

To: Cabinet
Date: 13 September 2023
Report of: Executive Director (Development)
Title of Report: Blackbird Leys Development Project – Variations to Development Agreement with Development Partner

Summary and recommendations	
Purpose of report:	To (i) seek approval to variations to the Development Agreement between Oxford City Council (OCC) and its development partner, Peabody, for the Blackbird Leys Development Project; and (ii) seek approval of a revised budget for the Blackbird Leys community centre and delegated powers to assign further Section 106 off-site affordable housing funds to the scheme for affordable housing delivery.
Key decision:	Yes
Cabinet Members:	Cllr Linda Smith, Cabinet Member for Housing Cllr Edward Turner, Deputy Leader (Statutory) - Finance and Asset Management Cllr Ajaz Rehman, Cabinet Member for Inclusive Communities
Corporate Priority:	Meeting Housing Need; Strong & Active Communities
Policy Framework:	The Oxford Local Plan 2016- 2036, including: <ul style="list-style-type: none"> • A pleasant place to live, delivering housing with a mixed and balanced community (Policy H1 – H16); • Making wise use of our resources and securing a good quality local environment (Policy RE1 – RE9); • Ensuring efficient movement into and around the city (Policy M1 – M5); • Providing communities with facilities and services and ensuring Oxford is a vibrant and enjoyable city to live in and visit (Policy V4 , V6, V7); • Areas of Change and Site Allocations including Policy AOC3, SP4, SP15.

Recommendations: That Cabinet resolves to:

1. **Delegate authority** to the Executive Director (Development), in consultation with the Cabinet Member for Housing, Deputy Leader (Statutory) - Finance and Asset Management, and Cabinet Member for Inclusive Communities, to agree (within the parameters set out within this report and associated appendices) and sign the final terms of a Deed of Variation to the Development Agreement between OCC and its development partner, Peabody;
2. **Approve** the revised phased delivery approach for the scheme and the revisions to the allocation of spend and profile of funding for Phases 1 and 2;
3. **Approve the allocation** of the remaining £1.3 million from Section 106 off-site affordable housing funds, currently delegated to the Head of Planning, to Phase 2 of the Blackbird Leys Regeneration Project;
4. **Recommend to Council** to approve allocation of an additional £1.5 million of S106 affordable housing funds, not currently delegated to the Head of Planning, to Phase 2 of the Blackbird Leys Regeneration Project;
5. Subject to the agreement of recommendations 3 and 4, **delegate authority** for the spend of Affordable Housing S106 allocated to the Blackbird Leys Regeneration Project to the Executive Director (Development) in consultation with the Cabinet Member for Housing; Deputy Leader (Statutory) - Finance and Asset Management; Cabinet Member for Inclusive Communities; and the Head of Financial Services/Section 151 Officer;
6. **Delegate authority** to the Executive Director (Development) in consultation with the Cabinet Member for Housing; Deputy Leader (Statutory) - Finance and Asset Management; and the Cabinet Member for Inclusive Communities to agree an appropriate vacant possession strategy and subsequent implementation of the strategy for obtaining vacant possession of the land required for Phase 2;
7. **Delegate authority** to the Executive Director (Development) in consultation with the Cabinet Member for Housing; Deputy Leader (Statutory) - Finance and Asset Management; and the Cabinet Member for Inclusive Communities to agree the detailed design to be submitted to the Local Planning Authority, undertake any necessary procurements and enter into any necessary contracts related to the detailed design, construction and fit out for the new Blackbird Leys Community Centre within the agreed budget;

8. **Delegate authority** to the Executive Director (Development) to agree to Oxford City Council taking over responsibility for the delivery, costs and financial risk of the community centre if Peabody requests this change as a means to improve the scheme's viability;
9. **Note** that the delegations from the Cabinet decision in March 2020 remain in place, including the delegations to the Executive Director (Development) relating to passing through future gateways of the Development Agreement; and
10. **Note** that start on site is still subject to both Oxford City Council and Peabody being satisfied that the viability gateway tests have been met.

Appendices

Appendix 1	Aerial View of Blackbird Leys Masterplan Sites
Appendix 2	Blackbird Leys Masterplan: District Centre
Appendix 3	Blackbird Leys Masterplan: Knights Road
Appendix 4 (Confidential)	Risk Register
Appendix 5 (Confidential)	Further detail for Variations to Development Agreement
Appendix 6 (Confidential)	Financial Summary Report
Appendix 7 (Confidential)	Knights Road Freehold Plan
Appendix 8 (Confidential)	District Centre Management Strategy Plan

Introduction and Background

Project Summary

1. Blackbird Leys District Centre and Knights Road were identified as a comprehensive regeneration sites in the Oxford City Council Sites and Housing Plan (2013) and reaffirmed in the Oxford Local Plan 2036.
2. The Blackbird Leys mixed use development provides a total of 294 residential units as a mixture of 1, 2 and 3 bedroom apartments and 2 and 3 bedroom houses spread across both sites. This represents a density of circa 95 dwellings per hectare at the District Centre and 38 dwellings per hectare at the Knights Road site. 100% of the homes are affordable, provided as a mixture of 174 (59%) for Social Rented and 120 (41%) for Shared Ownership. As well as housing, the scheme will provide improved public realm focusing on well-being and sustainability with the inclusion of sustainable drainage systems (SuDS), biodiversity-led landscaping and play space, as well as retail space, that allows for the relocation of existing retail units located within the scheme's boundary, and a new community centre.

3. OCC and Peabody have been working together to develop the Blackbird Leys masterplan, focusing on layout, housing mix, phasing and viability. The masterplan design has included engagement with the community and is subject to change during the detailed design and planning stages and will be informed by further engagement with the local community. The proposed masterplan is included in Appendices 1-3.
4. For further project background, refer to the [March 2020 Cabinet report](#).

Development Agreement Background

5. The Development Agreement (DA) sets out how the project is to be brought forward through a series of Gateways, where at key stages the schemes' viability is tested and agreed by both parties. In 2022, Peabody Housing Association merged with CHL and became Peabody in April 2023, who are continuing the development partnership on the Blackbird Leys regeneration project. Further background on the DA can be found in the March 2020 cabinet report linked above.
6. Since 2018, OCC officers have been working with development partners to achieve scheme efficiencies to close the viability gap, through Stages 1 and 2. The scheme continues to have considerable viability issues, and as such, Stage 2 viability work is ongoing.
7. The DA sets out how the project is to be brought forward through a series of Gateways, where at key stages the schemes' viability is tested and agreed by both parties.
8. In June 2022, after CHL was acquired by Peabody, a decision was made by the development partners to review the viability and deliverability of the Blackbird Leys Regeneration Project, which paused the project's progress. Until this point, CHL had been ready to submit a planning application for the scheme, which was not submitted at the time due to the viability review. The review consisted of a Pre-construction Services Agreement (PCSA) by a Peabody appointed contractor, to assess the scheme's viability and deliverability.
9. In December 2022, once the PCSA was completed and Peabody were satisfied with the findings, the project progress resumed. Although the project still faced ongoing viability issues due to inflation, increasing construction costs and supply chain issues, OCC and Peabody agreed to proceed with the scheme.
10. In February 2023, a decision was made to submit a planning application for the scheme even though the project still faced substantial viability issues and had therefore not completed the Stage 2 viability requirement, to progress into Stage 3. A hybrid planning application was submitted on 23/02/2023 and was validated on 14/03/2023. The application received resolution to grant permission in August 2023.
11. Due to a multitude of issues and occurrences, including delays and viability concerns, the DA between OCC and Peabody, needs to be amended through a

Deed of Variation (DoV) to enable the development to proceed. The main proposed changes to the original agreement are outlined below.

Variations to the Development Agreement

12. Below are the principles that will inform the Deed of Variation between OCC and Peabody. Both parties have appointed solicitors to draft a DoV to the DA, including the variations below, to be signed by both parties once it is finalised. It is worth noting that this remains in draft form, and so this report seeks authority to delegate to officers to finalise the Heads of Terms and then DoV itself, in consultation with the relevant lead members.

Relationship to Housing Infrastructure Funding (HIF) Agreement

13. On 24 July 2023, Homes England approved OCC's application for an extension to its HIF Agreement, in principle. The extension allows for an extension of time for spend of the £6.25 million grant that puts significant time pressure on the project. A separate cabinet report outlines the changes to the HIF Agreement for the Blackbird Leys regeneration scheme.

14. There are two main areas of risk relating to HIF; the risk of underspend by the deadline March 2024, and the risk of clawback by Homes England should the scheme not deliver the amount of housing units as outlined in the HIF Agreement, or 289 homes.

15. Negotiations have taken place with Peabody over the sharing of risk of clawback if the housing is not delivered but the funding has been claimed and spent. It has been agreed that Peabody carry the risk should it not be possible to drawdown all the HIF funding by the given deadline, but the Council will carry the risk of clawback if housing is not delivered. This is further detailed in Appendix 5.

Costs of Viability Studies

16. In the original DA, there was an 'at risk' cost agreement for OCC to cover 50% of the costs for the Stage 2 viability assessment within agreed parameters. The Cabinet report from March 2020 included an estimation that this would be around £994k (50% of the estimated £1.988 million) for professional fees for detailed design and viability works staff costs plus an estimated £297k for professional advice and meeting its obligations with the Development Agreement. There was contingency put within the budget agreed in March 2020 for these to vary because these were estimates and not all based on actual fee proposals.

17. Included in the £994k 'at risk' cost was £250k for a Pre-construction Services Agreement (PCSA), which saw Peabody appointing a contractor to conduct a comprehensive viability study of the scheme to determine its viability and deliverability. OCC and Peabody to share the cost, which came to £125k each. The study was completed at the end of 2022 and found that the scheme still had considerable viability issues and would therefore require further work to achieve a viable scheme.

18. Following the above, it was determined that further viability works would be carried out in the form of another PCSA. It was agreed that having more detailed cost information was the only way OCC and Peabody could determine if the scheme would be able to close its deficit gap and reach a viable and deliverable scheme. PCSA 2 would be carried out between January and August of 2023 to get the scheme to a viable position. The services included in PCSA 2 came at a cost of a further £250k, with costs to be shared equally between OCC and Peabody. The OCC allocation came from the contingency held for the project.
19. The OCC liability for costs shared with Peabody to date will fall away if the viability gateway is passed, leaving only the fees to date associated with project management, professional advice etc. This viability gateway will need to be passed before the scheme can commence.

Permitted Works

20. The works detailed in the planning application that is to be considered by the LPA at committee in August 2023, and where applicable that part of the works located in individual sites.

Block A Land Transfer / Lease Strategy

21. The DA between OCC and development partner dated 21st January 2022 requires OCC to grant Peabody long-leases except where Peabody will be constructing Council Works (the new retail units, the replacement council homes and the new community centre). For Block A this means OCC retaining the ground floor retail units and granting a lease of the upper floors to Peabody.
22. Since then, OCC and Peabody have been in negotiations to agree on terms for a lease agreement for Block A. This report seeks to delegate authority to the Executive Director Development to agree to those terms. Refer to Appendix 5 for further detail.

Knights Road Land Transfer Strategy

23. The existing DA specifies that OCC will grant Peabody a long lease of the land that they will develop on at Knights Road. In order to make it easier to sell the shared ownership homes that will be developed on the Knights Road site, Peabody have requested that OCC grant them the freehold interest in the site. Since then, OCC and Peabody have been in negotiations to agree on terms for land transfer for Knights Road. This report seeks to delegate authority to the Executive Director Development to agree to those terms. Refer to Appendix 5 for further detail.

Management Strategy

24. The management of different areas of both the District Centre and Knights Road sites will be carried out by management companies representing either OCC or Peabody. The delineation of these areas is shown in Appendices 7 and 8, but is subject to variations pending negotiations between development partners and the Highways authority, regarding adoption of roads, pathways, parking spaces etc. In the case of Knights Road, the Freehold Plan (Appendix 7) also delineates the management plan, where land indicated as being transferred to Peabody will be

managed by Peabody, land retained by OCC will be managed by OCC, and land adopted by Highways will be managed by the Highways authority pending review by Oxford County Council. This report seeks to delegate to Executive Director Development, the ability to agree to an appropriate management strategy, through negotiations with Peabody and the Highways authority.

Replacement Homes

25. The original DA contained a requirement for the development partner to return 25 homes or less to OCC.
26. In the March 2020 'Blackbird Leys Development Project Detailed Design' cabinet report, it was noted that due to viability challenges it was expected that the number of new homes being returned to Council could be reduced.
27. The number of homes now being proposed to be returned to the Council is eight. This replaces the existing HRA social rented units. The Council will also receive allocation rights for all new homes delivered. In addition to the HRA replacement homes included in this scheme, Council tenants will benefit from new amenities including retail space, public open space including play areas, and a new community centre.
28. The ward of Blackbird Leys benefits from a significant number of HRA socially rented homes, with an overall percentage of 38.6% of homes in the ward being socially rented, while in the area immediately around the District Centre site, that number reaches 81.3%. ¹
29. The Council's HRA contribution to the scheme will remain at £4 million as agreed at March 2020 cabinet and is shown in Appendix 6 Financial Summary Report. In the view of officers this still represents value for money for the HRA. Further information is included in Appendix 5.

Phasing

30. Phase 1 of the Blackbird Leys project is spread across two sites, the District Centre and Knights Road, and will deliver 196 affordable homes, over 1000 sqm of new retail space, new landscaped open space with play areas, and new transport routes. Phase 2 is in the District Centre and will deliver 98 affordable homes including new landscaped open space with play. The phased development sites are shown in Appendices 2 and 3, and phasing is further detailed in Appendix 5.
31. Given construction cost uncertainty, it is not in the best interests of Peabody and OCC to agree to a fixed price for Phase 2 at this stage, given the level of price uncertainty that a contractor would need to price into the contract sum. Therefore, development partners need to add an additional viability gateway ahead of Phase 2 commencement as part of the DoV. OCC will then work with Peabody to secure the

¹(Source: <https://www.ons.gov.uk/census/maps/choropleth/housing/tenure-of-household/hh-tenure-5a/rented-social-rented>)

best contract price for Phase 2 closer to when vacant position of that site can be secured. Once this cost is known, then an assessment of scheme viability will be made at that point and a decision about how best to move forward with the delivery of this phase will be made.

Vacant Possession/Decant Strategy

32. This report seeks authority to delegate authority to the Executive Director Development, in consultation with the Cabinet Member for Finance and Asset Management and the Cabinet Member for Inclusive Communities, the ability to agree an appropriate vacant possession strategy, and then subsequent implementation of the strategy, for obtaining vacant possession of the land required for Phase 2.
33. This vacant possession strategy will include proposals for acquiring the required property interests including purchasing leasehold interests as if a Compulsory Purchase Order (CPO) was already in place. If it is considered a CPO is required a future Cabinet report covering proposals for making a CPO will be presented to a future Cabinet meeting.
34. OCC will manage and cover the costs for obtaining vacant possession for Phase 2, including the costs of any possible CPO. It is likely that most of the costs for obtaining vacant possession of Phase 2 will be incurred by OCC at the same time as Phase 1 is under construction. This is further detailed in Appendix 5.

Block A Retail Space

35. As outlined in the March 2020 cabinet report, the BBL regeneration scheme included 982 sqm of new retail space (para. 16).
36. The scheme has since undergone further detailed design work, and through that process, Peabody and OCC have agreed that Block A will have 1142sqm of retail space on the ground floor (which includes back-of-house, corridor space and a shared refuse area) and 112.4sqm of plantroom space in the basement.

Deficit Funding Strategy

37. OCC and Peabody are to work together on a payment schedule for completed works to ensure invoicing, processing and payment can be carried out efficiently and in a timely manner. This is important to maintain Peabody's cash flow and allow the project to progress according to the tight programme.

The Community Centre

38. Under the terms of the original DA, the development partner is responsible for delivering the shell & core (building envelope, structure, and services) design and construction works for the community centre, while internal fit out works would be carried out by OCC.

39. The Council tendered for consultant services including Design Team and QS/Project Management to deliver the fit out and completion works for the community centre. Jessop & Cook were appointed as Design Team lead to carry out RIBA Stages 3 – 7. The QS appointment was placed on hold following delays to the Gateway Two viability works.
40. In mid-2022, with the project facing ongoing viability issues, Peabody requested that OCC consider taking on the cost and risk of delivering the community centre. This arrangement would improve the project's viability from Peabody's point of view, as it would transfer risk and cost to OCC. The Council agreed to investigate this option. However, it was subsequently not included in the deed of variation as Peabody concluded they could retain the delivery as per the original Development Agreement.
41. As per the original agreement the Council will be involved in the design and scope of the new community centre and the associated community engagement needed as we will be the asset owner. Peabody, in consultation with OCC officers have appointed specialist consultants to design a comprehensive community engagement strategy and to carry it out throughout the design process.
42. The Council is seeking approval to take on responsibility of delivering the community centre shell and core and adjacent public square, including cost and risk, should Peabody reassess their position and require this scope to be taken over by OCC before the viability gateway is passed. We consider the likelihood of this at the present time to be low.

Legal Implications

43. The aspects of this report that have legal implications to consider are set out below.

Relationship to Housing Infrastructure Funding (HIF) Agreement

44. Under clause 7 of the Grant Agreement, Homes England can clawback the grant if the Outputs or Milestones are not achieved. At present, this requires 289 residential units to be delivered by 1 July 2026.
45. A Deed of Variation to the Grant Agreement will extend the deadline for delivery of 289 homes to allow for delays incurred by the project, but the deadline for funding spend, although extended, cannot be extended further. Any unspent funding allocated to this project but not claimed by that date will remain with Homes England.
46. The risk of underspend is to sit with Peabody, which has been agreed in principle and will form part of the Deed of Variation to the Development Agreement.

Block A Land Transfer/Lease Strategy

47. Under section 153 of the Law of Property Act 1925 if leases are greater than 300 years, Peabody may (depending on terms) be entitled to enlarge their leases to a freehold.

Knights Road Land Transfer Strategy

48. The land transfer may need to include a buy-back right in relation to parts of the Knights Road site that have not been developed after 5 years. This will be considered as part of the detailed drafting.

Replacement Homes

49. The number of Replacement Homes can be varied under the Development Agreement by Council's Work Variation under paragraph 4.10 of Part 2 of Schedule 2. The ability to reduce the number of replacement homes is therefore allowed for and should not carry adverse legal implications. This was also set out in the March 2020 Cabinet report.

Phasing

50. Through the Housing Infrastructure Fund Agreement, OCC will be legally required to deliver a minimum of 289 homes for this scheme or be at risk of funding clawback by Homes England. Phase 1 is to deliver 196 homes, and Phase 2 is set to deliver a further 98 homes.
51. The Deed of Variation will add an additional viability gateway to determine viability for Phase 2, and OCC is to take on cost, financial risk, and the responsibility of delivering it should Peabody not be able to demonstrate viability, in order to avoid funding clawback.

Vacant Possession/Decant Strategy

52. Vacant possession for Phase 1 does not have legal implications for the Council.
53. The Council may have to use CPOs in order to purchase properties where purchase agreements cannot be reached and may result in payment of compensation to property owners.
54. The Council will detail the vacant possession strategy for privately owned properties, including CPO in a future cabinet report.

Community Centre Delivery

55. In its present arrangement, the DA commits Peabody to the responsibility and risk of delivering a new community centre shell and core and the public square located opposite the building. The current proposal is that this remains the approach. If OCC takes responsibility over delivery, cost, and risk for this scope, this will need to be incorporated in the Deed of Variation to the original DA. Therefore, if this was to revert it would need to happen before the completion of the Deed of Variation.

Financial Implications

56. The aspects of this report that have financial implications to consider are set out below.

Relationship to Housing Infrastructure Funding (HIF) Agreement

57. The HIF Grant Agreement includes a schedule of requirements that need to be met, including a clawback clause. This allows HE to claw back funding in case OCC does not deliver the agreed upon number of 289 homes, which means the HIF financial risk of clawback sits at a maximum of £6.25 million, (the total amount of grant). Although the risk of clawback cannot be overlooked, HE have confirmed they would act reasonably should the Council not be able to deliver all 289 homes or allow for more time to do so. For further information, refer to Appendix 5.

58. The financial risk of underspend of the £6.25 million grant sits with Peabody, but OCC, as development partner, will do what it can to make sure invoices and claims are processed efficiently, so HIF payments are made to Peabody in a timely manner, and funding can be drawn down before the deadline. OCC cannot control HIF claim processing times, but the Council has been in talks with HE regarding the grant claims process, and will work with HE, Peabody and internal OCC officers to create an efficient drawdown procedure.

Costs of Viability Studies

59. In March 2020, Cabinet approved to continue 'at risk' spend for Stage 2. This included an estimated £1.988 million to be shared equally between OCC and its development partner, £994k each. The budget also included an additional allowance for other professional advice and costs for stage 2 of £297k plus some contingency.

60. The 'at risk' cost to OCC of £125k for PCSA 2 was in addition to the £994k and came from the contingency. If the viability gateway is not passed then the council will be liable for 50% of Peabody costs to date of £994k plus the additional £125k from PCSA plus the costs of professional advice commissioned directly by OCC and staff time.

Block A Land Transfer/Lease Strategy

61. Any Stamp Duty Land Tax (SDLT) will sit with Peabody, and they will be required to reimburse OCC if the Council makes any SDLT payments.

Knights Road Land Transfer Strategy

62. The land transfer at Knights Road will be at nil cost, however, a best value assessment will be carried out before legal agreements are completed.

Block A Retail Space

63. The scheme has had an increase in the retail space offering since its original proposal. This uplift in area has been incorporated into OCC's costs and appears in Appendix 6 Financial Summary Report.

Management Strategy

64. Both Peabody and OCC will incur management costs for different areas of the development, across both the District Centre and Knights Road sites. These costs are to be recovered through service charges and will be established once the management area boundaries are finalised, the design for open spaces has been completed, and the management strategy agreed upon.

Replacement Homes

65. Peabody is to deliver socially rented Council-owned flats, the cost of which will be covered by the Council's HRA contribution of £4 million. The market value of the HRA 'Replacement Homes' being 'returned' to OCC is outlined in Appendix 5.

Phasing

66. Due to increasing cost of construction and hyperinflation, OCC and Peabody have agreed to create an additional viability gateway for the scheme, at which stage, Phase 2 viability will be assessed. To improve the viability and deliverability of Phase 1, OCC will restructure their funding allocations, which is further explained in Appendices 5 and 6.

Vacant Possession/Decant Strategy

67. Phase 1 sees the relocation of existing retail units into Block A. This will include a process of vacating the existing parade of retail units on Blackbird Leys Road and facilitating their relocation into newly built units on the ground floor of Block A. A provision has been made within the budget to cover liability for compensation to these Retail businesses.

68. Once all retail units located in the Blackbird Leys Road parade are relocated into Block A, OCC will be left with 12 vacant retail units. These vacant units will be demolished as part of Phase 2 but may be vacant for a period of time prior to demolition while Phase 2 viability is assessed. Business rates are payable in the existing retail units, and therefore OCC should seek short-term tenants to reduce rental losses.

Equalities Impact Assessment

69. This report includes proposed variations to the DA between OCC and Peabody, which will mostly affect aspects of project funding, delivery, and management, which will not have an adverse equalities impact. Overall, the scheme is delivering more amenities and housing than was included in the original proposal in 2020, which will benefit the area.

70. Equality Impact Assessments (EQIA) were carried out and presented in 2020, as part of the March 2020 cabinet report, and in 2023, as part of the planning application. It is therefore officers' opinion that this report does not require a further EQIA specifically for this decision. Equality impacts will continue to be assessed throughout the project's duration.

Alternative Options

72. The alternative to not entering a DoV to the DA is that both development partners would have to adhere to terms of the original agreement. Factors, such as viability issues and delays, have affected several aspects of the project's progress and deliverability, and it is officers' view that the original agreement in its current form is not adequate and requires the variations outlined in this report.

Next Steps

73. OCC will continue to work with Peabody and legal consultants to finalise a DoV to the DA which will include the proposed variations outlined in this report.

74. OCC and Peabody are to sign the DoV prior to the scheme progressing to Stage 3.

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Background Papers:	
1	11 March 2020 Cabinet Report : 'Blackbird Leys Development Project Detailed Design'

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