Report to CABINET

Phase two approval - Gateways to Oldham new build housing

Portfolio Holder: Councillor Barbara Brownridge, Lead Member, Co-operatives and Neighbourhoods.

Officer Contact: Helen Lockwood, Executive Director, Economy Skills and Neighbourhoods.

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24 July 2017

Reason for Decision

This report sets out the proposals for developing the next new build phase of the Primrose Bank regeneration scheme.

Executive Summary

As part of the Gateways to Oldham Private Finance Initiative regeneration scheme, the Council entered into a development agreement with Inspiral Developments (Oldham) Limited (IDO) to build out homes for private sale. Due to the poor performance of first phase sales, IDO has not exercised its option to build out subsequent phases within Primrose Bank. In 2017 IDO relinquished their rights to develop.

Much of the estate infrastructure has already been completed within Primrose Bank and officers believed that by addressing design and marketing shortfalls that affected the first IDO plot of private sales, properties could still be completed that would be attractive to the market and generate a surplus to the Council.

A successful first phase of this new development approach was piloted, where if the properties did not sell, then as a backup option the houses would be added to the Council’s Housing Revenue Account stock without incurring a net loss to the HRA. In the event all the properties have been reserved off-plan and officers are now recommending a
roll out of the approach to conclude the original aims of a mixed tenure housing regeneration led solution to revitalise Primrose Bank.

Recommendations

Cabinet is asked to recommend the following:

1. The Executive Director for Economy, Skills and Neighbourhoods, the Director of Finance and the Director of Legal Services (acting separately or together), or their respective nominated representatives, be authorised to conclude negotiations in respect of the development of the second phase under the existing development agreement to build new homes for private sale at Primrose Bank.

2. The Director of Legal Services, or his nominated representative, be authorised to serve a Pre-Exemption Notice on Keepmoat under the terms of the existing development agreement with Keepmoat and affix the common seal of the Council to the supplemental agreement to the development agreement together with any other incidental or ancillary documents or agreements necessary to complete the transaction.

3. Note the progress of the development including overall financial implications for the Council is reported to the Capital Investment Programme Board.

4. Commission a red book valuation (that is an independent valuation of the market value) of the second phase site prior to the disposal to confirm best consideration for the development site in question.
Phase two approval - Gateways to Oldham new build housing

1 Background

1.1 The Gateways to Oldham housing Private Finance Initiative regeneration scheme involved the construction and refurbishment of over six hundred council rented homes across 4 sites. As part of the scheme, the Council entered into a separate development agreement with Inspiral Developments (Oldham) Limited (IDO) to build out additional homes for private sale.

1.2 The private for sale sites within Primrose Bank estate form an important part of the Council’s intentions to improve the quality and choice of housing within the area. It fulfils the key aims of the Gateways to Oldham regeneration scheme, as outlined in the business case submitted to DCLG, on which basis the £113m funding for the PFI was confirmed. In particular the Gateways to Oldham scheme provided for –

- Creation of sustainable neighbourhoods and balanced communities.
- Completion of the Primrose Bank regeneration project.
- Preventing the creation of unused space that would be costly to maintain and could blight the area in years to come.

1.3 All of the three hundred and seventeen council rented new homes were completed between 2011 and 2015 at the 4 Gateways estates: Primrose Bank (Coppice), Dew Way (Westwood), Keswick Avenue (Fitton Hill) and Crossley (Central Chadderton). However, IDO has completed only 14 for-sale properties located in Primrose Bank in that same time frame. Demand was disappointing and IDO did not achieve its target rate of return, as a result IDO did not wish to exercise its option to build out subsequent stages.

1.4 In 2015, Cabinet approved entering into a Development Agreement for an alternative scheme (using amended house types and designs) that officers believed would be more popular with would-be purchasers. This followed an extensive consultation exercise with prospective purchasers and the procurement of a Development Partner through the Homes and Communities Agency (HCA) Development Partner Panel (DPP) framework, whereupon only one bid was submitted – by Keepmoat Regeneration Limited.

1.5 The key elements of the residential development proposal approved by Cabinet in 2015 were:

- The first phase tender (edged blue in the attached appendix) would comprise of an estimated eighteen properties with Keepmoat building the properties under licence and then selling on to 3rd parties.
• A backstop position whereby if any homes did not sell they would be bought by the Council for an agreed Base Cost and managed as social housing within the Gateways to Oldham PFI contract.\(^1\)

• Option to extend the development proposal to include other sites within the Primrose Bank site.

1.6 This current and previous approved proposal link to the Council’s Corporate Plan and Priorities in the following ways.

• A productive place where business and enterprise thrive through directly contributing to the outcome of a regenerated Borough.

• Confident communities where everyone does their bit through directly contributing to the outcome of the delivery of safe, strong and sustainable communities.

2 Current Position

2.1 In February 2017, Inspiral Developments Oldham (IDO) wrote to the Council formally relinquishing all of its interest in the Gateways to Oldham sites, on the basis that it believed it was not commercially viable to build out the remaining plots of land for private sale.

2.2 The revised 2015 phase one development commissioned by the Council with Keepmoat is so far a success. All properties have reserved off-plan for values in excess of the Base Cost agreed within the new Development agreement. This will result in the Council not needing to purchase any of the houses and potentially receive a small overage payment.

2.3 Some plots in phase one received multiple offers meaning that there are would-be purchasers identified for further new homes built on the remaining later phased plots at Primrose Bank.

2.4 Now that confidence has been established that there is a viable market for the revised house-types, it is proposed to develop the remaining vacant sites at Primrose Bank (phase two). These vacant sites are within the land defined as ‘Second Property’ in the Development Agreement with Keepmoat and are subject to a right of first refusal in favour of Keepmoat until September 2019. If the Council wishes to develop this land, it can serve a pre-emption notice on Keepmoat inviting them to put forward development proposals at which point a negotiation can commence.

2.5 In view of the success of the first phase sales, the Council proposes to reduce the number of properties it will guarantee to purchase in respect of this phase to 9 dwellings only in its negotiations as to the terms for the sale pursuant to exercise of the Pre-emption. This represents approximately half the value of the original development.

2.6 Clause 23 of the original Development Agreement contains provisions that in effect give Keepmoat first refusal on the site in question (the site being part of the land defined as the ‘Second Property’ in the Development Agreement). Upon approval of this report, the Council would serve the relevant Pre-Exemption Notice on Keepmoat formally inviting it to confirm its development proposals. A supplemental agreement to the existing development agreement would then be drawn up by external lawyers (potentially the same lawyers that drafted the original development agreement, subject to compliance with relevant procurement and financial regulations).

\(^1\) This risk was mitigated by the Council securing 8 reservations in principle prior to works commencing on site.
2.7 In summary, the phase two development agreement would: –

- Help address the shortage of family accommodation within the borough by creating an estimated further eighteen new homes containing over eighty bedrooms.
- Deliver a potential annual new homes bonus for four years, assuming the Council meets statutory baseline targets.
- Generate service charge income that will contribute towards maintaining the public open space within the wider estate.
- Generate additional Council Tax revenue from the new homes.

3 Options/Alternatives

3.1 There are two broad options as follows: –

3.2 **Option 1**- Do not build out the remaining sites now formally relinquished by IDO.

3.3 This would mean that the objectives of the scheme would not be fully delivered and would leave pockets of open space that could blight the recently built new estate in years to come.

3.4 **Option 2**- Build out the remaining phases using the terms agreed in the development agreement for the first phase Keepmoat proposal, (assuming on service of the pre-emption notice such terms can be agreed with Keepmoat).

3.5 Under this second phase development proposal, it is proposed that Keepmoat would take on the construction risk and receive a return based upon the sales values. It is also proposed that the terms would be the same as those within the Development Agreement negotiated under the first phase, with costs updated to reflect construction inflation and specific ground conditions, except that the Council would agree only to be liable to purchase up to [9] houses if unsold for a pre-agreed price, these homes then being used as additional social houses within the HRA. As in the first phase, the land value is assumed to be nil (subject to a red book valuation-independent market valuation). Any proceeds received in excess of target would be paid to the Council by way of overage.

4 Preferred Option

4.1 **Option 2**- Build out the remaining plots using the terms agreed in the Keepmoat development agreement. This is considered the most realistic method of delivering the benefits outlined in paragraph 2.7 above. It also provides the quickest method of delivering the scheme and taking advantage of the considerable market interest shown by potential purchasers. Delays to the scheme could mean that these purchasers are lost.

4.2 As outlined above in paragraph 3.5, it is proposed that, to minimise any financial outlay to the Council, only half of the plots in these phases will be guaranteed by the Council.

5 Consultation
5.1 Elected Members representing Medlock Vale and Werneth Wards were provided with a briefing note in March 2017. No comments have been received.

5.2 Briefings with the portfolio holder for housing.

5.3 Formal approval of the proposal at C.I.P.B in April 2017 and consultation with residents and other potential purchasers over how the house designs could be improved.

6 Financial Implications

6.1 Details contained in the confidential report.

7 Legal Services Comments

7.1 Legal Services have reviewed the terms and conditions of the existing development agreement and advised on the provisions relating to the right of first refusal for the relevant part of the Second Property which is a defined term within the agreement.

7.2 The proposed site for the development of the second phase outlined in this report is within the defined term “Second Property” and therefore until the expiry of the Pre-emption Period (which is midnight on 28 September 2019) the Council has no alternative than to offer the development to Keepmoat if the Council wishes to develop the site.

7.3 The Council may serve a Pre-emption notice either setting out all the terms on which it proposes to sell OR inviting Keepmoat to put forward development proposals. It is understood that the Council is proposing to invite development proposals.

7.4 Keepmoat have to produce development proposals within one month after receipt of the Pre-emption Notice and then the Council will have a further three months after the development proposals are provided by Keepmoat to decide and confirm whether or not they are acceptable. If the Council consider the proposals are not acceptable, it is to confirm reasons to Keepmoat in writing and invite them to consider amendments. The parties have up to 7 months after the date of the Pre-emption to agree terms. If terms are not agreed the Council is free to negotiate a sale with a third party for up to 12 months after the expiry of the 7 month period.

7.5 The relevant time for considering best consideration is once terms are agreed, subject to contract, during this process, although it may be advisable to have a valuation carried out at this stage in any event.

7.6 The proposed modification to the existing development agreement will be by way of a supplemental agreement which fall within the scope of Rule 17 (1) (a) and Rule 17.3 of the Council’s new Contract Procedure Rules.

7.7 By virtue of section 123 of the Local Government Act 1972 the Council has the necessary powers of disposal and to make this decision. On a disposal the Council is under a statutory obligation to obtain the open market and best value that can reasonably be obtained. It is prudent to obtain an independent valuation to assist in demonstrating this and the Report states this will be done to ensure compliance with the Land and Property Protocols should the transaction proceed under the terms of the General Disposal Consent (England) 2003.

7.8 The exemption from publication is justified on the category stated in the Report.
7.9 The Council’s Land and Property Protocols have been observed. (Elizabeth Cunningham-Doyle, Zoe Theofiopoulos and Rebecca Boyle)

8. **Co-operative Agenda**

8.1 The proposal to dispose of the site at Primrose Bank supports the Council’s Cooperative Housing Offer outcome for residents ‘to access appropriate quality private housing’. It supports opportunities to support residents into affordable homes for sale and will help widen the choice of housing within Primrose Bank.

9 **Human Resources Comments**

9.1 Not applicable

10 **Risk Assessments**

10.1 The major risks associated with the proposals are as follows –

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<th>Category</th>
<th>Risk</th>
<th>Mitigation</th>
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<tr>
<td>Demand</td>
<td>1. Internal design not popular with potential purchasers</td>
<td>The current designs respond to feedback obtained from the local market. Workshops will continue to be held with local residents with a view to optimising the internal design.</td>
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<td>2. General lack of demand for the for-sale units</td>
<td>Deposits will be sought where possible in advance of construction. Significant incentives to be built into the development agreement to encourage the developer to maximise sales opportunities. Any unsold properties can be incorporated into the HRA as the ultimate fall-back option.</td>
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<tr>
<td>Construction</td>
<td>3. Price exceeds tender</td>
<td>The risk has been mitigated by transferring design and construction risks to the Developer. Some residual risk will remain with the council in respect of ground conditions. However, in this instance the Council will have recourse against the original PFI contractor. However, given that the remediation is already complete, and signed off by building control, together with the detailed design information already available to the Council, ground risks are considered very low risk.</td>
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<td>4. Lack of quality control</td>
<td>The initial responsibility for ensuring quality will rest with the Developer. However, a Clerk of works role would be undertaken by surveyors within the Housing Strategy team due to unsold properties potentially reverting to the Council. Officers are already very familiar with the house designs and standards and should be ideally placed to ensure. Standard NHBC warranties would also be applicable.</td>
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<td>5. Contractor</td>
<td>The development would be completed under licence,</td>
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<td>abandons the site leaving the council abortive works and re-procurement costs.</td>
<td>thus rendering this as a remote risk.</td>
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(Mark Stenson)

11 **IT Implications**

11.1 Not applicable

12 **Property Implications**

12.1 It is noted that successful delivery of the proposals will result in financial benefits to both the General Fund and HRA as detailed in paragraphs 2.7.

12.2 It is proposed to transfer the land at nil consideration, whilst paragraph 3.5 notes that a formal Red Book valuation has been requested but is not available at this time.

12.3 It is assumed that the proposal will require a transfer of land at less than best consideration although in the absence of the valuation referred to above, the amount of the ‘undervalue’ remains to be determined. In any event, as this falls within the General Disposals Consent limit of £2m, it is considered to be within Cabinet’s authority to approve, subject to notification of the amount prior to the date of the final decision.

12.4 The report documents the significant improvements to the environmental and social well-being of the locality resulting from the proposals. (Cath Conroy)

13 **Procurement Implications**

13.1 A compliant procurement was carried out in 2015 in line with the HCA’s Development Framework (DPP2) and with Oldham Council’s Contract Procedure Rules.

13.2 The initial procurement was for the development of phase 1 and allowed for further sites to be developed by Keepmoat if successful therefore Strategic Sourcing support the approval of option 2. Emily Molden – Procurement Manager

14 **Environmental and Health & Safety Implications**

14.1 Environmental conditions were agreed as part of the initial planning application for the whole estate. This development will be subject to those same conditions.

14.2 As pre-qualified organisation on the DPP framework, Keepmoat has demonstrated that it operates to the appropriate health & safety standards.

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

15.1 None

16 **Equality Impact Assessment Completed?**

16.1 No
Key Decision

Yes

Key Decision Reference

NEICO-05-17

Background Papers

File Ref : D2391-October 2015
Name of File : Cabinet Report: Regeneration of Primrose Bank
Records held on Council Decision Website
Officer Name : Tim English
Contact No : 1316

Appendices

Appendix 1 – Plan of Primrose Bank development site and proposed layouts.
APPENDIX: SITE PLANS

Proposed Ashton Rd Layout

Proposed Lee St Layout