

DECISION OF THE LEADER OF THE COUNCIL

Complete this form to record details of all decisions made by officers acting under delegated powers. Send the completed form to forwardplan@oxford.gov.uk

Decision title:	To take a decision to acquire properties at Barton Park from OCH(I)L and the developer and hold with the Housing Revenue Account.
Decision date:	28 November 2024
Source of delegation: State how the decision was delegated. Was it an express delegation made at a meeting or a general delegation under the Council's Constitution?	<p>Part 4.6 of the Constitution:</p> <p>The Leader may delegate executive responsibilities to a single Cabinet Member with or without consultation with officers or other Cabinet Members.</p> <p>Part 16.4 of the Constitution:</p> <p>A decision outside the budget and policy framework may be taken with the agreement of the Chair of the Scrutiny Committee and future reporting to Council.</p> <p>Part 15.17 and 17.9 of the constitution:</p> <p>An urgent key decision may be taken and call in removed with the agreement of the Chair of Scrutiny.</p>
What decision was made? Explain briefly – include financial details of any income or expenditure relating directly to this decision. Please indicate whether information is exempt / confidential.	As set out in the accompanying report below.
Purpose: What does the	The acquisition of council housing in to the HRA and the

decision deliver or achieve?	addressing of the financial position of OCH(I)L as set out in the report.
Reasons: Please provide the reasons for the decision.	As set out in the report.
Decision made by: Name and title of officer within the senior management structure	Councillor Susan Brown Leader of the Council
Other options considered: List any alternatives that were available to the decision taker and why they were rejected	As set out in the report and the appendices.
Documents considered: Please attach any new documents relevant to the decision and state if they are exempt	The Council's constitution. Cabinet report of the 16 October 2024 "Acquisition of Social Rent Properties at Barton Park" and appendices there to
Key or Not Key: (see notes below):	Key
Wards significantly affected: If 2+ wards are significantly affected this will need to be treated as a key decision (see notes below)	N/A
Declared conflict of interest: Please record any declared conflict of interest by any Cabinet Member consulted on the decision which relates to the decision.	None
This form was completed by: Name & title: Date:	Emma Jackman Head of Law and Governance 27 November 2024

Approval checklist

Approver	Name and job title	Date
Decision maker	Councillor Susan Brown, Leader of the Council & Cabinet Member for Inclusive	28.11.24

	Economy and Partnerships	
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Consultee checklist

Consultees	Name and job title	Date
Head of Financial Services If required by the delegation / Constitution	Nigel Kennedy	28.11.24
Chief Executive	Caroline Green	28.11.24

Report for a Single Cabinet Member Decision

Leader of the Council

Date: 28 November 2024

Report of: The Monitoring Officer in conjunction with the Executive Director – Development & Development Board

Title of Report: Acquisition of Social Rent properties at Barton Park into the Council’s Housing Revenue Account.

Summary and Recommendations	
Purpose of report:	To seek approvals for the acquisitions at Barton Park from OCH(I)L and from the developer under the Development agreement as urgent key decisions and an urgent decision outside of the policy and budget framework.
Key decision:	Yes
Cabinet Member:	Councillor Susan Brown, Leader of the Council
Corporate Priority:	More Affordable Housing and Meeting Housing Needs
Policy Framework:	Corporate Strategy 2024-28
Recommendation(s): That the Cabinet Member resolves to:	
1. Approve, as an urgent decision outside of the policy and budget framework, that the Council:	
1. takes a transfer of the 168 Barton Park residential units from Oxford City Housing (Investment) Limited (“OCH(I)L”);	
2. acquires the remaining 184 units at Barton Park directly from the relevant phase developers for Phases 2, 3 and Phase 4 (“the developer”) at Barton Park as required under the overarching development agreement with Barton (Oxford) LLP;	
all properties to be purchased by the Housing Revenue Account (HRA) and from within the HRA capital budget.	
3. Agree that charging of the purchases approved at recommendation 1 (at the value shown in Appendix 2) is to the allocated HRA Capital budget for ‘Purchases of Properties from OX Place’, until such time as full Council may	

allocate a special budget for the purpose of acquiring the Social Rent homes at Barton Park into the HRA.
4. Approve and agree to the purchase of and authorise the entering of the relevant contract and transfer documentation, ancillary deeds of covenant and agreement for the acquisition of 5 new affordable homes at Barton Park (Phase 3) from the Developer directly into the Housing Revenue Account (HRA), as listed in Appendix 1.
5. Approve and agree to the purchase of and authorise the entering of the relevant contract and transfer documentation, ancillary deeds of covenant and agreement for the acquisition of the 168 residential freehold and leasehold units held by OCH(I)L at Barton Park and any associated land at a total purchase price of up to £33,125,324 plus up to £250,000 of associated costs.
6. Delegate authority to the Executive Director - Development, in consultation with the Cabinet Member for Housing and Communities; the Head of Financial Services/Section 151 Officer; and the Council's Monitoring Officer, to enter into all agreements necessary, for which powers are not already delegated under the scheme of delegation, to facilitate the transfer of the properties at 1.2 above, to the extent that such authority has not already been delegated to officers within the Constitution.

Appendices	
Appendix 1	Schedule of ten Phase 3 (Redrow) (Social Rent) properties forecast to complete between September and November 2024 proposed to be purchased into the HRA.
Appendix 2	Information relating to property valuation and cost (not for publication – Information relating to the financial or business affairs of any particular person (including the authority holding that information))
Appendix 3	Cabinet Report and appendices for the decision of Cabinet taken on the 16 October 2024 - <u>Acquisition of Social Rent Properties at Barton Park</u>
Appendix 4	Approval of the Chair of Scrutiny dated 27 November 2024

Introduction and background

7. In 2013 the Council took a decision to enter a legal agreement with Barton (Oxford) LLP to purchase all the Social Rent homes developed on Barton Park (40% of the development up to 354 homes). This agreement was signed in December 2014.
8. The City Executive Board and the Oxford City Homes (Investment) Limited (OCHL) Shareholder subsequently approved the purchase from the Council by Oxford City Homes (Investment) Limited (OCH(I)L) of the Social Rented homes being

developed at Barton Park. This programme of acquisition was expected to comprise 354 homes (all at Social Rent) across all phases of the scheme.

9. A report was considered by the Cabinet on 16 October 2024 (Appendix 3) and approval given to proceed to purchase 168 properties from OCH(I)L into the HRA. The Cabinet decision was subject to approval by Council of the required budget provision within the HRA capital budget. Delegations to officers made by Cabinet were also contingent on that further approval from Council.
10. Due to a number of procedural issues and oversights the recommendation from Cabinet to Council to make the budget available was not included on the Council agenda for the November meeting of the Council. This means there has not been a decision by the Council to allocate the budget to the HRA to enable the purchases as set out in the Cabinet report considered at the Cabinet meeting on 16 October 2024.
11. The Cabinet can ordinarily only take decisions where they are in accordance with the budget and policy framework. This means, in this case, where the budget for the acquisitions set out in the recommendations to the Cabinet were approved and the HRA Capital Budget increased. This therefore means that the decisions made by the Cabinet were conditional upon the budget being made available by the Council.
12. If the Council were to wait until the next meeting of Full Council in January 2025 there would be several adverse consequences both to the Council and the tenants of the properties currently held by OCH(I)L (see para xx).
13. The Constitution allows the Cabinet to take decisions outside of the budget and policy framework where they are urgent in accordance with the provisions of 16.4 which states as follows:

16.4 Urgent decisions outside the budget or policy framework

(a) The Cabinet or officers carrying out executive responsibilities can take a decision that is outside the budget or policy framework if:

- *it is urgent*
- *it is not practicable to arrange a Council meeting*
- *the Chair of the Scrutiny Committee agrees that the decision is urgent. (If the Chair of the Scrutiny Committee is absent, the Lord Mayor can agree that the decision is urgent. If the Lord Mayor is absent, the Deputy Lord Mayor can agree).*

(b) The record of the decision must say why it was not practicable to arrange a meeting of Council. It must also say that the Chair of the Scrutiny Committee (or Lord Mayor or Deputy Lord Mayor) agreed that the decision was urgent.

(c) The decision taker must take a full report to the next ordinary Council meeting explaining the decision. This must say why the decision was taken, why it was urgent and why it was not practicable to arrange a meeting of Council. If

the next meeting is within seven days of the decision being taken the decision taker will report to the next meeting after that.

14. In addition to the decision being outside the policy and budget framework the decisions required to allow the transactions to proceed are also Key, falling within the definition of a Key Decision within Part 15.14 of the Constitution. Ordinarily the procedure set out in Part 15.15 of the Constitution should be followed in relation to any decision to be taken that is key, which includes the publication on the Forward Plan of the intention to take the decision 28 days in advance of it being taken.
15. Further the decisions would be subject to call-in and were treated as key decisions under the previous approval from Cabinet on 16 October 2024.
16. Urgent key decisions can be taken in accordance with Part 15.17 of the Constitution where in exceptional circumstances it is not practicable to publish it on the Forward Plan and wait for 28 days before the decision is taken and the Chair of the Scrutiny Committee agrees. The urgent key decision cannot usually be taken until 5 clear days after the Chair of the Scrutiny Committee has been told. Agreement of the Chair of the Scrutiny Committee can be sought to allow the required 5 clear days between making the decision and implementing it to be waived where cannot be adhered to. This must be reported to full Council in accordance with Part 17.19, which will be done in January 2025.
17. Further, call-in of an urgent key decision can be removed with the agreement of the Chair of the Scrutiny Committee in accordance with Part 17.9 of the Constitution.
18. The Chair of the Scrutiny Committee has given the necessary approvals to allow the urgent key decisions set out in the recommendations in this report to be made and has waived the need to wait 5 days before the decisions can be made and also removed the requirement to wait a further 2 days for call in for the single member decisions to come into effect.
19. For the reasons set out in this report the Leader is being asked to take the urgent key decisions as set out in the recommendations. This includes the decision to acquire 5 properties from the developer. By a Single Member Decision by Cllr Linda Smith on the 19 September 2024 authority was delegated to officers to proceed with entering into the necessary documentation to complete the purchase of 10 properties, of which 5 have conclude and 5 remain outstanding. An urgent key decision was proposed to be taken by officers under this delegation, however to avoid multiple urgent key decision it has been included in this report for decision by the Cabinet Member, avoiding the need for a further urgent key officer decision.

Reasons for the Urgent decision outside of the policy Framework

20. Relevant to this decision is the report to the Cabinet on the 16 October 2024, which is set out at this report as Appendix 3. That report sets out:
21. The background to the reasons the Council is seeking to acquire the properties at Barton Park from both OCH(I)L and, moving forward, directly from the developer as they are delivered. The reason stems from the need to improve the financial position within OCH(I)L. Legacy costs, together with adverse economic conditions, primarily associated with rising borrowing costs in recent years, which are higher

for OCH(I)L than for the HRA, have been the main contributing factors that have led to a review of the arrangements with the Council and housing company.

22. The proposal that the properties are acquired by the Council into the HRA, due to the agreement the Council has concerning the development at Barton Park and the need for the properties to be held as Social Rented homes.
23. To secure the financial position of OHC(I)L, remove the potential impact on the OCHL group of companies and to safeguard the dividends due to the Council as shareholder it is not in the best interests of the Council for the properties to remain in the ownership of OCH(I)L. The financial implications set out in the report at Appendix 3 at paragraphs 20 to 32 inclusive detail the financial considerations.
24. There is a timeline set for the transfer based on the audit of OCH(I)L's accounts and the company group's accounts. To satisfy the auditor action is being taken in advance of the audit conclusion and the intention is that on the 29 November 2024 168 properties transfer from OCH(I)L ownership to the Council and that all future completions at Barton Park come directly into the HRA. The financial modelling for the transaction for both the Council and the company were based on this transfer date and work has been progressing with a view to completion.
25. The work includes having engaged with tenants over the change of landlord, becoming Council tenants, arranging for tenancy agreements to be in place from the 29 November 2024 and for the payment arrangements for tenants to be in place so rent is payable to the Council directly.
26. To not enact the decision to acquire the properties as planned from OCH(I)L and directly from the developers would lead to the following consequences:
 - a. The financial risk to the Group is set out below in the Financial Implications section. the company has agreed with its external auditors, Mazars, additional commentary within the 2023/24 accounts confirming the transfer of the Barton properties as this is a material post balance sheet event. If delays are experienced, then this may in turn put back the planned sign-off that is expected to take place this week on 29 November 2024
 - b. Delay would create a reputational risk, all tenancies in the name of OCH(I)L have been terminated and new agreements are being issued in the name of the Council. Communications have been issued to all of the affected tenants setting out that the expected transfer date is to be 29 November. Direct debit mandates have also been amended to reflect the anticipated change. When the properties transfer to the Council tenants will benefit from secure tenancies with additional benefits (Right To Buy etc).
 - c. A requirement to adhere to the terms of the development agreement which requires us to accept transfer at a specific point in time. That point has been formally reached and the Council is now required to accept transfer with no ability to delay.
 - d. There would be a delay in respect of properties now complete and able to be let (as currently owned by the developer) being transferred to the Council and

therefore they would remain vacant for an extended period when demand for council housing is significant.

- e. Additional costs and a significant capacity/resource impact for both the Council and OCH(I)L would result if there was a need to repeat work already done in preparation for a later transfer date in terms of undertaking new financial assessments, legal advice and updates to that and an impact on capacity of officers in the housing service in terms of delaying and undoing the work done to ensure that the transfer of tenants in to the Council is possible, effective and properly done.
- f. The cost of buying the homes from OCH(I)L will inflate monthly, as further interest charges on the debt will have been incurred by OCH(I)L.

Chair of Scrutiny – use of urgency procedures

27. The Chair Of Scrutiny, Cllr Katherine Miles was requested by email of the [xx] to agree to the following in taking this decision:

- a. Agreement to take an urgent decision outside of the policy and budget framework (16.4)
- b. Agreement to take an urgent key decision not on the forward plan (15.14 to 15.18)
- c. Agreement to waive the right to call in (17.9)

28. The reasons for the request are as set out above at section 13 to 18 of this report (inclusive).

29. On the 27 November 2024 Cllr Miles confirmed her agreement to the proposals submitted to her.

30. It has been agreed that the matter more generally, in terms of adherence governance requirements and key decision making, will be taken to a meeting of the Scrutiny Committee in January 2025 with steps taken and proposals to prevent a reoccurrence of such issues.

Legal issues

31. The legal issues are as set out in:

- a. This report
- b. The Cabinet report of the 16 October 2024 and the confidential appendix 7 to that cabinet report.

32. This report relates to activity for the purpose of acquiring affordable housing, the principle of which has already been approved and the acquisition of which approved on the authority to enter into the agreement concerning the development. As this was conditional on further Council approval of the budget required, which cannot now be obtained in time, these decisions are required in the manner set out

above in order to allow the decisions to be taken as an urgent exception to the constitutional rules concerning the separation of Council and Cabinet powers.

33. Such acquisitions are within the Council's statutory powers.
34. The properties will be subject to all the usual provisions of the HRA as with any other Council house, upon acquisition and letting.
35. A report to Council will be required, and will be presented in January 2025, outlining the decisions taken under 15.17 and 16.4 as required.
36. In the preparation of this report the Chief Executive, Section 151 and Monitoring Officer have been consulted and reviewed it and relevant Portfolio Holders briefed.

Financial issues

37. The financial implications of these decisions remain consistent with those contained in the report considered by the Cabinet on the 16th October 2024. Any delays in the transfer of these properties from OCH(i)L to the HRA will result in additional financial pressure to OCH(i)L in the form of additional interest charges less any rent collected for the period. The HRA has an approved capital budget for "Properties Purchased From OCHL" of £83.7 million of which it is currently forecast to spend £25.7million leaving adequate budget to fund these transfers in this financial year. Additional capital budget will be requested in the 2025/26 budget report to be presented to Council in February 2025 to replenish the "Properties Purchased From OCHL" budget in 2025/26 for the existing acquisition programme.

Level of risk

38. 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.
39. Risks are set out in the report with regards to not taking the decision.

Equalities impact

40. It is considered that there are no adverse impacts in undertaking this activity, with the potential to improve provision for persons in housing need, through the extension of additional tenancy rights to tenants as provided for through tenancy agreements with the Council.

Carbon and Environmental Considerations

41. There are no carbon or environmental considerations in relation to the acquisition and appropriation to the HRA of these homes.

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Service area or department	Law & Governance
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