

Meeting:	Cabinet	Date:	10 March 2021
Subject:	St Oswalds Redevelopment		
Report Of:	Cabinet Member for Planning and Housing Strategy		
Wards Affected:	Westgate		
Key Decision:	Yes	Budget/Policy Framework:	Yes
Contact Officer:	Ian Edwards, Head of Place		
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Appendices:	A Site & Plot Layout Plan		
	B Financial Implications		
	C Risk & Opportunity Management Implications		

EXEMPTIONS

The public are likely to be excluded from the meeting during consideration of Appendices B and C as they contain exempt information as defined in paragraph (3) of schedule 12A to the Local Government Act 1972 (as amended).

1.0 Purpose of Report

1.1 To secure approval from Cabinet to the disposal of the City Council's interest in sites pertaining to the comprehensive redevelopment of land at St Oswalds for up to 300 new homes in partnership with Rooftop Housing Association (RHA).

2.0 Recommendations

2.1 Cabinet is asked to **RESOLVE**:

- (1) to authorise the Property Commissioning Manager, in consultation with the Leader of the Council, Cabinet Member for Planning and Housing Strategy, Head of Policy and Resources and Head of Place:
 - a. To accept a surrender from Tesco Stores Limited (at no more than market value) of the land edged **Red** on the Plan or otherwise to facilitate the transfer of that part of Tesco Stores Limited's leasehold interest in the land edged **Red** to RHA
 - b. To agree heads of terms with RHA for the disposal at best consideration of the freehold interest, or the grant of a long lease (for a term of at least 99 years from completion) in all or part of the areas of land shown edged **Red**, **Purple** and **Yellow** on the Plan ("the Property") whether by one or more transactions
- (2) to authorise the Head of Policy and Resources to agree heads of terms with RHA for such financial agreements as may be desirable or necessary to protect payment of the purchase price negotiated under Resolution 1(b) until it is received

- (3) to authorise the Head of Place (insofar as they are not authorised under Resolutions 1 and 2 above, or otherwise delegated to an officer under the Constitution or lie with a Proper Officer) in consultation with the Leader of the Council, Cabinet Member for Planning and Housing Strategy, the Head of Policy and Resources and the Council Solicitor to take all necessary steps and undertake necessary procedures, including but not limited to:
- a. entering into any legal arrangements or other documentation as may be required to facilitate the redevelopment of the site for up to 300 new homes on the Property
 - b. to enter into partnership working arrangements with RHA desirable to achieve the comprehensive redevelopment outcomes described in Resolution 3(a)
- (4) to authorise the recipients of the delegations set out in Resolutions (1) –(3) above to instruct the Council Solicitor to prepare such documents as considered appropriate to achieve the outcomes set out in those Resolutions.

3.0 Background and Key Issues

- 3.1 The City Council owns the freehold of St. Oswald's Retail Park and Tesco's store sites identified as land edged **BLUE, GREEN, RED, YELLOW** and **PURPLE** in Appendix A.
- 3.2 In September 2019, Cabinet approved the acquisition of the long lease of the St.Oswalds Retail Park (land edged **BLUE** on Appendix A) from Hammerson PLC to include the development option over the adjoining vacant site of 4.5 acres (land edged **YELLOW** on Appendix A).
- 3.3 Tesco Stores hold all their land and buildings at St.Oswalds on a single long lease from the City Council expiring in 2154 which contains restrictions on any disposal of part, for which they paid a very substantial sum in 2012. Tesco's have been seeking to dispose of the leasehold interest in the 6.5 acre overgrown and vacant land edged **RED** in Appendix A for several years.
- 3.5 The remaining 4.6 acre vacant site in the far rear corner of St. Oswalds is owned freehold by the City Council and is edged in **PURPLE** on the plan at Appendix A.
- 3.6 The Council has had an ambition to achieve the holistic development of the combined 15 acre site for several years. The current draft City Plan identifies the site as providing up to 300 new homes. Previous attempts, including by Homes England, to assist in assembling the site through the purchase of Tesco's long lease on the land edged **RED** proved unsuccessful.
- 3.7 For the past 2 years, Officers have been discussing a masterplanning approach with RHA with Hemingway Design retained to advise on early design concepts. These discussions directly led to RHA bidding to Tesco's to secure the leasehold interest of the land edged **RED** in Appendix A.
- 3.8 In October 2020, RHA advised Officers that they had been identified by Tesco's as the preferred bidder for the site and were planning to enter in to a 3 month Exclusivity Agreement during which time, further due diligence including site investigations and engineers reports would be possible and a full and final offer made. At a meeting with the Leader, Cabinet Member for Planning and Housing Strategy and the Head of Place on 4th February 2021, the Chair of RHA confirmed that the Exclusivity

Agreement had been signed. As part of RHA's due diligence, the City Council will agree suitable license arrangements with to facilitate the site investigation work.

3.9 Current thinking is that the tenure mix across the site would be in the order of:

- 100 market for sale
- 100 affordable rent
- 100 shared ownership

3.10 RHA has made it clear that they would not be prepared to proceed with the acquisition of this site unless the City Council was committed to put its own land in to the development in a form, and at a price, that was acceptable to both parties.

3.11 The approach being recommended is for the Council to dispose of its 15 acre asset (land edged **YELLOW**, **RED** and **PURPLE** on Appendix A) to RHA at a price to be agreed. However, as Officers would like to maintain influence of the emerging masterplan rather than rely purely on the Council's role as Planning Authority, a non-binding Memorandum of Understanding could be developed to define the respective roles.

3.12 Further assessment is required to ensure that *best consideration* is achieved and to ensure that the affordable element of the housing is not pushed to a later phase once the market homes have been completed.

4.0 Social Value Considerations

4.1 The City Council will discuss with RHA how it and its development partners/contractors can deliver social value pursuant to the Council's Social Value Policy and maximise the social value benefits of a capital project likely to exceed £30m in value.

5.0 Environmental Implications

5.1 During the masterplanning and planning application stages, the development will fully explore the opportunities to minimise energy usage both in the construction methods used and the lifecycle of the properties developed.

5.2 Sustainable Urban Drainage Systems (SUDS) will be used across the site and the policy requirement of the draft City Plan will be fully adopted.

5.3 In addition, RHA will develop the site in accordance with the RHA Living Homes Standard which sets out the minimum requirements for all new homes. The Standard is a significant improvement on current building regulations as it ensures better environmental credentials for new homes by focussing on 6 categories which cover the core functions of a home and how it interacts with the wider environment for the benefit of the end user; Energy, water, carbon, comfort, space and place.

6.0 Alternative Options Considered

6.1 Should RHA secure the long lease of the land edged **RED**, there are no other options in terms of partners with whom to achieve a comprehensive redevelopment of the site. The main options in this case relate to the way in which the City Council would wish to engage with RHA to achieve that outcome.

6.2 The benefits of a Development Agreement approach rather than the disposal option described in 3.11 above would include providing the Council with greater control over the delivery of the scheme if it were felt that less formal arrangements were insufficient. However, there are legal issues to be considered with this option as set out in the legal implications.

7.0 Reasons for Recommendations

- 7.1 The proposal offered provides a high quality and rapid opportunity to develop up to 300 new homes on currently underused and derelict land owned by the City Council. Though the provision of up to 200 new affordable homes, the development addresses the strategic housing needs for the City and provides significant opportunities for local construction and services supply chains.
- 7.2 Officers believe the proposal is a practical and expedient way forward and recommend that approval is given in accordance with the recommendations at 2.1 above.

8.0 Future Work and Conclusions

- 8.1 Should Cabinet support the recommendations contained within this Report, the next steps would be as follows:
- (i) RHA to undertake further due diligence during the period of the 3 month Exclusivity Agreement including site investigation works and engineers reports
 - (ii) In parallel with (i) above, City Council to conclude negotiations with Tesco for agreement to dispose of land edged **RED** as referenced in 3.3 above
 - (iii) RHA Board to consider full and final offer to Tesco for the acquisition of the long lease interest in land edged **RED** in Appendix A. Likely to be May/June 2021
 - (iv) Should Tesco accept the offer, a number of parallel actions will follow including:
 - RHA to conclude the acquisition of the long lease in land edged **RED**
 - City Council to conclude the disposal of the long lease or freehold in land edged **YELLOW** and **PURPLE** and potentially the freehold in land edged **RED**
 - (5) RHA and City Council continue discussions on the masterplan for the comprehensive redevelopment followed by a subsequent planning application
 - (6) RHA will procure a developer / contractor partner through the Homes England DPP3 framework with modern methods of construction to the fore

9.0 Financial Implications

- 9.1 Refer to Exempt Appendix B.

10.0 Legal Implications

- 10.1 The City Council has a statutory duty to obtain best consideration when disposing of a freehold or long leasehold interest in property. Whilst it is anticipated that the proposed transaction will be at best consideration, in the event that it falls below this figure, the City Council would have to have regard to the Consents issued under section 25 of the Local Government Act 1988, which may restrict the future use of the land.
- 10.2 Whilst a freehold disposal is more clean-cut than the grant of a long lease, additional documents may be required (e.g. option agreements) to ensure that the City Council's future objectives are met.
- 10.3 The grant of a long lease may give the City Council greater control over the future of the site, but lenders may prefer taking a charge over a freehold interest.

- 10.4 If payment of the purchase moneys is to be delayed beyond the date of the transfer of the land to RHA, the sum outstanding could be secured by a legal charge over the land. However, the City Council in doing so would need to comply with the Subsidy Control regime (the replacement to state aid following the withdrawal of the UK from the EU). Detailed advice can be given if this option is to be considered. In addition, there may be risks to the City Council if the development of the site was commenced but not completed.
- 10.5 RHA's own lenders may require their charge to have priority over any charge taken by the City Council over the land. In the event of default, this could mean that the City Council may not receive the sum due to it.
- 10.6 Whether the disposal is by way of freehold or leasehold, an attempt to give the City Council detailed control of the development may have procurement implications. Detailed advice on those implications have been provided to officers as development agreements are often deemed to be public works contracts or public works concessions contract requiring adherence to the relevant procurement legislation (Public Contract Regulations 2015 or the Concessions Contracts Regulations 2016). If this option were to be considered, further legal advice would be required as to how to the development can be delivered without the requirement to conduct a procurement exercise, the associated risks and risk mitigations measures.
- 10.7 When considering the appropriate legal mechanism to achieve the outcomes desired by the City Council, regard will be had to minimising any liabilities it may occur, e.g. Stamp Duty Land Tax.
- 10.8 One Legal have been consulted in the preparation of this report.

11.0 Risk & Opportunity Management Implications

- 11.1 Refer to Exempt Appendix C.

12.0 People Impact Assessment (PIA) and Safeguarding:

- 12.1 The completed development will provide up to 200 new affordable homes for the City thereby increasing the supply and quality of suitable accommodation to meet Gloucester's housing needs.
- 12.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impacts as a result of this recommendation. Therefore, a full PIA was not required.

13.0 Community Safety Implications

- 13.1 The scheme will be delivered in accordance with one of the 13 key principles of the City Plan, namely "*Deliver development that achieves high quality design and layouts that integrates new and existing communities, reduces crime and the fear of crime, builds positively on local distinctiveness and contributes to the creation of an active, connected and sustainable city.*"

14.0 Staffing and Trade Union Implications

- 14.1 There are no staffing and trade union implications.

Background Documents: None