

Cabinet SUPPLEMENTAL AGENDA

DATE: Thursday 15 November 2018

Publication date: Friday 9 November 2018

AGENDA - PART I

COMMUNITY

10. **GAYTON ROAD PRIVATE RENTED SECTOR (PRS) HOUSING UNITS**
(Pages 3 - 118)

Joint Report of the Corporate Director, Community and Director of Finance.

20. **EXCLUSION OF THE PRESS AND PUBLIC**

To resolve that the press and public be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of confidential information in breach of an obligation of confidence, or of exempt information as defined in Part I of Schedule 12A to the Local Government Act 1972:

<u>Agenda Item No</u>	<u>Title</u>	<u>Description of Exempt Information</u>
10.	Gayton Road Private Sector Housing (PRS) Units (Appendices 1&2)	Information under paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972, relating to the financial or business affairs of any particular person (including the authority holding that information).

AGENDA - PART II

[**Note:** Due to the circulation of this report after the normal Cabinet agenda despatch, the deadline for the receipt of public and Councillor questions on the contents of this report is **3.00 pm on Wednesday 14 November 2018.**]

21. GAYTON ROAD PRIVATE RENTED SECTOR (PRS) HOUSING UNITS

Appendices 1 & 2 (with exempt information) to the Joint Report of the Corporate Director, Community and Director of Finance.

Note: In accordance with the Local Government (Access to Information) Act 1985, the following agenda items are admitted for consideration by virtue of the special circumstances and urgency detailed below:-

<u>Agenda item</u>	<u>Special Circumstances/Grounds for Urgency</u>
10. Gayton Road Private Sector Housing (PRS) Units	The items were not available at the time the Cabinet agenda was printed and circulated as they were still subject to professional advice and consultation. Members are requested to consider the items, as a matter of urgency, to allow for the Council to establish promptly its approach to the market sale / letting units being constructed at the development.



REPORT FOR: CABINET

Date of Meeting:	15 November 2018
Subject:	Update on the Gayton Road Private Rented Sector (PRS) Housing Units
Key Decision:	Yes
Responsible Officer:	Paul Walker - Corporate Director - Community Dawn Calvert – Director of Finance
Portfolio Holder:	Councillor Keith Ferry, Deputy Leader of the Council; Regeneration, Planning and Employment Portfolio Holder Councillor Adam Swersky, Finance and Resources Portfolio Holder
Exempt:	No, except for Appendices 1 & 2 which are exempt under paragraph 3 of Schedule 12A to the Local Government Act 1972 (as amended) in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information)
Decision subject to Call-in:	Yes
Wards affected:	Greenhill Ward
Enclosures:	Appendix 1 Exempt – Gayton Road – Options Analysis Appendix 2 Exempt – Valuation Report

Section 1 – Summary and Recommendations

This report sets out an update on the development of the 53 private units at Gayton Road being built out for the Council by Fairview New Homes as part of the wider housing development being constructed at the site. The report summarises the original plans for the units, details the results of the options appraisals to test those original plans and recommends the preferred way forward.

Recommendations:

Cabinet is requested to:

1. Approve Option 1 as the most financially prudent route for the use of the 53 PRS units at Gayton Road (para. 2.3.8)
2. Approve the use of Concilium Assets LLP (LLP) as the Council's Private Rented Stock investment vehicle to operate the 53 Gayton Road PRS units.
3. Delegate to the Director of Finance, in consultation with the Portfolio Holders for Regeneration, Planning & Employment and Finance & Resources:
 - To make the arrangements for the allocation of Members Capital, set at a nominal value of £100 (para. 2.7.3)
 - To set an interim budget with the Board of the LLP pending the submission of the Business Plan
 - To make arrangements for a loan, at a commercial rate, to the LLP, capped at £175,00, governed by a loan agreement (para. 2.7.5)
 - To take all other actions required on behalf of the Council to ensure that the LLP is operational and able to administer the 53 Gayton Road units, including the approval of any relevant reserved matters under the LLP Members Agreement.
4. Delegate authority to the Corporate Director – Community, in consultation with the Director of Legal & Governance, to authorise the form and grant of the underlease of the Gayton Road PRS units from the Council to the LLP.
5. Delegate authority to the Corporate Director of Community, in consultation with the Director of Legal and Governance, to approve the use and letting, to include a letting at less than best consideration, of the ground floor community and commercial space in the Gayton Road PRS block.

Reason: (For recommendations)

On the 17 September 2015 Cabinet approved proposals for the development of land at Gayton Road which included the offer from Fairview New Homes PLC to build out the 53 PRS units on behalf of the Council in lieu of a receipt

to the Council for its land.

The Council's 53 PRS units are nearing completion of construction. The units were originally intended for letting on the private rental market by the Council's investment vehicle, Concilium Assets LLP. Acknowledging that the Council's original intention was three years ago and both the Council's internal and external environment has moved on, it is considered prudent that the Council review the options available for the units to ensure the most financially prudent route is secured.

Section 2 – Report

2.1 Background

2.1.1 On the 17th September 2015 Cabinet approved proposals for the development of land at Gayton Road, where the council had a pre-existing freehold property interest in part of the development site, by Fairview New Homes (FNH). The development totals 355 homes of which 230 are owned by FNH, to be sold on the open market.

2.1.2 In accordance with the terms of the land transaction agreed with FNH, the remaining 125 units are owned by Harrow Council on a long leasehold basis. Two blocks, comprising 72 units, are managed by the Housing Services at affordable rents. These units are currently held in the Council's General Fund and let as temporary accommodation. Due to recent changes in funding arrangements for the Housing Revenue Account (HRA), there is the potential for the 72 units to be purchased by the HRA and let as permanent secure Council homes. This would realise a capital receipt for the Council

2.1.3 In addition to the affordable units the land transaction provided for FNH to build out a further block of 53 private units and associated 36 car parking spaces for the Council in lieu of the Council taking a receipt for its land. The private block owned by the Council also includes approximately 5,000 sq. ft. of community / commercial space located on the ground floor.

2.1.4 The Council owned private housing block is now nearing completion of construction and this report sets out the options available to the Council in respect of the residential units, the associated car parking and the commercial / community space.

2.2 Concilium Assets LLP

2.2.1 On 14 July Cabinet 2015 approved the creation of a trading company structure including the creation of Concilium Assets LLP (LLP) as its Housing Delivery Vehicle (HDV). It was initially envisaged that the LLP would be the HDV for both the Council's property purchase initiative to

acquire 100 housing units to help alleviate homelessness within the borough and Private Rented Stock (PRS) stock. This initial thinking has subsequently developed. The 100 homes are being held to assist the Council with its statutory duty to reduce homelessness, whilst the PRS stock is an investment proposition. It is now not recommended to mix stock for different purposes within the LLP and the 100 homes are therefore held in the General Fund with the potential to transfer to the HRA, funding permitted.

2.2.2 Concilium Assets LLP was incorporated on the 8 March 2016 and has remained dormant until recently when preparations have begun for the transfer of the 53 PRS at Gayton Road in line with the original strategy envisaged for these units.

2.3 Options Considered

2.3.1 The Council's original strategy since 2015 has been to let the 53 PRS units at Gayton Road to those willing and able to pay market rent and to treat the units as an investment opportunity for the Council in return for a long term sustainable income stream to support core services. The indicative timescale for the completion of the units is by way of a phased handover until the end of April / early May 2019. It is considered prudent for the Council to test its original plan to rent the units on the open market and review the options available for the units to ensure the most financially prudent route is secured. For this reason the Council has undertaken an options appraisal of the most feasible ways forward.

2.3.2 The options have been identified taking into account the terms of the Development Agreement with FNH. The agreement states that FNH benefits from a contractual restriction over the Council's PRS block, which prevents the Council from selling the block, or any individual unit, for 14 months following practical completion or, if earlier, the date on which FNH contract to sell their last private sale unit. FNH additionally benefit from a right of pre-emption where should the Council wish to dispose of the block, or any individual unit during the first month following practical completion, it must first offer them back to FNH who can acquire back at a discounted price.

2.3.3 The legal structure of the Gayton Road scheme is paraphrased in the Legal Implications section of this report. The Council's 999 year lease of the PRS block from Fairview and the Development Agreement restrict the permitted use to 'residential' use. There is no explicit restriction on the level of rents that can be charged. During the initial 14 month period of contractual restriction, the grant of under leases of more than three years duration requires FNH's consent, which may be withheld. Although this is unlikely to prevent the grant of homelessness tenancies (by the Council) or assured shorthold tenancies (by the LLP) on less than market rent (both of which do not attract statutory security of tenure), the three year restriction will prevent the grant of social housing tenancies (which do attract statutory security of tenure).

2.3.4 In planning terms, the section 106 agreement envisages the delivery of 'PRS Housing Units' described as '53 Housing Units within Block A to be provided as private rented housing.' Seeking to use the units on the basis of different tenure would therefore likely be a breach of the planning position.

2.3.5 The Gayton Road agreement was constructed with FNH on the basis that the intention was for social / affordable uses to be confined to the 72 units within the affordable block of the development. Notwithstanding the lack of contractual restriction regarding particular tenure, a view could be that it is not currently in the contemplation of FNH that the Council would use the PRS block as a type of affordable housing and if it were to do so at this stage, whilst they are selling their own units, may affect the Council's relationship with them and other potential development partners.

2.3.6 The option appraisal has considered the following five options:

Option 1: To use the 53 units as PRS housing units in line with the original strategy and transfer to Concilium Assets LLP.

Option 2: To sell the 53 units, within the 14 month restriction period, either as one block or as individual units (both including parking). Until sold, the units are assumed to be used for temporary accommodation and, upon sale, a capital receipt will be realised.

Option 3: To sell the 53 units, after the expiry of the 14 month restriction period. Until sold, the units are assumed to be used for temporary accommodation and, upon sale, a capital receipt will be realised.

Option 4: To use the 53 units as temporary housing (assuming efficiencies against the temporary accommodation budget).

Option 4a: To use the 53 units as temporary housing (assuming no efficiencies against the temporary accommodation budget).

Option 5: To sell the 53 units, after the expiry of the 14 month pre-emption clause, and use the capital receipt realised for investment in commercial property assets to generate a sustainable revenue stream.

2.3.7 The financial appraisal to support the options analysis, including assumptions made, is included in Appendix 1 (part 2 - exempt). As the original intention for the units was to generate an income stream to support core services to local residents, three key criteria have been used to assess the options against. These are shown in table 1 below along with the outcomes of the appraisal and their ranking:

Table 1: Summary of Options Appraisal

	NPV after 30 Years	Contribution to MTFS	In line with contractual restriction	Overall ranking
Option 1	1	1	Yes	1
Option 2	6	6	No	6
Option 3	4	3	Yes	3
Option 4	3	4	Yes	4
Option 4a	5	5	Yes	5
Option 5	2	2	Yes	2

The conclusions from the options appraisal are summarised below:

- Option 1 generates both the highest Net Present Value (NPV) over 30 years and the highest contribution to the Medium Term Financial Strategy (MTFS) and is not in breach of the pre-emption clause. The benefit of this proposal over option 5 is that it gives the Council the flexibility to retain an asset in the borough and consider alternative options in the future if the external market changes.
- Option 5 comes a close second in terms of the financial appraisal not does not maintain the future flexibility around the asset.
- Option 2 is discounted as it breaches the pre-emption clause
- Option 3 is ranked third
- The financial benefits of Option 4 are just behind option 3. Option 4 considers using the properties for temporary accommodation to help alleviate homelessness within the Borough. The Council is committed to a number of initiatives to increase the supply of temporary accommodation including the property purchase initiative (up to 150 properties), the 72 affordable units at Gayton which are all occupied and the redevelopment of the Vernon Road hostel. As these initiatives significantly increase the number of temporary accommodation units, in light of the financial challenges faced by the Council, the 53 PRS units are more appropriately deployed to support the General Fund.

2.3.8 The overall conclusion of the options appraisal, accepting that it is based on a set of assumptions at a point in time, is Option 1 – To use the 53 units as PRS housing units in line with the original strategy. This is assessed as the most financially prudent use and therefore this report recommends option 1 as the preferred option for the 53 units.

2.3.9 Harrow council will be provided with commercial and community space as part of the agreement with Fairview. The total space comprises approximately 478 sq m and provides an opportunity for the council to generate rental income and meet local community and business needs. For example with respect to community space, the demand for Nursery space is buoyant as the demand for residential development land has restricted the potential supply of space for nurseries. The premises could be suitable for a day nursery which would also cater to local demand created by the increase in homes in the Town Centre, with the

remaining section of the space a potential workspace. Currently the space is let to FNH for use as their marketing suite.

2.4 Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

2.4.1 This report provides Cabinet with the results from appraising five options deemed feasible for the future use of the 53 PRS units. There are no specific risk management issues within this report. It is acknowledged that the financial appraisal is based on a set of assumptions at a point in time but appropriate assumptions have been applied to all options. The rental and sale values that have been used as the basis for the options appraisal have been sourced from an external valuation company to ensure the most informed information is applied. The Valuation Report is attached at Appendix 2 (part 2 – exempt).

2.4.2 As the 53 units are near completion, there is the risk that a delay in deciding the future direction of the units will result in units standing empty, the opportunity cost being either a loss of rental income or a delay in the capital receipt being applied. The LLP will be instructed to develop the Business Plan at pace following approval of this report.

2.5 Procurement Implications

2.5.1 There are no direct procurement implications to this report.

2.6 Legal Implications

2.6.1 The Council has power to establish and participate in an LLP where:

(i) it is done to facilitate or is conducive or incidental to the discharge of any of its functions (s. 111(1) of the Local Government Act 1972); and

(ii) it is done other than for a commercial trading purpose (s. 1 of the Localism Act 2011)

The Council is able to establish an LLP for the purposes of owning housing where the creation of such is linked directly to one of its functions

The Council has statutory authority to hold property for a variety of purposes including those mentioned in section 120(1) of the Local Government Act 1972 which include for the benefit, improvement and

development of their area. The Council also has the power to invest for any purpose relevant to its functions under any enactment; or for the purposes of the prudent management of its financial affairs (s.12 Local Government Act 2003).

In respect of the PRS proposal the Council's decision to use an LLP could be based on it being conducive, facilitative, or incidental to the discharge of its investment function.

Section 123 of the Local Government Act 1972 provides the Council with the power to dispose of land and property, provided that in the case of freehold sales or the grant or assignment of leases of seven years or more such disposals are made for the best consideration reasonably obtainable. Where best consideration cannot be demonstrated, the consent of the secretary of state is required prior to making the disposal. The disposal of the PRS block to CA LLP can be shown to be best consideration where the Council demonstrates through its accounts that it has an equivalent investment in the LLP.

The Council entered into development agreements with Fairview New Homes to deliver social affordable and PRS accommodation at the Gayton Road site. The scheme has a very specific and restrictive legal structure. The Council transferred its freehold of the site to Fairview, which in turn granted the Council 999 year leases of each of the social affordable and PRS blocks.

The development agreement states that FNH benefits from a contractual restriction over the Council's PRS block, which prevents the Council from selling the block, or any individual unit, for 14 months following practical completion or, if earlier, the date on which FNH contact to sell their last private sale unit. FNH additionally benefit from a right of re-emption where should the Council wish to dispose of the block, or an individual unit, during the first month after practical completion, it must offer them back to FNH who can acquire them back at a discounted price.

2.7 Financial Implications

- 2.7.1 This report refers to the 72 units at Gayton Road which are managed by Housing Services at affordable rents. These units were handed over to the Council earlier in the year and are now fully occupied. This initiative is providing a financial contribution to the 2018/19 budget with estimated efficiencies against the temporary accommodation budget of £261k. This benefit will be reflected in the Quarter 2 Revenue Budget Update to Cabinet in December. The full year effect of this benefit will be reflected in the 2019/20 Draft Budget Report, also being brought to December Cabinet.
- 2.7.2 The results of the options appraisal are detailed in Table 1. The conclusion is that Option 1- To use the 53 units as PRS housing units in line with the original strategy is the most financially prudent. This

report therefore recommends option 1 as the preferred option for the 53 units.

- 2.7.3 Concilium Assets LLP will operate within the Members Agreement signed between Harrow Council Concilium Group Limited (wholly owned by the Council) and itself on 21 December 2016. Members capital is required as part of the legal structure of the LLP. There are two members of the LLP. The Council holds a 95% interest and Concilium Group Limited, itself a wholly owned Council subsidiary, holds a 5% interest. Initially the LLP will hold the 53 PRS units only and it is recommended that member's capital is set at a nominal £100, £95k from the Council and £5 from Concilium Group Ltd.
- 2.7.4 The Members Agreement states that the LLP shall prepare a Business Plan which must be approved by the Council. It is recommended the Director of Finance set an interim budget for the LLP pending the final approval of the Business Plan by Cabinet.
- 2.7.5 The LLP will require a set up loan from the Council. It is recommended that the loan is capped at a maximum £175,000 and the loan agreement will make provision for this to be repaid to the Council by 31 March 2020. The arrangement will be at a commercial loan rate.
- 2.7.6 The ownership arrangements of the LLP mean that 95% of any surpluses are not subject to income or corporation tax and can be received as a dividend to the benefit of the MTFs. The remaining 5% will be held within Concilium Group Ltd.
- 2.7.7 At the time of writing report, no financial benefit has been built into the draft MTFs for the rental income from the 53 units. The Business Plan, which will include forecasts of income and expenditure, will subsequently be built into the budget.

2.08 Equalities implications / Public Sector Equality Duty

Section 149 of the Equality Act 2010 requires that public bodies, in exercising Their functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and other unlawful conduct under the Act, (2) advance equality of opportunity and (3) foster good relations between persons who share a protected characteristic and persons who do not share it.

An Equality Impact Assessment had not been carried out in respect of this report.

Council Priorities

The Council's vision:

Working Together to Make a Difference for Harrow

The electoral arrangements allow residents to engage in the democratic process and contribute to the following Council priorities.

- Making a difference for the vulnerable
- Making a difference for communities
- Making a difference for local businesses
- Making a difference for families

Section 3 - Statutory Officer Clearance

Name: Dawn Calvert	<input checked="" type="checkbox"/>	Chief Financial Officer
Date: 08/11/18		
Name: Matthew Dineen	<input checked="" type="checkbox"/>	on behalf of the * Monitoring Officer
Date: 08/11/18		

Section 3 - Procurement Officer Clearance

Name: Nimesh Metha	<input checked="" type="checkbox"/>	Divisional Director - Procurement
Date: 08/11/18		

Ward Councillors notified:	YES
EqIA carried out:	NO*
EqIA cleared by:	EQIA not required

Section 4 - Contact Details and Background Papers

Contact: Dawn Calvert – Director of Finance (S151 Officer)
Dawn.calvert@Harrow.gov.uk

Background Papers

Report for cabinet dated the 14 July 2015 Trading Company Structures

Report for Cabinet dated 14 July 2015 Property Purchase Initiative to increase the supply of good quality Temporary Accommodation

Report for Cabinet dated 17 September 2015 Gayton Road Development Proposals

**Call-In Waived by the
Chair of Overview and
Scrutiny Committee**

NOT APPLICABLE

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of the Local Government Act 1972.

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