

LONDON BOROUGH OF BRENT

Executive – 23 May 2005

Report from the Director of Housing

For action

Wards affected:
Kilburn, Queens Park

Report Title: South Kilburn Delivery Vehicle Selection Process

Forward Plan Ref: HSG-05/06-43
APPENDICES 1 AND 2 are not for publication as

1.0 Summary

- 1.1 This report advises Members on progress to date with expressions of interest and the shortlisting of interested parties. It is now proposed to invite the shortlisted organisations to submit tenders. This report further advises Members of the involvement of residents' representatives from South Kilburn.
- 1.2 The report contains recommendations from the Director of Housing on the organisations that have been short-listed and that are to be invited to submit tenders.
- 1.3 The report also provides the Executive with an update on the application to the ODPM for inclusion on the 2005 Stock Transfer Register.

2.0 Recommendations

- 2.1 That Members note progress with seeking expressions of interest.
- 2.2 The Members approve the shortlist of bidders led by the following organisations:
 1. Compendium Venture Co
 2. Genesis Housing Group
 3. Hyde Housing Association Ltd
 4. Berkeley Homes (west London)
 5. Taylor Woodrow PLC

and agree that those organisations should be invited to submit detailed tenders.

- 2.3 That Members note that further reports will be received from the Director of Housing updating members on the tender process and recommending the parties with whom the Council should enter into negotiations.

3.0 Detail

- 3.1 On 17th January 2005, the Executive considered a report on the South Kilburn Master Plan Implementation. That report informed Members of progress with planning and consultation by officers on the regeneration of South Kilburn, the informal responses from developers and RSLs following a seminar in September 2004 together with various procurement procedures available and associated issues with regard to the future ownership of the housing stock and the various financial implications of the regeneration programme. The Executive of 17 January 2005 agreed to authorise the Director of Housing to seek expressions of interest for a delivery vehicle partner for the demolition and rebuilding of 1,534 units, building 1,419 new units for private sale and delivery of non-housing facilities to sustain the community. The Executive of 17 January 2005 also agreed to exempt the delivery vehicle procurement process from standing Orders 85(a), 89 and 90.
- 3.2 In line with the Executive decisions on 17th January 2005, a notice was placed in the Official Journal of European Union on 11 February 2005 along with an advertisement in trade and local press inviting expression of interest from suitably experienced organisations by 29th March 2005. The advert was also posted on both the NDC and Brent Council websites.
- 3.3 Interested organisations were asked to complete a pre-qualification questionnaire outlining their responses to specific questions relating to:
- Details of the organisation
 - Business probity
 - Economic and Financial standing
 - Ability and Technical capacity
 - Experience of similar large scale regeneration project and specific issues relating to funding and future aspirations.
- 3.4 In total, 47 enquiries were received leading to 9 submissions by the closing date. Out of nine submissions, there were two from developers, two from construction companies whilst the remaining five were from consortia made up of developers, RSLs and other specialists. The evaluations of the different areas outlined in (3.3) were carried out by Brent's Health and Safety Team, Brent Housing Finance team and Consultants from HACAS Chapman Hendy who have been engaged

by the Council to assist with the DV selection process. Legal advice was given by Trowers and Hamblins, who are the Council's legal advisors for the regeneration of South Kilburn.

- 3.5 The advice given at this stage was limited to ensuring compliance with procurement regulations. There is also a weekly strategic meeting with Core legal to ensure compliance with the Council's standing orders. Their contribution to the selection process has been valuable.
- 3.6 Members are already aware that Delivery Vehicle Selection Group (DVSG) which consists of two resident representatives from the South Kilburn Area Housing Board, two resident representatives from SKNDC board and two resident representatives from Housing Forum in addition to the Director and Assistant Director of Housing and the Chief Executive of SKNDC, supported by technical, financial and legal advisors have been meeting regularly since June 2004.
- 3.7 The residents involved in the process have been instrumental in ensuring the brief and selection criteria take into account their views and long term aspirations for the area. The role of the DVSG is to make recommendations to the SKNDC board for their comments and for endorsement by the Council's Executive for their decision at each stage of the selection process.
- 3.8 The pre-qualification questionnaire among other considerations, sought proposals from the interested organisations on a numbers of key issues e.g. their views on the funding gap, alternative approach to stock transfer, tenanted/vacant possession and the possibility of establishing a community based housing association. The expressions were open to single tenderers or a consortium of organisations. The responses on these issues are as follows:
 - All responses considered stock transfer as the main route for regeneration.
 - Shortlisted bidders were confident that they could address an anticipated funding gap of up to £100m
 - With the exception one developer who did not indicate a preference, the rest are happy with establishing a community based housing association.
- 3.9 The DVSG considered a summary of the evaluations prepared by the evaluation teams on 19th April. The group agreed to limit their recommendations of the shortlist to five organisations. This was considered a good number to ensure that there is genuine competition as well as giving all the applicants an equal chance of success. The group also considered that it is likely to cost the bidders from the shortlist of organisations with relevant experience, technical and financial capacity, around £50k to prepare bids. Officers have considered the recommendations by the group and support these.

3.10 Out of nine submissions, four were considered not to meet the Council's technical capacity and financial standing requirements and were not shortlisted. These are;

- Housing association with developer plus several other proposed partners – the partnership lacked the relevant experience and necessary financial capacity to undertake the project.
- A construction company which failed to complete the required information/evidence on a section relating to experience and their proposals on key areas.
- A building contractor with no relevant experience who also failed to complete response to a section on experience and lack of financial capacity to undertake the project.
- A joint venture company set up recently to bid for regeneration projects. This consortium lacked sufficient experience.

3.11. The recommended shortlist includes;

- Three consortia proposals from large RSLs with developer partners who have experience, financial capacity to undertake the project.
- Two developer only proposals. One proposes to select an RSL partner prior to bid submission. The other is a well known developer in the housing field with sufficient financial standing and experience.

3.12 Given the responses to the advertisement, Officers recommend that both developers are included in the shortlist. They will be asked to submit their bids for the next stage with a chosen RSL partner. This would mean that all bids can be evaluated against the same brief and evaluation criteria.

3.13 The DVSG's recommendations were considered by the SKNDC board and their response was as follows;

3.13.1 The Executive be asked to consider the evaluation results (both as set out in Appendix 1 of this report) and agree the organisations which should be invited to submit their bids.

3.13.2 Bidders will be required to submit their proposals on the basis of both tenanted and non-tenanted options as the Executive have authorised the Director of Housing in conjunction with the Director of Finance to consider these options and report back at a later date. Where a tenanted stock transfer is proposed, the transfer could only proceed if the Council secures a place on the 2005 Disposals Programme, the requisite majority of tenants voted in favour of the proposals, negotiations between the Council and transferee were successfully concluded and the consent of the First Secretary of State was received.

3.13.3 Though there is no legal requirement to ballot the home owners whose homes are affected by the transfer, officers recommend that their opinion is sought through a similar method. However, whilst their opinion can be considered, it will not prejudice the results of the secure tenants' ballot. The Executive is also reminded that tenants and home owners whose homes are being refurbished through the ALMO funding will not be included in the ballot.

3.14 The Executive also agreed to submit an application to the ODPM to seek a place on the Stock Transfer Register 2005. The application was submitted on 28th January 2005. The decision is expected shortly. It has since been identified that legally authority for the application to join the register could not be given by the Executive, and must instead come from Full Council. In order to address this procedural irregularity a report will go to Full Council on 16 May 2005. The ODPM has indicated that it is not concerned about this administrative point. Should officers be informed of the result of the application prior to the Executive meeting, this will be reported to members on the night.

3.15 Members should also note that a report from the Director of Policy & Regeneration is due on the Non-Housing facilities aspect of the South Kilburn Master Plan and this will be presented in the coming months.

4.0 Next Stage.

4.1 Should members agree the shortlist as recommended at appendix 1, the shortlisted organisations will be invited to submit full proposals on the basis of a tenanted stock transfer which will implement the agreed Master Plan as approved by the Executive.

4.2 Organisations will be allowed to submit variant bids which will be evaluated in line with the agreed shortlisted criteria.

4.3 Organisations will be required to return their bids by 28th July 2005 and members will receive further reports as indicated by the attached timescales (see appendix 2).

5.0 Financial Implications

5.1 Members were informed of a financial gap at the Executive meeting in January 2005. Since that time an application was submitted to the ODPM to be included on the 2005 stock transfer register. Within the application an amount of £65m was sought to assist closing the funding gap and give comfort to any potential bidding delivery partner.

- 5.2 Members will be informed of the outcome of the stock transfer application by the time the Executive meets.
- 5.3 The Council will be seeking to gain additional external funding for a number of its non-housing/community facilities as indicated within the Master Plan. The Council has utilised ALMO funding, Gap funding from the London Housing Board and is looking at the PFI regime to see whether there is the potential to attract funding as infrastructure costs. Currently within the Master Plan Business Plan there is around £30m attributed to non-housing/community type facilities and this will be used to bid for additional resources with the preferred delivery partner. There will be other ways of reducing the gap such as building more homes for sale, utilising other government funding streams and finally cost re-engineering solutions offered by the DV partners.
- 5.4 The Council was successful in the round four ALMO application, and the Council, through BHP will receive the full £14m applied for. This will enable the refurbishment of the 775 properties that are to be retained within Council ownership, to be refurbished beyond the decent homes standard.
- 5.5 As reported in July 2004 and January 2005, the Council was successful in attracting £9.85m (which has been subsequently confirmed to be £9,896m) from the London Housing Board to build units in advance of the main programme. The original application was for £19m and in order for the Council to complete the build of around 125 units a minimum of £10m will need to be raised from Council resources. Members authorised the Director of Finance, in conjunction with the Director of Housing, to recommend the most appropriate funding solution to complete the scheme.
- 5.6 The Council's HRA Business Plan (which has received a 'fit for purpose' rating from ODPM) has been predicated on non-ALMO properties in South Kilburn no longer forming part of the HRA from 2007/08. Clearly this will need to be reviewed in the light of firm proposals for the redevelopment of the area. The Council's ability to recharge the HRA from the General Fund will need to be reviewed in the light of any substantial stock loss.

6.0 Legal Implications

- 6.1 Any disposal of the estate held for housing purposes would be under the provision of S32 and 43 of the Housing Act 1985 and would require the consent of the Secretary of State. Any existing tenants would have their Right to Buy preserved and these are specified in the act around the uses to which receipts can be put.

- 6.2 Disposals of other land are subject to the provisions of s123 of the Local Government Act 1972 and require land to be disposed of for best consideration unless the consent of the Secretary of State is obtained. There is general consent that permits disposals at an undervalue of up to £2m but the disposal must be for the promotion or improvement of the economic, social or environmental well-being of its area and the Council needs to have regard to its Community Strategy. Members owe a fiduciary duty to their taxpayers and they must consider whether any such disposal complies with normal and prudent commercial practices.
- 6.3 Any demolition and rebuilding of property will require planning permission. The grant of such permission will be decided by the Council's planning committee on the planning merits of the application.
- 6.4 The Executive of 17 January 2005 agreed that the stock transfer route should be pursued. This option and possible alternatives to it were explored in outline in the pre-qualification questionnaire. Applicants all indicated that the stock transfer route is the one that they would consider most appropriate for the transaction.
- 6.5 As advised in the report of 17 January 2005, the stock transfer route anticipates either:
- (1) the transfer of the current tenanted stock in South Kilburn (other than that managed by BHP) to an RSL which would redevelop the site either itself or in a consortium in accordance with the agreed principles of the Master Plan, or
 - (2) the transfer of vacant land by the Council on a phased basis to the Delivery Partner which would then build the scheme as against such agreed principles.
- 6.6 The EU Procurement legislation applies to the letting of contracts for works, services or supplies by public bodies. The question arises as to whether, in the context of the stock transfer option, the Council is procuring works, services or supplies at all or whether the stock transfer arrangement (involving as it does the transfer of land) falls outside the scope of the legislation.
- 6.7 As advised in the 17 January report, there are a number of possible approaches as to how the stock transfer option should be categorised for EU Procurement purposes. The transaction could be classified as any of the following:
1. Contract for the Disposal of Land;
 2. Development Agreement;
 3. Public Works Contract;
 4. Public Services Contract;
 5. Mixed Contract for Public Works and Services;
 6. Public Housing Scheme;

7. Public Works Concession Contract;
 8. Public Services Concession Contract.
- 6.8 Given the complexity and size of the transaction and difficulty with establishing the financial implications tenders and the risk allocation for both the Delivery Partner and the Council, without some degree of negotiation, the view taken upon receiving legal advice was that however, the contract comes to be finally classified, it should be possible to justify the use of negotiation for this award within the EU Public Procurement Regulations regime.
- 6.9 The tender process will therefore be conducted in accordance with the European Procurement Rules. The Executive agreed on 17 January 2005 that there were good financial and/or operational reasons not to comply with the requirements of Standing Orders 89 and 90 in relation to the approval of pre-tender considerations in relation to the procurement of the Delivery Partner.
- 6.10 The procedural irregularity in respect of the stock transfer register (paragraph 3.14) is not a legal impediment to the progression of the South Kilburn programme. Officers will need to ensure that any authority to seek permission from the Secretary of State for actual disposals under sections 32 or 43 of the Housing Act 1985 is obtained from Full Council rather than the Executive.

7.0 Diversity Implications

- 7.1 The diversity implications surrounding the Master Plan were fully addressed in the report to members in July 2004.

8.0 Background Information

South Kilburn Delivery Vehicle Files

Anyone wishing to inspect these documents should contact:
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