

HERTSMERE BOROUGH COUNCIL

Meeting name & Date	EXECUTIVE 11 November 2020
Agenda item	7.5
Report title	Transfer of Land Adjoining Grosvenor Road, Borehamwood to Hertsmere Developments Limited
Report reference no.	EX/20/37
Wards affected	'All wards'
Report author, job title & email	Harvey Patterson, Head of Legal & Democratic Services harvey.patterson@hertsmere.gov.uk
List of Appendices	Appendix 1 - Plan of Land to be Transferred
Reason for urgency	N/A

Is it a Key Decision?	Yes
Call-in expires on	16 November 2020
Exempt from Call-in	Not applicable
Portfolio Holder	Councillor John Graham Portfolio Holder for Finance and Property

PUBLIC REPORT - this report is available to the public.

1 RECOMMENDATION

1.1 That the Executive recommends to Council:

1.1.1 that all the sites identified in the initial Business Plan of Hertsmere Development Limited (HDL) for the development of flats for sale or rent are leased to HDL on 125 year leases

1.1.2 That the Executive recommends to Council the grant of a lease of a minimum of 125 years to Hertsmere Developments Limited (HDL) of the Council owned land adjoining Grosvenor Road Borehamwood shown for identification purposes on the plan at Appendix 1 to the officer's report and that authority be delegated to the Managing Director in her capacity as the HDL Shareholder Representative in consultation with the Portfolio-holder for Finance and Property to agree the detailed terms of the Lease to HDL

1.1.3 That the consideration for the grant of the lease to HDL shall represent the current market value of the site with the benefit of the planning permission for housing development granted by the Council

on 21 February 2020 under reference 19/1537/FUL and shall be received by the Council by taking an equity holding in HDL.

- 1.2 That the Executive agrees to the transfer of the Council's shares in Hertsmere Homes Limited (HHL) to HDL at their nominal value of £100 and in accordance with the terms of the Governance Agreement with HDL, consents to the acquisition by HDL of the Council's shareholding in HHL on condition that the Governance Agreement is amended to reserve to the Council the right to approve the appointment of the directors of HHL following consultation with the Shareholders Panel (when finally established).
- 1.3 That in accordance with the terms of the Council's Governance Agreement with HDL, the Executive agrees and consents to the establishment by HDL of a wholly owned subsidiary not-for-profit company limited by guarantee and to HDL applying to the Social Housing Regulator to register the company as a Registered Provider on condition that the Governance Agreement is amended to reserve to the Council the right to approve the appointment of the directors of the RP following consultation with the Shareholders Panel (when finally established) and that the Council is given 100% nomination right on all first and subsequent lettings of such accommodation.

2 PURPOSE OF THIS REPORT

- 2.1 To recommend to Council that lands identified in the HDL Business Plan for transfer to the company for the purposes of flatted development for sale or rent, are leased to HDL on leases of a minimum of 125 years
- 2.2 To recommend to Council the grant of lease of a minimum of 125 years to HDL of the land shown on the Plan at Appendix 1
- 2.3 To authorise and give approval under the terms of the Governance Agreement to the sale of the Council's shares in HHL to HDL for reasons of good governance as HHL will be responsible for the management and maintenance of all market rented accommodation developed by HDL and in order to establish a Group structure with the Council and EFS to enable the transfer of land assets within the Group free of Stamp Duty Land Tax (SDLT) charges and to secure the VAT reclaim and corporation tax advantages of being in such a group.
- 2.4 To approve the establishment by HDL of a wholly owned not for profit subsidiary company limited by guarantee and apply to the Social Housing Regulator for registration as a Registered Provider (RP) in order that the RP can manage and maintain the affordable housing elements of HDL's housing development activities and to ensure that the Council has 100% nomination rights in respect of such accommodation

3 REASONS FOR RECOMMENDATIONS

- 3.1 On 18 July 2018 full Council acting on the recommendations of the Executive approved the HDL Business Plan authorised the terms of transfer to HDL of the Council owned sites identified in the Plan and made

project funding of £50 million available to HDL at maximum draw down limits of £10 million in any financial year (Council minute 116/2018 refers). In particular, the Council approved the grant of 125 year leases to HDL in respect of the sites identified in the Business Plan for flatted development for sale on the open market and 20 year leases in respect of flatted development sited intended for market value lettings.

- 3.2 The ability of HDL to progress the implementation of its Council approved Business Plan has been hampered by difficulties in recruiting a Development Director with experience of project managing the delivery of housing and commercial developments. A recent recruitment exercise by HDL at a more competitive salary did generate more interest and the Board was able to make an offer to a suitably qualified candidate with a good track record in the delivery of private sector housing. Unfortunately, the successful candidate decided at the very last moment not to join the company and the Board will be asked to consider a range of options at its next Board Meeting by which the company can procure the skills required to drive forward the implementation of the Business Plan.
- 3.3 The addition of this resource will enable the company to commence its development activities in earnest beginning with the 'shovel ready' Council owned site adjoining Grosvenor Road Borehamwood shown in Appendix 1, which already has full planning permission for the development of 15 x 2 bed flats, five of which would be allocated for use as social rented accommodation for local persons in need of such accommodation and in respect of which the Council would receive 100% nomination rights for first and subsequent tenants

In addition, the Council's external legal advisors, Anthony Collins LLP, have recommended that where leases are to be granted in respect of sites identified in the HDL Business Plan for flatted development for sale or rent, all leases should be granted for a minimum of 125 years in order to represent good security for lenders. In this way the Council will retain control over these land asset through the terms of the leases, by its ownership of HDL and the right to appoint its directors and by the terms of any or project finance loan agreements that will include step-in rights for the Council and be secured by a first charge on HDL's leasehold interest.

- 3.4 Consequently, the Executive is requested to recommend to Council:
- 3.3.1 That the sites in the HDL Business Plan identified for flatted development for sale or for rent are transferred to HDL on leases of a minimum of 125 year; and
- 3.3.2 That the land shown in Appendix 1 to this report, being land adjoining Grosvenor Road Borehamwood, is leased to HDL on a minimum 125 year lease in accordance with the recommendations at Paragraph 1.2 above.
- 3.5 As the Council has delegated the power to the Executive to agree project funding on receipt of a detailed business case, one of the priority actions for HDL will be the development of a viable business case in respect of the land adjoining Grosvenor Road.

- 3.6 The Council has also been advised by its external solicitors, Anthony Collins LLP, that for reasons of tax efficiency and good governance, the Council's wholly owned property management company, HHL, should become a wholly owned subsidiary of HDL. Consequently, the agreement of the Executive is sought to the sale of its shares in HHL to HDL at their nominal value of £100. The acquisition of shares in another company is also a reserved matter in the HDL Governance Agreement and therefore the consent of the Executive is requested to the acquisition by HDL of the Council's shares in HHL.
- 3.7 It is also intended that HDL's housing development activities on the land adjoining Grosvenor Road Borehamwood and on the other sites in the HDL Business Plan will result in the construction on sites of 10 units or more of between 35% and 40% affordable housing. Accordingly, Anthony Collins LLP have analysed the various options available to the Council for the future management of these dwellings and taking into account the Council's desire to retain freehold ownership of affordable housing units derived from the development activities of HDL, it is their recommendation that HDL establish as a wholly owned subsidiary, a company limited by guarantee and then apply to the Social Housing Regulator to register the company as a not-for-profit Registered Provider (RP).
- 3.8 The consent of the Executive is therefore sought to the establishment by HDL of a subsidiary guarantee company and to its registration with the Social Housing Regulator as a not for profit RP. As with all Council owned companies, the governance arrangements, which will be brought to a future meeting of the Executive for approval, will reserve to the Council the right to nominate the directors - although officers will be the first director and secretary of the guarantee company purely for the purpose of establishing the company and registering it at Companies House.

4 ALTERNATIVE OPTIONS

- 4.1 The Executive could decide not to recommend that the Council grants minimum 125 year leases of the land identified in the HDL Business Plan for flatted development for sale or rent. This is not recommended as a long lease will represent good security for any related Council project funding in respect of which the Council will take a first charge with step-in rights.
- 4.2 The Executive could decide not to recommend to Council that the land adjoining Grosvenor Road is leased to HDL on a 125 year lease. This is not recommended as the Council has already invested in obtaining planning permission for housing development on the site, nor can the Council offer the tenures required for market rented accommodation and could be required to re-open its Housing Revenue Account, meaning that rental income could not be used to support general fund expenditure. .
- 4.3 The Executive could decide not to sell the Council's shares in HHL to HDL. This is not recommended as the on-lease by HDL of housing accommodation to HHL could result in the imposition of SDLT charges.

- 4.4 The Executive could decide to withhold its consent to HDL establishing a not for profit RP through the medium of company limited by guarantee. This is not recommended as HDL would have to on-lease the affordable housing units to another RP and at present the RP's active in the Borough are reluctant to obtain leasehold interests in disparate units of social or affordable rented accommodation due to the perceived management costs.

5 FINANCIAL AND BUDGET FRAMEWORK IMPLICATIONS

- 5.1 It is proposed that the land adjoining Grosvenor Road Borehamwood, as shown in the plan at Appendix 1, be transferred to HDL in consideration for the Council taking an equity holding in HDL equivalent to the open market value of the site. This is the same arrangement previously agreed by the Council in relation to the sites set out in the approved HDL Business Case (July 2018 C/18/21). The transfer must be at the open market value in order to comply with 'State Aid' requirements.
- 5.2 Development of this site will also necessitate 'State Aid' compliant loan funding arrangements from the Council and it is proposed that HDL drawdown against the £50M loan funding facility approved by the full Council in July 2018 (C/18/21). In accordance with the approved delegation to the Executive, the business case for development of this site will be submitted by HDL and subject to robust scrutiny and the acceptable return on the investment being demonstrated, the Executive, on behalf of the Council, will release the project funding requirement in agreed stages. This will be the subject of a future report to the Executive.
- 5.3 The Council's return from its equity and lending will come from four main sources:
- 5.3.1.1 Interest yield on the lending – lending will need to be on a commercial basis and be State Aid compliant. The Council will lend at PWLB rates plus a risk premium of a minimum of 3%.
 - 5.3.1.2 Dividend payments – Due to the Council's equity holding the Council will be entitled to dividend payments subject to HDL making sufficient distributable profit. However, it needs to be borne in mind that the distributable profit will be after tax and interest payments so the dividend payment may not be delivered in the near future.
 - 5.3.1.3 Provision of services to HDL – Support services provided to HDL by the Council may be chargeable.
 - 5.3.1.4 Rent from granting of a lease – As freeholder the Council will receive rental income in accordance with any lease agreement between both parties.
- 5.4 Previously the Council also approved a working capital loan facility of £500k (C/16/32) for HDL to carry out day to day operations and sustain its cash flow activities. To date this funding has been utilised to establish the company, develop the business case for approval, seek appropriate legal, financial and tax advice and to implement appropriate governance arrangements. This loan facility will also facilitate the appointment of a

Development Director and the required resources to start to progress the business plan including taking forward this proposed development.

6 LEGAL POWERS RELIED ON AND ANY LEGAL IMPLICATIONS

- 6.1 The Council sought the advice of Anthony Collins LLP in relation to:-
- 6.1.1 the Council's powers in relation to the transfer of land to HDL for housing and commercial development purposes;
 - 6.1.2 the Council's powers of investment (for example, when the Council transfers land to HDL in return for an equity holding in the company);
 - 6.1.3 the Council's powers of borrowing and lending to fund HDL's developments activities;
 - 6.1.4 the powers of HDL to acquire the share capital of HHL from the Council and the steps required be taken to achieve that objective;
 - 6.1.5 procurement considerations as they relate to HDL and HHL as Teckal companies;
 - 6.1.6 the Council's powers to establish through HDL a not for profit company including advice on the constraints and legal requirements to be satisfied in registering the company as a Registered Provider with the Social Housing Regulator;
 - 6.1.7 tax efficiency, and
 - 6.1.7 State Aid compliance to ensure that none of the financial assistance provided by the Council to HDL or through HDL to HHL will constitute unlawful State Aid.
- 6.2 The recommendations in this report have been structured taking into account the advice of Anthony Collins LLP in relation to all these matters

7 EFFICIENCY GAINS AND VALUE FOR MONEY

- 7.1 The net revenues generated by the development and letting of housing accommodation at market rents will flow through to the Council to support the general fund. The Council will also benefit from the appreciating capital value off such assets whilst delivering non cashable benefits in terms of housing delivery including the provision of much needed affordable housing.

8 RISK MANAGEMENT IMPLICATIONS

- 8.1 HDL will only be able to access development funding from the Council to develop the land adjoining Grosvenor Road Borehamwood by the provision of a viable business case and the Council will also take a first charge on the site as security for lending.

- 8.2 HDL will not commence the development of this site until it has procured the requisite project management expertise to deliver it.
- 8.3 The transfer of the Council's shares in HHL to HDL will enable a more tax efficient group structure

9 PERSONNEL IMPLICATIONS

- 9.1 None for the Council.

10 EQUALITIES IMPLICATIONS

- 10.1 None for the purposes of this report.

11 CORPORATE PLAN and POLICY FRAMEWORK IMPLICATIONS

- 11.1 The lease of the land adjoining Grosvenor Road, Borehamwood to HDL for the development of general demand and affordable housing together with the establishment of a not-for-profit Registered Provider will contribute to the Council's Corporate Plan priorities of being an enterprising Council by optimising the use of its assets and increasing the supply of affordable housing to meet local needs

12 ASSET MANAGEMENT IMPLICATIONS

- 12.1 As set out in the report

13 HEALTH AND SAFETY IMPLICATIONS

- 13.1 None for the purposes of this report.

14 BACKGROUND DOCUMENTS USED TO PREPARE THIS REPORT

Document Title:	Filed at:
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15 CONSULTATION ON DRAFT REPORT

- 15.1 A draft of this report was sent to the following on the following dates:

Consultee	Report sent	Comments rcvd
Managing Director	22 October 2020	
Executive Director	22 October 2020	
Head of Finance and Business Services	22 October 2020	
Head of Legal & Democratic Services	Author	
Head of Partnerships and Community Engagement	22 October 2020	

Head of Engineering and Asset Management	22 October 2020	
Portfolio holder Finance and Property	22 October 2020	