



Joint Report of the Cabinet Member for Climate Change & Service Transformation and Cabinet Member for Delivery & Operations

Cabinet – 21 October 2021

Proposed Appropriation of General Fund Sites by Housing Revenue Account

Purpose:	To consider the potential appropriation of identified General Fund residential development sites to the Housing Revenue Account (HRA) in order to support affordable housing provision via the More Homes initiative.
Policy Framework:	Asset Management Plan, More Homes Strategy, Local Housing Strategy, Local Development Plan, Welsh Government Land Transfer Protocol
Consultation:	Access to Services, Finance, Legal.
Recommendation(s):	It is recommended that: 1) The General Fund sites named in the table in Section 4.3 of this report are appropriated to the HRA at the suggested market value, noting a potential reduction in Capital receipt. 2) Authority is delegated to the Director of Place in conjunction with the Chief Finance Officer, the Cabinet Member for Climate Change & Service Transformation and the Cabinet Member for Delivery & Operation to agree the final value for the Midland Place site to be determined in accordance with the scheme viability process.
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1. Introduction

- 1.1 Since Council agreed the More Homes Strategy in 2016, the Council has been building capacity to maximise the number of new affordable homes that can be delivered to help meet the growing shortage across the city. This has been done by balancing the overall financial viability of directly developing new Council housing, assessing alternative options for delivery, addressing the practical, organisational and capability issues, and developing and comparing specification options to balance the viability of the scheme with the affordability for the occupants and overall sustainability of the design.
- 1.2 Cabinet approved the first Housing Revenue Account Development Plan in February 2019, which set out a programme to develop over 140 new homes up to 2022. The Council then increased this ambition, and approved a 10 year delivery ambition to develop a 1000 new Council homes from 2021-2031 in January 2020.
- 1.3 To support this target, Cabinet also approved the start of a project that would result in the HRA procuring development partners to develop HRA sites for mixed tenure housing. The report also agreed that the HRA could appropriate General Fund sites at market value for this purpose. The report also recommended that prior to commencing the procurement exercise, the Council undertakes the due diligence required and acquired the appropriate specialist legal, financial and planning advice to support the process.
- 1.4 This work has been progressing and this report set out the process, as part of that due diligence, that has been followed to arrive at a value that the HRA is able to pay to ensure viability to acquire the stated General Fund sites.
- 1.5 The report also sets out an assessment of market values prepared by the District Valuer pursuant to the best practice Welsh Government Land Transfer Protocol for the appropriation of public sector assets. These are the market value figures which the General Fund may reasonably seek to achieve following the usual property marketing protocols.
- 1.6 Cabinet should note the difference in values between the price HRA is able to pay and the District Valuer market values, together with the potential reduced capital receipts for the General Fund.

2. General Fund Market Value

- 2.1 Should the Council wish to dispose of General Fund land to a third party, then it would be required to follow the principle of seeking best value for the disposal of surplus Council property as set out in Section 123 of the Local Government Act 1972.
- 2.2 The sites identified by the HRA for appropriation have been declared surplus and Council officers would usually seek to achieve a disposal at market value and the best price possible in accordance with 2.1 above.

- 2.3 The District Valuer has been instructed on behalf of the General Fund to reasonably assess and advise upon market value for each site. A detailed market value report has been prepared on a site by site basis, which takes into account Council LDP policies. The District Valuer market valuation figures are set out in the table below.
- 2.4 The District Valuer market valuations provide a guide for Cabinet to understand indicative potential values should the sites be placed on the open market. These figures make full allowance for providing policy compliant levels of affordable housing.
- 2.5 The General Fund would propose that HRA appropriate sites on the basis of the District Valuer market value figures, however HRA valuation offers following due diligence for providing policy compliant levels of affordable housing and satisfying enhanced requirements set out in the Council's Local Development Plan (LDP) provision are below these figures; this is the key issue for Cabinet consideration.

3. HRA Due Diligence undertaken to support HRA Valuation Offers

- 3.1 DWF (a specialist law firm) were commissioned to explore the best way for the Council to take forward this project, advising both the HRA and General Fund development proposals. After exploring the proposals, it was decided that the General Fund sites appropriation to the HRA should be explored for inclusion in the HRA partnership project.
- 3.2 Following this decision, JLL (specialist land advisors) were appointed to act as the land advisors to the HRA on the project. JLL were then instructed to carry out valuations on the sites that were earmarked for potential disposal to the HRA.

JLL valuations were undertaken on the following sites:-

- Milford Way
- Gower Road
- Gorseinon Business Park
- Midland Place
- Pipehouse Wharf

- 3.3 One of the key agreed principles for developing the sites is that they will have to contain at least the level of affordable housing outlined in the Council's own Local Development Plan. It was agreed that the market value, should take this affordable housing commitment into account, as any developer will be expected to comply with the LDP policy. It should be noted however the HRA partnerships will actually aim to deliver 40% of affordable housing across each site. This will contribute to the Council's target of delivering 1000 new homes up to 2031. It should also be noted that the DV market value figures also make allowance for LDP compliant affordable housing provision.

- 3.4 JLL were instructed to provide 2 valuations, a market valuation based on the LDP planning policy and a valuation based on the delivery of 40% affordable housing across each site. This will help the HRA in negotiations with potential partners/developers.
- 3.5 In order to ensure that the principles and assumptions underpinning the valuations were comparable, it was agreed that the HRA would commission Andrew Burrows (AB) of Burrows Hutchinson Ltd) a specialist advisor in development viability and affordable housing issues. AB has carried out viability work on the LDP, and was asked to look at the development appraisals for the General Fund sites. This further work has helped to determine the value the HRA can pay for the sites whilst also delivering a policy complaint scheme.
- 3.6 The valuations undertaken by Andrew Burrows were carried out using the same methodology as the viability assessments carried out for the LDP sites. These assumptions include all the costs a developer would need to undertake to develop a LDP compliant scheme, including allowances for SAB, sprinklers, a % of WDQR affordable housing (homes that will have to be built to Welsh Government's Welsh Design Quality Requirements) and other 106 contributions. It is based on a dense market type scheme that would be undertaken by any developer.
- 3.7 It is worth noting that the schemes that are intended to be delivered by the HRA would have higher levels of affordable housing, up to 40%, and would include higher build standards on the affordable housing. This would affect the scheme viability further for the HRA, although it is hoped that Social Housing Grant (SHG), or Land Release Fund (LRF) to deal with site constraints will be available to the HRA to support scheme viability.

4. Comparison of District Valuer Market Value versus HRA Proposed Valuation Offer

- 4.1 As outlined above a number of valuations have been carried out and have resulted in a range of different values depending on the assumptions used. The table below summaries the current position with District Valuer market valuations and the JLL market valuation.
- 4.2 The valuations carried out by AB are consistent with the JLL valuations, as they are both based on LDP complaint schemes. The DV valuations are based on an opinion of the best price the Council may achieve if the sites were marketed externally.
- 4.3 Cabinet should note the potential reduced capital receipt for the General Fund on a site by site basis should it be decided to approve appropriation based upon the HRA offers. The total potential reduction in capital receipt for the General Fund if all sites are appropriated by HRA would be between £265,000 and £465,000 versus the potential sale proceeds if the sites were placed on the open market.

Site Name	Gower Road	Gorseinon Business Park	Midland Place
Affordable Housing % Required	35%	15%	10%
DV Market Valuation	£750K	£600k	£265k
JLL Market Value	£600k	£500k (With LRF**)	£50K
Difference in Values	-£150,000	-£100,000	-£215,000
No of Units delivered by HRA	40 units	50 units	30 units

Social Housing Grant is a Welsh Government Grant to support the delivery of affordable housing schemes.

***Land Release Fund is a grant available to help Council's and Housing Associations bring forward sites for affordable housing that are difficult to develop due to site constraints.*

4.4 Further detail and clarification in respect of the sites and figures listed above as follows:-

Milford Way

- It is suggested that the Milford Way site is removed from the current package of sites pending further diligence. It is recommended that a further report is brought to Cabinet to deal with this site when those further investigations have been completed. It has also been indicated that there is potential interest from Education in the site, so this needs to be resolved before any further investigations are completed.

Gower Road

- Strategic Estates have marketed this site which has generated a huge level of market enquiries. If the site were not appropriated by HRA the disposal strategy would be to maximise best value by way of an Allsop Auction House sale. Cabinet should be aware that there is special purchaser interest which has the potential to generate a capital receipt in excess of the DV market valuation. A

market disposal figure at or around £1million is a reasonable prospect.

Gorseinon Business Park

- The HRA valuation offer is subject to receipt of a Welsh Government Land Release Fund grant in the sum of £500,000 for abnormal costs. Informal discussions with Welsh Government have indicated a positive response to this application.

Pipehouse Wharf

- It is suggested that the Pipehouse Wharf site is removed from the current package of sites pending further investigations due to the unknown site constraints and conditions. It is recommended that a further report is brought to Cabinet to deal with this site when those further site investigations have been completed.

Midland Place

- The HRA/JLL valuation for this site is based on the site abnormalities and known constraints, however the full extent and potential costs of remediation is unknown. It is suggested that in the event of these constraints being less restrictive and requiring less significant remediation works than anticipated, that the HRA could agree to increase the land offer if viable to do so. This would be on a different basis to the legal advice set out in paragraph 7.7. This could potentially be up to the DV value, but would be dependent on the scheme cost and viability. Therefore it is recommended that the appropriation is agreed, and the final value is then determined through the scheme viability process. This arrangement would be delegated to Director of Place and the Chief Finance Officer to agree.

4.5 It is therefore recommended that the HRA acquires the 3 sites in the table at 4.3 on the basis set out above, at the JLL market values, with the final values for Midland Place being determined once further site investigations are complete. Although these JLL/HRA values are lower than could potentially be achieved through external marketing there are a number of advantages that disposal to the HRA would bring. This would include a guaranteed capital receipt in 21/22, delivery of higher levels of affordable housing to support the Council's target of developing 1000 homes, high standards of design and placemaking, activity on sites, some of which been vacant for many years.. Most importantly the Council will have control over the schemes and can once again lead the way in exemplar design, standards and placemaking

4.6 What needs to be considered is whether the benefits of a direct appropriation to the HRA with certainty of capital receipt and direct control over the form of development outweigh a potential reduced future capital receipt if the sites were sold on the open market. This reduction potentially amounts to between £250k and £465k. There is no doubt that some of the

sites in question would be marketable but it may be a number of years and involve considerable officer time and Council resource to achieve some of the figures quoted by the District Valuer. It is also clear that a competitive market place may lead developers to pay more for sites that can seemingly be justified by formula or appraisals.

- 4.7 Whilst it is acknowledged that there is potential for a greater capital receipt practical experience suggests that there is also a risk that the initial offer is then negotiated downwards, and the developer then negotiates on viability grounds against providing affordable housing and other Section 106 contributions, as they have initially paid too much for the land. There have also been cases where sites have been sold but then not progressed and left vacant. The HRA receipt gives certainty to the Council on this issue.

5. Integrated Assessment Implications

- 5.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
 - Deliver better outcomes for those people who experience socio-economic disadvantage
 - Consider opportunities for people to use the Welsh language
 - Treat the Welsh language no less favourably than English.
 - Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.
- 5.2 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.
- 5.3 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.
- 5.4 An IIA Screening Form has been completed and a full IIA report is not required at this stage. Each site will need to be considered in detail once the development proposals are known. This will be subject to a further report.

- 5.5 Delivery of affordable homes is a good example of the 5 Ways of Working promoted by the Wellbeing of Future Generations (Wales) Act 2015 and will make a significant contribution to the 7 well-being goals. It is an example of collaborative working between the public and private sector in a sustainable way resulting in a long term partnership with the objectives of developing homes within the city for the benefit of future generations.
- 5.6 Increasing the supply of affordable housing will assist in the regeneration of areas, and stimulating economic growth, addressing issues such as poverty, inequality, jobs and skills which directly contributes to the council's obligations to act in a sustainable way pursuant to the WFGA.

6. Financial Implications

- 6.1 The current HRA business plan includes provision for the acquisitions of land for the development of affordable housing. The schemes form part of the HRA development plan and will be reported in line with FPR7 requirements.
- 6.2 Opportunities to support viability to provide higher levels of affordable housing will be sought through Welsh Government Grants. WG have recently introduced a new model for grant funding based on a Standard Viability Model so at present assumptions cannot be made about the levels of any potential grant subsidy to support the schemes.
- 6.3 It must also be noted that the HRA is proceeding at risk with a view to acquiring the sites in advance of any firm development proposals. As noted the intention is to embark on a competitive procurement process to appoint development partners. There may be sites in the package that attract little or no developer interest, as indicated in the recent PIN published on the Penderry sites. In this event, the HRA will develop the site as 100% affordable housing, but will aim to develop a Council low cost home ownership model to ensure a mixed tenure approach on larger sites.
- 6.4 It is evident that whilst there are differences in opinion of value the certainty of transaction effectively creates an unconditional offer scenario, which in some cases is preferable as it gives certainty. The only situation where this is not the case is Midland Place. Future capital receipts inform the wider Capital Programme however as these are opinions of value there is often fluctuation – both up and down- when sites are eventually marketed so this could be accepted as the norm. The proposals contained in the report do not dramatically deviate from what would be expected.
- 6.5 Nevertheless the S151 Officer reminds that whilst concurring valuations are opinion and sites are ultimately only able to realise what a prospective purchaser will pay the wider capital programme is predicated on achieving a certain level of capital receipts and is then significantly leveraged with capital borrowing on top. Disposals at lower values than assumed and budgeted for by Council do have funding consequences

elsewhere and given the maximum affordability envelope has been set for the purposes of the medium term financial plan and capital programme may require cuts to the capital programme if disposals externally or recompense by appropriation fall below levels budgeted. Officers and members exercising the decision will have to weigh carefully the merits and demerits to the ultimate benefit or detriment of HRA rent or general fund taxpayers.

7. Legal Implications

- 7.1 Section 9 and 17 of the Housing Act 1985 gives the Council, as local housing authority the power to provide and/or acquire housing accommodation by erecting houses on land acquired for housing purposes.
- 7.2 The general appropriation power is Section 122(1) of the Local Government Act 1972 which provides that a councils “may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation.
- 7.3 Appropriation to the HRA is dealt with in Section 19(1) of the Housing Act 1985 which provides that “A local housing authority may appropriate for the purposes of this Part (housing purposes) any land for the time being vested in them or at their disposal, and the authority have the same powers in relation to land so appropriated as they have in relation to land acquired by them for the purposes of this Part”.
- 7.4 Accordingly, the Council may exercise its statutory power to build the housing scheme once the site has been appropriated for housing purposes.
- 7.5 The Council must be able to demonstrate the purpose for the appropriation and that it has taken all the relevant considerations into account and not taken any irrelevant considerations into account. The appropriate Head of Service has confirmed that the land is deemed to be ‘surplus to requirements’ in accordance with Part 4.7 of the Land Transaction Procedure Rules.
- 7.6 The relevant guidance for appropriations of this nature is set out in the “Housing Revenue Account Manual: Guidance for Local Authorities on the operation and management of a Housing Revenue Account, October 2020, the ‘HRA Manual’. The Guidance notes that:
- “although property can be transferred for accounting purposes between the HRA and the Council Fund (subject to obtaining any necessary consent), in legal terms there is no transfer or lease of the property because the Council's HRA and Council Fund are not separate legal entities and the Council cannot contract with itself.”*
(paragraph 4.20)

7.7 The Guidance also sets out the basis on which any valuations in respect of such a transfer should be made. It is clear that market valuation should be:

“interpreted in the context of the use to which the site will be put once appropriated Valuation on the basis of the provision of a mixed or 100% affordable site to be delivered in the HRA should be considered in respect of the viability, sustainability, funding and subsidy requirements and would be expected to be low or zero to reflect such use. Valuation for appropriation on this basis would avoid the HRA “overpaying” for the site compared to if it was valued on an “open market” basis. This approach to “value in use” is an established and supportable basis for valuation” (paragraph 4.23).

Background Papers: None

Appendices:

Appendix 1 - IIA Screening Tool