

| REPORT TO | ON |
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| CABINET | Wednesday, 16 September 2020 |



| TITLE | PORTFOLIO | REPORT OF |
|---------------------------|---|-----------------------------------|
| McKenzie Arms Development | Cabinet Member (Finance, Property and Assets) | Director of Planning and Property |

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| Is this report a KEY DECISION (i.e. more than £100,000 or impacting on more than 2 Borough wards?) | Yes |
| Is this report on the Statutory Cabinet Forward Plan ? | Yes |
| Is the request outside the policy and budgetary framework and therefore subject to confirmation at full Council? | No |
| Is this report confidential? | No |

PURPOSE OF THE REPORT

1. To bring forward to Cabinet the proposed development of 15 homes for affordable rent at the former McKenzie Arms site which has achieved full planning permission at Planning Committee on 27th August 2020.
2. To seek approval to move to the next stage of the project which includes appointing a partner to work with the Council to take the project through to the construction and delivery phase. This will be achieved through the adoption of a suitable procurement strategy.
3. To bring forward to Cabinet how the day to day operation of the new homes at the McKenzie Arms development will be run and managed on an ongoing basis.

PORTFOLIO RECOMMENDATIONS

4. Cabinet welcome the decision taken by Planning Committee on 27th August 2020 to approve the application for the development of 15 new homes for affordable rent on the former McKenzie Arms site.
5. Cabinet approves an increase to the capital budget from £2.217m to £2.253m to deliver the scheme and agree to commit Section 106 commuted sums funding to cover this additional £36k forecast cost.

6. Cabinet requests that Officers undertake an open procurement route evaluated based on cost, quality and social value for the project which allows for the new affordable housing development achieving the Passivhaus standard which represents the very highest quality in terms of environmental outcomes.
7. To bring back to Cabinet a further report to approve the contractor to deliver the McKenzie Arms project.
8. That Cabinet requests Officers to explore Homes England funding if a new round of funding becomes available.
9. Cabinet to note the advice received in relation to the Right to Buy implications and to agree to resolve the issue of a potential overage claim through the purchase of indemnity insurance if required.
10. That Cabinet notes the outcome of the audit in to the original purchase of the McKenzie Arms site.

REASONS FOR THE DECISION

11. The development of the McKenzie Arms site represents a key priority within the Council's revised Corporate Plan which is to deliver an increased number of affordable homes for rent in the South Ribble Borough.
12. To take the McKenzie Arms project forward, a number of Key decisions are needed to be taken by Cabinet.

EXECUTIVE SUMMARY

13. Following the options appraisal and full business case that was brought to Cabinet in November 2019, officers have been progressing detailed design works to RIBA stage 3 to prepare and submit a full planning application for the proposed development.
14. Planning permission has now been approved by the Council's Planning Committee and this report seeks approval to progress the project to the next stage.
15. The next phase of the project will be to appoint a contractor to work with the Council to take the project through to the construction and delivery.
16. A report will be brought back to Cabinet at the earliest opportunity to seek approval to award the final contract to deliver the affordable rent scheme.

CORPORATE OUTCOMES

17. The report relates to the following corporate priorities:

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| Excellence, Investment and Financial Sustainability | ✓ |
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| Health, Wellbeing and Safety | ✓ |
| Place, Homes and Environment | ✓ |

Projects relating to People in the Corporate Plan:

| | |
|----------------------------|---|
| Our People and Communities | ✓ |
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BACKGROUND TO THE REPORT

- 18.** In March 2018, the Council was awarded £362,000 funding from the Ministry of Housing, Communities and Local Government (MHCLG) One Public Estate (OPE) programme towards site preparation costs for three specific Council owned sites, not including the McKenzie Arms site.
- 19.** In November 2019 a report was considered at Cabinet which presented a business case for the development of affordable housing at the former McKenzie Arms. The decision was taken to approve a 15 dwelling scheme and mix to provide affordable rented housing, enhance the scheme to Passivhaus Standard, commit Section 106 and other funding to finance the development and to develop the proposal into a planning application.
- 20.** The business case assumed that the scheme would be funded through £90,000 funding from the OPE award and the remainder through the Council's Section 106 affordable housing monies.

PLANNING DECISION

- 21.** Additional design works have now been undertaken and a full application was submitted to the Council's planning department in May 2020.
- 22.** Following consideration at Planning Committee on 27th August 2020, the application for the proposed development has now been.

PROPOSALS

DETAILED DESIGN

- 23.** A key part of the proposals put forward is the design of the new homes on the McKenzie Arms site. It represents an opportunity to embrace MHCLG's Nationally Described Space Standards and meet optional standard Part M4(2) of Building Regulations in future proofing the homes through incorporating accessible and adaptable standards. This includes enhanced energy efficiency measures using air source heat pumps.
- 24.** The design also proposes the use of modern methods of construction through the use of Structured Insulated Panels as the main building frame which allows for reduced energy costs for future residents and reduced installation time on-site.

25. As previously requested by Cabinet, the design has been modelled to achieve Passivhaus Standard which provides a high level of comfort for occupants whilst using very little energy for heating and cooling enabling reduced energy bills. In the UK, achieving this standard includes design modelling using the Passiv House Planning Package (PHPP).
26. As part of the detailed design, modelling has been undertaken using the PHPP which confirms that it is possible for each of the dwellings to reach Passivhaus Standard, however this maximises design opportunities.
27. The design team have therefore recommended that development of the scheme will require a contractor that is very familiar with the Passivhaus process in order to achieve certification. In securing the standard, contractors will need to tender appropriately.
28. The procurement route will allow the new affordable housing development to achieve the Passivhaus standard.

PROJECT FINANCE

29. To date, total expenditure on the project has been £82,214.85 which has included all works to take the project to RIBA Stage 3 and securing planning permission. This cost includes the initial feasibility advice, business case, design works, survey fees and planning application fees.
30. The completed business case reported to Cabinet in November 2019 assumed that the development would be funded through Section 106 funds and £90,000 funding from the OPE Land Release Fund.
31. For reasons outlined in paragraph 18 of this report, a change request was submitted to MHCLG in December 2019 with the support of local OPE officers for £183,250 of the original £362,000 OPE funding to be retained and allocated to progress this single, alternative and deliverable site at the McKenzie Arms.
32. On 10th March 2020, MHCLG wrote to confirm that the proposal had been considered but that it could not be agreed as it would result in a material change to the funding agreement. As a result, the OPE funding of £362,000 has been withdrawn in full and the Council are now awaiting instruction to repay the unspent funds. This risk was highlighted to Cabinet at the original acceptance of the OPE Funding.
33. An updated Budget Cost Estimate has been produced following detailed design works and estimates the total development cost at £2.283m. This includes design costs of circa £30,000 spent to date and the cost of necessary design requirements to reach Passivhaus Standard. The proposal put forward is to commit expenditure of this amount and to commit Section 106 funding in full to meet this expenditure.
34. The Council is in a fortunate position in that it currently has sufficient unspent Section 106 Affordable Housing Commuted Sums funding and so could fully fund the development. Many Section 106 receipts have specific timescales attached in

which they are to be committed/spent. Following previous Cabinet decision, Section 106 receipts have already been identified and committed to the McKenzie Arms development.

35. A new Affordable Homes Programme has been confirmed by Government to be delivered through Homes England. Further programme detail is yet to be announced, however there may be an opportunity to apply for grant funding through the new programme. A proposal has been put forward to explore Homes England funding when a new funding round becomes available.

OPERATIONAL HOUSING MANAGEMENT

36. At this stage of the project, the Council needs to consider the options available to manage the new homes once built. Housing management could be undertaken directly by the Council, however it is recognised that the Council does not currently have the resources in-house to deliver this at the present time and this would not presently prove cost effective given the number of homes.
37. A collaborative approach will therefore be considered and officers will explore options for housing management to be undertaken through a service level agreement and partner arrangement. This will be the subject of a future detailed report to Cabinet.

SITE CONSTRAINTS

38. At Feasibility Stage of the project, independent legal advice was sought on title for the site and specifically in relation to the overage provisions included within the transfer documents of the land. The overage places onerous restrictions on any future sale of the site or of homes on the site in favour of the former owner.
39. Given that the overage provisions will remain in place until 2032, further advice was sought in July 2020 to understand the implications of this for any potential future Right to Buy of the homes.
40. The Governments Right to Buy scheme gives secure Council tenants the right to buy their Council home at a discounted price once they have been a public sector tenant for at least 3 years. Depending on the route the Council chooses to deliver new homes, the Right to Buy could be applicable for the McKenzie Arms.
41. Upon advice received, one option to resolve any issues would be for the Council to take out indemnity insurance at the cost of circa. £17,000 (subject to formal quote). The Council would take this insurance out to cover to cover in the event that a claim for overage is made up to 2032.
42. A further report is to be brought to Cabinet in due course to consider the Councils strategy and approach to delivering new homes across the borough. Dependent on the route the Council decides, this indemnity may/may not be required.

ORIGINAL PURCHASE OF MCKENZIE ARMS SITE

- 43.** The McKenzie Arms site was originally purchased by the Council in 2012. At that time the vision was that the McKenzie Arms site would provide an access to the former Wesley Street Mill site to the east and beyond the primary school site. The circumstances surrounding the purchase of the site are unclear and are now impacting on the ability of the site to come forward due to the overage sought from the previous owners. This overage has implications for the ability for South Ribble to sell the site onwards and on any right to buy from units delivered as part of this scheme. Given this the Council sought advice from Lancashire County Council audit team to assess the circumstances surrounding the purchase of the site.
- 44.** The LCC Audit were asked to look in to the following items:
- Whether the Council's actions were appropriate to serve the best interests of the community and Council
 - Whether appropriate due diligence was undertaken to support the purchase of the McKenzie Arms
 - Whether the purchase of the McKenzie Arms was achieved at the best consideration for the Council
 - The nature of overage associated with the McKenzie Arms transaction in relation to the development of the Wesley Street Mill site
 - Whether the advice given to officers was properly taken.
- 45.** The LCC Audit provides a thorough assessment of the situation and provides a conclusion. The conclusion highlights that in 2008 the Council's intentions were reasonably clear to regenerate a large, derelict brownfield site in Bamber Bridge and to do so holistically through a land assembly with appropriate access to the local road network. Conditional decisions were made to seek a developer partner in both 2008 and 2011, but it does not appear that one was ever appointed. The risks inherent in the Council's purchase of the McKenzie Arms site independently of any other negotiations to assemble the whole site were identified and articulated by one of the Council's estates surveyors in February 2011.
- 46.** It is clear that the original intention of the site forming part of the wider Wesley Street regeneration has never transpired and left the Council with a standalone site.
- 47.** The site was purchased for the price of £499,999. This price was deemed reasonable by the LCC Auditor but it is only on the basis that this was a midpoint between different valuations. It is acknowledged that the auditor is not a qualified valuer and therefore a lower price may well have been achievable given the range in value. Alongside the price paid there are clear issues arising due to the restrictions placed upon re-sale to any new owner by its former owner placing a burden on the Council or future owner until October 2032. This is further emphasised in potential right to buy discussed elsewhere.

48. The report provides a summary of issues relevant to the Council and these can be listed as follows:

- Whilst the Council clearly intended to achieve the regeneration of Bamber Bridge, any plans it made do not appear to have been adequate, or effectively pursued in practice.
- The reports to the Council do not appear fully to have reflected what officers and external advisers were considering in practice and, conversely, decisions made by the Council do not appear to have been adequately enacted by officers.
- Acknowledging that the information available is limited, elected members do not appear to have questioned the progress of the project, or if they have, to sufficient effect.
- Having recognised the risks to the council of progressing with the purchase of the McKenzie Arms site alone, this was precisely the action taken. The process by which the decision to do so was proposed by officers and recommended to the Council is not clear.
- A number of advisers were commissioned to act on the council's behalf, but the drafting of the contract for the transfer of the McKenzie Arms site was undertaken by the Council's own legal team. The problematic wording of this contract has effectively precluded the sale by the Council of the site to any developer before 2032, and has left it, derelict, in the Council's ownership even as the rest of the larger site is being developed.
- A project team was established in November 2011 and a number of officers met regularly until April 2013, including those central to the project. Risk and issues logs, risk matrices and project timelines were prepared and minutes kept but it is not clear what value was added, if any, by these meetings and documents.

CONSULTATION CARRIED OUT AND OUTCOME OF CONSULTATION

- 49.** Previous consultation has been undertaken in December 2018 with the community which sought to understand views on the future use of the site. Consultation feedback suggested little opposition to using the site for development with just one objection received as part of this consultation exercise.
- 50.** The planning application was submitted to the Council's planning department in May 2020 and has been available to view publicly on the Council's public access system. The Council also issued a press release at this time to highlight that the application had been submitted.
- 51.** Local and neighbouring residents have been consulted through the planning process. Some residents raised concerns over the location of the proposed apartment block in relation to the new homes built to the rear of the site on the Wesley Street Mill development and queried whether the layout could be altered to locate the car parking in place of the apartment block.

- 52. Officers considered the site layout and sought the technical opinion from the planning case officer. The decision was taken to proceed with the site layout submitted to Planning as this layout maximises the use of the site, best represents the ability to meet the housing needs of the borough and distances are acceptable in planning terms.
- 53. All statutory consultees have also been consulted through the planning process and comments addressed where required.
- 54. A number of conditions have been attached to the planning decision.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 55. Do nothing – rejected as this will not deliver the Council’s Corporate Plan objectives and will leave the site underutilised.
- 56. As identified at paragraph 32, the Council currently has large sums of Section 106 funding and some of this funding has been committed to delivering the scheme. If this funding is not utilised the Council would be open to risk of having to pay it back to the relevant developer.

AIR QUALITY IMPLICATIONS

- 57. The proposed development site is located within an identified Air Quality Management Area (AQMA) but also presents a sustainable location close to Bamber Bridge centre offering existing alternative transport links.
- 58. Air Quality has been a material consideration throughout the planning process and an air quality assessment undertaken through consultation with the Council’s Environmental Health department. Measures have been agreed through the planning process to address air quality concerns supported by Environmental Health including a sum of £6,500 to assist the Council in achieving Air Quality objectives.
- 59. The Council has committed to working towards a net carbon neutral borough by 2030 in addition to removing all single use plastics from its operations. These two corporate priorities must be considered when appointing partner contractors ensuring any proposals are, as far as practical, carbon neutral and prevent the use of single use plastics. Any tender specification should include these elements as part of the evaluation.

RISK MANAGEMENT

- 60. The table below presents the key risks associated with the development and project:

Table 1 – Key Project Risks

| Risk | Control Measure |
|--|--|
| S106 monies are to be paid back to the developer | Priority s106 receipts have been identified and committed to the development |

| | |
|---|--|
| Unrealistic and disproportionate costs to achieve Passivhaus Standard | Procurement route to allow for two options to be costed including option to achieve Passivhaus Standard |
| No funding is secured from Homes England to deliver the scheme | Continue to engage with Homes England to look to understand requirements of the new Affordable Homes Programme. Project can be funded solely through s106 monies if the Council so wishes. |
| Delays to the project due to Covid-19 pandemic | Project monitored to understand if/where delays might be |
| Lack of capacity internally and externally | Officers across the Council to support the project and additional capacity/resources to be sourced externally where there is a skills gap |

61. At this stage in the project, it is impossible to know what the impact of the Covid-19 pandemic will have on any future construction and the costs associated with this. The next stage of the project will be crucial to understand any impacts on delivery.

EQUALITY AND DIVERSITY IMPACT

62. The Council's Affordable Housing Commuted Sums Policy has previously been subject to an equity impact assessment and was found to have a positive impact on the protected group of disability and a neutral impact on other protected groups.

63. There are no adverse impacts envisaged through the development of 15 new affordable rented homes. The new homes are to be built to nationally described space standards and also comply with additional optional building regulation standards ensuring the homes are accessible and adaptable. A positive impact is therefore envisaged on the protected groups of age and disability.

COMMENTS OF THE STATUTORY FINANCE OFFICER

64. The remaining capital budget for this project is £2.217m. As outlined in this report the budget will be revised to £2.253m and will be funded through S106 contributions. Officers will look to secure Homes England funding if such funding becomes available.

COMMENTS OF THE MONITORING OFFICER

65. A full open procurement exercise will be carried out in relation to the proposed carrying out of the scheme. The final decision on contract award will be brought back to Cabinet. Formal contracts will then be duly entered into.

66. We have to be mindful that we do not do anything that could trigger the overage provisions in the original transfer documentation. External advice has been obtained in this regard and will continue to be accessed if required.

BACKGROUND DOCUMENTS

Reports were previously considered by Cabinet on the following dates:

20th March 2019 -

<https://southribble.moderngov.co.uk/documents/s8143/McKenzie%20Arms.pdf> and
[https://southribble.moderngov.co.uk/documents/s8223/4%20Sites%20Consultation%20Feed
back%20Report.pdf](https://southribble.moderngov.co.uk/documents/s8223/4%20Sites%20Consultation%20Feedback%20Report.pdf)

19th June 2019 -

[https://southribble.moderngov.co.uk/documents/s9190/cabinet%20Report%2019th%20June
%202019%20-
%20site%20consultation%20feedback%20and%20OPE%20update%20V3%2010.6.19.pdf](https://southribble.moderngov.co.uk/documents/s9190/cabinet%20Report%2019th%20June%202019%20-%20site%20consultation%20feedback%20and%20OPE%20update%20V3%2010.6.19.pdf)

13th November 2019 -

[https://southribble.moderngov.co.uk/documents/s11649/Options%20Appraisal%20and%20B
usiness%20Case%20for%20the%20McKenzie%20Arms%20Bamber%20Bridge%20PMC%
205.11.19.pdf](https://southribble.moderngov.co.uk/documents/s11649/Options%20Appraisal%20and%20Business%20Case%20for%20the%20McKenzie%20Arms%20Bamber%20Bridge%20PMC%205.11.19.pdf)

APPENDICES

None

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