

Decision Pathway – Report Template



PURPOSE: Key decision

MEETING: EDM- Executive Director Meeting (former DLT)

DATE: 08 January 2021

TITLE	Disposal of Land to We Can Make Community Interest Company (“WCM”) for the Micro Plot Pathfinder Community Led Housing initiative – Decision in relation to Secretary of State consent.		
Ward(s)	Filwood Ward		
Author: Elaine Olphert	Job title: Head of Housing Delivery		
Cabinet lead: Marvin Rees	Executive Director lead: Stephen Peacock		
Proposal origin: BCC Staff			
Decision maker: Officer Decision forum: Officer Meeting			
Timescales: Decision required Jan 2021			
<p>Purpose of Report: To seek a decision from EDM in relation to Secretary of State consent on the disposal of HRA vacant land to We Can Make Community Interest Company (WCM) taking into consideration legal advice</p> <p>The proposal of the scheme is for a Council Tenant to voluntarily surrender their current secure tenancy and take a new secure tenancy with a smaller back garden. The part of the back garden surrendered will then be transferred to We Can Make Community Interest Company who will provide a new modular affordable housing micro unit in the space.</p> <p>At this stage the Council is working on a pilot of 16 units. The purpose of the pilot is a learning process to; establish the best way of WCM and BCC working together, to tease out any challenges or issues, to establish proof of concept and to establish the merits of rolling out the model on a larger scale.</p> <p>Legal advice by Council lawyers is that Secretary of State consent should be obtained to the proposed scheme on the basis that it is likely that there are no general disposal consents available to authorise the transfer of HRA land without Secretary of State consent. Counsel’s advice states that although there is no definitive answer, the risk of challenge by way of judicial review is high and Secretary of State consent should be sought.</p> <p>WCM sought independent legal advice and sent this to us. They take a different view and advise that the Council is able to rely on General Housing Disposal Consent A1 on the basis that the land can be declared “vacant land”. Legal advice for the Council is not in agreement with this simplistic conclusion as can be seen in paragraph 8 of counsel’s opinion attached at Appendix A.</p> <p>The commitment from the Council for all 16 pilot units is £400k of Council reduced stock value, land undervaluation and Officer time. The existing rent of the Council property will remain unchanged and hence there is no impact to the Council’s revenue income. Decision approved by SHLT 25th November 2020.</p> <p>If the 16 unit pilot proves successful a full cabinet report will be presented to gain approval to scale up delivery. At this stage the possible requirement for Secretary of State consent along with other issues the pilot teases out will be fully presented.</p> <p>Given Counsel’s legal opinion regarding the disposals and the risk of legal challenge, the Council is intent on seeking</p>			

approval for the scheme from the Secretary of State. However, the Council also recognises the need to continue to progress the project to safeguard funding and community support and is therefore proposing to release the land for the first two plots; one at 2 Belstone Walk, BS4 1QS and one at 139 Novers Lane, BS4 1QP without Secretary of State approval for these developments. As a result, *We Can Make* will be free to construct on those plots, subject to planning approval. *We Can Make* will also be able to progress with Planning drawings and submission of planning applications for up to the agreed maximum of a further 14 plots, but this will be done at the organisation's risk in relation to fees and services associated with gaining such planning consents. When Secretary of State approval is secured the Council will dispose of land to WCM on the same terms as the current two plots. If approval is not received then the land will not be disposed and will be retained by Bristol Council as garden areas for associated HRA houses.

Evidence base:

We Can Make Background and Update

This paper reports on We Can Make pathfinder community led housing project.

The Council has previously verbally agreed to explore a possible disposal of land to Knowle West Media Centre (KWMC) at a peppercorn i.e. at an under valuation, in order to enable delivery of new affordable homes via micro plots through an initiative called We Can Make. In addition, the previous and current Cabinet Members for Housing Delivery have provided their support and assurances that the project will proceed with a land transfer from the Council. KWMC has incorporated a not for profit entity 'We Can Make Community Interest Company', to act as the body to facilitate this initiative (referred to as 'the CIC' in this report). It is intended that in the longer term completed new build affordable housing units will be transferred to a newly incorporated community benefits society in the form of a Community Land Trust (CLT). The homes will be held by the CLT to ensure affordable homes in perpetuity.

Knowle West is an area of high deprivation and disadvantage in the city and We Can Make was set up in response to community demands and concerns about housing need. It works with the community to create affordable homes at 'point of need'. The Council is partnering with Knowle West Media Centre in the delivery of this pilot as one of its key pathfinder projects for housing delivery via community led housing. By doing this the Council is able to utilise existing land resources in Knowle West, provide affordable housing and to deliver significant social value outputs as detailed in the attached social value calculator and associated text (attached appendix B1 & B2). This initiative strongly aligns with the Council's Corporate Strategy commitment to: *"support community build housing offering local communities, Community Land Trusts, local builders, eco-homes and self-builds the chance to identify land and empty buildings for redevelopment and bring forward appropriate council land to kick-start development"*. In addition, it aligns to the Council's Corporate strategy commitment to: *"taking an asset-based community development approach by working with communities and partners to transfer assets and power to greater numbers of people so they have more involvement"*.

Drawing on the existing resources of this low density neighbourhood (c25 units per hectare) We Can Make is intending to unlock micro-sites for development across the estate. Modern Methods of Construction are used and homes are produced in KWMC's factory based in Knowle West, a community-based digital fabrication space. Production localises and diversifies housing supply. We Can Make have a local trades directory to help supply local tradespeople for the construction of the homes and delivers training and other employment opportunities for local people. Funding has been secured from Innovate UK to invest and develop capacity in the KWMC factory as a quality housing fabrication facility. Funding and support has also been received from The Nationwide Foundation and Homes England.

We Can Make have fully engaged with the City Design team in advancing a design code to ensure quality design. Planning applications have been submitted on the first two plots namely 139 Novers Lane and 2 Belstone Walk. The planning determination deadline was the 7th September 2020. There is currently a delay however the Planning Officers are working with Knowle West Media Centre and are seeking to determine the two applications at the

earliest. The programme was scheduled for a start in factory MMC production in September this year with units intended to be completed in March 2021. However current developments on the land disposal issue have served to delay timescales somewhat.

Current issues

In order for the projects to progress, WCM identify Council Tenants to voluntarily surrender their existing tenancy and to enter into a new tenancy with a smaller garden boundary. The tenant is able to nominate the first new tenant for the newly constructed home on the micro plot subject to housing need and Council approval. Subsequent tenant selections will be made by the We Can Make community interest company, in consultation with the Council Tenant in the host council property and in line with a local lettings policy agreed with the Council.

The Council cannot dispose of land without Secretary of State consent unless a general consent applies. The consent We Can Make lawyers believe they can rely on is the General Housing Disposal Consent A3,2 which allows the disposal of “vacant land” at an under-value. This is based on; the land being voluntarily surrendered, separated from the garden, transferred from HRA to the General Fund at net nil value and then transferred to We Can Make CIC. (Draft Memorandum of Understanding attached at appendix D)

Legal advice for the Council is that the land may not be classed as vacant land due to the fact that it is currently the garden of a dwelling house.

External Counsel concluded in their advice (attached at Appendix A, dated 20th July 2020 at point 12 that);

“I am afraid that i [sic] am unable to give a definitive answer to the question as now posed. It all rests on the Interpretation of what land may be defined as “vacant”, given its prior association as the garden of a dwelling. I am not aware of any decisive authority on the point. It follows that the council may decide to pursue this path, but that it (and any party with which it contracts) should be prepared to face a challenge (probably by way of judicial review) the determination of which will require consideration of the meaning of general consent a and the conclusion of which may result in the disposal being adjudged void. If this route is to be taken, i strongly advise asking the Secretary of State for his own view beforehand, in writing.”

It should be noted that asking the Secretary of State for a view on any course of action is not possible, as outlined in Section 10 of the relevant Government’s Circular¹ on this issue: ‘It will be for the local authority to decide whether any proposed disposal requires specific consent under the 1972 Act, since the Secretary of State has no statutory powers to advise authorities that consent is needed in any particular case.’ It would therefore be necessary to make a full application for consent to the scheme from the Secretary of State to obtain authority for the scheme.

The risk identified if we proceed without consent from the Secretary of State is that a successful challenge by judicial review or from the Secretary of State could result in the scheme being declared as unlawful and void. This could result in the transfer/lease to We Can Make being invalid and the parties would need to be returned to the position they were in before the transfer.

Mitigations to the risks identified are:

1. The proposal ensures the existing tenant obtains independent legal advice to ensure the current tenant understands the implications of the proposed tenancy changes. The tenant will be made fully aware that they relinquish control over the occupation of the new property after the first letting.
2. Completion of the tenancy surrender and entering into a new council tenancy with smaller garden will take place prior to disposal of any land to the CIC.

¹ Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained

3. The lease granted to the CIC to be terminable if BCC's ability to make the disposal is successfully challenged, such that BCC will be able to regain control of the land.
4. The CIC entity incorporated by Knowle West Media Centre is to provide an indemnity to BCC to further support this protection, with such indemnity covering all costs incurred by BCC in removing any buildings developed on the land.

It is not possible to determine the precise amount of time it would take to obtain Secretary of State consent but Officers understand that the granting of Secretary of State consent could take considerable time. The Council has worked in partnership with Knowle West Media Centre over the past two years to bring the pilot to this critical stage. The community in Knowle West has been fully engaged in the pilot and there is significant risk of reputational damage that will need to be managed if the project is paused at this stage.

EDM are therefore asked to consider a risk based approach for the 2 initial pilot units at 2 Belstone Walk and 139 Novers Lane to proceed, on the basis of the proposed mitigation measures whilst the Council seeks Secretary of State approval to release a further 14 sites for the 16 unit pilot programme.

Officer Recommendations:

Approval is sought to proceed with disposal of Council land for the first two sites to We Can Make Community Interest Company to facilitate the project as set out in this report with mitigating measures in place, whilst seeking consent from the Secretary of State for disposal of a further 14 units,.

Corporate Strategy alignment:

This will support delivery of the Fair & Inclusive Key Commitment:

1. Make sure that affordable new homes are delivered in Bristol.
 2. Taking an 'asset-based community development' approach we will work with communities and partners to transfer assets and power to greater numbers of people so they have more involvement.
 3. This will support the delivery of the Empowering and Caring Key Commitments: Prioritise community development and enable people to support their community.
 4. support community build housing offering local communities, Community Land Trusts, local builders, eco-homes and self-builds the chance to identify land and empty buildings for redevelopment and bring forward appropriate council land to kick-start development
- This will support delivery of the Fair and Inclusive Key Commitment: Help develop balanced communities which are inclusive and avoid negative impacts from gentrification.
5. This will support 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 The proposal will increase the supply of affordable housing and local jobs which will be of benefit to the whole city.

Consultation Details: Knowle West Media Centre has undertaken a range of consultation events with local residents, community groups, stakeholders and members to ensure their project delivers homes that meet local need.

Background Documents:

1. EDM update paper 19th Nov 2019 - Appendix C
2. Draft Memorandum of Understanding for land transfer November 2020 – Appendix D

Revenue Cost	£	Source of Revenue Funding	<i>Insert specific service budget</i>
Capital Cost	£	Source of Capital Funding	<i>e.g. grant/ prudential borrowing etc.</i>

One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input type="checkbox"/>
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Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice

Financial Impact on HRA

The value of any land to be appropriated from the HRA to the General Fund has been determined as £80k this needs to be verified by the council's surveyors. Assets of an equal value will have to be appropriated from the General Fund to the HRA, so there is no direct implication for the overall value of HRA assets. However, with the detaching of plots from individual properties, there will be a reduction in the remaining value of those properties, estimated at £20k per unit. Any subsequent Right To Buy receipt from those units will potentially be reduced. Given the number of different factors involved, which include the individual discount calculations as well as market factors, it is not possible to quantify this.

The statutory rent calculations are not affected by the transaction, so in the absence of any policy decision to vary rents, the rental income to the HRA is unchanged.

Financial Impact on the General Fund

The asset that has transferred to the General Fund will then be disposed to the Community Interest Company at a nominal value only. As a result, the General Fund will incur a loss on disposal, which will need to be reflected on the balance sheet.

Although the risk of a challenge to the disposal of the land is partially mitigated by the potential cost of removing any buildings developed being covered by the CIC indemnity, this does not include the cost of any potential judicial review that would have to be met by the Council.

Finance Business Partner: Wendy Welsh, Finance Manager, 4th December 2020

2. Legal Advice:

S32 Housing Act prevents disposal of HRA land without consent of the Secretary of State unless the disposal falls within the General Housing Consents 2013. Legal Advice for the Council advises that there are no General Housing Consents we can rely upon for this scheme. Secretary of State Consent is in the process of being obtained.

Due to timescales with obtaining SoS consent, this report is requesting authority to proceed with two properties in advance of SoS consent being granted. There is a risk of challenge and whilst the mitigating measures referred to in the main body of the report do not alleviate the fact that the scheme could be outside the legal powers of the Council, they do reduce the risk and provide an arguable defence for the Council. Limiting the authority to two properties prior to achieving SoS consent also alleviates the risk for the Council in the absence of authority for the larger scheme.

Legal Team Leader: Andrew Jones 30 October 2020

3. Implications on IT: No anticipated impact on IT Services

IT Team Leader: Simon Oliver dated 15th October 2020

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

HR Partner: Celia Williams dated 15th October 2020

4. Procurement Advice: There are no procurement implications evident.

Category Manager: Matt King, Commercial Systems, Performance and Strategy Manager 28th October 2020

5. Reputational narrative: *Please contact public.relations@bristol.gov.uk for their comments, and copy/paste the email text in this section.*

PR officer: *PR officer to enter their name to confirm they have provided comments on the full and final report and the date.*

EDM Sign-off	[name]	[date]
Cabinet Member sign-off	[name]	[date]
For Key Decisions - Mayor's Office sign-off	[name]	[date]

Appendix A - Counsel's advice dated 20th July 2020	YES
Appendix B1 - Social Value Calculator	YES
Appendix B2 - Social Value Text	YES
Appendix C - EDM update report dated 24th November 2019	YES
Appendix D - Draft Memorandum of Understanding for Land Transfer	YES
Appendix E – Letter to We Can Make from the Mayor's Office	YES