

SUBJECT:	TRANSFER OF LAND AT JASMIN GREEN TO BIRCHWOOD AREA COMMUNITY LAND TRUST
DIRECTORATE:	HOUSING AND INVESTMENT
REPORT AUTHORS:	DAREN TURNER (DIRECTOR OF HOUSING & INVESTMENT) & ANDREW McNEIL ASSISTANT DIRECTOR, INVESTMENT & STRATEGY)

1. Introduction

- 1.1 This report provides Executive with and update on the position with the Jasmin Green land transfer and housing project last considered by Executive in October 2019.

2. Background

- 2.1 Executive are aware of the ongoing discussion with Birchwood Area Community Land Trust (BACLT) about the potential transfer of a significant piece of HRA land at Jasmin Green in the Birchwood area. BACLT was born out of the Birchwood BIG project that was set up following the award of £1m from the Government in 2012.
- 2.2 The BACLT was set up with the intention of developing play and recreation facilities for young people in the area. The CLT being the chosen vehicle as the Birchwood BIG organisation constitutionally cannot hold assets and has a defined life span. The Council's Executive has received a number of reports on the plans from officers supporting the development of CLT proposals going back to 2012. A timeline of Executive reports is attached at Appendix 1.
- 2.3 The basic concept sees the development of community affordable housing on a proportion of the site. Income from which will fund the ongoing maintenance, in perpetuity of recreation and play facilities adjacent to the housing. These will mainly take the form of a skate park the capital costs of which will be funded by Birchwood Big Local. Other areas of the site will see investment in the form of planting and bench seating etc.
- 2.4 In order to ensure a safe decision on transfer, to protect the Councils long term position and the public purse, the Council has been seeking for a number of years now a definitive business plan/proposal that demonstrates that a viable development can be delivered. One which compliments the Councils existing Housing and V2020/5 strategies and provides the stated outcomes of BACLT.

- 2.5 In recent times the BACLT have moved forward as a result of pump prime funding through the Homes England Community Housing Fund. This has helped the BACLT board commission professional advice and to crystalise plans that have now begun to demonstrate that the scheme is potentially deliverable. Planning permission for the revised scheme was granted in July 2020. This was a revised scheme of 49 homes including houses, bungalows and dorma bungalows with a mixture of 1, 2, and 3 bed options. The City Council were consulted on the plans and approval broadly supports our current housing strategy.
- 2.6 Additionally, the BACLT have now secured a Registered Provider (RP) as a development Partner. ACIS will develop the site in line with the planning permission and provide BACLT with a ground rent/lease payment that both parties believe will be sufficient to fund the long-term revenue costs of maintaining the play areas and skate park. The RP will be required to give allocations rights to COLC who have been asked to develop a local lettings policy which is designed to give preference to the existing Birchwood community.
- 2.7 BACLT have undertaken extensive consultation with the local community on the proposals, this can be evidenced back to 2015.
- 2.8 At its July 2017 meeting the Executive approved in principle the sale of the majority of the land at Jasmin Green, and the lease of the rest, to BACLT in order that it could progress its proposals for recreational and housing developments, subject to review on progress after 2 years. The Executive last considered the proposal for the Jasmin Green project in October 2019. At that point the Executive reiterated previous decisions to, in principle, support the transfer of the land and lease adjoining land to the BACLT but required additional information in the form of a business case to make a final decision. The minutes specifically requested that the position on the RP is resolved, that a suitable allocation policy be developed, and that a viable business case was provided which demonstrated the scheme complemented and supported the Council's strategic priorities. The decision on transfer was, at that stage, deferred until Spring 2020.
- 2.9 Since that decision officers have worked with the BACLT board to progress the information required by Executive.

In April 2021 the Council were informed that the RP position has been resolved with the appointment of ACIS as the preferred development partner. Delays in production of the final business case were said to be in relation to access to the site as a different access was being investigated and the need to get the development brought within the cost envelope originally set out by BACLT. More recently discussions on a local lettings policy have begun but remain at an early stage.

3. Latest Position

- 3.1 A factor in the delay for BACLT providing the viability information has been the evaluation of an alternative site access from Jasmin Road. This evaluation has now concluded that the site access will remain as originally designed (Aldergrove Crescent).
- 3.2 ACIS and BACLT have worked with EMCLH to bring costs to the level that ACIS believe makes the development viable. It should be noted that the City Council has not had sight of the full cost plan at this stage. The City has details of the elements removed from the scheme to reduce costs.
- 3.3 A “project development and viability report” was received by the Council on 24th September 2021. This provided a detailed overview of the scheme and the process used by BACLT to bring the project forward. It gives information on the housing provision and how BACLT foresee the model, with ACIS, working and, how this will support the recreation facilities and the open space going forward on Jasmin Green. It provides detailed plans of how the site will be laid out and how the recreation facilities will now be predominantly based on a large skate park – the emphasis now being on unsupervised play and activity.
- 3.4 The report also discusses how the BACLT and Birchwood BIG’s aims and objectives will be delivered, the local and wider community benefits from the construction and subsequent housing. It discusses, at high level the commercial, licence and lease arrangements that will be put in place to secure the sight for now and in the future between the RP, BALCT and the Council.
- 3.5 Some of the required financial information has been provided. Predominantly with regard to the cost of providing and running the skate park. However, we are still without the full detail behind the costing for the housing development. BACLT accept that the final construction costs and subsequently the level of public grant (anticipated via a Homes England application by ACIS) will not be known until a contractor is appointed to undertake the work.
- 3.6 One significant change to the project is the land area of land to transferred either via lease or freehold. Initially the whole site was to be transferred as per the Executive reports of 2017 and 2019 (appendix 2). The areas where the development (including recreational facilities) was to take place, along with the access through Aldergrove Crescent, was to be transferred freehold at nominal value. The remaining land to the east of the site was originally to be leased to BACLT for them to maintain as community space. This was to be for a ten-year period and the Councils Grounds maintenance contractor was to be engaged to maintain the site.
- 3.7 BACLT are now proposing only to transfer, via freehold the land specifically required for the housing and recreational facilities (Appendix 3).
- 3.8 This change in the extent of land to be transferred will require Executive approval as it is a material change from the decision to support the extent of

land to be transferred in principle taken at its meetings in July 2017 and October 2019.

4. Conclusions

- 4.1 The requirements of the Executive on 28th October 2019 have generally been adhered to:
- BACLT have a planning permission
 - Initial discussions have been had regarding a local lettings/allocations policy for the development – *allocations rights have been agreed*
 - A Registered Provider partner is in place
 - A business case has been provided to some extent– *however there are gaps specifically relating to the schemes ability to deliver the income required the manage and maintain the skate park.*
- 4.2 The information required by the Council as laid out in the Executive decisions of 2017 and 2019 has partially been provided. The information pertaining to the “Open Space Viability” has been provided.
- 4.3 The requirement to demonstrate the viability of the housing development has not been fully met. However, it could be argued that this will not be possible until a procurement exercise is carried out and a developer appointed. In order to maintain sufficient protection for the council the draft legal documents should be conditional so that they include provisions which ensure that the land transfer is subject to the demonstration of a viable scheme at contract stage. Further, any final transfer should be subject to full allocation of necessary capital funding including public subsidy in the form of grant. In drafting the legal documents to facilitate any transfer sufficient protection for the council should be included to ensure that ownership should not transfer or should revert to the CoL should the scheme become not viable at final contract stage.
- 4.4 As a result of the change in the area BACLT are requesting to be transferred the City of Lincoln could release only half of the originally envisaged Grounds Maintenance saving.
- 4.5 Property Services have assessed the undervalue for the proposed disposal of the Jasmin Green site at nominal consideration as being below £2.0m undervalue, meaning Secretary of State's general consent to disposal is available – subject to para 6.3 below.
- 4.6 The original objectives for the scheme at Jasmin Green have remained as those set out by Executive in 2017 and 2019. In terms of the information requested by Executive and re-iterated by the portfolio holder by letter the outstanding issues are the change in the area of land to be transferred and the final business case following the selection of a contractor. Given the progress with these requirements Executive could agree in principle to the revised area of land transfer and delegate the final decision on the transfer to the Director of Housing & Investment in consultation with the Portfolio Holder for Quality Housing, the

Monitoring Officer, and the Section 151 Officer, subject to the provision of the business case and a successful bid for funding.

5. Strategic Priorities

5.1 Let's deliver quality housing

The development being worked on by BACLT is intended to be fit for purpose for the future and will result in properties for affordable rent. It is intended that all will be wheelchair accessible and to target that at least a third will be built to full lifetime homes standards. In designing the final scheme BACLT have asked their architect to take full account of the HAPPI standards (Housing our Ageing Population: Panel for innovation)

5.2 Let's enhance our remarkable place

The proposal by BACLT is to provide modern play equipment and landscaping in Jasmine Green which they will manage. The housing proposals they are developing are intended to 'unlock' capital investment by Big Local for the leisure facilities and create a long-term sustainable revenue stream via BACLT for ongoing management and maintenance of the open space.

6. Organisational Impacts

6.1 Finance (including whole life costs where applicable)

It was estimated in the July 2017 report by the Council's then Property Manager that the transfer of land at nominal value represented an undervalue of around £1.2m - £1.4m. Whilst this value will have increased the de-minimis level for disposal under the general consent is not likely to be met. As there may be a change to the site layout and exact land required a current valuation at the point of disposal will be required as each valuation has a limited assurance period.

6.2 Legal Implications including Procurement Rules

Where the Council disposes of its assets, it is under a statutory duty pursuant to section 123 of the Local Government Act 1972 to do so at the best consideration (i.e., price) reasonably obtainable, unless a consent to a disposal at an undervalue has been obtained from the Secretary of State.

6.3 The Secretary of State has issued a general consent, allowing local authorities to dispose of land at an undervalue, where they consider that to do so will help to secure the promotion or improvement of the economic, social or environmental wellbeing of the area, provided that the difference between the value of the land interest to be disposed of and the consideration being accepted by the Council ("the undervalue") is £2,000,000 (two million pounds) or less and that the valuation process set out in the general consent has been complied with.

- 6.4 The Council must also ensure that prior to disposing of any land forming part of an open space that it gives notice of the proposed disposal for two consecutive weeks in a local newspaper. The Council must then consider any objections to the proposed disposal which may be made.

6.5 Equality, Diversity and Human Rights

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

7. Risk Implications

- 7.1 (i) The option of not progressing with the disposal of land at Jasmin Green to BACLT has been considered. A scheme could be progressed by the council in its own capacity. There is a risk of adverse publicity with this approach now that the CLT has been successful in attracting £267K revenue funding from Homes England to progress the project to the detailed planning stage, which it has now achieved. If the Birchwood CLT scheme does not progress this option can be revisited.

- 7.2 (ii) Key Risks Associated with the Preferred Approach

Capital grant funding will be required for the delivery stage for affordable housing BACLT propose. This grant is most likely to come from Homes England and will need to be applied for by BACLT partner ACIS as a Registered Provider (or a partner Registered Provider). The availability of such grant is always subject to current Government policy.

8. Recommendation

- 8.1 Subject to the revision at 8.2 below, to reaffirm the decisions at the July 2017 and October 2019 meetings of the Executive Committee to support in principle the transfer of land to BACLT.
- 8.2 To agree, in principle, a change in the area of land to be transferred on a freehold interest to Birchwood Area Community Land Trust (BACLT) to that as set out in Appendix 3, at the nominal value of £1. In doing so the Executive considers the intended disposal at an undervalue will help to secure the promotion or improvement of the economic, social, or environmental wellbeing of the area
- 8.3 To agree that the final terms and details of the transfer of the land, including any nomination rights to the new Affordable Housing, be delegated as per section

4.6 above. Such agreement being conditional upon the provision, by BACLT, of a viable business case which includes all known development costs and a successful bid to Homes England to support the housing development.

- 8.4 That Executive agree, ahead of any transfer, to give notice of intention to dispose of public open space as per section 6.4 above and report back any objections raised for consideration.

Is this a key decision?

Yes/No

Do the exempt information categories apply?

No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply?

Yes/No

How many appendices does the report contain?

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List of Background Papers:

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