



City of Westminster

Cabinet Member Report

Meeting or Decision Maker: Cabinet Member for Climate Action,
Regeneration and Renters

Date: 12th January 2024

Classification: For General Release save for Appendix A, B, C, D and E be declared as exempt from publication by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

Title: West End Gate Block H – Affordable Units
Acquisition

Wards Affected: Little Venice and Church Street

Policy Context: Fairer Housing - The proposed acquisition of 45 affordable units from Berkeley Homes on the West End Gate Phase 3 development will increase the Council's provision of much-needed truly affordable housing. Thus, allowing the Council to provide permanent accommodation to residents currently on the housing waiting list. This will promote fairer housing and boost local economy through a thriving community as seen in the earlier West End Gate phases, therefore helping to build a fairer Westminster for all.

Cabinet Member: Cabinet Member for Climate Action,
Regeneration and Renters

Key Decision: Yes

Financial Summary: The expenditure for the acquisition of 45 homes will be met initially from the Central Contingency within the approved Capital Programme, with a new budget request included in the draft 2024/25 budget. (Further details set out in Appendix A)

Report of: Executive Director of Regeneration, Economy and Planning

1. Executive Summary

- 1.1. Phase 3 of the West End Gate scheme on Edgware Road, being developed by Berkeley, will provide 45 affordable homes through its Section 106 obligation, and is targeting to achieve practical completion by Q1-2026.
- 1.2. The Council had a first right of refusal to acquire these homes and identified them as a good opportunity to provide additional homes in the area to tackle waiting lists and aid the decant of Church Street required to enable development of sites B and C.
- 1.3. The Council will acquire the homes on a 'golden brick' (development reaching design and partial construction beyond foundation stage) arrangement with a development agreement, mirroring the previous acquisition of earlier phases on the scheme. The acquisition price is set out in appendix A and its value for money is supported by a Red Book Valuation Report (Appendix B) by JLL, demonstrating the acquisition's value for money.
- 1.4. In summary, the 45 homes will comprise of three studios, twenty-two 1 beds, eighteen 2 beds and two 3 beds within the two development cores.
- 1.5. The Council will acquire through leases and development agreement, meaning that the Council will acquire the site during its development, paying on stage payments until completion is reached at which point it will own and let the homes to residents. The leasehold titles will be for 999 years.
- 1.6. A budget allocation for the purchase is included in the draft budget proposals 2024/25 which will be presented to Cabinet and Full Council in line with the Council's annual budget process. This paper therefore recommends funding costs from central capital contingency until superseded by the new budget.

2. Recommendations

- 2.1. That the Cabinet Member for Climate Action, Regeneration and Renters:

- Approves the acquisition of 45 affordable homes at West End Gate Block H from Berkeley Homes for the price set out in Appendix A, on the terms in Appendix C.
- Approves further spend of £400,000 to meet legal costs, monitoring costs and specification changes required to match those on earlier phases.
- Approves expenditure from the central contingency to fund this acquisition, noting that the draft budget 2024/25 includes a line item for the scheme. (Further details set out in Appendix A)
- Delegates authority to the Executive Director of Regeneration, Economy and Planning in consultation with the Director of Legal to enter into the Development Agreement, Agreement for Lease, Block H1 Lease and Block H2 Leases (x13) and all associated legal documents required by the recommendations of this report.

3. Reasons for Decision

- 3.1** The Council has acquired 130 homes across the earlier phases of West End Gate which have provided high quality homes for residents and an opportunity to decant existing social tenants from Church Street Site A. The 45 under construction in Block H would complement these homes, providing more decant opportunities and high-quality Council managed homes near Church Street.
- 3.2** The homes are required to be built by Berkeley as a S106 obligation, regardless of whether the Council acquires them or not, with nomination rights for the Council. However, by acquiring them the Council can ensure high quality management to its residents and has been able to influence the type of tenancies and procured a further variation to the S106 agreement to convert the 33 shared ownership homes into London Living Rent. A deed of variation to the s.106 will need to be entered into and it will be a condition of the Agreement for Lease. Berkeley must satisfy this condition before the Council completes the acquisition. If Berkeley do not satisfy this condition within one year of exchange the deposit (detailed below) shall be returned to the Council and the Development Agreement shall be terminated.
- 3.3** Further to the above, the Council can convert the larger homes from intermediate rent to social rent increasing the total provision on the site. To avoid undue delay and complication, the Council will implement this after entering into contract with Berkeley but before the end of construction.
- 3.4** The average acquisition cost as set out in Appendix A is less than the cost of self-building and therefore represents value for money. The Council has significant waiting time on larger homes and converting intermediate rent to social will provide much needed permanent social housing.

4 Background, including Policy Context

- 3.1. The Council's Fairer Westminster Delivery Plan makes a commitment in Fairer Housing to rehouse more people on our waiting list by building (and purchasing) more truly affordable housing. Block H in West End Gate provides an opportunity to extend the Council ownership within a development where it already has 130 affordable homes, leveraging its position to increase the affordability of housing provided while ensuring a legacy of good management.
- 3.2. The Council has negotiated a price which is conditional on Berkeley making the s.106 planning amendments of the 33 shared ownership homes to London Living Rent, a type of affordable home that is more obtainable for those working and living in the borough.
- 3.3. In the Truly Affordable Housing Strategy, approved by Cabinet in October 2022, the Council set out the need to provide more family sized social rent homes to tackle the waiting lists and noted that the complementary need for intermediate rent to be particularly one-bedroom homes. Therefore, it is intended to convert 6 of the 8 two bed shared ownership homes to social rent. Due to core layouts two will remain intermediate rent.

Table 1 - Planning Approved Tenure Mix:

	Studio	One Bed	Two Bed	Three Bed	Total
Shared Ownership	3	22	8	-	33
Social Rent			10	2	12
Total	3	22	18	2	45

Table 2 – Intended Amended Tenure Mix (subject to planning)

	Studio	One Bed	Two Bed	Three Bed	Total
London Living Rent	3	22	2	-	27
Social Rent	-	-	16	2	18
Total	3	22	18	2	45

- 3.4. The Council's intervention will increase the number of London Living Rent homes on the project by 27 and Social Rent by 18
- 3.5. The project is underway with the foundations and Reinforced Concrete (RC) frame structure almost fully constructed. The next stage of development includes facades installation, and first fix works commencement. The Council homes are targeting practical completion in early 2026.
- 3.6. The contractual arrangements have sought to minimise the risk to the Council through:

- A fixed price as set out in Appendix A has been agreed with no additional costs to be awarded to the developers, excepting instructions from the Council.
 - Lessons learnt from previous phases to ensure the specification is appropriate to the Council's objectives, minimising the need for further instructions.
 - Employment of Phillip Pank to act as employers agent to monitor the contract and hold Berkeley to its terms.
- 3.7. The developer can request extensions of time only, which may delay the handover of homes. However, the project is significantly advanced, and Berkeley is a reputable developer. If the project is delayed the Council would incur additional financing costs on sums paid to date and Phillip Pank will monitor this closely throughout the build.

5. Financial Implications

Scheme summary

- 5.1 West End Gate Block H sees the council acquire 45 new homes within Westminster and will contribute to the Council's aim of delivering affordable housing for its residents.
- 5.2 Upon practical completion, which is currently forecasted in Q1 26, the site will comprise of 27 London Living Rent and 18, detailed in Table 2 above.
- 5.3 The total cost of the 45 homes is set out in Appendix A and with the additional costs to be incurred. The average home cost for Block H is referenced in Appendix A whereas the average market value for flats in the Little Venice area for 23/24 was £1,032,224.
- 5.4 An external valuation was completed by JLL (see appendix B) which yielded a higher calculation for the Existing Use Value for Social Housing. The negotiated price with Berkeley Homes therefore represents good value for money for the Council.
- 5.5 The Development Agreement does not grant costs (only allows extension of time in some instances) to Berkeley for any delay or change outside of the Council's control, and as the agreed specification reflects that of earlier phases there are not expected to be any additional costs incurred through construction. Additionally, the Council's appointed employer's agent will continuously monitor progress on site thus enabling robust cost and programme assessments (through valuation and any relevant milestone payments). This will enable the Council to make informed decisions and help mitigate any potential financial risks.

Budget

- 5.6 Within the proposed 24/25 Capital Programme is an allocation for West End Gate phase 3 for the purchase price proposed as per appendix A. This capital programme will not be approved until March 2024, and it is therefore proposed to fund expenditure from the central contingency to meet the costs initially, with the new budget replacing it once approved. The central contingency is an approved budget within the current capital programme.
- 5.7 The original budget proposal, submitted in September 2023 identified a cost as summarised in Appendix A which has risen by £400,000 to include specification uplifts, ongoing monitoring, legal costs and contingency, as set out in appendix A. These will be met from central contingency.
- 5.8 The Council intends to secure external funding for these homes, recognising the Council's interventions to increase the number of affordable homes on the site. The Council is in discussions with the GLA but has excluded this from their financial appraisals. Achieving external funding will allow the Council to claim Stamp Duty Land Tax relief. Should this not be secured, an additional cost of £170,000 will be incurred which will be funded from the central contingency fund. This will not have a material impact on the financial viability of the scheme.

Funding West End Gate Block H.

- 5.8 The scheme will be developed by Berkeley Homes and will be funded by the General Fund (GF) throughout its construction. Initial payments for exchange and the golden brick (development reaching design and partial construction beyond foundation stage) will be made from the GF to Berkeley Homes at contract completion, currently expected in Q4 23/24. Thereafter monthly construction payments will be made to Berkeley Homes based on costs incurred which will be confirmed by Philip Pank, the Council's employer agent.
- 5.9 Upon practical completion the 18 social homes will be transferred to the HRA and the 27 London Living Rent homes will be transferred to Westminster Builds with each paying the GF a capital receipt to offset incurred expenditure.
- 5.10 Further detail on funding West End Gate Block H as well as risks associated with the scheme is available in Appendix A.

Revenue implications.

- 5.11 Future maintenance and repair costs will be met from the rents generated from the homes and is fully incorporated into the Council's affordability calculations.

6. Legal Implications

6.1 The Council has the power to enter into the proposed Agreement for Lease, Block H1 Lease and Block H2 Leases (x13) and Development Agreement under section 1 of the Localism Act 2011 (the “General Power of Competence”). The General Power of Competence states that a local authority may do anything a person can do so long as it is specifically prohibited (under that Act or other legislation not prohibited). A local authority may exercise the General Power of Competence for its own purpose, for a commercial purpose or for the benefit of others.

6.2 Under section 120 of the Local Government Act 1970 (“1970 Act”) a local authority may acquire by agreement any land, whether situated inside or outside their area, for any purpose for which they are authorised by the 1970 Act (or any other enactment to acquire land) notwithstanding that the land is not immediately required for that purpose; and, until it is required for the purpose for which it was acquired, any land acquired under this subsection may be used for the purpose of any of the Council’s functions.

6.3 Under section 111 of the Local Government Act 1972, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions

6.4 A report summarising terms of the Agreement for Lease, Development Agreement, Block H1 Lease and form of Block H2 Lease is annexed and we not propose to duplicate by summarising the terms below but will highlight the following:

6.4.1 Building Safety

- The Building is a “higher-risk building” as defined in the Building Safety Act 2022 (BSA). The development falls within the transitional arrangements. The only possible reason why the building would not fall within the transitional arrangements is if plans were rejected by building control or otherwise ceased to have effect. Were this to happen, there would be a process for the Building Safety Regulator to take over as the building control body for the project and some golden thread requirements would apply. This is purely a procedural change which would not impact on the design requirements for the building.
- The Council will be an “accountable person” as defined in the Building Safety Act in respect of Block H1 and will need to comply with its statutory obligations within the BSA.

6.4.2 Development Agreement

- The Council must notify the developer on the earlier of (a) 2 months following receipt of an independent report confirming a Post DLP Matter (a systemic issue that becomes apparent after the defects liability period) or (b) six months of the Council becoming aware following when such defect should have been reasonably apparent. If the Council does not provide such notice to the

developer the Council waves all such rights (contract, common law or otherwise) to claim any damages, loss, expense in respect of that defect. The Council felt the time periods agreed were sufficient to provide enough time for the Council to comply.

- A summary of the price and payment mechanism within the Development Agreement is set out within the attached summary report at Appendix C.
- If either party has not remedied a material breach within 10 working days written notice the other party shall be entitled to terminate the Development Agreement and the buyback provisions detailed in the Agreement for Lease shall apply.

6.4.3 Agreement for Lease

- The completion of the H1 Lease and H2 Leases are conditional on the developer completing a Deed of Variation to vary the tenure mix as detailed above.

6.4.4 Leases

- The forms of lease to be annexed to the Agreement for Lease have been based on the previously agreed versions entered into on the previous phase. Updates include the incorporation of the Council complying with the BSA statutory obligations.

6.5 A separate report detailing the tax implications and options available to the Council in respect of this project is also attached at Appendix D

6.6 A separate report detailing the construction implications in respect of this project is also attached at Appendix E

7. Carbon Impact

Decision of this CMR have no impact on the development's sustainability credentials which were secured through the original planning permission, the developer is solely responsible for ensuring the development meets all regulatory requirements. Nevertheless, the following sustainability features has been highlighted:

The WEG Phase 3 development designed with revamped energy strategy which reduces the overall carbon impact and increases sustainability during and after the construction phase. This involves utilising existing WEG energy centre, resulting in increased plant efficiency through higher load diversity and delivering lower operational carbon emissions and cost savings for residents. The development will lower the whole life carbon by utilising the existing equipment and avoiding need for new heat pump, this will be delivering an embodied carbon saving estimated at 1,047 tonnes of CO₂ over 60-year lifecycle.

During the construction phase the waste management plan will be used to manage construction waste on site and ensure that waste is sorted, reused, and recycled wherever possible. All timber and materials will be sourced in accordance with the developers Sustainable Procurement Policy. Buildings have been specified with high efficiency building fabric and services to ensure Building Regulations Part L 2013 standards are met before low-carbon technologies are accounted for. Site-wide regulated carbon dioxide emissions are projected to be reduced by 38% from Building Regulations Part L 2013 standards through on-site measures, exceeding the 35% target stipulated in the London Plan Policy SI2 and Westminster City Plan Policy 36. Carbon offset payment also payable. All residential units will be constructed to achieve minimum standards for energy and water consistent with Code for Sustainable Homes Level 4; (although as the scheme is being terminated); The sanitary fittings within each residential unit will include low water use WCs, showers, taps, baths and (where installed) white goods to comply with an average household water consumption of <105 litres/person/day. The phase 3 development will further incorporate 44 solar panels, green roof space and sustainable urban drainage where rainwater will be collected and reused for landscape irrigation.

Overall, The Mayor of London's Priority Standards as set out in the Sustainable Design and Construction, Supplementary Planning Guidance, April 2014, will be met. 10% active EV chargers available within basement. 175 cycle parking spaces included to encourage sustainable transport (Blocks G & H only).

8. Equalities Impact

The acquisition of these homes will provide the council with the additional social and intermediate homes and therefore positively impact those households in greatest need that the council has statutory duty to support.

Once the council has accepted handover of the completed homes, the housing team intend to go through internal allocation on behalf of the council in line with published policies.

9. Consultation

No requirements for this report – all consultation completed by the developer early in the planning stage.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Timothy Hampton; Thampton@westminster.gov.uk

APPENDICES

Appendix A: Restricted Appendix - Funding West End Gate Block H.

Exempt from publication by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

Appendix B – Valuation Report – December 2023

Exempt from publication by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

Appendix C- Report on Transactional Documents

Exempt from publication by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

Appendix D- Tax Report

Exempt from publication by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

Appendix E-Construction Due Diligence Report

Exempt from publication by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

NB: For individual Cabinet Member reports only

For completion by the **Cabinet Member for Regeneration and Renters**

Declaration of Interest

I have no interest to declare in respect of this report



Signed:

Date: 19/01/24

NAME: **Matt Noble**

State nature of interest if any:

(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled West End Gate Block H – Affordable Units Acquisition and reject any alternative options which are referred to but not recommended.

Signed:



Cabinet Member for Regeneration and Renters

19/01/24

Date:

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

