

## Decision by Portfolio Holder



**Report reference: HSG-015-2017/18**

**Date of report: 09 April 2018**

**Epping Forest  
District Council**

---

**Portfolio:** Housing – Cllr S Stavrou

**Author:** Alan Hall, Director of Communities (Ext 4004)

**Democratic Services:** Jackie Leither

**Subject:** Proposed affordable housing development off Mason Close, Waltham Abbey

### Decision:

- 1) That approval be given under the 125-year lease between the Council and Ability Housing Association for land at Mason Close, Waltham Abbey (coloured red on the plan attached at Appendix 1) to provide a vehicular and pedestrian right of way to B3 Living, at nil consideration, to enable them to develop the adjacent land for affordable housing, that is currently leased by the Council to Hamme Construction Limited (Taylor Wimpey); and
- 2) That the Council joins with Hamme Construction Limited (Taylor Wimpey) to transfer all the respective interests in the land off Mason Close, Waltham Abbey (coloured green and purple on the plan attached as Appendix 1), and that the Council's freehold for this land be transferred for nil consideration.

<b>ADVISORY NOTICE:</b> <i>A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest. A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.</i>	
I have read and approve/ <del>do not approve</del> (delete as appropriate) the above decision:	
Comments/further action required:	
Signed: Cllr S-A Stavrou	Date: 9 <sup>th</sup> April 2018
<i>Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:</i>  None	<i>Dispensation granted by Standards Committee:</i> Yes/No or n/a  N/A
<b>Office use only:</b> Call-in period begins: 17 <sup>th</sup> April 2018	Expiry of Call-in period: 23 <sup>rd</sup> April 2018

**After completion, one copy of this pro forma should be returned to  
Democratic Services IMMEDIATELY**

## **Reason for decision**

There is an opportunity for one of the Council's Preferred Housing Association Partners to develop land, for which the Council currently owns the freehold, for affordable housing – but to do so, the Council needs to vary the existing lease between the Council and Ability Housing Association and to transfer the freehold of the land instead of allowing the assignment of the lease.

## **Options considered and rejected**

The main options considered and rejected are:

- a) Not to vary the lease between the Council and Ability Housing Association – but this would result in the land not being developed for affordable housing;
- b) Not to include the additional rectangle of land in the proposed land transfer – but the inclusion will result in a better laid-out development;
- c) Not to transfer the land at nil consideration – but if the Council sought any money, the development would not result in a 100% affordable development and would have to include some market housing;
- d) Not to transfer the freehold – but this would likely cause a major issue in terms of any statutory Right to Buy that may apply to the proposed rented housing and the mortgageability of any shared ownership provision.

## **Background Report**

1. A number of years ago, the former Greater London Council (GLC) entered into a 999-year lease with George Wimpey & Co (now Taylor Wimpey). for land off of Mason Way, Waltham Abbey. The leasehold interest is now held by their subsidiary Hamme Construction. This lease was entered into enable the development of private housing at Mason Way by George Wimpey & Co, which was built many years ago. The leased land includes areas that were not developed, but were leased at the time to enable highway rights to be placed on them under the Highways Act 1959 – which was a common approach at the time, before other legal ways of placing highway rights on land were introduced. The freehold of the land was transferred from the GLC to EFDC on the transfer of estates in 1980.

2. In August 2006, the Council provided a 125-year lease to Ability Housing Association, for a peppercorn, to develop 5 wheelchair bungalows on land off of Mason Way (called Mason Close), which have now been built and let to 5 disabled tenants, with the provision of housing related support by Ability HA. The development by Ability HA was designed in such a way as to allow access to the adjacent land leased to Taylor Wimpey, should that land become available for development in the future.

3. A plan is attached as an Appendix, showing the land leased to Taylor Wimpey for 999 years coloured green and the land leased to Ability HA for 125 years coloured blue.

4. In October 2015, the Housing Portfolio Holder agreed that the 125-year lease between the Council and Ability Housing Association for land at Mason Close, Waltham Abbey be varied to provide a vehicular and pedestrian right of way to the leaseholder Hamme Construction in order to enable Taylor Wimpey to develop 9 new dwellings on the land adjacent to Mason Close (coloured green on the plan at Appendix 1), including 4 affordable rented dwellings to be provided by Ability Housing Association and incorporated as part of its existing supported housing scheme at Mason Close for people with disabilities. The Portfolio Holder also agreed

that the existing 999-year lease between the Council and Taylor Wimpey be varied to allow flats to be provided on the land.

5. Since that time, Taylor Wimpey has been unable to agree terms for the purchase of neighbouring land required as part of the development. Therefore, B3Living, one of the Council's Preferred Housing Association Partners, has been investigating the feasibility of developing the land instead, and are in further discussions with the adjacent landowner.

6. Authority is therefore sought to amend the authority previously given by the Portfolio Holder to give approval, under the 125-year lease between the Council and Ability Housing Association, to a vehicular and pedestrian right of way being given to B3 Living to enable them to develop the adjacent land for affordable housing. B3Living also requires the approval of Ability Housing Association.

7. B3Living have advised that the limited nature of the proposed development site means that it is not possible to produce a layout whereby an individual property is not bisected by the boundary between the Council's land and the neighbouring land that they intend to purchase. B3Living's solicitor has advised that this is likely to be a major issue in terms of any statutory Right to Buy that may apply to the proposed rented housing and the mortgageability of any shared ownership provision that may be required to make the development viable. B3Living has therefore requested that the Council joins with Hamme Construction to transfer all the interests in the land to them – effectively transferring both the freehold and the leasehold of the land highlighted in green, instead of simply allowing the lease to be transferred to them. Since a 999-year lease is very similar to purchasing the freehold, it is recommended that this request be approved. In order for it to be viable to enable all of the properties on the land to be provided as affordable housing, it would be necessary for the Council to relinquish the freehold of the land for nil consideration, which is also recommended.

8. Since the time of the decision by the Housing Portfolio Holder in October 2015 to vary the lease between the Council and Ability Housing Association to provide a vehicular and pedestrian right of way across the land in Mason Close, B3Living has identified that the inclusion of a small additional area of land in the Council's ownership (coloured purple on the plan attached at Appendix 1) could help the proposed development scheme's layout and, ultimately, the development's viability. It is therefore recommended that this additional area of land be included in the land transfer.

### **Resource Implications**

The Council will be facilitating the provision of affordable housing flats that would otherwise not be provided. The value of the right of way that would be foregone was assessed in 2015 by specialist valuers commissioned by the Council's Estates Team (Derrick Wade and Waters) as £61,500. This value will not have changed significantly since that time and the provision of the affordable housing would be for the social wellbeing of the district.

The value of allowing B3Living the freehold of the proposed development land, instead of the 999-year lease already granted to Hamme Construction is minimal.

### **Legal and Governance Implications**

The Local Government Act 1972 permits the granting of rights of way for social, economic or environmental reasons, subject to the value of the right of way (provided above) being known at the time of the decision.

**Safer, Cleaner and Greener Implications**

Loss of a scrubland area, which contains a few trees, to enable the development to proceed.

**Consultation Undertaken**

None

**Background Papers**

None

**Impact Assessments:****Risk Management**

The risks to the Council are minimal, since B3Living will be responsible for the development.

**Key Decision Reference (Y/N):** No

**Equality Analysis**

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix 2 to the report.