

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

1 NOVEMBER 2022

Title:

**FREEHOLD ENFRANCHISEMENT PURCHASE OF 1 to 32 WYATTS CLOSE
GODALMING AND SURROUNDING LAND GU7**

Portfolio Holder: Councillor Rivers, Co-Portfolio Holder for Housing (Delivery)
Councillor Mark Merryweather, Portfolio Holder for Finance, Assets
and Commercial Services

Head of Service: Andrew Smith, Executive Head of Housing

Key decision: Yes

Access: Public

1. Purpose and summary

- 1.1. To inform Members of the approach by National Corp Limited to sell the freehold of Wyatts Close Godalming to Waverley Borough Council (the Council).
- 1.2. The Council currently holds 1 to 32 Wyatts Close on a long leasehold within the housing revenue account. National Corp Limited are looking to divest the properties. Following negotiation an agreed sum has been reached to buy the properties and the wider site.
- 1.3. This report seeks to inform Members of the reason why acquisition is deemed appropriate and asks for authority to proceed with the purchase.
- 1.4. Given a linked application for Leasehold Enfranchisement through the Court and a settlement agreement dated the 28 September, if the Council wishes to purchase the site, exchange of contracts **must** take place by no later than 7 November 2022. Following exchange of contracts, completion must take place within one month of this date.

2. Recommendation

The February 2022 Council approved that the Executive has delegated authority for the financial year 2022/23 to bid, negotiate and complete on property acquisitions and investments with a total individual cost of up to £10m.

It is recommended:

2.1 that the Executive use their delegated authority to approve the purchase of the unencumbered freehold interest of 1 to 32 Wyatts Close and wider site for the total costs of £1,236,000 to be funded from the Housing Revenue Account.

2.2 that the Executive receive the background documents to the enfranchisement:

- Opinion Letter from Bishop & Sewell LLP dated 28 September 2022 [Annexe One]
- Valuation Report from Perry Hill dated 19 October 2022 [Annexe Two]
- Settlement Agreement dated 28 September 2022 [Annexe Three]
- Draft Agreement for Sale National Corp Limited (1) and Waverley Borough Council (2) [Annexe Four]
- Transfer of Part (TP1) SY788504 £1,015,000 (freehold to houses at 1-32 Wyatts Close) [Annexe Five]
- Transfer of Part (TP1) SY788504 £10,000 (roadways, verges and remainder of site) [Annexe Six]

2.3 and upon having considered matters in light of advice received from its advisors the Executive approves to:

- i ratify the settlement agreement entered into between National Corp Limited and the Council on 28 September 2022, and
- ii approve the budget virements schedule as at Annexe Seven

2.4 The Executive approve:

- iii the purchase of additional land;
- iv to exchange and complete the statutory contract for the purchase of the freehold to the houses in accordance with the provisions of the Leasehold Reform Act 1967; and
- v to authorise the Interim Executive Head of Legal and Democratic Services to enter into any documentation required to effect the transaction.

Both steps being simultaneous as set out in the draft Settlement Agreement.

3. Reason for the recommendation

The Council in securing the freehold of this site will consolidate its holding in this site, to provide social housing and secure control for the future and the ability of considering it in combination with nearby holdings.

4. Background

4.1. Currently the Council holds 1 to 32 Wyatts Close on a long leasehold within the Housing Revenue Account. The original lease was granted for 99 years from 24 June 1956, the unexpired term is 33 years. The Freeholder is National Corp Limited.

4.2. Under the lease the Council is responsible for the maintenance of all 32 units.

- 4.3. National Corp Limited made a written offer to sell the freehold to the Council so the Council was obliged to investigate and respond. The Property Services team were duly instructed by the Housing Service to secure the best price for the properties. To mitigate the risk of the freeholder ending the lease with the loss of 32 council homes.
- 4.4. The investigation process identified that the Council is able, as the long leaseholder, to serve notices under Section 9(1) of The Leasehold Reform Act 1967 to acquire the freeholds to the houses, on a statutory basis. This process establishes a statutory valuation framework which is more favourable to the Council than considering the pure open market value, however this only applies to the houses.
- 4.5. The Council sought independent opinion and employed specialist legal advice from Bishops & Sewell LLB (Annexe One) and specialist valuation advice from Perry Hill (Annexe Two) in order to secure the best outcome.
- 4.6. The outcome, following a negotiation process, is the reaching of an agreement for the Council to purchase the freeholds of the 32 houses and associated land and the remainder of the site, the verges and corner plots comprised in Land Registry title number SY788504 belonging to National Corp Limited for £1,025,000 for the whole unencumbered freehold title.
- 4.7. This agreement comprises both statutory and non-statutory elements, statutory being the acquisition of the houses under the Leasehold Reform Act and non-statutory the remainder of the site, which are brought together under the terms of the Settlement Agreement.
- 4.8. Annexe Two confirms the value for money of the enfranchisement. The market value of the site and homes was estimated to be £1,700,000 to £2,000,00, by the independent market valuer. Therefore a substantial saving has been secured by using the leasehold reform act legislation.

Statutory process

- 4.9. Acquisition under the Leasehold Reform Act 1967 requires a statutory process to be followed. Should a settlement not be reached through negotiation, an application to the First Tier Tribunal of the Property Chamber would be made to resolve disputes over the price to be paid on any acquisition pursued on a statutory basis.
- 4.10. The matter progressed towards a hearing at tribunal listed on 28 September 2022 and in the run-up to this hearing, settlement was reached.
- 4.11. The Settlement Agreement is a contractual document entered into by the parties which sets out concisely the terms that have been reached and outlines the Council's obligations arising under it and is set out in Annexe Three.

- 4.12. Legislation sets statutory time scales that must be met in managing claims for leasehold enfranchisement, this has informed the provisions of the settlement agreement and the implications arising from it.
- 4.13. Bishops & Sewell LLP have set out the dates which the Council will need to work to if it is to proceed to successful completion under the settlement agreement should Members give approval to proceed. Exchange of contracts must take place by no later than 7 November 2022. Following exchange of contracts, completion takes place a week later. In the event the Council does not complete on that day it has up to a month to complete (although suffering a penalty of interest at 2% above bank base rate). In the event that the Council does not either exchange on time or subsequently complete within the timescales given, then the Council is deemed to have terminated the settlement agreement and withdrawn its claim for leasehold enfranchisement.
- 4.14. As part of the settlement process the purchaser pays costs including the Council's fees, which amount to £135k. This is regardless of whether the purchase completes. The amount is included in the total costs of £1,236,000.
- 4.15. It should be noted that the acquisition whilst securing ownership and control of the freehold into the future does not directly impact on the current status of any tenant on the site who would remain the tenant of the Council.

Property Information

- 4.16. A planned maintenance report has been undertaken for the properties. This forecasts expenditure of £3.6m over 30 years, including inflation at 5% per annum.
- 4.17. The Housing Revenue Account Business Plan rent forecast report indicates an income of £9.3m over the same period, creating a surplus £5.7m.
- 4.18. Council homes are assessed, rated and awarded an Energy Performance Certificate. Rates range from A - very energy efficient with lower running costs to G - not energy efficient with higher running costs. The government has set a target for social housing providers to ensure homes have an EPC of C by 2030. Most of the Wyatts Close homes already have an EPC C rating although there are two with a D rating and one with an E rating.
- 4.19. There is good demand for the homes from housing applicants and downsizers. The homes are one bedroomed bungalows with good transport links and local services meeting local housing need.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 The Corporate Strategy aims to maximise the availability of housing that meets the needs of local people at all income levels. The Housing Operations Service Plan also commitments to the service meeting the needs of all tenants and their

families. The enfranchisement of the freehold secures the future of the homes for current and future tenants.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

The total costs of £1,236,000 are made up of the cost of:

- acquisition £1,025,000
- Stamp Duty Land Tax and land registry fees totalling £76,005
- professional and statutory fees associated with negotiating the acquisition in the region of £135,000 (to be borne by the HRA regardless of whether the purchase proceeds)

A budget of £1,000,000 was approved at February 2022 Council for this project. The additional costs of £236k will need to be vired from other budgets as set out in Annexe Seven.

The ongoing maintenance and rental stream is factored into the HRA Business Plan.

6.2 Risk management

The acquisition mitigates the risk of the freeholder ending the lease with the loss of 32 council homes.

The Assets and Property team ensured the project complied with Waverley's Asset Investment Strategy 2022-27.

The team sought independent legal advice and followed statutory processes.

Financial assessments were made to review value for money and maintenance liabilities against projected rental income.

If the future maintenance exceeds rent projections the Council could move tenants on and dispose of the properties at market value.

6.3 Legal

The Council has the power to acquire property including either by enfranchisement or voluntary agreement for the purposes of the Housing Acts. This is an executive power.

In exercising its decision making Executive must consider their duty under the Best Value provisions. In considering this Members can place reliance on the report of Perry Hill Chartered Surveyors. Members may also consider the alternative option and the potential impacts / benefits of this in making their decision.

6.4 Equality, diversity and inclusion

There are no direct equality, diversity or inclusion implications in this report as although the ownership of the site will change it has no impact on any residents or those with protected characteristics. Equality impact assessments are carried out when necessary across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

6.5 Climate emergency declaration

The council has committed to utilise its current assets where possible and the purchase of the freehold allows the council to invest and provide more central homes for Godalming and Farncombe residents which are close to local facilities and amenities.

7. Consultation and engagement

The project was identified in 2021 and included in the budget setting process of 2022/23.

The Chair and Vice Chair of Overview and Scrutiny Resources have been informally consulted on the proposal.

8. Other options considered

The Council is not required to complete this transaction. Should it let the settlement agreement lapse by not entering into contract then the opportunity under the legislation would fall away. The Council would then be prohibited from applying to exercise its rights for a period of at least 12 months.

In the event that Members did not take this opportunity the Council and tenants would remain in place under the existing terms for the remainder of the lease.

9. Governance journey

There was a misunderstanding that the necessary approval was in place due to the budget being made available; and now officers have received clarifications on the correct governance route, formal Executive approval is now sought to complete the transaction.

The project has progressed at pace and exchange of contracts must be completed by 7 November or the opportunity as currently available is lost. Therefore, the Mayor's agreement has been sought and obtained to treat this as an urgent decision, which will not be subject to call in by the relevant overview and scrutiny committee pursuant to paragraph 16.3 (Call-in and Urgency) of the Overview and Scrutiny Procedure Rules, in addition under clause 15 of the Access to Information rules the Chairman of the Overview and Scrutiny Committee has been informed that this matter was not included on the Forward Plan and that it will be proceeding to the Executive. This is because the time it would take to allow any call in to be made and dealt with would clearly exceed the legal deadline of 7 November. Given this, it is considered that a delay caused by the application of the call-in process would seriously prejudice the Council's and the public's interests in this matter.

Annexes:

Annexe One - Opinion Letter from Bishop & Sewell LLP dated 28 September 2022
Annexe Two – Valuation Report from Perry Hill dated 19 October 2022 and Annexe 2.2 Valuation Calculation Sheet (larger print)
Annexe Three - Settlement Agreement dated 28 September 2022
Annexe Four – Draft Agreement for Sale National Corp Limited (1) and Waverley Borough Council (2)
Annexe Five - Transfer of Part (TP1) SY788504 £1,015,000 (freehold to houses at 1-32 Wyatts Close)
Annexe Six - Transfer of Part (TP1) SY788504 £10,000 (roadways, verges and remainder of site)
Annexe Seven - Budget virements schedule

Background Papers

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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Agreed and signed off by:
Legal Services: 20 October 2022
Head of Finance: 20 October 2022
Strategic Director: 20 October 2022
Portfolio Holder: 20 October 2022

