

LONDON BOROUGH OF BRENT**Meeting of the Executive**

13 December 2004

Report from Director of Housing

For action

Wards affected:
Sudbury

Report Title: Barham Park Estate Regeneration: selection of Partner Registered Social Landlord

Forward Plan Ref: HSG-04/05-29

Appendices 2 and 3 are not for publication.

1.0 Summary

1.1 This report concerns the selection of a preferred partner registered social landlord (RSL) for the regeneration of Barham Park estate.

2.0 Recommendations

2.1 That the Executive note and approve the process that has been carried out, including the assessment criteria, to select a preferred partner RSL for the regeneration of Barham Park estate.

2.2 That the Executive agree to select Notting Hill Housing Trust as preferred partner, provided that NHHT produce a viable and deliverable regeneration scheme which is acceptable to the council and estate tenants.

2.3 That the Executive instructs officers to begin negotiations with NHHT on a revised regeneration scheme, which meets as far as possible, the development objectives previously agreed.

2.4 That the Executive instructs officers to identify and secure alternative sources of funding to meet any deficit which may arise in the revised proposals.

2.5 That the Executive instructs officers to bring a further report incorporating the following:

- a) detailed proposals and how they would impact on residents and the council,
- b) an examination of the option of prudential borrowing compared with the RSL proposal,
- c) a financial impact and risk assessment, including the availability of any gap funding,
- d) an equality impact assessment, and
- e) a final decision on the selection of the delivery partner and regeneration scheme.

3.0 Detail

3.1 On 13th October 2003, the Executive received a report on the options for the regeneration of Barham Park estate. To recapitulate briefly, Barham Park estate comprises 214 flats of the same 'Resiform' build system as at Church End estate. On the basis of work by consultants Hunter & Partners, it was clear that to refurbish the estate to 'Decent Homes' standard would be extremely costly and outside the level of funding provided by the successful ALMO bid. Hunters were commissioned to carry out a full options appraisal exercise in consultation with residents of the estate. They said that complete demolition and new build was likely to be the best overall solution and this was also the option favoured by most residents. They also said that a transfer to an RSL offered the most promising vehicle for a regeneration scheme.

3.2 At that meeting, the Executive instructed officers to make enquiries of our joint commissioning partner Registered Social Landlords (RSLs) to seek ideas on how to achieve the regeneration of the estate. The Executive agreed the following development objectives for inclusion in the initial brief:

- That the Council seeks a transfer and redevelopment scheme for Barham Park without any direct Council financial contribution
- That all 214 existing units are replaced with social housing
- That the scheme meets the design, layout and parking standards set out in the Unitary Development Plan 2000-2010 and relevant supplementary planning guidance notes
- That the scheme also includes a community centre and other proposals for the social and economic regeneration of the estate
- That all costs of rehousing and leasehold buy out are met
- That there is no impact on the Council's temporary accommodation position from decanting at Barham Park
- That all current residents at Barham Park are rehoused satisfactorily and have an opportunity to be housed in new homes at Barham Park if that is what they wish
- That the successful RSL reimburses the Council's costs in commissioning the Options Appraisal report and the Residents Friend appointment and indemnifies the Council if it has to use its CPO powers.

3.3 All ten joint commissioning RSLs were asked if they wished to participate and five expressed an interest, sending comments on the above objectives. A pre-qualification questionnaire was then sent to these five, in order to reduce the number to a more manageable three or four. The questionnaires were returned by 26th January and assessed against the following criteria:

- Capacity and ability in stock transfer and estate regeneration
- Capability in managing a decant scheme
- Capability in sustainable regeneration
- Experience and ability to bring in funding
- Special needs housing and BME partnering
- Performance assessment

The scores from this assessment are set out in appendix 2 (for members only and not for publication). On this basis the following four RSLs were selected to prepare proposals for the estate: Catalyst, Metropolitan Housing Trust (MHT) Notting Hill Housing Trust (NHHT) and Stadium. Catalyst subsequently withdrew prior to submitting any proposals. An invitation to negotiate document (ITN) was sent to the four RSLs on 19th March 2004 asking them to return various documents, including design proposals, a business plan and a completed questionnaire by 2nd July 2004. The ITN gave some background to the proposal, information about the estate, a fuller exposition of the council's requirements, the conditions applying to the process, council and other contacts, an outline timetable and a detailed questionnaire to be completed. A copy of the main body of the ITN is attached as appendix 1 (except for a plan of the estate, the ITN appendices providing information to the RSLs are not attached to save space, but are available on request).

3.4 As previously reported, an Independent Tenants Adviser (ITA) – PPCR - had already been appointed to assist and advise residents during the process. The ITA formed a residents' steering group, comprising members of the tenants' association and other interested residents and the RSL's had an early meeting with this group and a tour of the estate. The ITA and council staff have held regular meetings with this group to explain issues, answer questions and report on progress. A separate meeting has also been held with leaseholders. Members of the steering group visited schemes developed by the three RSLs in June. Two newsletters have been issued to keep all residents informed.

3.5 An open day was held on 24th May to give an opportunity to all residents to meet the RSLs and for the RSLs to understand residents' needs and aspirations. This was well attended with 89 completed exit questionnaires, of which 91% were in favour of redevelopment. An exhibition of the final three RSLs' proposals was held on 19th July 2004. This was also well attended with 70 completing an exit questionnaire, where 94% were in favour of redevelopment. NHHT came out with the highest number (50%) of residents favouring their scheme over the others, with MHT next (27%) and Stadium third (19%). (4% did not select any of them).

- 3.6 A selection panel had been formed comprising three officers from Housing and three residents from the steering group. It had been intended to convene the panel to hear presentations and interview the three RSL's at the end of July. However, all three RSLs submitted controversial schemes which showed substantial development on Maybank Open Space, which adjoins the estate. This led to understandable concern by the sports-club users of the open space and some coverage in the local press. To be fair to the RSLs, they all retained the sports playing areas and set aside substantial sums to improve the facilities. However, they could not replace all the public open space lost. The views of planning colleagues were sought on the submissions and it was clear that all three schemes were at odds with regional and local planning policies. The decision was taken to rule out all the design proposals as being undeliverable.
- 3.7 On informing the three RSLs, they requested that a choice be made between them on the information already submitted, rather than asking them to commit further expenditure in preparing fresh design proposals, which for two of them at least would have been abortive. This was agreed and the panel reconvened for 4th October, with the ITA attending as observer and adviser to the resident panel members.
- 3.8 The criteria used for the assessment of the RSLs were as follows:
- Financial robustness
 - Rehousing and leaseholder proposals
 - Design and development
 - Housing management
 - Organisation and procurement
 - Economic and social programmes
 - Equal opportunities and diversity
- 3.9 The information used for the assessment was that submitted in July, together with information provided by the Housing Corporation's assessments of the RSLs, particularly as to the financial strength of the organisations and their housing management performance. Having ruled out their design schemes, compromises had to be made around some aspects of the assessment. Their submitted schemes were used to assess the quality of their design work and they were asked in the interviews to say how they would approach the project without developing on the open space. The assessment made by the joint officer-resident panel is summarised below.

Summary of assessment against criteria

	Criteria	MHT	NHHT	Stadium
1	Financial robustness	-	-	-
2	Rehousing & leaseholder	3	3	3
3	Design & development	2	3	1
4	Housing management	3	3	1
5	Organisation & procurement	-	-	-
6	Economic & social programmes	2	3	1
7	Equal opportunities & diversity	1	1	0
	Total	11	13	6

- 3.10 On the above basis NHHT was considered the best, with MHT second and Stadium third. This reflects the residents' own assessment made at the exhibition in July. It will be noted that no points have been allocated to two criteria: financial robustness and organisation and procurement. In the latter case there was little difference between this aspect of the proposals and insufficient detail to separate the three RSLs. The financial aspects are of course critical. They can be divided into the financial strength of the organisation and the soundness of their financial plans for the redevelopment scheme. In the first case, the Housing Corporation's 'traffic lights' assessment gives all three RSL's a 'green light' indicating they are satisfactory for 'Viable' – the Corporation's regulatory code for assessing financial sustainability and business efficiency.
- 3.11 As there are no fully worked-up design proposals which are considered deliverable, an assessment of the financial strength of proposals is problematic and can only be considered provisional. The RSL's were asked to submit, by 5th November, outline financial models on two possible approaches to the redevelopment: their preferred option and a safe option, which was to be entirely confined to the site of the existing estate. At this point Stadium withdrew from the process, leaving MHT and NHHT as the only bidders (they were not aware of this).
- 3.12 Members will appreciate that at this point, the RSLs concerned have gone through several layers of selection, starting with their inclusion as one of the council's joint commissioning partners, following a thorough assessment and vetting process. Four of the joint commissioning RSLs were selected following a pre-qualification exercise and two subsequently withdrew at separate points. Both the final two RSLs are considered to be very capable of carrying out the kind of regeneration envisaged for Barham Park. It is not surprising that little separates them in this respect making the choice difficult. The preparation of detailed schemes is both costly and time consuming and even schemes selected from competition, frequently change with more detailed consultation with tenants, prior to a ballot. The approach being recommended is to select the RSL which the panel believe offers the best overall approach and the best prospect of achieving a viable and deliverable scheme.

- 3.13 Summaries of the two financial models from MHT and NHHT are set out side by side in appendix 3 (attached for members only and not for publication). It must be noted that these are outline proposals only and have not been discussed with the Planning Service or anyone else. MHT's preferred option is to develop new housing on Maybank Open Space and reprovide the open space on the site of the existing estate, plus the development of the Harrow Road frontage. This would still be controversial and in light of the reaction to their original submission, seems an unpromising route to go down. Furthermore, their preferred option has a deficit funding position of £14.3m. It was considered that there were omissions from their model in terms of any allowance for the laying out of the replacement open space and also a community centre which was in the brief. If added in for comparative purposes, this would bring the gap funding requirement to around £15.5m. MHT have not offered any special form of funding into the scheme, although both RSLs would explore additional sources of funding from GoL, Housing Corporation and English Partnerships if selected. The Harrow Road site is in third party ownership and its inclusion in the scheme cannot be guaranteed but is considered desirable as it could bring a significant improvement to the Harrow Road frontage.
- 3.14 NHHT's preferred option shows a small corner of Maybank Open Space being developed, where it would not impact on the existing sports pitches, and also the Harrow Road frontage. Their densities are higher than MHT and their model shows a balanced position, with no gap funding requirement. NHHT have used Recycled Capital Grant Fund (RCGF) to balance the model. It is considered that their assumption of Social Housing Grant for use on site is dubious and they have possibly understated the cost of leasehold buyouts, however, they have allowed for a community centre. If these are added back in for comparative purposes, there is a deficit of around £4m. This scheme is considered to offer the most promising way forward, although there are aspects which are untested and uncertain. This includes the minor incursion onto Maybank open space and the development of the Harrow Road frontage (as with MHT above). NHHT's approach is the only one to have come close to the original objective that there is no council funding requirement.
- 3.15 The main difference between their approaches to the safe option is in their willingness to exploit higher densities. MHT adopt Hunters outline scheme of 280 units, an increase of 66 over the existing. NHHT have 451, doubling the number of units on site. MHT's safe option model has a deficit of £16.2m which would become £16.5m when adjusted for omissions. NHHT's model again balances, with a substantial RCGF contribution, but with adjustments might again show a deficit of around £4m. NHHT's densities are almost certainly too high, but on the other hand MHT have not demonstrated a willingness to exploit densities to reduce the funding deficit. NHHT have shown a willingness to contribute significant RCGF (although members should note that the Housing Corporation's consent would be required for this).

- 3.16 Officers are not in a position to recommend a viable scheme. In their initial bids, three RSLs put forward similar proposals to develop on Maybank Open Space. They did this because without some additional land it has proved difficult and probably not possible to reprovide the existing number of social housing units purely from cross subsidy from homes built for sale. NHHT's lower deficit may indeed grow if as seems likely their densities have to be reduced. The council's ability to provide gap funding is extremely limited and no current provision exists. It may be possible to gain some contribution from GoL, the Housing Corporation and/or English Partnerships and all these avenues will be explored. An informal approach to GoL drew the response that they would like to see the outcome of the bidding process with the RSLs completed and a report to the Executive, before entering into any discussions. In any event, they could not fund a deficit at the higher end of the range, for such a small estate.
- 3.17 It is recommended that NHHT be selected as preferred bidder, with the intention of entering into further negotiations with them, in consultation with the residents, to develop a viable scheme. If members agree this, they will not be committing the council to any of the above outlined schemes or even to a final commitment with NHHT. If NHHT produces a viable and deliverable scheme, officers will seek members' approval before entering any agreement for its delivery. For the reasons given above, officers are not presently in a position to recommend a viable scheme as such and the eventual funding method and requirement for any gap funding has still to be established. There will be a tension between the amount of development that is desirable in order to maximise cross-subsidy and what may be considered an acceptable density level. This will depend on consultation and negotiation with planning and transportation colleagues, estate and neighbourhood residents and possibly third party land owners in the area.
- 3.18 Members should be aware that there are the following risks:
- That despite the possibility of other external funding sources, none of these are assured and the council may be asked to make a direct funding contribution to make the scheme viable
 - That a scheme is developed to mitigate the funding problem which is unacceptable and voted against by the tenants, on density or other grounds
 - That insufficient funds can be raised to proceed with an acceptable scheme, which meets the councils objective to reprovide all the existing social housing units.
- 3.19 Officers will work with the RSL to bring in whatever external funding that can be obtained, to minimise any financial impact on the council. The larger the requirement for any financial contribution from the council, the more important will be the consideration of any other funding route open to the council such as prudential borrowing. Residents' views will be sought throughout so that a scheme which is unlikely to gain their approval at a ballot, is not developed to an advanced stage. Compromises may be needed to secure a viable scheme which is also acceptable to residents but further

work is required to establish whether that is the case. A further report will be brought before members to enable them to decide on such issues, prior to an absolute commitment being made to any particular scheme. The timetable for this is unclear and needs to be established with the RSL provided their selection is agreed.

4.0 Financial Implications

- 4.1 An important objective of the exercise must be to devise a solution which will be self financing or able to attract in other funding sources. The Council has a limited number of options available to finance such expenditure: either the new prudential borrowing code or a partnership with an RSL to lever in private and possibly other sources of finance (or indeed a combination of both). It is also important that any decant programme should avoid, as far as possible, any call on the Council's rehousing resources which would compete with homeless families, as this would have an adverse impact on the Council's temporary accommodation budget. At present there is no fully costed scheme and the council cannot commit itself to any course of action until these costs are known and the financial impact on the council can be evaluated.
- 4.2 It is difficult therefore to advise members on any potential financial impact on the council. The outline schemes put forward by Notting Hill Housing Trust when adjusted for comparative purposes both have a deficit of around £4m. It is not clear how this deficit will be funded. It is important for the council and the RSL to investigate additional sources of funding and/or develop other development options which mitigate the deficit.
- 4.3 The following risks are identified in the report
- That despite the possibility of other external funding sources, none of these are assured and the council may be asked to make a direct funding contribution to make the scheme viable
 - That a scheme is developed to mitigate the funding problem which is unacceptable and voted against by the tenants, on density or other grounds
 - That insufficient funds can be raised to proceed with an acceptable scheme, which meets the councils objective to reprovide all the existing social housing units.
- 4.4 The transfer of 214 properties, will also affect the fee income of Brent Housing Partnership which currently manages the estate.
- 4.5 Clearly, a further report will be required with a fully evaluated proposal, including the cost of the scheme, all the funding streams identified and the financial impact on the council known with certainty, before a final decision can be made. The final proposal from the recommended RSL will need to be assessed alongside any alternative options open to the council, such as prudential borrowing.

5.0 Legal Implications

- 5.1 The Council has the power to dispose of property under s 32 of the Housing Act 1985 subject to the consent of the Secretary of State. There are statutory requirements under s 106A to consult secure tenants about any proposals to redevelop their homes or transfer them to another landlord. Broadly speaking, tenants must be given an opportunity to make representations to the Council and these must be taken into consideration before the Council makes any firm decision. The precise consultation requirements will depend on the option being pursued and will have an impact on the timing and potential costs of the project. For example, if properties are transferred to a Registered Social Landlord (RSL) it will be necessary to vary the terms and conditions of the tenancy for those affected.
- 5.2 There may be a need for legal proceedings under the Housing Act 1985 to obtain possession of individual homes, although experience at Chalkhill shows that it is entirely possible to obtain vacant possession of an estate by negotiation alone. Where long leases are held by property owners the Council may have to exercise its compulsory purchase acquisition powers (CPO), which would involve making compensation payments to leaseholders and perhaps also rehousing them.
- 5.3 The Council will need to comply with the procedures for making and confirming compulsory purchase orders set out in the Acquisition of Land Act 1981, if the Council decides to acquire leasehold interests under its CPO powers. The effect of the procedure is that a compulsory purchase order cannot be acted upon until sufficient notice has been given to the owner of the land and it has been confirmed by the confirming authority, in this case the Office of the Deputy Prime Minister. Thus the Council will not actually be in a position to acquire the leasehold interest until the order has been confirmed.
- 5.4 If the Council acquires the leasehold interest under its compulsory purchase powers, the Council will be obliged to pay compensation to the owners of the property. The amount of the compensation payable is essentially the open market value of the land with disturbance, interest (if there is a delay in paying compensation) and costs.
- 5.5 If redevelopment is the chosen option, planning permission will need to be applied for either by the Council or the developer. If applied for, there may be blight implications for those who claim to be adversely affected by the development, which may involve the Council in additional cost in that a person affected by blight who is unable to sell his or her property can require the Council to acquire that property.
- 5.6 There are also Human Rights implications. The rights that are of particular significance to members' decision in this matter are those contained in Article 8 (right to respect for private life and home) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).

- 5.7 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society, in the interests of the economic well-being of the country, protection of health and the protection of the rights and freedom of others. Article 1 of Protocol 1 provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided by law, although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 5.8 In determining the level of permissible interference with enjoyment, the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck. Until precise details of the proposals are known is difficult to advise further on these points.
- 5.9 It is possible that arrangements could be made for an RSL to bear the cost of exercising CPO powers and indemnifying the Council against costs associated with it.
- 5.10 A disposal of land is outside the provisions of the EU procurement regime and the Council's contract standing orders do not apply to a disposal of land, however it is not possible at this stage to say whether this scheme will consist of more than a disposal of land and that issue will need to be addressed in a further report.
- 5.11 In disposing of land members must bear in mind their fiduciary duty to their Council Tax payers and satisfy themselves they are obtaining value for money.

6.0 Diversity Implications

- 6.1 All current residents of Barham park estate will be affected by any regeneration scheme, the objective being to improve their housing conditions and their quality of life. All the RSLs bidding for the project submitted equality and diversity statements and policies that show they share the council's aims. The recommended RSL in particular refereed throughout their presentation to the need to pay special attention to the make-up of the estate, in their consultation and resident involvement strategies. There is clearly potential with any regeneration scheme for some groups to be disadvantaged, unless clear policies are established to prevent this. If agreed by members, officers will work with the selected RSL on a full Equality Impact Assessment at any early stage, so that it is available to influence the final scheme.

7.0 Staffing Implications

- 7.1 The project is being led by the Project Director (Regeneration) with support from other existing staff. There are no other immediate staffing implications.
- 7.2 The proposed vehicle for the regeneration of Barham Park, subject to any views the consultees may have, is a stock transfer. Brent Housing Partnership currently manages Barham Park estate. A stock transfer will impact on current staff and therefore it is anticipated that TUPE will apply. The Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) ('TUPE') regulate the employment implications of transfers of undertakings. Where TUPE does apply, the transferee (the RSL) will take over the employment contracts of all staff assigned to the transferor's (the Council's) undertaking or that part of the transferor's undertaking being transferred. The staff transfer across to the transferee with continuity of employment. Further details will be put before members in a subsequent report.
- 7.3 As the size of the stock is small in this case, the impact on staffing levels is also small. Current estimates are that the number affected would be two or possibly three posts, however BHP will try to absorb staff into other parts of its operation where possible. Further information will be presented to members as and when the scheme is approved. The successful RSL will be notified of these posts and be given details of the staff in question. The Council will endeavour to require the RSL to make the necessary provision for the employment of these staff prior to the completion of the proposed transfer.
- 7.4 At this early stage, the following issues remain to be finalised in respect of TUPE resulting from the possible transfer:
- The extent of employment details to be given by the Council concerning relevant employees.
 - The extent of any warranties / indemnities to be given by the Council concerning such employment details
 - Pension rights and other considerations and benefits associated with public sector employment.

Background Papers

1. Initial Appraisal Exercise for the Regeneration of Barham Park Estate - Hunter & Partners.
2. Barham Park Estate, Option Appraisal Report – Hunter & Partners September 2003.
3. Invitation to Negotiate, with appendices
4. Design schemes for Barham Park estate, submitted on 2 July 2004.

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