

# Decision Pathway – Report



**PURPOSE:** Key decision

**MEETING:** Cabinet

**DATE:** 03 March 2020

<b>TITLE</b>	Land Disposal at Bonnington Walk, Lockleaze		
<b>Ward(s)</b>	Lockleaze		
<b>Author:</b> Jon Feltham	<b>Job title:</b> Programme Director (Estate Regeneration)		
<b>Cabinet lead:</b> Cllr Smith	<b>Executive Director lead:</b> Stephen Peacock		
<b>Proposal origin:</b> BCC Staff			
<b>Decision maker:</b> Cabinet Member			
<b>Decision forum:</b> Cabinet			
<p><b>Purpose of Report:</b> To seek Cabinet approval for the disposal of surplus land at Bonnington Walk, Lockleaze to Legal &amp; General Homes Modular Limited (L&amp;G Modular). This will be in accordance with Section 123 LGA 1972, and will be sold for the best consideration reasonably obtainable.</p> <p>This report sets out proposals for the development of the site for circa. 188 homes through a `non-binding` Memorandum of Understanding (MoU), and seeks approval to acquire the newly built affordable homes utilising the land receipt obtained from the site.</p>			
<b>Evidence Base:</b>			
<u>Background Information</u>			
<ol style="list-style-type: none"> <li>Coming out of the Bristol Housing Festival, it is recognised by the City that there is an appetite for imaginative approaches to address the shortage of housing in Bristol. Bristol City Council is committed to delivering 2,000 new homes a year by 2020, of which 800 will be affordable. Bristol Housing Festival is a five-year Festival, during which the organisers' stated ambition is to "test innovation in real life scenarios, to find out what works for people in our City, in order to see real and lasting positive change." Following on from an exhibition at the Bristol Housing Festival in October 2018, Bristol City Council committed to supporting the Festival and to making land available for innovative solutions to address the shortage of housing in Bristol.</li> <li>L&amp;G Modular has been identified as an innovative volumetric modular housing solution that could help the Council achieve this ambitious housing commitment and showcase innovation on a larger scale. L&amp;G Modular is part of the Legal &amp; General Group, which has a long history in housing – from retirement living to affordable housing, and traditional housebuilders CALA and L&amp;G Homes. The company remains committed to bringing long-term institutional capital to the sector to increase provision and raise overall service standards. Institutional investors, such as pension funds, hold long-term patient capital and seek long-dated stable returns. Long-term capital is exactly the type of funding the sector needs to increase development activity whilst the affordable housing sector provides a long-term stable return - a natural and mutually beneficial fit. L&amp;G Modular has built a 550,000 square foot factory outside Leeds – the largest of its type in Europe – capable of producing 3,500 homes a year once fully operational. <a href="https://www.bbc.co.uk/news/av/business-45672770/is-this-the-solution-to-the-uk-s-housing-problem">https://www.bbc.co.uk/news/av/business-45672770/is-this-the-solution-to-the-uk-s-housing-problem</a></li> <li>The site is located within the Lockleaze area of Bristol, about three miles to the north of the city centre. Lockleaze comprises an area on the western flank of Purdown, a hill situated within the Stoke Park Estate, which is separated from Horfield by a main railway line operated by Network Rail. The area is predominantly residential in character, but it includes a focal service and retail centre known as Gainsborough Square. The Square has received considerable investment in recent years with further investment and improvements to come.</li> <li>The site itself is a former allotment gardens which is now disused, with the whole site suffering neglect (see <b>Appendix Aa</b>). The area is largely open grass and scrubland with pockets of dense vegetation and trees. To the</li> </ol>			

southern end of the site there is the Lockleaze Community Orchard that will be unaffected. The railway line and associated embankment sits at a lower level than the site.

5. The skyline is dominated by the two electricity pylons and overhead cables that run from north to south across the site. There are additional high voltage cables below ground that cannot be built over.
6. The site has a limited number of access points; however, an access lane adjacent to 57 Landseer Avenue was widened to provide a secondary access point for the wider site to compliment the proposed 'main' access into the site off Bonnington Walk.
7. The Concord Way cycle path also traverses the site from Bonnington Walk to Constable Road and is a key commuter cycle route as part of the Sustrans network.
8. The overall site area is approx. 6.19 hectares, with a developable site area of 3.69 hectares, reflecting a gross ratio of approximately 59.6% (normal 80-85%). This is quite low due to the 30m easement zone beneath the pylons and overhead cables being designated as a no-build-zone. A strip of land to the north west of the site, adjacent to the railway, has been designated as a Site of Nature Conservation Interest (SNCI), with a further strip designated as Important Open Space. Development will also be avoided within these zones.
9. The site sits largely within the Bristol City Council housing allocation ref: BSA0402 – Bonnington Walk former allotment site. The allocation forms part of the Site Allocations and Development Management Policies DPD document (adopted July 2014), which together with the Core Strategy form the Local Plan. The site in question has been allocated for housing in the Bristol local plan for over 20 years and was allocated in the 1997 Bristol Local Plan.
10. The HRA Development Team has spent the last 12-months undertaking development due-diligence checks on the site, and has been working-up residential proposals that are suitable for 'modular' housing.
11. The Planning pre-application submission currently proposes the redevelopment of the site to create 188 'modular' residential dwellings in a mix of 1, 2, 3 and 4 bed houses and apartments. The application would also include areas of open space/amenity space, together with new vehicular, cycle and pedestrian links to the surrounding neighbourhoods as well as the provision of new allotments. The proposal focusses on two storey houses with apartments set out in 4 storey blocks.
12. In terms of amenity space, the proposal includes the provision of open space within the site which provides 0.67ha of publicly accessible open space. There is also the existing open space to the west of the application site which residents will be able to enjoy through enhanced pedestrian links. In addition, all houses will also include private amenity spaces in the form of rear gardens.
13. Bristol City Council owns the freehold of the site and the majority is currently held in the Housing Revenue Account (HRA). Part of the land is held in the General Fund and it is proposed to appropriate this parcel of land to the HRA to align the entire holding. The land is registered under HM Land Registry Title No. BL103093, BL111593 and AV61469 (part).
14. In pursuance of his powers under section 8 of the Allotments Act 1925, the Secretary of State gave consent for the disposal of the allotment land at Lockleaze Allotments. This was confirmed in writing on 8<sup>th</sup> January 2020.

#### Key Issues for Consideration

1. Off-site manufacture has a key role to play in improving the performance of the UK construction industry. Moving the building process away from the physical site and into a controlled factory environment has multiple advantages. This includes speed of construction, greater certainty over cost and programme, higher quality, safety and a more sustainable approach to construction.
2. The main advantages of working with L&G on this site are that they have significant financial backing through institutional investment and that they have a dedicated factory setup to deliver at scale. They also acknowledge the importance of social value and have offered to commit to several opportunities to create social value on the site.
3. The site plan attached at **Appendix Aa** is for identification. The precise boundary of the land to be sold is to be agreed, but is largely as shown. Authority is therefore sought for the Executive Director of Growth and Regeneration to determine the precise boundary of the land to be sold in order to implement the recommendations.
4. The Council, through disposal of the land, will achieve the best consideration that can reasonably be obtained in accordance with its statutory obligations. This will be validated through an independent 'Red Book' RICS valuation.
5. Costs are currently being incurred to work up the scheme for Planning and to facilitate the sale. These are being

forward funded in advance of the capital receipt being generated.

6. The report seeks the decision to declare the Council's land identified as surplus to requirements and to dispose of the Freehold interest based on the terms summarised below:
- The sale is conditional on Cabinet approval.
  - Completion to take place on satisfactory receipt of Planning consent.
  - Each party to meet their own legal costs.
7. We also propose to enter into a 'non-binding' Memorandum of Understanding ('MOU') with L&G Modular, with the aim of working in partnership to work-up quality proposals for the timely delivery of new homes on the site (a statement of intent). This will include, as a minimum, a 'policy compliant' level of affordable housing (i.e. 30%), with aspirations for an additional 21%. The estimated cost of the following affordable housing provision on the site is £16.1m (gross), plus associated on-costs.

S.106 Affordable (30%)	56
Affordable Additionality (21%)	<u>40</u>
TOTAL	96

8. The Council has also introduced a number of measures to help secure delivery of the site, without creating an obligation to carry it out, which would have procurement implications. These are:
- Planning and sales overage.
  - Including a buy-back option for the Council to re-acquire its original Freehold interest if development has not commenced within a defined period.
9. If the development is delivered, the Council will have an option, which are equivalent to rights of first refusal, to:
- Purchase private residential units, which it will use as affordable housing, above the level secured through the Planning process, such that the resulting proportion of affordable is a maximum of 51% across the overall scheme.
  - To acquire the affordable housing units secured through the S.106 agreement or to nominate a HomesWest Bristol RP to do so. This option applies separately to the various component tenures and to the whole of the provision, subject to agreeing suitable terms that offer value for money.
10. In addition to the terms of sale, the S.106 agreement and Planning process will give the Council, in its role as Local Planning Authority, some control over the nature of the development and in particular the level of affordable housing on the site and is subject to agreeing suitable terms.
11. The eventual redevelopment of the site will generate resources through Section 106/Community Infrastructure Levy (CIL) obligations. These will be controlled by the Council. The Council and, therefore, the City, will also benefit directly from the generation of additional Council Tax and New Homes Bonus.
12. Due to the size of the site (thus requiring market sale homes) and a significant number of affordable homes already being developed in the area, it was felt that 'direct' delivery of the site was not the preferred route. Also, the HRA has limited financial capacity available to deliver new homes, and officers felt it not feasible (with other priorities) to tie up significant capital finance in delivery of the scheme.
13. Through disposal of the site we anticipate generating a sizeable land receipt that we propose recycling to help pay for the council's acquisition of the affordable homes on the site.

**Cabinet Member / Officer Recommendations:**

1. That Cabinet approves the disposal of land at Bonnington Walk, Lockleaze to L&G Modular Homes, on the principles set out in this report.
2. That Cabinet authorises the Executive Director of Growth and Regeneration (with appropriate legal and procurement advice) in consultation with the Cabinet Member for Housing, to make minor variations to the precise boundaries of the site.
3. That Cabinet authorises the Executive Director of Growth and Regeneration (in consultation with the Director of Finance, Director of legal and the Cabinet Member for Housing), to take all steps necessary to finalise the terms of the proposed disposal and conclude all associated agreements and contracts.
4. That Cabinet authorises the Executive Director of Growth and Regeneration (in consultation with the Director of Finance, Director of legal and the Cabinet Member for Housing), to negotiate and, subject to financial viability, acquire the affordable housing units to be provided within the scheme and a further 21% of the units provided, for use as additional affordable housing or to meet other housing objectives.

5. That Cabinet approves the land shown in **Appendix Ab** being appropriated from the General Fund (Parks) to the HRA, subject to the land being declared surplus to requirements; with the necessary capital financing adjustments made to General Fund and HRA accounts based on the valuation of the land appropriated.
6. That Cabinet authorises the use of the HRA land receipt (subject to financial viability and value for money), for acquiring affordable homes on the site.
7. That Cabinet authorises the Executive Director of Growth and Regeneration (with appropriate legal and procurement advice) in consultation with the Cabinet Member for Housing, to conclude a non-binding Memorandum of Understanding with L&G Modular, to work in partnership to deliver new homes on the site.

**Corporate Strategy alignment:** This proposal aligns with Corporate Strategy Commitment to creating a fairer more equal City for everyone. The Council is committed to building a better Bristol that includes everyone in the city's success. It is here to take care of the economic, social and environmental wellbeing of Bristol alongside many other key stakeholders. It also seeks to address inequalities, unemployment and poverty in the City through access to warm, secure affordable homes, to achieve a higher quality of life. A priority for the City is finding innovative ways of increasing the availability and affordability of a range of housing types and creating mixed and balanced communities where people want to live and work. The scheme will support the Strategy's target of making sure that 2,000 new homes – 800 affordable – are built in Bristol each year by 2020.

**City Benefits:** This proposal will facilitate the supply of additional affordable housing which will be of benefit to the whole City. Housing is at the heart of the Council's drive to improve the quality of life for residents and to create thriving communities and attractive places where people positively choose to live. Housing should provide a springboard to achieving a high quality of life and create the opportunity for all to thrive in mixed communities of their choice. Creating a mixed and balanced community with a strong sense of place and liveable environment, can help benefit mental and physical health, social interaction and security. It will also help create greater equality of opportunity and quality of life. The lack of affordable housing causes homelessness and the people who are owed a homelessness duty by the Council are disproportionately young people, disabled people, BAME people and lone parents who are mainly women. The increased use of modern, efficient factories will attract and retain a more diverse range of talent into the industry to help tackle the skills shortage.

**Consultation Details:** The HRA Development Team is in the throes of a pre-application engagement programme, which includes engagement with Officers at Bristol City Council; City Councillors; resident groups and the local community. Various meetings, drop-in sessions and events have been occurring with the community and Councillors since September 2019. These are on-going with a second round of publication due in January 2020. Statutory Public Consultation will take place as part of the Planning application process.

**Background Documents:** Bristol City Council Corporate Strategy 2018 – 2023.

<b>Revenue Cost</b>	N/A	<b>Source of Revenue Funding</b>	N/A
<b>Capital Cost</b>	£1.18m	<b>Source of Capital Funding</b>	HRA New Build Budget
<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:**

It is proposed that the land as set out in Appendix Aa which has been allocated as a housing site for 23 years, is disposed of to L&G (subject to planning). The final plan of the site to be disposed is still to be finalised however based on the indicative area would mean an approximate value of c£7m (however this is an early high level indicative figure and an independent red book valuation will be undertaken closer to disposal)

General Fund (GF) and HRA (statutory ring fenced account) are separate Council accounts and there can be no cross-subsidy between the funds, although legitimate charges flow between the accounts. On disposal of the assets the Council has a statutory duty to obtain the best price reasonably obtainable in this instance, as outlined in the legal section below this must be in line with s123 of the Local Government Act 1972.

The Council will be responsible for obtaining planning consent and will meet all associated costs. The costs associated with securing planning is expected to be circa £1.5m. This can be attributed to the following; professional fees, surveys, consultation, internal costs and contingencies. These costs will be financed by the HRA capital development budget.

The assumption is that any associated fees after planning will not be the Council's liability and any future costs associated to maintaining the public realm should be included in the costs of future development.

#### General Fund – Land Disposal

The methodology for appropriation between the GF and HRA will need to be clear and ensure the true market value of the GF land is reflected. An independent valuation by a professionally qualified valuer applying the RICS valuation professional standards ("the Red Book") will be required and the value cannot be adjusted down for any special purchaser arrangements that benefit the HRA or deferred on terms that do not provide a prior agreed financial uplift to the GF. The approach and value must be agreed (with the s151 Officer) before a transfer to L&G is legally authorised.

Following transfer the Council will alter its Asset Register to move the land to the HRA, decrease the GF debt with a corresponding increase in the HRA debt and a reduction to the available borrowing headroom that will be agreed as part of the refreshed 30 year Business Plan for the HRA.

#### HRA – Land Disposal to L&G

There is no absolute requirement to market the land being disposed of. In the current market where housing developers are more cautious and finance more difficult to come by a competitive approach does not necessarily achieve the desired outcome of estate regeneration or additional homes. In some instances where land does change hands, it does not always lead to development, as the land is "banked" or attempts are made to sell on by speculators. This situation can also lead to neighbourhood issues as land can be left overgrown and can attract anti-social behaviour.

This direct negotiation arrangement should not be used as a blanket approach and is not appropriate for all sites. It tends to be more beneficial on more complicated sites, those which will require significant capital investment to unlock or when piloting innovative solutions not readily achievable by the wider market.

L&G are considered best placed in the market (by the Commissioners) to deliver an innovative modular approach which the Council would like to explore and as a result a direct arrangement with **upfront payment and coverage** is being proposed for the disposal of the land. Whilst it is recognised that this arrangement will carry no legal obligation to develop, it is anticipated that this arrangement should enable the site to be disposed of early and with the appropriate conditions should L&G decide to undertake the development outlined could lead to the accelerated delivery of homes.

Best consideration is still required and further work will be need to be undertaken prior to disposal to clearly demonstrate that best consideration is achieved if the site is disposed of on this basis. Formal Red Book valuation by a RICS Registered Valuer close to the time of completion (recognising the limited shelf life of such valuations) will be carried out to provide evidence of an appropriate value for the land transfer with consideration given to any other available and relevant information that should be taken account of in reaching the decision in view of value for money for the public purse and best consideration requirements.

#### Indicative Development Costs and Terms.

The development proposition from L&G is in its infancy, it is anticipated that c. 188 new homes will be delivered and an option available to the Council to buy sales units (subject to its assessment of financial viability and value for money) to achieve above policy compliant level of affordable homes (30% to 51%). However no financial details have been shared with the Council to assess in relation to the development, or price at which additional affordable units could be secured and the Heads of Terms based on which this agreement would be progressed are not yet drafted.

### Other Benefits

Social Value (SV) - Utilising the Bristol SV framework and toolkit the additional commitment of SV to Bristol to be achieved from this arrangement by L & G is c. £11.8 million (to be independently verified for assurance and future measurement). This is attributed to social, economic and environmental impact. In addition to the above for any additional properties constructed the scheme also has the potential to deliver additional Council Tax revenue, CIL and New Homes Bonus (noting the current arrangements are subject to change) at this stage these cannot be quantified.

### Risk

The Council must be mindful of state aid rules which prohibit the Council from using its resources to provide selective financial support to a third party operating in the market. Other risks may need to be explored as the proposition is further developed for example:

- A 30m easement zone beneath the pylons
- Overhead cables being designated as a no-build-zone
- A strip of land to the north west of the site, adjacent to the railway, has been designated as a Site of Nature Conservation Interest (SNCI), with a further strip designated as Important Open Space

We understand that development will need to be avoided within these zones adding further complexity to the project which may impact the value or result in additional cost being transferred to the Council.

Further review is required between now and legal agreements with appropriate technical, legal and financial input to finalise the deal to which those assigned with delegated authority can sign-off ensuring state aid compliance and best consideration.

### **Finance Business Partner:**

#### **2. Legal Advice:**

##### Transfer of Bonnington Walk

The land can only be transferred directly to L&G Modular (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. 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. L&G Modular 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. Accordingly, there will be commercial pressures on L&G Modular to deliver the scheme.

The Council land is being sold by direct negotiation with the developer, rather than on the open market. It must be ensured that best value under s123 Local Government Act 1972 is obtained. In the absence of competition, a valuation will be needed to ensure this is achieved. Furthermore, state aid exists if land is sold at an under-value. This is a separate requirement to securing best value under Section 123. The proposed disposal is to be at market value and in the absence of competition again an independent valuation is required supporting the proposed disposal terms (including price).

Housing disposals are further covered by s32 of the Housing Act 1985 which again requires consent from the Secretary of State. However such disposals are in turn covered by a General Consent issued by the Secretary of State, permitting disposals at "market value".

##### Procurement

Provided the developer does not have an obligation to carry out works, the disposal of the Bonnington Walk site is a land transfer, and does not amount to a public contract and 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 particular obligations on the developer, it could carry out an EU compliant procurement exercise (in connection with which L&G Modular 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 be 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” on the site. 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 a works or, services contract). So, for example, the MoU can’t contain any promise of payment by the Council in return for homes, or services (including the securing of planning permission).

Acquisition of Affordable Housing

Consideration is being given to the Council acquiring the affordable homes on the site. 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 fall-back position being the transfer of the affordable homes to a Registered Provider.

It should be noted however that at this stage the Council is not committed to purchase these affordable housing units or any additional units. Any purchases will be subject to a detailed assessment of the financial viability of the properties and value for money and approval is sought for delegated authority to proceed as appropriate.

In addition to the affordable housing required by planning, it is proposed that the Council will have an option to purchase private residential units for use as affordable housing. This will mean that the proportion of affordable housing across the overall scheme might exceed 30%. Again the Council is not entering into any commitment at this stage, but seeks delegated authority to proceed as appropriate, subject to a detailed assessment of the financial viability of the properties and value for money.

Statutory Allotments

In pursuance of his powers under Section 8 of the Allotments Act 1925, The Secretary of State gave consent on 8th January 2020, to Bristol City Council for the disposal of the Lockleaze Allotments, Bonnington Walk.

Appropriation of Land

The Council has powers to appropriate land it holds where it is satisfied it is no longer required for the purpose for which it is held immediately before the appropriation (Section 120-122 of the Local Government Act 1972).

Open Space

Section 122(2A) requires that where land is existing open space, notice of the change of use must be advertised and any objections considered prior to the appropriation taking place.

**Legal Team Leader:** Andrew Jones /Eric Andrews, Team Leaders, Legal Services – 30<sup>th</sup> January 2020

**3. Implications on IT:** No expected impact on IT Services.

**IT Team Leader:** Simon Oliver, Director - Digital Transformation – 30<sup>th</sup> January 2020

**4. HR Advice:** There are no HR implications evident.

**HR Partner:** Celia Williams, HR Business Partner (Growth and Regeneration) – 6<sup>th</sup> February 2020

<b>EDM Sign-off</b>	Stephen Peacock	15 <sup>th</sup> January 2020
<b>Cabinet Member sign-off</b>	Cllr Paul Smith	21 <sup>st</sup> January 2020
<b>For Key Decisions - Mayor's Office sign-off</b>	Mayor's Office	3 <sup>rd</sup> February 2020

<b>Appendix A – Further essential background / detail on the proposal</b> Appendix Aa - Site Plan (Outlined Red) Appendix Ab – Land to be Appropriated	<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>