**

8. There is a commitment in the 30-year HRA Business Plan to generate circa £1 million income from HRA owned stock disposal on an annual basis to support the wider stock investment programme. The disposal of these 3 sites has the potential to generate capital receipts according to the market appraisals carried out by AY on 17 May 2022 and 30 June 2022.
9. The Council has successfully bid and received grant funds to carry out due diligence for the sites, for preparing and marketing for sale the sites through the GLA portal. Part of the work has included market appraisals for the three sites which are

annexed to Part 2 confidential appendix of this report.

### **Relevance to the Council's Corporate Plan**

#### **Good homes in a well-connected neighbourhood**

10. The income from the disposals will be utilised to improve the quality and safety of existing homes contributing to the creation and sustainability of thriving neighbourhoods and places.

#### **Sustain strong and healthy communities.**

11. The income from the disposals will assist and sustain the development of high quality, safe housing, in areas which people desire to live so contributing to the building of strong, sustainable communities.

### **Background**

12. The Council owns the freehold of the three HRA sites which are existing (declared surplus to operational requirements) garages or former garage sites. These sites have for some time now suffered a combination of anti-social behaviour and or neglect, and in some cases are subject to the generation of housing complaints.
13. The sites are also subject to continued site security and management expenditure with no prospect of revenue income generation, as there's no local demand for garages or the funds to put the sites to alternative uses including housing.

### **Main Considerations for the Council**

14. The sites have been designated as surplus to operational requirements by the Housing & Regeneration Department.
15. There is a requirement in the 30-year HRA Business Plan to generate £1million income from HRA owned stock disposal by the year end, on an annual basis to support the wider stock investment programme. The three HRA sites have the potential to contribute towards this target (Part 2, Appendix 1) with the net figure to be confirmed.

### **Safeguarding Implications**

16. N/A

### **Public Health Implications**

17. Good housing is fundamental to health, and delivery of new housing in response to this demand is necessary to improve the borough's health & wellbeing.

### **Equalities Impact of the Proposal**

18. It is not envisaged that the disposals of these sites will have a negative impact but instead may have a positive impact in terms of the potential creation of jobs for both local residents and building contractors. The disposal of the three sites has the potential to empower SME builders as well as Community Led Housing organisations to provide local solutions to local housing need. A detailed EQIA report is attached at Part 2, Appendix 4.

### **Environmental and Climate Change Considerations**

19. Where built assets already exist, their transfer could potentially reduce the Council's direct emissions. However, there will be an element of scope switching so the emissions will most likely transfer to being borough wide. Ultimately poorly performing buildings will need to be subject to retrofit, although by disposing of them there is a transfer of responsibility from the public to private sector.

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

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Risk Category	Mitigation
<b>Strategic</b>	<p><b>Risk:</b> The Council does not deliver against its housing asset management strategy.</p> <p><b>Mitigation:</b></p> <ul style="list-style-type: none"> <li>• Marketing the disposal by the GLA small sites portal will support the Council's 30-year HRA Business Plan complete</li> </ul>
<b>Financial</b>	<p><b>Risk:</b> Failure to approve the disposals will result in the missed opportunity to deliver a capital receipt.</p> <p><b>Mitigation:</b></p> <ul style="list-style-type: none"> <li>• Proceed with disposal and benchmark against data to demonstrate value for money.</li> </ul> <p><b>Risk:</b> Failure to comply with the grant conditions of the due diligence grant provided by the GLA to support the work to make the three sites ready for marketing, will result in the GLA clawing back part or all of their investment.</p> <p><b>Mitigations:</b></p> <ul style="list-style-type: none"> <li>• Proceed with disposal for the submission of marketing package.</li> <li>• The alternative would be to dispose of the three sites through a public auction with the benefit of the due diligence undertaken to date.</li> </ul>
<b>Operational and financial</b>	<p><b>Risk:</b> That the disposals are unsuccessful in raising a capital receipt because the Council is unable to agree the terms of the disposal with the winning bidder(s) or the bids received are below market value and are not best consideration reasonably obtainable.</p> <p><b>Mitigations:</b></p> <ul style="list-style-type: none"> <li>• Learn lessons from other local authorities that have disposed of similar sites.</li> <li>• Monitor disposals.</li> <li>• Engage with potential bidders early with the support of specialists employed for the task (AY), so they understand the disposal process.</li> </ul>

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

21. The table below highlights risks identified and mitigating actions taken:

<b>Risk</b>	<b>Mitigating action</b>	<b>Residual risk High / Medium or Low</b>
<b>Vacant possession cannot be delivered prior to transfer</b>	Ensure the sites are fully cleared of any rubbish or squatters so that a sale can take place.	Medium
<b>Transfer cannot be completed by deadline</b>	Planning briefs have been developed to assist in the disposal process with some form of comfort on the development potential of all three sites. The intention is for the winning bidder(s) of each site to enter into an agreement for lease conditional upon planning permission and funding.	Medium/High
<b>Reputational risk and upside for the Council</b>	The GLA and the Mayor of London are dependent on Councils to bring forward surplus small build sites to meet housing delivery targets.  These three sites for disposal will deliver on these targets and support the SME sector and or CLTs active in supporting communities.	Medium

**Grant Conditions**

- 22 The due diligence grant from the GLA is subject to LBE complying with the grant conditions and uploading the sites for disposal through the GLA portal. Failure to do so will trigger a clawback clause for a proportion of the grant depending on the number of sites that fail to be uploaded on the GLA portal. Any clawback grant can be offset from the proceeds of the disposal of the three sites in the event that the GLA clawback is triggered. Any additional expenditure associated with the due diligence, marketing and valuations of the three sites will be subject to LBE apportioning the sum from the disposal of the three sites gross sales contribution.
- 23 Given current market conditions and Covid -19, the Council requested an extension of time in which to upload the identified HRA asset sites to the portal. This was granted to 11 September 2022 and the funding agreement was amended accordingly. The proposal in this report will be subject to the GLA granting a further extension if required.
- 24 The grant conditions as set out by the GLA are to be found in the Part 2 confidential appendix 3.

## Financial Implications

- 25 See confidential appendix part 2.

## Legal Implications

*Legal imps prepared by HB on 12.08.2022 based on a report circulated on 02.08.2022.*

26. Section 111 of the Local Government Act 1972 permits local authorities to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions.
27. A local authority has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to public law principles. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. The proposals in this report are compliant with the Council's general power.
28. In entering into property transactions, the Council must comply with the provisions of its Constitution, including but not limited to its Property Procedure Rules, which set out mandatory procedures regarding (amongst other things) the acquisition, management and disposal of property assets. In addition, Section 123(2) Local Government Act 1972 requires a Local Authority to secure the best consideration reasonably obtainable when it disposes of land except on a short tenancy, unless it has the benefit of an express or general consent of the Secretary of State. A short tenancy is defined as a lease of not more than 7 years or the assignment of a lease which has not more than 7 years unexpired of the term.
29. It is noted that the Council intends to enter into an agreement for lease conditional on planning permission and funding with a small developer, housing association or community led organisation for the grant of a build lease for a term of 250 years for each of the sites. The lease will be granted upon the agreement becoming unconditional for the site to be developed. It will be contracted out of the Landlord and Tenant Act 1954 if the site is to be developed for mixed use or commercial purposes. The sites will be marketed through the GLA small sites portal in compliance with the Property Procedure Rules.
30. The Council is required as a best value authority under section 3 of the Local Government Act 1999 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. It is considered that this duty is fulfilled by:
- (a) carrying out a competitive marketing process to ensure that the Council obtains best consideration reasonably obtainable and market value;
  - (b) These sites have been designated as surplus to operational requirements by the Housing and Regeneration Department and by disposing of them the Council intends to obtain a capital receipt in order to contribute to the financial target set by the 30-year HRA Business Plan.
31. In this regard, the Council will need to obtain a formal written valuation in accordance with the Property Procedure Rules.
32. The Council has a general power under the Housing Act 1985 to dispose of property held for housing purposes. By section 32 Housing Act 1985 a voluntary disposal requires Secretary of State's consent unless a general consent has been granted as

set out in the General Housing Consents 2013 issued by the Department for Communities and Local Government. This transaction falls within A3.1.1 of the General Housing Consents 2013 where the sites can be disposed of as intended without Secretary of State's consent provided, they are disposed of for a consideration equal to market value.

33. The Council is required to act in accordance with the Public Sector Equality Duty under section 149 of the Equality Act 2010 and have due regard to this when carrying out its functions which includes making a new decision. The Council will have to ensure that it removes or mitigates any potential factors which may interfere with its Public Sector Equality duty. It is noted that an equality impact assessment has been conducted which confirms that the proposed use of the three sites will have a positive impact on some of the protective characteristics and will not have a negative impact on the other protected characteristics
34. All planning applications will need to be separately submitted to the Council in its capacity as Local Planning Authority for approval, separate from the proposed disposals and compliance will be required of the Town and Country Planning Act 1990.
35. The Council must ensure that any legal agreements arising from the matters described in this report are in a form approved by Legal Services on behalf of the Director of Law and Governance.

### **Workforce Implications**

36. At present there are no immediate or longer-term implications and no redundancies.

### **Property implications**

37. The disposal of the sites listed in the Part 2 Appendix 1 to this report needs to follow the Property Procedure Rules (PPR). In this instance, the sites are to be marketed through the dedicated GLA portal with the successful bidder entering into an agreement for lease with the Council, subject to planning approval and funding. The PPRs state:

Such disposals are subject to a report prepared by the Responsible Senior Officer, and approved by the relevant Cabinet member and must include:

- (i) Justification for such a disposal as being in the best interest of the Council; and
  - (ii) Consideration of external valuation advice.
38. In relation to the first requirement, it is proposed that this report contains the required justification to the relevant Cabinet member. In relation to the second requirement, a Red Book valuation will be carried out before any final bids are recommended by a qualified professional. To this end another DAR will be prepared with supporting valuations at the time for approval and sign off.

### **Other Implications**

39. None

## Options Considered

40. To not proceed with the disposals and miss out on the associated capital receipts and risk repaying the GLA grant. To dispose via the GLA portal would achieve best value, best consideration and would create potential jobs. To dispose via auction - would not achieve best value, best consideration and would create conflict.

## Conclusion

- 41 By proceeding with the disposals to deliver within the required timescales will ensure a capital receipt, that contributes towards the annual £1m target for the Council, which can be reinvested into housing and regeneration.
- 43 The capital receipt will contribute towards the overall aims and objectives of Enfield Council's Housing Strategy, which sets out the strategic approach to investment in council homes over the long term. This also supports the delivery of Enfield Council's Housing and Growth Strategy 2020-2030 and specifically the objective of "Investing and being proud of our Council homes".
- 44 This approach to disposal of identified sites through the GLA's dedicated portal further cements the partnership between the Mayor of London and LB of Enfield in addressing the London housing crisis.

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Appendix 1 See Part 2 confidential appendix

Appendix 2 See Part 2 confidential appendix

Appendix 3 See Part 2 Confidential appendix

Appendix 4 See Part 2 Confidential appendix - Equality impact assessment