

Transfer of land at Clays Close, Swindon (former Stratton Education Centre) to Swindon Housing Company Ltd

Cabinet

Date: 3rd February 2021

Author:	Deputy Leader and Cabinet Member for Commercialisation, Education and Skills Director of Housing
Wards:	Penhill and Upper Stratton
Parishes Affected:	Stratton St. Margret

1. Purpose and Reasons

- 1.1 This report proposes the transfer of the site at the former Stratton Education Centre, Clays Close, Swindon in order for the Swindon Housing Company Ltd to redevelop the site for residential purposes.
- 1.2 As this is a proposal to dispose of land at a value that is less than could reasonably be obtained being lower than the current valuation for the site, the Commercial Investment Strategy Board (CISB) have referred this to Cabinet for consideration. The business case (attached at Exempt Appendix Two but not published as it is considered that it contains exempt information under Paragraph 3, Schedule 12A, Local Government Act 1972) was presented by the Housing Company, to the CISB on 1st December 2020.
- 1.3 The details of this report will help to deliver the Council's Priority 1: 'To improve infrastructure and housing to support a growing, low-carbon economy' and contribute to delivering Pledge 6F: 'Ensure there is a range of good quality housing options in Swindon, including affordable opportunities to buy and rent' and: 'Through the Local plan review, identify brown field and green field sites for housing to deliver homes...'

2. Recommendations

Cabinet is recommended to:

- 2.1 Authorise the Head of Property Assets in consultation with the Director of Housing to dispose of the freehold of the land at Clays Close, Swindon shown edged red on the plan attached as Appendix 1 ('the Site') to Swindon Housing Company Ltd at a value of 75,000. This disposal to be on such detailed terms and conditions as are determined by the Head of Property Assets in consultation with the Chief Legal Officer and as are considered necessary in order to protect the Council's interests.
- 2.2 To agree to a disposal at an undervalue of between £325k and £375k in order to secure wider benefits of retaining the Victorian building.

Further information on the subject of this report can be obtained from Michael Ash, Director of Housing, mash@swindon.gov.uk.

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3. Detail

- 3.1 This proposed development forms part of the wider house building programme being developed by The Swindon Housing Development Company Ltd. The proposed scheme of 19 units (7 flats, 12 houses) would be delivered by the company for the benefit of the Council.
- 3.2 This site is one of a number of sites recently appraised by the Swindon Housing Company on land owned by the Council. The appraisal has taken account of the key factors and constraints of the site including a pre-application Planning submission which includes the retention of the existing Victorian school building. The Company has also made an assessment of the local housing market to establish potential sale prices.
- 3.3 The proposal includes the provision for 3 of the properties (15%) to be affordable homes however this will be subject to the planning application process, including a viability assessment.
- 3.4 The project can be funded by the Housing Company drawing down on a Council loan for the land acquisition, construction and associated fees. All profits arising from the completion and sale of the development will be returned to the Council as revenue, subject to the Company being able to declare a dividend, with the land sale returned as a capital receipt.
- 3.5 The key objectives for this project as proposed by the Housing company are:
 - 3.5.1 To retain and convert the Victorian building.
 - 3.5.2 Deliver 15% affordable housing provision subject to a viability assessment as part of the planning application process.
 - 3.5.3 To deliver a dividend to the Shareholder, as set out in the business case.
 - 3.5.4 To directly engage with the local housing market and improve the housing offer.
 - 3.5.5 Cabinet have previously agreed that disposals to the Housing Company would be at an open market valuation. This proposal departs from that principle. The proposed disposal to the Housing Company will ensure the Victorian building on the site is retained and converted. The building is of local significance but there is no guarantee that if the site is sold on the open market that the building can be protected from demolition. The disposal to the Housing Company will ensure its retention and therefore provides an environmental benefit to the local area that otherwise could not be secured. The Housing Company as stated above, would

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also deliver 15% affordable housing provision, but this will be a matter for a separate viability assessment in accordance with Planning policy .

- 3.5.6 Discussions with planning officers have established that the building is considered to be of local significance and any proposals for development of the site would be required to retain the building. However, whilst the planning authority would require the building's retention, it is always possible that if the site is sold a purchaser would seek to challenge the planning authority's approach in this regard by way of appealing a refusal of an application to demolish the building. If an appeal is successful, demolition of the building could take place. Therefore reliance on planning powers does not guarantee the retention of the building. Also there is no way of ensuring that the Council as the current owner of the site can ensure through a sale on the open market that the building can be protected from demolition. The disposal to the Housing Company will ensure its retention and therefore provides an environmental benefit to the local area that otherwise could not be secured.

4. Alternative Options

4.1 Sell the land as a development site:

- 4.1.1 The site could be sold on the open market for the open market value recognising it is a potential residential development site as there is no existing planning approval for residential use.. The land could be sold by the Council either with or without planning permission, but with no guarantee of construction. The Council would receive a capital receipt for the land sale and diminished control over the retention of the Victorian building, relying solely on planning policies.

4.2 Do not pursue this specific project (Do nothing):

- 4.2.1 The Council could decide not to transfer the land to the company to develop the site. This would retain the area of land which could be used for alternative purposes or development for the future. Alternative sites for development are available but are yet to be fully developed to be brought forward through the current analysis process.

4.3 Re-design the scheme in its entirety:

- 4.3.1 The proposed development of the site could be re-designed entirely without retaining the Victorian building, subject to planning permission being obtained. This could result in a different size, form, layout or unit number of the development to meet an alternative outcome. As a result, the viability of the scheme would change and may lead to securing an open market valuation for

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the land, and thereby affecting the return on investment, either positively or negatively. In order to facilitate any major amendment to the scheme, additional time and officer engagement would be required resulting in a delay.

4.4 Undertake minor amendments to the scheme:

4.4.1 There is the option to re-design less significant aspects of the development, such as the appearance of the properties or parking arrangements. There is no significant benefit to the Council in undertaking minor amendments to the design and layout.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 Funding for future housing developments is required through a loan from the Council to the Housing Company, which forms part of the £15M agreed at Council on 26th January 2017 (Council Minute 73, 2016/17 refers).
- 5.2 The loan from the Council to its Housing Company will be charged at a State Aid compliant rate of 6%.
- 5.3 The Government has introduced changes around accessing funding from the Public Works Loans Board. It cannot be used if the Council has any plans to buy investment assets primarily for commercial return and each Council's s151 officer is required to confirm that this is complied with.
- 5.4 This proposal is considered to be compliant as its purpose is to deliver the Council service priority of ensuring there is a range of good quality housing options in Swindon.
- 5.5 The Housing Company will be required to make payments on a monthly basis through a tightly controlled development cash flow. The company is expected to drawdown funding from the Council in line with the future cash flow requirements on a regular basis, in line with payment requirements which will reduce the risk to the Council and ensure the company keeps interest charges to a minimum.

Legal and Human Rights Implications

- 5.6 Section 123 of the Local Government Act 1972 requires any disposal of land to be at the best consideration reasonably obtainable, unless the prior approval of the Secretary of State has been obtained. The General Disposal Consent 2003 provides for specific consent not to be required where the local authority considers that a disposal at less than best consideration will help it secure the promotion or improvement of the economic, social or environmental well-being of its area and the difference between the

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unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2M.

- 5.7 The Head of Property Assets has had the site valued and this has assessed the value of the site to be between £400k-£450k. The Housing Company has made provision in its business case to pay £75k for the site, which represents an undervalue of £325k- £375k. The unrestricted value of the land to be disposed of and the consideration for the disposal to the Housing Company does not exceed £2M therefore specific consent from the Secretary of State for the disposal is not required provided that the Council must be satisfied that the environmental benefit being secured from this proposed transaction as detailed in this report justifies the loss in value from an open market sale.
- 5.8 Any disposal at less than best consideration amounts to a subsidy to the Housing Company. Where this occurs we must ensure that the nature and amount of subsidy complies with the State Aid rules, particularly if there is no element of competition in the sale process. For most purposes, a *de minimis* level of aid of two hundred thousand Euros over three years applies.
- 5.9 If Cabinet are minded to approve this transaction, it is recommended that specific state aid advice is obtained prior to any disposal to ensure there is no breach of state aid rules.
- 5.10 It is considered that the proposal within this report is compatible with Convention Rights.

Climate Change Impact

- 5.11 The recommendations would bring about a reduction in the Council's carbon footprint with the development of quality, modern and energy efficient homes.
- 5.12 The Council is committed to building sustainable, energy and thermally efficient homes that are resilient to climate change. It will achieve this by creating great places to live, in mixed and balanced communities and contribute towards the Council's ambition towards net zero carbon.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.13 None.

Diversity Impact Assessment

- 5.14 No DIA has been undertaken at this time since the report does not propose any changes to service levels.

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Risk Management

- 5.13 The current pandemic has seen delays with construction projects. The Company and its contractors are required to adhere to Government working practices that may contribute to such a delay.

Viability

- 5.14 The proposed development produces a lower return for the council as shareholder compared to a purely commercial scheme. However the scheme produces wider benefits of retaining the Victorian building as well as delivering additional affordable housing.

Costs

- 5.15 Cabinet are asked to mindful that costs may fluctuate. Current costs are based on known benchmarks. The Company will need to mitigate and manage any cost pressures and keep the Council advised of any variances through its regular reporting requirements.

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None.

8. Appendices

- 8.1 Appendix One: Plan of Clays Close site.
- 8.2 Appendix Two: Housing Company Business Case for development. This appendix is not for publication as it contains information that the Council considers exempt under Paragraph 3, Schedule 12A, Local Government Act 1972.

9. Key Decision/Decision in Cabinet Work Programme and Forward Plan

- 9.1 This is not a Key Decision and is included in the Cabinet Work Programme and Forward Plan for February 2021.