

Report to CABINET

Environmental Warranty at Fitton Hill

Portfolio Holder: Councillor Taylor – Lead Member for Housing

Officer Contact: Paul Clifford – Director of Economy

Report Author: Ben Hill – Housing Delivery Team Leader
Ext. 5261

24th July 2023

Reason for Decision

To confirm settlement to the Notice issued by ForHousing on 28th September 2022, notifying the Council of purported breaches of the environmental warranties in the Transfer Agreement between the Council and Villages Housing Association in 2004.

Recommendations

To authorise the Director of Legal Services or their nominated representative to sign and/or affix the Common Seal of the Council to all documents required to bring effect to the recommendations in this Report.

Environmental Warranty at Fitton Hill

1 Background

- 1.1 Cabinet approved the disposal of land at Fitton Hill to Countryside in March 2020. The land is being sold in partnership with ForHousing who own 43.28% compared to the Council's 56.72% holding. Sales proceeds were split accordingly.
- 1.2 Countryside reserved the right to complete further Site Investigations and revise the offer accordingly. An independent report by Savills was commissioned by the Council and ForHousing which confirmed these additional costs were reasonable and justified.

2. Current Position

- 2.1 Part of the land which ForHousing have sold was formerly owned by the Council. This land was acquired by The Village Housing Association Limited from the Council in 2004 via a small-scale stock transfer. In the relevant transfer agreement, the Council provided a warranty to The Village Housing Association Limited which effectively confirmed that there was no contamination in the relevant land. In 2019 The Village Housing Association Limited merged into City West Housing Trust, which was renamed ForHousing Limited.
- 2.2 The claim is based on a report ForHousing commissioned from Arup that concluded certain abnormal costs identified by Countryside could form the basis of a claim under the Warranties (namely those abnormal costs arising in respect of soil contamination and ground gas at the Property).
- 2.3 A Notice of Breach dated 28 September 2022 was served on the Council.
- 2.4 The Council subsequently instructed Ramboll to provide a technical review of the Arup Report (including a review of the e3p Reports), to confirm whether the conclusions reached in the Arup Report can be accepted by OBC (i.e. whether Arup's identification and valuation of the abnormal costs covered under the Warranties is fair and reasonable). The report issued by Ramboll on 23 March 2023 confirmed that:
 - The rates applied as mitigation are reasonable; and
 - The pro-rata calculation applied by Arup on behalf of ForHousing is correct.
- 2.5 The Council has been advised on this issue by Pinsent Masons. After accessing relevant information their assessment recommends that:
 - The Notice of Breach is valid; ForHousing has the benefit of the Warranties; and the Warranties apply;
 - The Council ought to satisfy ForHousing's Notice of Breach by remedying the breach.

3 Options/Alternatives

3.1 Option 1 – Settle the Claim

Based on the information above, the Council provided a Warranty when the land was transferred to Villages in 2004. Now that the sale to Countryside has been completed, the

claim against the Council has been crystallised. The quantum of this claim has been independently verified as accurate.

3.2 Option 2 – Fight the claim

Challenge the claim. The Council has no grounds to defend the claim and would only incur additional legal costs should this option be pursued.

4 **Preferred Option**

4.1 Option 1 is the preferred option for the reasons outlined above.

5 **Consultation**

5.1 The Lead Member for Housing has been briefed.

6 **Financial Implications**

6.1 Contained within the Part B Report

(James Postle)

7 **Legal Services Comments**

7.1 Contained within the Part B Report.

(Rebecca Boyle, Corporate Group Solicitor).

8. **Co-operative Agenda**

8.1 By settling the Warranty, it will enable new homes to be built including a mix of affordable and private which will benefit the residents of Oldham. It will also bring back derelict and heavily fly tipped land into positive use. The Developer will also offer a number of apprenticeships and use local supply chains further benefitting the borough.

(Mahmuda Khanom)

9 **Human Resources Comments**

9.1 None arising from this report.

10 **Risk Assessments**

10.1 Contained within the Part B Report

(Mark Stenson)

11 **IT Implications**

11.1 None.

12 **Property Implications**

12.1 No direct implications arising from this report as the asset has already been sold.
(Katy Webster)

13 **Procurement Implications**

13.1 Not applicable.

14 **Environmental and Health & Safety Implications**

14.1 The redevelopment of the land will include remediation to ensure the whole site is clear of contamination. (Ben Hill)

15 **Equality, community cohesion and crime implications**

15.1 None

16 **Oldham Impact Assessment Completed?**

16.1 Yes

17 **Key Decision**

17.1 Yes

18 **Key Decision Reference**

18.1 NEI-04-23.

19 **Background Papers**

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :

File Ref : Fitton Hill
Name of File : Env Warranty
Records held in Economy and Place Department,
Officer Name : Ben Hill
Contact No : 5261