



**Report for:**  
**ACTION**

**Item Number: 13**

<b>Contains Confidential or Exempt Information</b>	<b>YES (Part)</b> Appendices 2, 3, 4, 5 & 6 contain Exempt Information by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972
<b>Title</b>	Acquisition of Cattle Market site adjacent to Southall Market Car Park and redevelopment of the combined site to deliver circa 125 affordable homes.
<b>Responsible Officer(s)</b>	Tony Clements, Executive Director for Place <a href="mailto:clementst@ealing.gov.uk">clementst@ealing.gov.uk</a> x 9120
<b>Author(s)</b>	Philip Browne, Director of Housing Development, <a href="mailto:brownep@ealing.gov.uk">brownep@ealing.gov.uk</a> x5807
<b>Portfolio(s)</b>	Cllr Mason, Housing
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	15 October 2019
<b>Implementation Date if Not Called In</b>	28 October 2019
<b>Affected Wards</b>	Southall Broadway
<b>Keywords/Index</b>	Southall Car Park, Cattle Market, Mackenzie

#### **Purpose of Report:**

To seek Cabinet authority to enter into a 'Purchase of land and Development Agreement' with Mackenzie (South West) Homes Ltd (Mackenzie Homes) to realise marriage value of Southall Market Car Park by acquiring the adjacent Cattle Market site for the purposes of delivering circa 125 affordable homes and re-providing the public car park to circa 80 spaces (the Scheme).

## **1. Recommendations**

It is recommended that Cabinet:

- 1.1. Notes the change of strategy for the Southall Car Park from that outlined in the Cabinet report of 13th December 2016 in paras 2.6 to 2.8.
- 1.2. Notes and agrees the proposal to the principle of the redevelopment of the Southall Market Car Park together with the acquisition of the remainder of the adjacent Cattle Market site as proposed in paras 3.3 to 3.6 below as shown on the plan in Appendix 1 which will result in a construction of circa 125 homes (or as amended by planning), and re-provision of the public car park circa of 80 spaces.

- 1.3. Notes that the funding commitment required to undertake the transaction will come from the GLA Grant funding of £12.5m and the rest to be financed HRA capital programme or via loan agreement to the RP or BL (from existing BL loan facility).
- 1.4. Delegates authority to the Chief Finance Officer to apply the most appropriate funding source as indicated within Recommendation 1.3.
- 1.5. Delegates authority to the Executive Director of Place, subject to Recommendation 1.3 and 1.4 and following consultation with the Portfolio Holder for Finance and Resources, Portfolio Holder for Housing and the Director of Legal and Democratic Services to negotiate and enter the legal agreement/s necessary to progress the redevelopment as proposed.
- 1.6. Agrees in principle for the Southall Market Car Park to be appropriated for planning purposes and the adjacent site to be acquired for planning purposes.
- 1.7. Authorises the Director of Regeneration and Planning to undertake the appropriation process as and when necessary.
- 1.8. Delegates authority to Executive Director of Place, following consultation with Chief Finance Officer and Director of Legal and Democratic Services to transfer the residential units at the most appropriate time to Broadway Living (BL) or its RP subsidiary (BLRP) subject to further consideration of financial and development feasibility and discussion and negotiation with BLRP.
- 1.9. Notes and agrees that if the Scheme does not progress by way of a transfer to BL or BLRP then the Scheme will be delivered within the HRA and that the HRA Capital Programme will be adjusted to reflect the requirement to support the delivery of the Scheme.
- 1.10. Delegates authority to Chief Finance Officer following consultation with Executive Director of Place and Director of Legal and Democratic Services to enter into the Funding Facility Agreement with BL or BLRP as appropriate.

## **2. Background**

- 2.1. The Council purchased part of the Cattle Market site in 2013 and created an 80 space pay and display, surface level public car park.
- 2.2. The car park is located between the car park behind Red Lion Public House and the remainder of the old Cattle Market site to the rear of the Lidl supermarket on Southall High Street at the eastern end of Southall Town Centre.
- 2.3. The vehicular access to the car park is jointly shared with the adjacent Cattle Market currently operating as a local market for three days a week.
- 2.4. The car park is 0.179 hectares and consists of 78 regular bays, 2 disabled bays and electric car charging points. The car park receives 25,000 visits per annum.

- 2.5. The Council was approached for the purchase of our car park by the developer of the Red Lion site in early 2016, and Cabinet approved the disposal of the car park in December 2016. However, this scheme did not proceed when the proposed supermarket operator dropped out.
- 2.6. In July 2018, as part of the Future Ealing project, Cabinet approved a more commercial and strategic approach in the use of Council assets in achieving its objectives of delivering genuinely affordable housing.
- 2.7. In October 2018, the Council secured circa £98.8 million grant funding from the Greater London Authority under the 'Building Council Homes for Londoners' programme to deliver 1138 affordable homes.
- 2.8. As part of the above, Council has been reviewing its corporate portfolio to identify suitable sites for housing development and Southall market car park has been identified as one. The approved strategy meant that the site was to be developed in conjunction with the adjacent sites instead of development of the site in isolation.

### **3. Options Considered**

- 3.1. In March 2019, in the interest of realising the best value and higher affordable housing numbers for the site, the Council invited affordable housing proposals from parties holding beneficial interest in the adjoining sites, who have previously expressed an interest.
- 3.2. The owners of the Red Lion car park declined to submit an offer. However, Mackenzie Homes, who holds an option to purchase the Cattle Market site, submitted an offer to deliver 100% affordable housing.
- 3.3. Mackenzie Homes' offer requires the Council to enter into a fixed sum contract for the transfer of Mackenzie Homes' option site and for the construction of the homes.
- 3.4. The design proposals by Mackenzie Homes include the re-provision of the existing car park and ancillary accommodation on the ground level, with residential accommodation over nine floors above.
- 3.5. The residential accommodation is made up of two staggered blocks served by two cores producing circa 125 homes which will be predominantly for London Affordable Rent with a small number of shared ownership should this be required for making the scheme financially viable.
- 3.6. The proposals also include the creation of a new public space behind the High Street buildings, new public realm and play spaces and improves the existing pedestrian access to the north west corner of the site.

- 3.7. One of the previous proposals with the supermarket operator, which has fallen through, included for a public toilet, however, this is no longer being proposed.
- 3.8. To proceed with the current proposals, the Council has reviewed other options for the site, and they are summarised below:
  - 3.8.1. Do Nothing. This will result in sub-optimal use of the site as a car park and does not provide any genuinely affordable homes to cater to our residents' need.
  - 3.8.2. Development of the car park site alone. The car park can provide up to 76 homes whilst retaining a reduced amount of public car park on the ground floor. However, this proposal does not realise the full potential of the site, will result in loss of car parking spaces and income for the longer term. The proposals also deliver significantly reduced number of affordable homes due to poor viability and requiring cross subsidy with high number of private sale or shared ownership tenures.
  - 3.8.3. Joint development across three sites. The Council has considered combining all three sites to realise the full potential of the sites however, this didn't come to fruition as the owner of the third site is not willing.
- 3.9. Considering the above options, the current proposal with the Mackenzie Homes site achieves the best outcome for the Council.

#### **4. Deal Structure**

- 4.1. The legal structure will be an agreement for the purchase of the adjacent Cattle Market site and a development agreement with Mackenzie Homes to re-provide the car park and construct circa 125 new homes, subject to planning permission. The agreement and build contract will be at a fixed price as required by the option holder. The site plan is appended as Appendix 1.
- 4.2. The contracts are intended to be exchanged in November 2019 subject to approval by Cabinet, which will then allow Mackenzie Homes to develop the design and secure planning consent at their own risk and cost.
- 4.3. The land transfer will take place upon securing satisfactory planning consent following which the land payment is to be released to the developer.
- 4.4. It is proposed that upon purchase of the option site, the development land is appropriated for planning purposes. This will result in overriding any third-party rights to an injunction that may affect the redevelopment (as set out in paragraph 7.1-7.3below).
- 4.5. The proposals are still in development and an element of shared ownership/private sale units may need to be introduced to support the viability of the scheme and the proposals are subject to planning permission.

- 4.6. The deal structure is subject to tax advice.
- 4.7. During the construction period, the car park is anticipated to be closed for a period of up to two years.
- 4.8. The indicative programme is listed below;

Activity	Date
Completion of Development Agreement	November 2019
Submission of planning application	December 2019
Cattle Market (Option Site) Land Transfer	July 2020
Start on Site	October 2020
Completion of new homes	October 2022

- 4.9. The summary of the key terms of the proposed deal are outlined below and draft Heads of Terms are attached as Confidential Appendix 2.

**The Developer** - Mackenzie (South West) Homes Ltd.

**The Site** – The Site currently comprises property in two key ownerships namely a surface car park property owned by the Council and the adjacent Cattle Market site (the Option Site) currently in private ownership and subject to an option agreement in favour of the developer.

**The Scheme** - The Scheme comprises of circa 125 units for affordable housing and the re-provision of public parking subject to planning permission.

**Car Park**– The Scheme will incorporate a new ground floor parking facility to accommodate the existing car parking spaces and its associated income.

**Development Licence** – The developer will be granted a Development Licence to undertake the Development works

**Land Purchase/Ownership** – The land payment is payable upon transfer of the Option Site with planning consent. The land payment figure is supported by the valuation from Council's commercial advisors, Lambert Smith Hampton, (LSH) which is attached as Confidential Appendix 3.

**Planning Consent** - The developer will make a detailed planning application at their cost on behalf of the Council as the landowner and the Council agrees to appropriate the land for planning purposes.

**Contract Sum**- The Contract Sum will be the amount that the Developer will receive on monthly valuations to undertake and complete the development of the Scheme. This is the fixed price less land payment.

## 5. Key Implications

- 5.1. It is proposed to enter into contract by November 2019 on the basis of the attached Heads of Terms subject to Cabinet Approval. This date is critical due to the deposit amounts required by the developer to secure the option site.

Failure to enter into the agreement by this date will result in Mackenzie Homes' option for the site expiring.

- 5.2. Should the Council/Broadway Living fail to complete the development as per the agreement, the developer would be entitled to seek recovery of their losses as per the contract. The developer may require a fixed figure payable to recover the costs of surveys, design and planning work undertaken to that stage. This will be adjusted against any further claim brought to recover full loss and expenses.
- 5.3. The Head of Parking does not consider that the car park is vital to the provision of parking in Southall, but it plays an important part in managing parking demand in the summer and school holidays. There is strong local expectation that the Council retains such assets in this area given the high level of traffic, popularity of the location with visitors, and impact of other changes in the area including The Green and the former Gasworks site. The car park is of importance during the school holidays and during summer weekends when visitor numbers in Southall are at their highest.
- 5.4. The car park will need to close during the construction period creating a temporary impact on the provision of the car parking in the area. However, it is noted that the car park is operating at sub-optimal capacity and there are other alternative parking facilities available in the local area.
  - 5.4.1. The car park behind Red Lion Public House has capacity although the site is currently being considered for redevelopment.
  - 5.4.2. Fairlawn car park is a private car park consisting of 60 spaces is less than a five-minute walk away.
  - 5.4.3. Herbert Road Car Park has 243 spaces, offers two hours free parking and is a five-minute walk away.
- 5.5. The Council will work with Mackenzie Homes to develop a vacant possession strategy for the market stall holders, prior to site being transferred to the council.

## **6. Financial**

- 6.1. Currently the financial viability of delivering 125 London Affordable Rent Units is being developed and assessed. Furthermore, more work is being done in-regard to working up options on where the development will be delivered. Currently, the Council has options to develop Cattle Market site within the HRA or pass this onto one of the Council Owned Housing Companies, Broadway Living Ltd or Broadway Living RP Ltd.
- 6.2. The loss of parking income during the period of construction is allowed for in the appraisal to ensure no loss of revenue for Parking Services team. This loss of parking income forms part of the total cost of development and will be paid to the Council's Parking services department based on the loss as per the 19/20

Budget position. This will therefore not lead to budget pressures within Parking Services.

- 6.3. The project is intended to secure funding from the GLA Home for Londoners programme and will be partially funded using borrowing from the GF or HRA. The GF borrowing option will only be used if the units are transferred over to Broadway Living or Broadway Living RP and the funding will be provided as a loan with a payback period over 40 years, which covers interest and principal repayments. This will be structured at nil cost to the GF.
- 6.4. The Council will continue to review financing options and will depend upon which entity the development will be held. A final business case will be presented as part of the delegation and Key Officer Decision before the scheme progresses and the development agreement is signed.

## **7. Legal Implications**

- 7.1. The Council has the power to appropriate land for planning purposes under section 122 of the Local Government Act 1972. The Council may also dispose of land appropriated for planning purposes under section 233 of the Town & Country Planning Act with a view to securing its best use or the construction of buildings needed for the proper planning of the area.
- 7.2. The Council has the power to acquire land for planning purposes under section 227 of the Town & Country Planning Act
- 7.3. The effect of the acquisition or appropriation of land for planning purposes is that under section 203 of the Housing and Planning Act 2106 the Council may override easements and other third-party rights in specified circumstances although the beneficiaries of any rights overridden may claim compensation but cannot seek an injunction to delay or terminate the development.
- 7.4. The proposed agreement with Mackenzie Homes would in principle constitute a direct award for the Public Contracts Regulations 2015 (PCR 2015). However, the Council is of the view that it can rely on Regulation 32 (2) (b) (iii) of PCR 2015 and enter into direct negotiations with Mackenzie Homes to undertake the Scheme on the basis that the latter has a pre-existing option to acquire the adjacent site (for future development purposes) and as part of the site transfer arrangements with the Council, Mackenzie Homes wish to retain their pre-existing development rights (which therefore constitute "an exclusive right" for the purposes of Regulation 32 (2) (b) (iii)). Therefore, direct negotiation with Mackenzie Homes constitutes the only viable legal and commercial route if the Council wish to proceed with this Scheme.

- 7.5. To reiterate, the Scheme (as proposed) is the only viable option
- 7.5.1. the Council's previous consideration of the possibility of redeveloping the car park site as a standalone Scheme resulted in a recognition of the need to redevelop in conjunction with redevelopment of an adjacent site in order to deliver a feasible scheme to maximise the provision of affordable housing;
- 7.5.2. it is not considered that there are any other options for redevelopment of the car park site in order to achieve the maximum level of affordable housing possible. There was an unsuccessful attempt to redevelop the car park site with another adjacent owner
- 7.5.3. Mackenzie Homes' rights over the Cattle Market site and their willingness to redevelop the sites jointly is subject to a requirement that they be responsible for the construction on the combined site.
- 7.5.4. To mitigate any risk of a public procurement challenge, the Council will publish a voluntary transparency notice in the OJEU. This would notify the market of the Council's intention to enter into an agreement with Mackenzie Homes and its intention to rely on the exclusive rights exemption to do so. Under section 203 of the Housing and Planning Act 2016 the Council may override easements and other third-party rights in specified circumstances although the beneficiaries of any rights overridden may claim compensation but cannot seek an injunction to delay or terminate the development.

## **8. Value for Money**

- 8.1. Lambert Smith Hampton, as the acting advisors and valuers for the Council have assessed the commercial terms of the deal and provided confirmation that the deal represents Value for Money (Attached as Confidential Appendix 4)

## **9. Sustainability Impact Appraisal**

- 9.1. Sustainable impacts will be considered during the planning process for redevelopment of the site.

## **10. Risk Management**

- 10.1. Planning risk is with the developer and the Council will not incur any costs should the planning consent be refused or is unsatisfactory for the purposes intended.
- 10.2. The Council has taken the following contract protection measures to mitigate various contract risks:
- 10.2.1. 10% Performance Bond
- 10.2.2. 10 Year Building Warranty



10.2.3. Insolvency Cover

10.2.4. Collateral Warranties for all design work

10.2.5. Standard contract retention on all construction related payments of which 50% to be released on handover and the remaining 50% on successfully completing end of defects works.

10.3. A risk register is appended in Confidential Appendix 5.

## **11. Community Safety**

11.1. Development of this asset will have a positive impact on the surrounding area by designing out crime with improved public realm, improved access and connectivity to the site and by designing areas to offer more natural surveillance.

## **12. Links to the 3 Key Priorities for the Borough**

12.1. The redevelopment will contribute to achieving Ealing's objectives:

- **Good, genuinely affordable homes**

All the new homes built will be affordable homes with a large majority of them being genuinely affordable homes.

- **Opportunities and living incomes**

All new homes in the development provide opportunities for Ealing's residents to stay in the borough and not be priced out of the market with growing rental prices in the area.

- **A healthy and great place**

The new development will provide high quality, well insulated homes for local residents. All new homes will be built to lifetime homes standards, in addition to a percentage of the homes will be adapted for residents with disabilities. The new development will promote a secure and safe environment through the principles of secure by design. The development may stimulate further investment in neighbouring properties with additional benefits in terms of community benefit.

## **13. Equalities, Human Rights and Community Cohesion**

13.1. An Equality Analysis Assessment (EAA) has been undertaken for the Scheme

## **14. Staffing/Workforce and Accommodation implications:**

14.1. The current Housing Supply Team has the resources to deliver the Scheme. Specialist support/advice will be procured where required to deliver the Scheme. There are no workforce implications arising from the recommendations.

## 15. Property and Assets

- 15.1. The Southall Market Car Park is a Council owned site providing circa 80 Car parking spaces in Southall town Centre. The freehold interest in the Option Site will be transferred to the Council thereby the Council will own the freehold interest for the whole site

## 16. Any other implications:

- a. None

## 17. Timetable for Implementation

Activity	Date
Completion of Development Agreement	November 2019
Submission of planning application	December 2019
Option site land transfer	July 2020
Start on Site	October 2020
Completion of new homes	October 2022

## 18. Appendices

Appendix 1 – Site Plan  
Confidential Appendix 2 – Heads of Terms  
Confidential Appendix 3 – Market valuation for Cattle Market  
Confidential Appendix 4 – Best Consideration Report  
Confidential Appendix 5 – Risk Matrix

## 19. Background Information

Cabinet Report - Future Ealing: Property Assets and Neighbourhood Offer –  
10<sup>th</sup> July 2018

Cabinet Report - Grant of 125 year lease for land at Southall Market Car Park  
– 13<sup>th</sup> December 2016

## 20. Consultation

Name of consultee	Post held	Date Sent to consultee	Date response received	Comments appear in paragraph:
<b>Internal</b>				
Tony Clements	Executive Director of Place	19/09/2019	23/09/2019	2.3, 2.7, 3.2, 3.3 3.7, 4, 4.8, 6
Lucy Taylor	Director of Regeneration and Planning	16/09/2019	24/09/2019	5.4, 6.2

Phillip Browne	Director of Housing Development	16/09/2019	26/09/2019	1.6 - 1.8, 3.8, 4, 5.1, 6.3, 10
Jackie Adams	Head of Legal (Commercial)	16/09/2019	26/09/2019	1, 2.5, 3.8-3.9, 7
Nish Popat	Head of Accountancy	16/09/2019	27/09/2019	1.7-1.9, 6
Peter Mason	Cabinet Member for Housing	26/09/2019		
Gina Cole	Head of Parking Services	16/09/2019	24/09/2019	2.4, 5.3

### **Report History**

<b>Decision type:</b>	<b>Urgency item?</b>
Key Decision	No
Report no: Philip Browne Director of Housing Development brownep@ealing.gov.uk Ext 5807	