

BRIEFING PAPER

SUBJECT: FUTURE DELIVERY OF TOWNHILL PARK PLOTS 2, 9 AND 10
DATE: 1ST FEBRUARY 2024
RECIPIENT: OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE

THIS IS NOT A DECISION PAPER

STATEMENT OF CONFIDENTIALITY

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SUMMARY:

1. Following a procurement exercise the council contracted with Drew Smith (DS) to produce the planning application and consent for the development of housing on Townhill Park Plot 2 and Plots 9 & 10. Their successor Countryside Partnerships has formally notified the council that they no longer wish to fulfil their contractual obligations under the Pre-Construction Services Agreement. This has resulted in a need to revisit the delivery options available to ensure the delivery of a successful regeneration scheme. The paper sets out the options considered and makes recommendations for continued delivery of Townhill Park Regeneration.

BACKGROUND and BRIEFING DETAILS:

2. The proposals are as follows:
 - a) The council implements the contractual procedure to bring the Pre-Construction Services Agreement (PCSA) contract with Drew Smith (DS) to an end for the delivery of Plots 2, 9 & 10. (See Annex 1 for locations)
 - b) The council ceases delivery itself, of the design and build contracts for Townhill Park Plots 2 and 9.
 - c) Townhill Park Plots 2 and 9 are transferred to the council's Affordable Homes Framework (AHF) to be offered to the framework Delivery Partners by way of the mini tender process as part of the first tranche of sites approved by Cabinet in December 2022.

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- d) The council design team is approved to carry out further design work to RIBA Stage 2 and due diligence work including associated cost to include financial viability, covered by existing approved budget, to enable identification of the quickest and most cost-effective delivery of Townhill Park Plot 10 and that a recommendation is made to a future Cabinet.
 - e) That Cabinet notes that this report has implications for the council's ability to spend its Right to Buy Receipts in the allocated timeframe. Failure to spend in the timeframe means the money needs to be paid to Central Government with interest. There is therefore a need to identify alternative options to spend the Right to Buy receipts.
 - f) That Council approves the funding earmarked in the Housing Revenue Account (HRA) for the delivery of Plots 2 and 9, is reallocated within the (HRA) capital programme to improve existing council homes.
3. The option recommended in this report is to transfer plots 2 and 9 to the AHF for tender to the delivery partners as part of the first tranche of sites. This option would allow the council to reallocate the funding earmarked for plots 2 and 9 in the HRA for the improvement of existing council homes. It would also reduce the financial and development risk to the council, as the larger plots would be transferred to the AHF.

Plot 10 is the smallest of the sites with 20x3 bed houses proposed and will be subject for further design and due diligence to establish the quickest and most economic method of delivery.

4. Countryside Partnerships recently advised the council that due to a change in company priorities it no longer wishes to complete the Pre-Construction Services Agreement (PCSA) for the design/planning of Plot 2, 9 and 10 at Townhill Park. This report recommends that the council proceeds to take the action necessary to bring this contract to an end.
5. Information was provided by DS in late 2023 which advised that the estimated cost of delivering Plots 2, 9 & 10 had increased, and analysis of the cost information indicates the increase would be significant. Further information is contained in Confidential Annex 3 paras 1 to 4. The council would either need to identify additional funding from the HRA or additional grant subsidy. The increase in costs increases the gap on the financial viability of these plots and even if Homes England (HE) Affordable Homes grant was secured it would not be possible to develop these sites in the timescales required under this funding round which is March 2026.
6. Concurrently, the HRA budget is under review. The budget is under pressure from competing needs and choices will have to be made about what can be delivered. There is a need for further investment in the Council housing to improve the quality of homes and therefore funding previously allocated for the direct delivery of Plots 2 and 9 can be invested in improving existing council housing.
7. Taking into account all these reasons set out in para 4, 5 and 6 it is recommended that the contract with DS is brought to an end and that Plots 2 and 9 are transferred the AHF. The first expression of interest for the AHF was issued in December 2023 for two plots at

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Townhill Park (Plots 5 and 6 – see Annex 1 for location). Should approval be granted to transfer Plots 2 and 9 to the AHF the intention is to prioritise work to issue their mini tender to follow the 1st mini tender for Townhill Park Plot 5 and 6. If approved the aim is to issue the mini tender for Plot 2 and 9 in the summer of 2024 with the Delivery Partners appointed by the end of 2024.

8. There are outline designs and updated surveys and studies for the 3 sites (Plots 2, 9 and 10) as undertaken by DS. Pre-planning advice has been sought and a public engagement exercise was carried out on the design proposals in December 2022. Housing Management were involved in the suggested property numbers and mix included in the proposals for each site. This body of information provides a good basis for the mini tender brief to the AHF Delivery Partners. However, these are indicative designs and densities, and it is anticipated that the Delivery Partners will develop their own proposals based on viability and their own design requirements.
9. Valuations have been completed for each site by an independent RICS surveyor.
10. The Cabinet paper in December 2022 set out the council requirements for the AHF mini tenders. It is proposed that the tender criteria for each plot will look at:
 - Best use of the land – property types, number of homes delivered, tenure mix.
 - Best consideration against predetermined valuations.
 - Deliverability – community engagement, build timescales.
 - Affordability – social rent, affordable rent, sales valuations for shared-ownership.
 - Design – extent that the designs adhere to the City Council Design Manual.
11. The December 2022 Cabinet paper also included the proposal that there will be a requirement that 5% of the Affordable housing delivered on land provided by the council will be fully wheelchair accessible as part of the terms for AHPs on the framework.
12. In addition, the final detailed requirements for each site will be concluded using the delegations in the recommendation (ii) of the December 2022 Cabinet report:

“To delegate any further decisions relating to the terms for transfer or implementation of the recommendations of this report to the Executive Director of Place following consultation with:

 - *Cabinet Member for Housing ...*
 - *Executive Director for Corporate Services*
 - *Executive Director for Wellbeing and Housing*
 - *Director Human Resources and Governance*

including the tenure mix for each site and any specific housing requirements.”

Note that housing development and regeneration now sits in the Leader’s portfolio.
13. The direct delivery of Plots 2, 9 and 10 currently have between them £9.536m of Right to Buy Receipts (RTB) allocated. The council will need to address reallocation of the RTB receipts in the timeframe and to the amount required. By not doing so, RTB receipts will

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require to be paid to Central Government with interest. The key options for the for use of Right to Buy receipts are to:

- invest in the acquisition of housing.
- development of new housing.
- pass to other providers to utilise towards the provision of Affordable housing. This is detailed in the Confidential Annex 3 Finance paras 5 to 9.

RESOURCE/POLICY/FINANCIAL/LEGAL IMPLICATIONS:

Capital/Revenue

14. The current budget for plots 2 9 and 10, and the proposed budget amendment under recommendation (ii), is summarised in the table below:

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	Total
	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Current regeneration Budget	1,250	27,127	31,033	872	0	0	60,282
Funded by:							
Right to Buy	- 450	- 4,543	- 4,543				- 9,536
Anticipated Shared ownership capital receipts				- 6,695			-6695
HRA Borrowing	- 800	- 22,584	- 26,490				- 49,874
Repayment of HRA borrowing				5,823			5,823
Proposed Budget							
Proposed regeneration budget (including design work)	325	3,595	3,457				7,377
Reapportionment of funding to capital programme	0	5,000	5,000	5,000	5,000	5,000	20,000
Funded by:							
Right to Buy	0	-225	-225				-450
Borrowing	-500	- 8,370	- 8,232	- 5,000	- 5,000	- 5,000	- 32,102
Unallocated balance on RTB	- 450	- 4,318	- 4,318				- 9,086

Existing fee expenditure on Plots 2, 9 & 10 is set out in Confidential Annex 2. In addition to the costs incurred to date, allowance is also estimated for works invoiced but not yet certified by the EA. It is estimated that there will be a remaining budget, but the figure will not be finalised until the termination agreement is concluded. The termination agreement will include that the council will receive and be able to use all the surveys and drawings and reports that have been generated to date. These can then be used in the brief for the mini tender and also given to the Delivery Partner selected to deliver the sites.

15. Plots 2, 9 and 10 were originally part of the 1000 Homes Programme approved by Cabinet and Council, and subsequently added to the HRA Capital programme in July 2020. In 2022 there was a change of policy, and the 1000 Homes Programme was brought to a close. However, as the tenders had already progressed with the delivery of Plots 2, 9 and 10 it was approved that these would continue and the budget of £60m was retained. These sites are proposed predominantly for flats, and it was always acknowledged that these would be expensive sites to deliver and would require grant funding. Financial modelling was carried out in 2022, which identified a significant viability gap, as a result of factors such as significantly increased inflation and borrowing costs. Positive discussions were held during 2023 with Homes England (HE) around the possibility of Affordable

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Homes Programme (2021 to 2026) grant assistance to improve viability. Whilst HE cannot formally respond on grant requests until they receive a formal submission (and those are not usually made until planning consent is positive), there were plans to submit a bid. Since then, following the further significant increase in costs reported by DS in October 2023 the council has not had further discussions with HE. This is because the project could not be delivered in the time to spend the HE grant in the timeframe required (March 2026), and the resulting pressure any loss of grant puts on competing financial commitments in the HRA. The council's New Homes Board has been kept apprised of the project and financial details.

16. The 40-year HRA business plan currently assumes that direct delivery continues on all 3 sites, with a consequent adverse impact on the 40-year business plan. Financial viability is outlined in the confidential Annex 3. The annex outlines that the expected rents receivable from the new properties would not cover the combined running costs and borrowing costs associated with the anticipated build costs over the life of the plan without grant funding.
17. The scheme modelling also assumes the use of Right to Buy (RTB) receipts and s106 affordable housing contributions to help fund the scheme. RTB funding can be used to fund up to 40% of additional units on a new development or acquisition. If RTB receipts are not spent within 5 years of being received, then they needed to be paid to government with interest.
18. The application of retained RTB 141 receipts is outlined in government guidance, which states that "additional retained Right to Buy (RTB) receipts are used to replace, on a one-for-one basis, those additional homes sold under the reinvigorated Right to Buy scheme". As a result, on a development such as at Townhill Park, only additional units over and above the existing number of units would attract RTB funding.
19. Based on the Council delivering Plot 2, 9 and 10 and the forecast costs there is currently £9.5m RTB allocated to these plots. Consideration therefore needs to be given to how this funding can still be utilised to avoid it being returned to government.
20. Discussions with Homes England (HE) have been taking place to explore securing grant funding for the sites in order to reduce or eliminate the viability gap. Currently no assumption has been made for the use of HE grant in the HRA business plan.
21. There is currently also £1.4M affordable housing s106 contribution allocated to the scheme, and similarly, an alternative use of these contributions would need to be identified. There is a risk of repayment for unspent s106 receipts If plot 10 is developed as originally planned, s106 affordable housing receipts can be utilised towards funding the project, along with approximately £0.5m RTB receipts.
22. If the decision is made to transfer Plots 2 and 9 into the AHF, there would be an opportunity to review the budget allocated to the build costs in the HRA capital programme, in the context of the investment requirement for the existing housing stock. Although there is currently approx. £60m allocated to the build cost, some of that cost is offset by funding including the RTB receipts above, by capital receipts from shared ownership sales, and by future rental income associated with the new properties. However, the likely capacity to invest elsewhere would still be significant at circa £25M

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over five years. Proposals to reinvest funding in the wider capital programme will be addressed in the HRA budget report to Cabinet on 21st February.

23. Following a decision to transfer the sites to a registered provider, the balance sheet value of the sites (currently recorded on the HRA balance sheet as work in progress), will be reclassified as assets held for disposal. There will be potential capital receipts received with the transfer of Plots 2 and 9. It is anticipated that any costs incurred including land registry information, specific legal and procurement costs, site valuations and any ancillary amounts will be recovered from the capital receipt for any land transferred, and any remaining receipt invested back into the HRA capital programme. The extent of capital receipt is not yet known however valuations have been completed.
24. There will be no ongoing capital or revenue funding required for the new homes at Plots 2 and 9 after the plots have transferred, as these will be owned by the AHP who will be responsible for the future management and maintenance of new properties. The AHP will also receive the rental income receivable from the new homes once occupied.

Property/Other

25. Plots 2, 9 and 10 are owned by the Council and are part of the HRA property portfolio. The recommendation of this report is to sell Plot 2 and 9 freehold to the Development Partners as part of the Affordable Homes Framework.
26. Procurement advice is that it is possible to add sites to the Affordable Homes Framework. The first list of properties was approved at Cabinet in December 2022 and further approvals beyond Plot 2 and 9 will be needed via delegated decision, Cabinet or Council depending on the value of the asset.
27. The procurement of the AHF and a contractor if this proceeds for Plot 10 will be compliant with the Public Contract Regulations 2015.

Legal Implications

28. The recommendations of this report require the PCSA to be terminated. This will be managed by the Council's Employers Agent and advice is also being provided by the council's legal officers.
29. The Council can dispose of land providing it is compliant with Local Government Act 1972 s.123 in achieving best consideration. As the intended use for the land is the provision of social/affordable housing the capital receipt offered may be lower than the valuation for open market sale.
30. Where best consideration is less than £2,000,000 below the market valuation then authorisation for transfer can be granted by the Council providing the transfer contributes to the promotion/improvement of economic well-being, promotion/improvement of social well-being or the promotion/improvement of environmental well-being.

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31. Where best consideration is greater than £2,000,000 below market valuation then a request to the Secretary of State for authorisation must be obtained. As no site currently has an expected valuation exceeding £2,000,000 this is unlikely to be implemented.
32. Land or property assigned to the HRA must be transferred in accordance with the above legislation, and any capital receipts retained within the HRA.
33. The Council will still have its obligations under the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 through either providing homes owned by the Council or by nomination for a housing association tenancy.
34. Disposals of Housing Revenue Account (HRA) property out of the Council's ownership, whether on a freehold or a leasehold basis, require consent under Section 32 of the Housing Act 1985 (the 1985 Act). The current General Consents are 'The General Housing Consents 2013. Where the land is vacant it is covered by the general consent and therefore specific permission is not required for this disposal.
35. The General Consent allows a local authority to dispose of HRA land at market value. Disposals of the freehold of tenanted properties to private landlords are not covered by the Consent; nor are disposals to a body owned or partly owned by the local authority.
36. A dwelling-house which was social housing disposed of pursuant to this consent to a registered provider of social housing must remain as social housing for the period it is owned by the registered provider of social housing until it ceases to be social housing under the provisions of sections 72 to 76 of the Housing and Regeneration Act 2008.
37. RTB receipts must be applied in accordance with relevant legislation and guidance and particularly the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) and the terms of any retention agreement reached under section 11(6) of the Local Government Act 2003 modifying the applicability of the regulations.
38. The council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness-the best value duty.
39. Under Section 3 of the Local Government Act 1972 the Council has the power to do anything incidental to the exercising of any of its functions. The general power of competence under section 1 of the Localism Act 2011 gives local authorities a broad range of powers "to do anything that individuals generally may do" subject to limits within other legislation and there are no adverse limits on the proposed scheme under the current legislation.
40. Should the recommendations of this report be approved all legal requirements will be complied with.

OPTIONS and TIMESCALES:

41. A number of options were considered and rejected:

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- a) Option 1: Do Nothing. Plots 2 and 10 are vacant and available for redevelopment and Plot 9 is currently due for demolition commencing in the Spring of 2024. Leaving these plots vacant is not a realistic option as the council has made a longstanding commitment to the regeneration of Townhill Park and the provision of new homes on these sites.
- b) Option 2: Council tender and employ a Design and Build Contractor to Deliver Homes on Plot 2, 9 and 10. The council has considered continuing to directly delivering Plots 2, 9 & 10 through the procurement of a new Design and Build contractor. This has been rejected principally because of the increase in cost of the schemes and also the time and resource needed to reprocure a contractor. In addition, the delivery of Plots 2 and 9 would be particularly reliant on a Homes England grant. Under the current funding round these grants need to be spent by March 2026 which would not be feasible. Currently, there are no details of the next grant programme.
- c) Option 3: Plots 2, 9 and 10 are transferred to the AHF. Plots 2, 9 and 10 are approved for immediate transfer to the AHF to be issued in a mini tender process as part of the first tranche of sites for delivery by the delivery partners. It is believed that new homes on Plot 10 can be more quickly delivered by the council, whereas Plot 2 and 9 which are much larger schemes would be better suited to delivery through the AHF.
- d) Option 4: Sale of Plot 2, 9 and 10. The council could consider selling the sites on the open market. However, this would not necessarily deliver the agenda of delivering affordable homes on these sites. It is a council priority to deliver affordable housing in the city to meet the city's housing need and the AHF has been set up to deliver this.

42. The recommended option is to transfer Plots 2 and 9 to the AHF. Progress the council designing of Plot 10 and procuring a contractor using a traditional contract to build Plot 10. This is dependent on the due diligence exercise being positive and will be the subject of a separate decision. Further details are described in para 3.

43. If approved Plots 2 and 9 will be transferred to the AHF and will become part of the first tranche of approved sites and will be released in a mini tender in the summer of 2024 with the Delivery Partners appointed by the end of 2024.

RISK MANAGEMENT IMPLICATIONS

44. The transfer of Plots 2 and 9 to the Affordable Homes Framework will reduce the councils financial and development risks as these risks are passed to the Development Partners within the AHF. There are risks associated with the delivery of the AHF and there is a risk register for the programme and for each individual site. The top overarching risks for the AHF are listed below:

- Scheme viability issues.
- Partners capacity and access to funding.
- Partners appetite for delivering flatted schemes.
- Risk of needing to repay RTB receipts with interest and s106 monies if the council is unable to reallocate.

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45. In the event that these plots are not of interest to our Delivery Partners, in such instances consideration will be given to promoting these to the wider market including specialist providers outside of the framework or private developers.
46. There will be development risks for the council if the decision is made to deliver Plot 10 in house and procure a build contractor. These will be principally around cost and deliverability and will be included in detail in the future report on Plot 10.

Appendices/Supporting Information:

Annex 1 - Location of Plots at Townhill Park

Annex 2 - Confidential: PCSA expenditure on Plots 2, 9 & 10

Annex 3 - Confidential: Financial Information

Annex 4 - Equality and Safety Impact Assessment

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