

**Disposal of a parcel of land between Fossway and Sturdee Grove
to enable the delivery of new affordable homes**

Summary

1. The City of York Council has an ambition to accelerate the delivery of new high quality affordable housing in the city with the Housing Delivery Programme at the forefront of this ambition. Alongside this council led direct delivery of new homes we are working closely with our housing association partners to unlock barriers to further affordable housing delivery in the city.
2. One such opportunity is to utilise an area of largely unused land between Sturdee Grove and Fossway (shown edged red on the plan in Annex 1) to support new affordable housing delivery. This land is currently owned by the council and measures approximately 787 square metres. This land sits between council homes on Fossway and some car parking and a wardens bungalow owned by Joseph Rowntree Housing Trust (JRHT) at Sturdee Grove. JRHT's land is approximately 429 square metres. As separate parcels of land they offer few opportunities for new affordable housing delivery, but combined they could facilitate the development of around eight new homes.
3. JRHT have offered £50,000 for the council land subject to the securing of planning permission and the finalisation of legal terms. To ensure the land is used for the intended purpose we would impose a restrictive covenant in the Transfer Deed limiting the land for use to solely affordable housing. It has also been agreed that as part of the sale the council would hold nomination rights on lettings of the proposed dwellings such that residents on our housing waiting list will benefit from the provision of these new homes. A new boundary and smaller communal space for the flats on Fossway would be created as part of the development.

4. JRHT have a long history of developing good quality homes in York and the surrounding area. They are committed to delivering 1,000 new affordable homes between 2019 and 2029 which will make a significant contribution to increasing the availability of affordable homes locally (<https://www.jrht.org.uk/development>). They have a commitment to delivering lower carbon homes using a fabric first approach to reduce the energy demand for the homes, supporting a reduction in carbon emissions and fuel poverty.
5. JRHT's priority is to provide two and three bedroom family houses, reflecting the priority need in York and the surrounding areas. On this site they are proposing eight x two bedroom houses, five of which would be for social rent and three for shared ownership.

Recommendations

6. The Executive Member is asked to:
 - i. Approve the disposal of the land between Fossway and Sturdee Grove for a sum of £50,000 to JRHT for the development of affordable housing. Disposal subject to JRHT obtaining planning permission, finalising legal terms and delivering a new boundary fence and communal space to the rear of the council flats on Fossway.
 - ii. Delegate authority to the Corporate Director of Place to agree the final terms of the legal agreement.

Reason: To make better use of our assets and support the delivery of much needed new affordable housing in York.

Analysis

7. The land which is subject to an offer from JRHT is 'land locked'. JRHT own the land to the north, to the south are council homes along Fossway. JRHT's land currently accommodates a warden's bungalow and resident parking. JRHT intend to demolish this bungalow as part of plans to change the way they provide support for their residents and in order to maximise the capacity of the site for new affordable homes.
8. To the south of the land are sixteen flats, fourteen occupied by council tenants with the other two sold under the Right to Buy

(RTB). These flats have access to two areas of neighbouring land – (i) private rear gardens associated with the ground floor flats and (ii) the land subject to an offer for purchase. This land can currently be accessed by residents of all flats within 21-51 Fossway but not by the general public. Access to this land from the flats at 21-51 Fossway is through a locked gate. Engagement with the residents of these flats indicates that the land is largely unused by them. Under the plans JRHT would erect a new boundary fence along the new boundary (see Annex 2) and would seed or turf the reduced communal space area retained by CYC. Alongside this we would engage with the existing residents to support the use of this space, which could include seating, raised beds for communal growing and washing lines. The remaining land would then be combined with the existing JRHT land ownership to create a development site for new affordable housing, subject to planning permission.

9. The council owned land has been valued independently and the JRHT offer of £50,000 is consistent with this valuation.
10. The Council will impose a restrictive covenant in the Transfer Deed for the land limiting the use to solely affordable housing. JRHT have requested this covenant be subject to a 'mortgagee protection provision' entitling JRHT's funder/lender to dispose of the land released from the covenant if JRHT falls into arrears with loan repayments. This is because JRHT consider their funder/lender would struggle to sell the Property for an acceptable price if it remained subject to such a restriction. Accordingly, JRHT state that they will only be able to obtain the necessary loan funds to cover the costs of constructing the development if the restrictive use covenant is subject to such a mortgagee protection provision. This is not an unusual request, and it matches the requirements in the council's standard Section 106 Agreement. The mortgagee clause would be triggered if JRHT defaulted on their mortgage, it would then allow the lender/mortgagee to sell the Property free/released from the restrictive use covenant. Whilst this risk is low, it is an important consideration when agreeing to this land disposal.

Options

11. Option 1: Approve the sale of the Property for £50,000 to JRHT to develop affordable housing subject to JRHT securing Planning Permission and finalising legal terms with City of York Council and

to create a new boundary and communal space to the rear of the council homes.

12. Option 2: Retain the land for the use of residents in the flats at 21-51 Fossway.

Analysis

13. Option 1

- The sale contributes to the delivery of much needed affordable housing in York.
- Makes positive use of a largely unused HRA land asset.
- Gives the council nomination rights, ensuring the development benefits those on the housing waiting list.
- The sale of the site would release a receipt of £50,000 to support other investment priorities.
- Opportunity for residents to influence how the new smaller communal space is used.

14. Option 2

- The site is underutilised at present and doesn't make a positive contribution to the area.
- No additional affordable houses would be provided on this site.
- Loss of a potential capital receipt of £50,000.

15. It should be noted that this site sits less than 100m from the significant open space available at King George's Field which also includes formal children's play facilities.

16. For the reasons outlined above Option 1 is recommended.

Consultation

17. Discussions between JRHT, Property Services, Housing Management and Legal Services have taken place on a number of occasions.
18. Residents in the flats at 21-51 Fossway were invited to an engagement event in September 2020 to discuss JRHT's proposals, these discussions were positive and although the land

is occasionally used by existing residents, there was an appreciation from them of the need for new affordable housing in York.

19. Local ward members have been kept informed of progress and advised that we will be seeking permission to dispose of the land to JRHT to support the delivery of new affordable housing.

Council Plan

20. This proposal contributes directly to, Creating Homes and World Class Infrastructure, as well as supporting the other key priorities through the provision of affordable homes where people can live safely and thrive.

Implications

21. Financial – There are no significant financial implications to the HRA from the sale of this piece of land. The capital receipt will be utilised to repay debt, pay for repairs of existing stock or for future affordable housing delivery.
22. **Human Resources (HR)** - None
23. **Equalities** – None
24. **Legal** - It is understood from Housing that the land currently sits within the Housing Revenue Account (HRA) rather than the Council's General Fund. Section 32 of the Housing Act 1985 states that consent from the Secretary of State for Housing, Communities and Local Government ("SoS") is needed for the Council to dispose of HRA land. However pursuant to paragraph A3.2 of the S.32 General Consent Order SoS consent has been given to the disposal of 'vacant' HRA land – the land falls within that category since there are no dwellings currently standing on the land.
25. Section 25 of the Local Government Act 1988 requires that consent from the SoS is required for the giving of any financial assistance or gratuitous benefit by a local authority in connection with the provision of housing. However as the proposed sale price of £50,000 is in line with the valuation of the land it is considered that the sale of the land to JRHT for that price does not constitute a financial

assistance or gratuitous benefit so SoS consent under Section 25 is not required.

26. It is understood from Housing that residents of the neighbouring flats at 21-51 Fossway occasionally use/have used the land for recreation such as dog-walking. Whilst it is considered that they do not have any formal established legal rights to use the land, it is understood from officers in Housing that JRHT's proposed Development plans allow for a smaller space to be created that can be used by the residents of these flats.
27. It is understood from officers in Housing that the land is not accessible by/used by the general public for recreation (as it can only be accessed via a locked gate). Therefore it is considered that the land is not 'open space' land for the purposes of Section 336 of the Town and Country Planning Act 1990. Accordingly it is considered a Section 123 open space disposal notice does not need to be published in a local newspaper regarding the proposed sale of the land to JRHT.
28. **Crime and Disorder** - None
29. **Information Technology (IT)** - None.
30. **Property** - Property implications are contained within the main body of the report.
31. **Other** - There are no further implications

Risk Management

32. The land sale is subject to JRHT successfully obtaining planning permission for the delivery of affordable housing on this site. The site is in a sustainable residential location which is suitable for new affordable housing development. The likelihood of JRHT falling into arrears on loan repayments and therefore enacting the 'mortgagee protection provision' clause to allow the land to be sold and used for non-affordable housing use is considered low and therefore acceptable in this case.

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**Report
Approved**



Date 1 April 2021

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For further information please contact the author of the report

Annexes

Annex 1 – HRA land
Annex 2 – Joseph Rowntree Housing Trust's draft development
proposal

Abbreviations

CYC – City of York Council
HRA – Housing Revenue Account
JRHT - Joseph Rowntree Housing Trust
RTB - Right to Buy
SoS - Secretary of State for Housing, Communities and Local
Government