

 <b>Brent</b>	<b>Cabinet</b> 9th December 2019
	<b>Report from Strategic Director,            Community Well Being</b>
<b>JOHN BARKER COURT - TITLE RESTRICTION</b>	

<b>Wards Affected:</b>	Brondesbury Park
<b>Key or Non-Key Decision:</b>	Key Decision
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>No. of Appendices:</b>	Two: Appendix A: HM Land Registry Title and transfer is provided for information as 2 <sup>nd</sup> October 2000 Appendix B: HM Land Registry Title and transfer is provided for information as 27 <sup>th</sup> August 2019.
<b>Background Papers:</b>	Not Applicable
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Hakeem Osinaike Operational Director of Housing 020 8937 2023 <a href="mailto:hakeem.osinaike@brent.gov.uk">hakeem.osinaike@brent.gov.uk</a>  David Guy Head of Supply and Partnerships 020 8937 2111 <a href="mailto:david.guy@brent.gov.uk">david.guy@brent.gov.uk</a>

## 1.0 Purpose of the Report

- 1.1 As part of its Housing Strategy, the council promotes a strong, local, cross-sector co-operation with housing organisations operating within Brent to develop and deliver its strategies.
- 1.2 This paper is submitted to Cabinet to ensure compliance with due process by specifically seeking approval of the removal of the restriction on the title of John Barker Court, Brondesbury Park, London, NW6 7BW, to enable affordable

rented and shared ownership housing to be made available to those in need regardless of their age.

- 1.3 Redevelopment of John Barker Court was completed in December 2018, with the scheme owned and continuing to be managed by Network Homes. The recommendation(s) made to Cabinet in this report are specifically to enable the Registered Provider (RP) to make existing housing available without an age restriction which in turn also contributes to providing a wider housing mix within the Borough,
- 1.4 Both the current Section 106 legal agreement and land transfer agreement currently impose restrictions for homes to be made available only to residents over 50 years old.
- 1.5 The restrictions are preventing the council from being able to nominate people on the waiting list who are in need of housing, regardless of their age. They are also making it extremely difficult for Network Homes to sell shared ownership homes as there has been limited interest from the over 50's and it is recognised that other groups of residents in need are unable to access housing.

## **2.0 Recommendation(s)**

2.1 Cabinet is asked to:

- 2.1.1 Note that the change to the Section 106 legal agreement associated with the planning consent can be approved under delegated authority, as it does not materially change the consented development.
- 2.1.2 Approve the removal on the title of John Barker Court so that the existing properties on the land can be sold or rented to people of any age and that the land can be used for the development of affordable housing.

## **3.0 Context**

- 3.1 A committee report was submitted on or around January 2000 by the then acting Director of Housing Services.
- 3.2 The report kept Members informed about the council's proposal to transfer its sheltered housing dwellings held for the purpose of Part II of the Housing Act 1985 to Willow Housing a subsidiary of Network Housing Association Ltd. The purpose of the transfer was to enable the proposed programme of improvement refurbishment and new build to be carried out in compliance with Elders Accommodation strategy, which was endorsed by various Committees in 1996 and subsequently became corporate policy.
- 3.3 A period of statutory consultation would have taken place prior to the transfer of John Barker Court, which would have highlighted the likely consequences of the disposal. It is not known what representations were made by the residents at the time. The council would have needed to obtain the permission of the Secretary of State to the transfer of John Barker Court.

- 3.4 John Barker Court (including the land) was at that time held for the purpose of social housing as defined in Part II of the Housing Act 1985. At the time of the transfer social housing did not include what is now known as affordable housing and so at the time that John Barker Court was transferred to Willow Housing Limited, it was envisaged that the land would be used solely for social housing (not affordable housing) for the over 50s.
- 3.5 A covenant was therefore placed on the title of John Barker Court which was to ensure that even if the building itself was demolished or sold that the land would always be used for the purpose of social housing for the over 50s for a period of 40 years, however the council could consent to some other form of social housing use should it so wish. The provisions of the Housing and Regeneration Act 2008 extend the definition of social housing to include housing below market rent affordable housing such as shared ownership, equity percentage share etc.
- 3.6 In advance of demolition of the site, planning consent was granted in July 2015 for a temporary one-year change of use of the existing flats into a hostel.
- 3.7 Planning consent was granted in February 2017 for the demolition of the existing sheltered accommodation block and redevelopment of John Barker Court to provide 33 new homes, comprising of 16 affordable rent and 17 shared ownership homes (application reference 15/5068).
- 3.8 The application submission specified that the homes would provide accommodation for over 50 year olds. This was secured within the legal agreement for the planning application. However, the over 50s age restriction did not form a part of the planning justification for the development and the Planning Committee report for the application specified that this restriction is reflective of an agreement that exists on the property.
- 3.9 The application also confirmed that the development whilst originally intended for the over 50's was not considered to fall within Use Class C2 (i.e. provision of residential accommodation and care to people in need of care) as there were no permanent care staff on site and homes were to be self-contained. For these reasons the accommodation was considered to fall within Use Class C3 (i.e. provision for those living together as a single household).
- 3.10 Both the current Section 106 legal agreement and land transfer agreement impose restrictions for homes to be made available only to residents over 50 years old, thereby currently preventing the provision of affordable housing to those in need regardless of their age.
- 3.11 A variation to the Section 106 legal agreement is required to allow occupation by those who are under 50 years old. Network Homes has formally requested this change and the variation is in the process of being finalised by the council's Legal team.
- 3.12 The change to the Section 106 legal agreement associated with the planning consent can be approved under delegated authority, as it does not materially change the consented development.

- 3.13 Whilst variation to the Section 106 legal agreement will enable Network Homes to remove the age restriction in place, approval from Cabinet is also required to agree a deed of variation to change the land transfer agreement (dated 2<sup>nd</sup> October 2000) as this also has an age restriction in place, so that Network Homes can use the land for affordable housing.
- 3.14 The reason for seeking Cabinet approval to change the land transfer is due to the council's role as 'planning authority' being separate to the council as 'land owner'. A separate consent is required to enable changes to be made.
- 3.15 A copy of the HM Land Registry Title and transfer is provided for information as **Appendices A (2<sup>nd</sup> October 2000) and B (27<sup>th</sup> August 2019)**.

#### **4.0 Housing Provision**

- 4.1 The development was presented and planning consent provided on the basis of providing 100% affordable homes, satisfying the London Plan by maximising the amount of affordable housing on sites, as well as making a valuable contribution towards the council's affordable housing targets at the time.
- 4.2 Since the site was developed, the council has set an ambitious strategic housing target to deliver 1,000 new affordable homes every year for the next five years. Delivery of a total of 5,000 new affordable homes includes the provision of 1,000 directly by the council by the 31<sup>st</sup> March 2024.
- 4.3 In addition to delivering the New Council Homes Programme, opportunities to maximise the number of affordable properties delivered through Section 106 planning conditions and encourage registered providers to invest in the borough is seen as an essential intervention in meeting the targets set in the Housing Strategy. Officers have looked at options for purchasing but as the scheme comprises of one bedroom homes this would not address current need for three and four bedroom homes within the Borough.
- 4.4 By approving to change the land transfer the council would be able to nominate people on the waiting list who are in need of housing, regardless of their age, therefore ensuring that Network Homes would be able to let all 16 affordable rented homes.
- 4.5 This would also facilitate the sale of the shared ownership homes. Network Homes are finding it increasingly difficult to sell the 17 shared ownership properties as there is no demand from the over 50's as the majority would be unable to secure the mortgage required for house prices in the area due to their age.
- 4.6 The council's planning policies refer to the provision of housing to meet need, but do not directly specify the requirement to provide housing for over 50s. External consultation for the application was in line with the Development Management Procedure Order (DMPO) and the Statement of Community Involvement (SCI). Planning has confirmed that the removal of the restriction is not considered

4.7 The changes would be compliant with the council's policy of a 70/30 split between rented and shared ownership housing products. This policy is in-keeping with the Mayor's London Plan. The variation and removal of the agree restriction could also provide the council with the opportunity to work with Network Homes to introduce key worker housing as part of our wider approach.

## **5.0 Financial Implications**

5.1 There are no financial implications for the council in arranging for the changes made as set out in this report.

## **6.0 Legal Implications**

6.1 The intention of the council in 2000 was to ensure that the land at John Barker Court was held for social tenants (as defined by Housing Act 1985) which meant that these tenancies were let at a lower rent than tenancies in the private rented sector and provided long-term security of tenure.

6.2 Due to the ambitious strategic and housing targets that the council is committed to delivering, it is now necessary to ensure that the property can be used as affordable housing within the meaning of the Housing and Regeneration Act 2008 which means that the restrictive covenant will need to be varied to allow for this use.

6.3 The legal implications are negligible to the council as the deed of variation to change the land transfer (dated 2<sup>nd</sup> October 2000) is a matter of due diligence and necessity; it is required to remain consistent with changes being made to the Section 106 agreement under delegated authority by the council as planning authority.

## **7.0 Equality Implications**

7.1 The Council has a statutory duty to consider the impact of its decisions on age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation.

7.2 By removing the restrictions currently in place the council would be promoting equality by ensuring that people who are under 50 are not discriminated against or prevented from accessing housing due to their age, whilst continuing to meet housing need in the borough.

## **8.0 Consultation with Ward Members and Stakeholders**

8.1 Statutory consultation was carried out between December 2015 and June 2016 in relation to the original planning application submitted when consent was given by the council. A total of 269 addresses were consulted on two separate occasions (the latter due to amendments to proposals) with no representations being received at the time. All statutory consultees and Ward Councillors were also consulted twice on the proposals at the time and no comments were received.

- 8.2 The need to seek Cabinet approval for the variation to change the land transfer has been raised with the Lead Member for Housing and Welfare Reform in advance of this report being submitted.
- 8.3 Network Homes has been proactive in engaging with officers within the council's planning and legal teams to formally request the variation, whilst ensuring that conditions of grant set by the Greater London Authority (GLA) continue to be complied with.
- 8.4 Discussions between Network Homes and officers to date have focused solely on removing the restrictions on the covenant. Wider consultation with stakeholders has not been carried out, as the lifting of the age restriction does not prevent anyone over the age of 50, who is interested in a shared ownership property approaching Network Homes. Social rented homes will be allocated and let as per existing council policies and based on housing need.

## **9.0 Human Resources / Property Implications**

- 9.1 There are no human resource implications for the council as the work required can be accommodated utilising existing in-house capacity.
- 9.2 There are no property implications for the council as the site has already been developed, however, the changes proposed will release housing for affordable rented and shared ownership allocation.

**Report sign off:**

**Phil Porter**

Strategic Director for Community Wellbeing