

To: Cabinet – 9 August 2023
Council – TBC 2023

Report of: Executive Director (Development)

Title of Report: Bertie Place affordable housing scheme – project approvals and land appropriation

Summary and Recommendations	
Purpose of report:	To seek project approval and delegations to progress the development of 31 affordable homes at Bertie Place. This includes delegated authority to enter into a Development Agreement with Oxford City Homes Limited (“OCHL”), operating under the name OX Place, to facilitate the development and purchase the completed homes, and approval to commence the process regarding the appropriation of land from the General Fund (“GF”) to the Housing Revenue Account (“HRA”) (changing the statutory basis on which it is held by the Council).
Key decision:	Yes
Cabinet Member:	Councillor Linda Smith, Cabinet Member for Housing Councillor Ed Turner, Cabinet Member for Finance and Asset Management
Corporate Priority:	More Affordable Housing and Meeting Housing Needs
Policy Framework:	Housing and Homelessness Strategy 2023 to 2028
Recommendations: That Cabinet resolves to:	
<ol style="list-style-type: none"> 1. Grant project approval for the build and acquisition of affordable homes developed by OCHL for which budgetary provision has been made in the Council’s Housing Revenue Account in respect of Bertie Place; 2. Delegate authority to the Head of Housing in consultation with the Head of Law and Governance and the Head of Financial Services/Section 151 Officer to enter into a Development Agreement with OCHL to facilitate the development, secure the purchase of the completed affordable homes, to be held in the HRA, and to enter into any related agreements and contracts to facilitate the development within this project approval and budget for Bertie Place. Acquisition costs are specified in the confidential appendix; and 3. Agree to commence the appropriation process of Site A at Bertie Place, noting the intent to take a full report to October Cabinet and subsequently to Council. 	

Appendices

Appendix 1
(Confidential)

Summary of Development Scheme Appraisal, including valuation and cost information

Introduction and background

1. The Council continues to develop a supply programme to deliver more affordable housing through multiple work streams, including the delivery of homes through the Council's housing company – OCHL (operating under the name OX Place); direct delivery by the Council; joint ventures; regeneration schemes; acquisitions; and enabling activity with Registered Providers, Community-Led Housing groups, and other partners. The Council seeks to deliver over 1,600 affordable tenure homes across the next four years (to March 2027), with at least 850 of those at the most affordable Social Rent level.
2. This is a further report regarding the arrangements between the Council, using its HRA, and OCHL. It seeks to secure Council-side approvals and delegations to enable the development of the Bertie Place scheme in the direct-delivery programme, and the purchase of the new affordable housing into the HRA.

OCHL development programme

3. OCHL continue to deliver an extensive programme of development schemes in accordance with the OCHL business plan.
4. This report relates to one development in the programme, Bertie Place, which will be ready to enter contract shortly (subject to approval of the recommendations set out in this paper).
5. The scheme is also subject to planning consent. A planning application for the site was submitted in May 2023 (23/00988/FUL). It is anticipated that the application will go to Planning Committee in early Autumn 2023. This report is separate to the planning process and the overview provided is for the information only.
6. It is proposed that the Council should i) enter into a Development Agreement with OCHL for the development and purchase of completed affordable homes at Bertie Place and ii) hold the affordable housing stock within the HRA on completion. The Council has allocated sufficient budget in the Medium-Term Financial Plan and the HRA business plan, for this purpose.
7. This report also requests that Cabinet agree to commence the appropriation process for Bertie Place Site A from the General Fund to the Housing Revenue Account, noting a report to Cabinet in October 2023 and to Council beyond this.
8. Additional scheme information relating to the financial appraisal is provided in the (commercially sensitive) appendix to this report.

Scheme information

9. Bertie Place (Bertie Place Recreation Ground and Land Behind Wytham Street) is located within the Hinksey Park ward.



Image 1: Aerial view of the sites. Site A is the current Bertie Place recreation ground with the adjacent Site B currently scrub land.

10. The development comprises two sites: Site A and Site B. Site A is currently a public recreation ground, including a small children’s play area and a Multi-Use Games Area (MUGA) and is the principal site which will accommodate the flats and houses along with a re-sited MUGA and play area. The scheme is predicated on minor works and improved public access to Site B. See image below for a map of the site.



Image 2: Map image of the sites currently.

11. The land has been identified for housing development in successive Local Plans since 2013. Both the current and previous Local Plans were adopted after extensive public consultation and rigorous examination at a public inquiry.
12. Oxford City Council owns the land and proposes the development of the site in collaboration with OCHL. The current proposal is for a 100% affordable housing development of 31 homes (22 for Social Rent and 9 for shared ownership), comprise of the following mix:

Size	Social Rent	Shared Ownership	Total	Notes	%
1B2PF	11			1 flat (3.2%) to M4(3)	35.5%
2B3PF	1				3.2%
2B4PH		9			29%
3B5PH	10	a			32.3%
Total	22	9	31		100
	71%	29%	100%		100%

13. The proposals aim to achieve 40 per cent carbon reduction from the current Building Regulations standard whilst also meeting all the requirements of the updated Building Regulations Part L and Part F, in addition to the new Building Regulations Part O (Overheating).
14. This proposed development would be car-free with three visitor, one disabled, and one car club parking space(s) by the entrance near Bertie Place. A series of pedestrian and cyclist access points have been retained along the site boundary in the proposals.
15. The proposed scheme would re-provide both a MUGA and a children's play area for use by new and existing residents. See image below for a proposed site layouts and visuals.

provision for purchases of affordable housing from OCHL's 10-year development programme of 1,214 properties within an overall budget envelope of £367m (before grant and shared ownership sales), in addition to 89 affordable homes through direct delivery in the HRA.

22. The decision to proceed with any development and purchase of the affordable homes through the Development Agreement will be supported by a development scheme appraisal/ financial modelling to ensure that financial parameters and requirements are met for OCHL and the HRA, as set out in Appendix 1.

Land appropriation and rationale

23. Appropriation is the process by which land held by the Council pursuant to one statutory function is transferred to another statutory function.
24. Two separate "appropriations" are required in order to undertake this development. First, (subject to cabinet agreeing to the commencement of the appropriation process, planning permission being granted and the conclusion of the consultation exercise) the land at Site A must be appropriated for the purpose of building affordable housing. Second, if this proposed appropriation process has been approved and completed and should planning permission be granted, the land must be appropriated (i.e. transferred) from the General Fund to the Housing Revenue Account under a separate legal mechanism. This report deals with the appropriation of Site A for the purpose of building affordable housing. The Council holds land for the statutory purposes for which it was acquired or following acquisition, appropriated. Section 122 Local Government Act 1972 governs the process of appropriation. Section 122 provides that before appropriating any land which is an open space the Council must give notice of its intention to do so and consider any objections made to the proposed appropriation. Comments will be given due consideration and a summary report to be submitted to Council. The notice must be given in a local newspaper over a period of two consecutive weeks.
25. The Land is held by the Council as a pleasure ground under section 164 of the Public Health Act 1875 – this status as a pleasure ground amounts to a public trust over the Land preventing its use for other purposes. Appropriation of the Land to a planning purpose under section 122 of the 1972 Act (see previous paragraph) will have the effect of discharging this public trust.
26. It should be noted that there may be other trusts over the land which will need to be dealt with appropriately in due course.
27. The purpose of this report is to authorise the taking of the first step of advertising the intention to appropriate. Any objections received would be considered at a future meeting of Council when the decision would be taken on whether to appropriate the land.
28. The appropriation notice will cover Site A (as shown in Appendix 1 Image 1) as it is necessary to appropriate the land for the purpose of building affordable housing before the works can be undertaken. At the time of appropriation the council will need to balance the public benefit of the Bertie Place project proceeding against the impact that the loss of private rights/restrictions may have on landowners benefiting from those private rights.
29. Given the nature of the exercise of the powers proposed by the Council it will be necessary for the Council to comply with its public sector equality duty in reaching a final decision to appropriate the Land to planning purposes.

30. In order to progress the Bertie Place (Site A) development, officers are currently of the view that the appropriation of council-owned land in this area will facilitate the development of the land, and will contribute to the delivery of 31 affordable homes and the achievement of the economic and social wellbeing of the area.
31. The intent is to appropriate all of the site which is required for the development. This would be all land at Site A identified in Image 2.
32. It is likely that footpaths and rights of way will be temporarily suspended to allow for the development to proceed. This also includes the possibility of a temporary road stopping order to accommodate the utility connections. The Council will go through all necessary consultation processes to secure all appropriate permissions.
33. It is important to note that the intent to appropriate covers only land owned by Oxford City Council.
34. Officers consider it necessary to appropriate the land at Bertie Place Site A for development, and believe the benefits of developing these sites outweighs the negative impacts.
35. A report will be submitted to Cabinet in October to set out the response to the publication of the notices. If it is proposed to make the appropriation Cabinet will also be asked to recommend to Council that the land should be transferred from the General Fund to the Housing Revenue Account. A further decision will be required following completion of the works to transfer back to the General Fund that part of the Site not used for housing.

Legal issues

36. The activities, as set out in this report, relate to activity for the purpose of developing homes as affordable housing. This is within the Council's statutory powers. The general power of competence under the Localism Act 2011 and the Local Authorities (Land) Act 1963 enable the Council to develop land it already owns. The Council has power to appropriate land from one purpose to another under section 122 of the Local Government Act 1972.
37. The Council has Homes England Investment Partner status and is a Registered Provider.
38. Any procurement of goods and services for the purpose of developing homes must be carried out in accordance with the Council's constitution and procurement procedures, complying with The Public Contracts Regulations 2015, including ensuring that best value is achieved.

Level of risk

39. Any risks inherent in this programme are already identified elsewhere, with actions to mitigate these detailed in the OCHL and HRA Business Plans and the Council's Medium Term Financial Plan.

Equalities impact

40. There are no adverse impacts in undertaking this activity, with the potential to improve provision for persons in housing need, through the provision of more affordable and accessible housing to better meet client needs. A separate report to Cabinet on the proposed appropriation will consider the specific impact of this at that time.

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Background Papers:	None
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