

# Decision Pathway

**PURPOSE:** Key decision

**MEETING:** Cabinet

**DATE:** 01 October 2019

<b>TITLE</b>	<b>Airport Road Disposal Strategy</b>		
<b>Ward(s)</b>	<b>Filwood</b>		
<b>Author:</b> Abigail Stratford			<b>Job title:</b> Head of Housing Delivery
<b>Cabinet lead:</b> Councillor Paul Smith			<b>Executive Director lead:</b> Colin Molton
<b>Proposal origin:</b> <i>BCC Staff</i>			
<b>Decision maker:</b> Mayor			
<b>Decision forum:</b> <i>Cabinet</i>			
<b>Purpose of Report:</b> To put in place arrangements to deliver new homes in partnership with Boklok and authorise the necessary action to implement this approach, including negotiating terms of the disposal of the Airport Road site in accordance with Section 123 LGA 1972 achieving best consideration.			
<b>Evidence Base:</b>			
<b>Bristol Housing Festival:</b> Bristol Housing Festival seeks to test and showcase innovative homes and community living in the City. Bristol Housing Festival has identified it would be desirable to bring Boklok's sustainable, quality, low cost homes to Bristol, as part of the Housing Festival, in order to showcase their innovative modular technology. It is intended to dispose of the Airport Road site identified red on plan at Appendix A (' <b>Airport Road</b> ') to Boklok for residential development.  Boklok have spent over 18 months researching their UK strategy and has identified Bristol as an ideal location in which to invest. They are an experienced house builder in Sweden and this development offers Bristol an opportunity to test their system in UK.  It is anticipated that Airport Road would be one of the first schemes of its type in the UK. The advantage of being one of the first for the city, will help ensure that all parties are working together to create an exemplar scheme that is a proof of concept to demonstrate that Boklok can deliver on their public aims whilst working in collaboration with local authorities to serve the housing needs of the city with regards to housing, placemaking and mixed communities. Further, this proposed scheme is one which fits with Homes England's agenda to develop Modern Methods of Construction (MMC) supply and delivery within the UK.			
<b>Boklok:</b>  Boklok is a Swedish housing concept developed by the construction company Skanska and the home furnishing company Ikea that offers sustainable quality homes for many people. Boklok is a residential developer with a public aim to ' <i>make it possible for ordinary people with average incomes to own a sustainable, quality, low cost home.</i> ' Further details of the Boklok product are attached at Appendix 1.  Boklok have a desire to deliver at scale in the City and are prepared to commit to working in partnership with the Council to drive delivery over the next 5years.  Approval is sought to enter into a non-binding Memorandum of Understanding (' <b>MOU</b> ') with Boklok with the aim of working in partnership to deliver new homes in City over the next 5years. As the MOU is non-binding the Council would need to rely on the planning system to secure the provision of affordable housing on an individual site by site basis.			

**Airport Road Site:**

Airport Road is an allocated housing site as identified red on plan at Appendix A.

Boklok has identified that it could potentially build circa 200 homes on site at Airport Road with a policy compliant 30% affordable housing. However, it is believed that the Airport Road site has a number of significant site constraints which will affect the viability of any residential led development on the site with 30% policy compliant affordable housing.

**Homes England Funding:**

Homes England is working with the Council to explore opportunities for investing funding into the Airport Road to facilitate a viable residential development, with 30% policy compliant affordable housing. It is estimated circa £3m funding will be required to create a viable policy complaint development, however the final amount of funding that would be required is still to be confirmed.

On 5<sup>th</sup> February 2019 Cabinet delegated authority to the Executive Director, Growth & Regeneration in consultation with the Council's s.151 Officer and Cabinet Member for Housing to enter into negotiations with Homes England to agree mutually acceptable terms for the potential draw down and investment of Homes England funds.

To qualify for Homes England investment, the project must:

- Comply with the funding eligibility criteria (i.e. site in council ownership and have a minimum housing capacity of 30 homes)
- Seek the minimum level of funds necessary to make the scheme viable
- Be able to expend all funds by March 2021
- Invest funds in a manner that is both state aid and procurement regulation compliant
- Achieve a strong value for money outturn (determined via a Cost / Benefit economic assessment)

Once acceptable terms have been agreed, Homes England would then progress the proposal through its own decision making processes in order to secure the necessary approvals to make the Homes England investment. It is intended, if the Homes England funding drawn down is secured to facilitate a viable residential development at Airport Road, with a policy compliant 30% affordable housing, the Council will then enter into a separate Funding Agreement for the same amount as the Homes England Funding with Boklok to undertake site remediation and enabling works on Airport Road.

The Funding Agreement with Boklok will have regard to any conditions, including clawback, imposed upon the Council by Homes England.

**Airport Road Disposal:**

Airport Road would form the first phase of delivery under the MOU subject to value for money assessment and achieving best consideration in accordance with Section 123 LGA 1972.

It is recommended that the terms and conditions for the contract for the sale of Airport Road site are to be delegated to the Executive Director for Growth and Regeneration and will be in accordance with the Property Delegations.

**Acquisition of the Affordable Homes by the Council:**

Boklok has indicated that it would be prepared to enter into to appropriate arrangements for the Council to acquire the affordable homes once built. Careful consideration needs to be given to the legal, financial and housing management issues associated with such an approach. At this time it is proposed that the immediate arrangements between the parties allow for the option, but that the matter be given further consideration by officers as the project proceeds and a further report made if it should prove feasible. The fallback position would be the transfer of the affordable homes to a registered provider.

**Cabinet Member / Officer Recommendations:**

**That Cabinet:-**

1. Authorises the Executive Director for Growth & Regeneration in consultation with the Executive Member for Housing to negotiate and enter into a non-binding Memorandum of Understanding with Boklok to work in partnership to deliver new homes in Bristol over the next 5 years.
2. Authorises the Executive Director of Growth & Regeneration in consultation with council's s151 officer and the Service Director Legal and Democratic services to negotiate mutually acceptable terms for the drawdown of Homes England Funding and subject to resolving outstanding legal issues pass this to Boklok via a funding agreement.
3. Authorises the Executive Director for Growth & Regeneration to transfer Airport Road to Boklok at best consideration subject to the completion of the enabling works in accordance with a detailed planning consent and Funding Agreement.
4. Authorises the Executive Director for Growth & Regeneration, in consultation with the Executive Member for Housing, to explore the potential for the affordable housing to be transferred to the Council and report back to Cabinet, should this be deliverable, on the terms of such an arrangement.
5. Notes that if recommendation 4 is not deliverable, Boklok will dispose of the affordable housing to a registered provide of their choice

**Corporate Strategy alignment:**

1. This will support delivery of the Fair & Inclusive Key Commitment: Make sure that 2,000 new homes – 800 affordable – are built in Bristol each year by 2020.
2. This will support delivery of the Fair and Inclusive Key Commitment: Help develop balanced communities which are inclusive and avoid negative impacts from gentrification.
3. This will support the delivery of the Well Connected Key Commitment: Reduce social and economic isolation and help connect people to people, people to jobs and people to opportunity.

**City Benefits:** To increase the stock of new market and affordable housing in the city

**Consultation Details:** No consultation has been undertaken

<b>Revenue Cost</b>	N/A	<b>Source of Revenue Funding</b>	N/A
<b>Capital Cost</b>	£100k	<b>Source of Capital Funding</b>	<b>Housing Delivery Enabling Budget</b>
<b>One off cost</b> <input checked="" type="checkbox"/>	<b>Ongoing cost</b> <input type="checkbox"/>	<b>Saving Proposal</b> <input type="checkbox"/>	<b>Income generation proposal</b> <input type="checkbox"/>

**Required information to be completed by Financial/Legal/ICT/ HR partners:**

**1. Finance Advice:**

Via cost benefit modelling, Homes England has calculated that substantial grant funding could be provided to Bristol City Council to deliver circa 200 homes on the Airport Road site. Further negotiations with Homes England are underway and they have indicated their (subject to contract / without prejudice) willingness to provide grant funds. It is estimated the grant funding required will be around £3m but the final amount of Homes England funding required will be determined following the outcome of further due diligence / abnormal cost modelling for the site.

Once the minimum level of Homes England grant subsidy required to generate a City Council 30% affordable viable housing development scheme has been identified (to the satisfaction of BCC, Homes England and Boklok), Homes England will carry out further cost benefit analysis to confirm whether the required level of grant meets their minimum value for money hurdle rate. However, it should be noted that early modelling by Homes England has indicated that grant funding in the order of the £3m estimated requirement would be acceptable.

Council's s.151 Officer will need to review closely any conditions associated to the Homes England funding to ensure the terms are acceptable to the Council and do not unduly expose the Council to unacceptable risk. Any sign of of these terms must be following consultation with the Council's s151 officer.

The subsequent development would be required to include 30% Affordable Housing and would use Modern Methods of

Construction.

It is intended to pass the Homes England funding to Boklok, by means of a funding agreement, to carry out enabling work on the site and to secure planning consent. The land would then be transferred to Boklok at the open market valuation and they would develop the site as per the planning consent.

The potential financial risks and mitigations are as follows:

Recommendation	Risk	Mitigation
Memorandum of Understanding with Boklok to deliver homes – non binding	Non delivery of homes	The land sale with Boklok would need to include a buy back clause at the original transfer price.
Homes England grant passed to Boklok	The Council may have to repay all or part of the grant to Homes England if conditions are not met or if Boklok go into receivership.	Further negotiations with Homes England will determine the potential grant clawback. The project team and legal will endeavour to ensure that the funding agreement with Boklok reflects the Homes England grant conditions to ensure any payback mechanism incorporated within the conditions can be clawed back in full from Boklok Proposal is to consider if funds could be paid to Boklok in instalments on completion of work. Proposal is for a parent company guarantee to be provided.
Transfer of land to Boklok at best consideration	There is no current evidence of the land value on completion of enabling works	An independent valuation of the land will ensure that best consideration is achieved. The agreement with Boklok will also have a standard overage clause.

Although a number of financial risks have been identified, the project team, finance and legal are working to consider how these risks are eliminated and that there are mitigations in place to address those that cannot be. Further work is also being carried out to provide evidence of an appropriate value for the land transfer in view of value for money for the public purse and best consideration requirements.

**Finance Business Partner: Wendy Welsh, Finance Manager 23/9/19**

## **2. Legal Advice:**

### **Procurement**

Provided the disposal of the Airport Road site is a land transfer, and does not amount to a public contract then no issues should arise under the Public Procurement Regulations 2015. However, disposing of a site without competition does raise the possibility of a challenge by way of judicial review, e.g. from other property developers, arguing that this approach was unreasonable/irrational etc., and that a competition would have delivered better value for the Council, particularly given the absence of any development obligations. If the Council wishes to impose obligations on the developer and secure a development to meet its aspirations, it could carry out an EU compliant procurement exercise (in connection with which Boklok would be free to take part).

### **Memorandum of Understanding (MoU)**

The memorandum of understanding is proposed to be “non-binding”, which will mean it will of no contractual effect. The terms of the MoU have not yet been finalised, other than that it relates to the “aim to deliver homes”, in Bristol with the first circa 200 at Airport Road. Provided the MOU is a statement of intent, (and contains no obligations on either side) it should not amount to a contract; which would expose it to the Procurement Regulations (either as works, services or goods contract). So, for example, the MoU can’t contain any promise of payment by the Council in return for homes, or services (including securing planning permission).

### **Transfer of Airport Road**

The land can only be transferred directly to Boklok (without carrying out a procurement that complies with the Public Contracts

Regulations 2015) if the transfer constitutes a land transaction with no public works elements. The transfer will only constitute such a transaction if the council does not impose any binding obligation to build on the site. Of course the absence of any such contractual obligations means that the Council will be in no position to ensure the development proceeds in the form it wishes, or at all. It will be for the developer to determine this, subject to planning, in accordance with its own commercial interests. Boklok would of course be free to challenge planning requirements (e.g. affordable housing) in the same way as any other property developer.

It is proposed however, that the transfer contains obligations to return the site to the Council if the development does not proceed to an agreed timetable, and repayment provisions in the funding agreement if the affordable homes are not delivered. Accordingly there will be commercial pressures on Boklok to deliver the scheme.

It must be ensured that best value under s123 Local Government Act 1972 is obtained for the site. In the absence of competition, a valuation will be needed to ensure this is achieved. State aid exists if land is sold at an undervalue. (This is a separate requirement to securing best value under Section 123). The arrangements are assuming disposal is at market value and in the absence of competition an independent valuation is required supporting the proposed disposal terms (including price).

#### Grant Aided Enabling Works

Reference is made to the need for an estimated £3m public funding being necessary for the Airport Road proposal to proceed and deliver planning compliant affordable housing. This is required to finance site enabling and related works without which the viability of any development on the site is unachievable and affordable housing will not be delivered. It is proposed that this investment be secured initially from Homes England by way of grant, and then passed through to Boklok by a funding agreement. Discussions continue with Homes England over the level of funding, and the terms to be attached. The proposed funding agreement between the Council and Boklok will also be structured in such a way so as ensure compliance with Homes England requirements and state aid requirements, and the in house team are working with Boklok's legal team to ensure this. The funding agreement will provide for repayment of the grant if and to the extent that the proposed affordable housing is not delivered.

#### **Acquisition of Affordable Housing**

Consideration is being given to the Council acquiring the affordable homes. Careful thought needs to be given to the legal issues and implications associated with such an approach (procurement, state aid, housing management (including security, RTB etc). The heads of terms can provide for this option to be available should it prove feasible, albeit with the fallback position being the transfer of the affordable homes to a registered provider.

#### **Legal Team Leader:**

Eric Andrews, Commercial and Governance Team Leader, 11/9/19

#### **3. Implications on IT:** No impact to IT Services identified

**IT Team Leader:** Simon Oliver 10<sup>th</sup> September 2019

#### **4. HR Advice:** No HR implications are evident

**HR Partner:** Celia Williams - HR Business Partner – Growth and Regeneration

#### **Background Documents:** N/A

<b>EDM Sign-off</b>	Colin Molton	14 <sup>th</sup> August 2019
<b>Cabinet Member sign-off</b>	CLlr Smith	17 <sup>th</sup> September 2019
<b>For Key Decisions - Mayor's Office sign-off</b>	Mayor's Office	3 <sup>rd</sup> September 2019

<b>Appendix A – Site Plan</b>	<b>YES</b>
<b>Appendix B – Details of consultation carried out - internal and external</b>	<b>NO</b>
<b>Appendix C – Summary of any engagement with scrutiny</b>	<b>NO</b>
<b>Appendix D – Risk assessment</b>	<b>NO</b>
<b>Appendix E – Equalities screening / impact assessment of proposal</b>	<b>NO</b>
<b>Appendix F – Eco-impact screening/ impact assessment of proposal</b>	<b>NO</b>

<b>Appendix G – Financial Advice</b>	<b>NO</b>
<b>Appendix H – Legal Advice</b>	<b>NO</b>
<b>Appendix I – Exempt Information</b>	<b>NO</b>
<b>Appendix J – HR advice</b>	<b>NO</b>
<b>Appendix K – ICT</b>	<b>NO</b>