

Meeting of:	Cabinet
Date of Meeting:	Monday, 12 April 2021
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	Request by Newydd Housing Association to purchase the Councils freehold interest at St Garmon Road, Penarth
Purpose of Report:	To approve the sale of the Council freehold interest of land at St Garmon Road, Penarth to Newydd Housing Association.
Report Owner:	Cabinet Member for Housing and Building Services
Responsible Officer:	Miles Punter - Director of Environment and Housing
Elected Member and Officer Consultation:	Mike Ingram, Head of Housing and Building Services Lorna Cross, Operational Manager (Property) Carolyn Michael, Operational Manager, Accountancy James Docherty, Principal Lawyer
Policy Framework:	This report is a matter for Executive Decision by Cabinet.
Executive Summary:	<p>The Council have received a formal request from Newydd Housing Association (NHA) to purchase the freehold of their Social Housing Development at St Garmon Road, Penarth.</p> <p>The estate comprising of 66 Social rented homes was built in 1989 to provide much needed housing in the Penarth area. The land was leased to Newydd by the Council for a term of 125 years and under the terms of the lease Newydd covenanted to provide 100% nomination rights to the Council. Newydd also covenanted to pay to the Council a percentage of future rental income net or repairs and improvements to compensate for the opportunity cost of sale for private development.</p> <p>However, under the Leasehold Reform Act 1967 and subsequent legislation namely the Commonhold and Leasehold Reform Act 2002, Newydd have the "right to buy" the freehold of the land & each individual home through a process known as enfranchisement.</p> <p>This is a cumbersome route and costly for both purchaser and the Council as each individual home would have to be enfranchised and valued together with the issuing of formal notices and responses.</p> <p>Officers have sought legal and estates advice and have discussed the potential to negotiate an agreed valuation for the sale of the freehold on terms to be agreed.</p>

It will be necessary to obtain the consent from Welsh Government to authorise the transfer of the land as the General Consent under s.32 of the Housing Act 1985 only allows disposal of vacant properties to Housing Associations.

This report highlights the issues involved and requests agreement to proceed with the sale of the freehold interest through negotiation.

Recommendations

- 1.** That Cabinet notes the request from Newydd Housing Association (NHA) to purchase the Council owned land known as St Garmon /St Dyfrig Road, Penarth on a negotiated basis or alternatively to exercise the right to buy the land in line with the provisions of The Leasehold Reform Act 1967 and The Commonhold and Leasehold Reform Act 2002 through enfranchisement.
- 2.** That delegated authority be granted to the Director of Environment and Housing Services, and in consultation with the Cabinet Member for Housing and Building Services, Head of Finance and the Monitoring Officer/Head of Legal and Democratic Services to dispose of the parcel of land by the most appropriate means and on terms and conditions to be agreed to Newydd HA subject to securing the necessary consent of Welsh Government Ministers to dispose of the land pursuant to s.32 Housing Act 1985.
- 3.** That the Monitoring Officer/Head of Legal and Democratic Services be authorised to prepare, complete, and execute the required legal documentation to formalise the disposal of the Freehold interest.

Reasons for Recommendations

- 1.** To comply with the statutory provisions.
- 2.** To ensure that the Council obtains best consideration for the land in accordance with its statutory and fiduciary obligations and obtains necessary consent from Welsh Government.
- 3.** To legally formalise the disposal of the land.

1. Background

- 1.1** In 1989 the Council entered into a long lease with NHA on Council owned land, now known as St Garmon Road/ St Dyfrig Road, Penarth under a 125-year lease for the purpose of them developing the land for social rented housing and building 66 houses.
- 1.2** Newydd entered into a covenant guaranteeing the Council 100% nomination rights for the homes and all future vacancies. Newydd also covenanted to pay to the Council a percentage of future rental income (net of repairs and improvements) to compensate for the opportunity cost of sale of the site for private development.
- 1.3** The rent was based on a peppercorn basis for 35 years from the certificate date (October 1990), with rent thereafter based on 30% of the gross rents received. The rent element is therefore due to commence in October 2025 and would continue until the end of the lease term.

- 1.4 Newydd have formally requested the Council consider the sale of the freehold interest of the land to them and have offered to negotiate a market payment based on the valuation of the land and the covenants contained in it rather than follow the statutory right to buy or enfranchisement route.

2. Key Issues for Consideration

- 2.1 This type of leasehold arrangement has precedent not only in Wales but also in England, dating from a time when there was significant mutual advantage for local authorities and housing associations to develop land on this basis, rather than Council's disposing of the freehold outright to a Housing Association
- 2.2 The length of the lease term remaining, coupled with the covenants contained in the lease, presently make the asset unattractive to lending institutions and as a consequence Newydd have expressed an interest in purchasing the freehold interest in the land in order to attract loan security of an unencumbered asset.
- 2.3 Under the Leasehold Reform Act 1967 each of the houses within the estate have a long lease in excess of 21 years and the Head Leaseholder/tenant(in this case NHA) must have been the legal owner of the leasehold interest of the house for at least two years immediately preceding the service of the notice requesting the right to buy. There are further stipulations which Newydd also comply with.
- 2.4 The Commonhold and Leasehold Reform Act 2002 (CLRA 2002) removed the residency test which means that corporate tenants and non-residential individuals can also enfranchise, Newydd therefore, will have the right to buy the freeholds of each of the individual houses.
- 2.5 The tenant must pay the landlord for the acquisition of the freehold. The purchase price can be fixed by agreement between the parties and in the absence of agreement, by the leasehold valuation tribunal. The valuation basis for determining the purchase price is set out in the legislation and will depend on whether the tenant has the right to enfranchise by virtue of the original requirements of the LRA 1967, in this case Newydd only has rights due to the relaxation of the requirements under the CLRA 2002 and therefore would be a special valuation. The price payable under the special valuation method is the open market value of the freehold interest of the site and the house. However, the price is reduced by the value of any improvements the tenant has carried out to the house and the premises at its own expense.
- 2.6 The procedure to exercise the right to buy requires the tenant to serve a notice of the tenant's claim in the form prescribed by the Leasehold Reform (Notices) (Amendment) (Wales) Regulations 2002. Under section 9(4) of the LRA 1967 where a person gives notice of their desire to buy the freehold, the tenant is responsible for paying the purchase price and its own valuation, conveyancing and legal costs. The tenant is also responsible for the reasonable costs of the

landlord for investigating the tenant's right to acquire the freehold, valuation costs and conveyancing costs.

- 2.7** The introduction of the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) in tandem with Newydd's Right to Buy request has rendered the former covenants worthless by virtue of the fact that Council would be compelled to sell the freehold interest in the land.
- 2.8** To strengthen the important partnerships that exist with Registered Social Landlords (RSL's) in the Vale , the Council and its partners have recently signed a partnership agreement which establishes an agreed approach to how the Council and the RSLs will work together and forms a statement of commitment, setting out how affordable housing will be planned and developed. The sale of the freehold interest will enable Newydd as an important partner to continue to support the Vale in developing more affordable homes.
- 2.9** Newydd are valued partners in the Council's Homes 4 U scheme and as a result all Newydd vacancies are allocated via the Council's allocation policy. Consequently 100% nomination rights are retained.
- 2.10** Any negotiated sale of the Freehold valuation would result in a significant capital receipt being received which will be invested in the Council's own Housing development programme thereby increasing the number of social housing properties available to residents of the Vale.
- 2.11** The Council will need to obtain the consent from Welsh Government to authorise the transfer of the land under s.32 of the Housing Act 1985 as the General Consent contained within the legislation only allows us to dispose of vacant properties to Housing Associations.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** Looking to the long term - The Housing Business Plan allocates significant resource, some £270 million, towards the development of new Council homes over the next thirty years. The Council plans to complete a minimum of 500 new Council homes by 2025. Further homes will be considered for development utilising the capital receipt.
- 3.2** Taking an integrated approach - In April 2018, Welsh Government announced an independent review of affordable housing supply in Wales. The purpose of which was to examine whether more can be done to increase the supply of affordable housing in Wales, maximising the resources available to meet the clear commitment to deliver 20,000 affordable homes during this term of Government. The Council is committed to working with Welsh Government, its housing partners, communities, and the private sector in maximising the delivery of affordable housing in the Vale.

- 3.3** Involving the population in decisions - In arriving at a decision to provide new affordable housing, the Council will fully consult with its tenants and residents on development proposals and consider their responses, from the feasibility stage through to the determination of the planning application and when the scheme is being delivered.
- 3.4** Working in a collaborative way- The Council has strong established links with several Housing Associations which make a significant contribution to housing supply in the Vale. It is important this continues, and it is not the Council's intention to compete with Housing Associations. Therefore, the Council intends to work alongside our partners and envisages a complimentary approach to the delivery of affordable homes.
- 3.5** Understanding the root causes of issues and preventing them - The Local Housing Market Assessment (LMHA) 2019 highlighted the chronic shortage of affordable housing in the Vale of Glamorgan. In assessing the housing market, the LMHA calculates the net need for affordable housing, including social rented housing, intermediate rented housing and low-cost home ownership housing products, over the coming years. This assessment projects the headline annual need for affordable housing in the Vale of Glamorgan to be 890 units per annum between the years 2019 to 2024. The LMHA identified an overwhelming need for all types and tenures of affordable housing in the Vale. The Council has recognised this and is acting to invest significantly in new council homes and enable housing association development.
- 3.6** This proposal will meet:
 Meets the relevant Strategic Objective 2 of the Corporate Plan 2016-20
 Meets the Objectives 1-5 of the Well Being Plan 2018-23
 Meets all the Strategic Aims 1-4 of the Local Housing Strategy 2015-20
 Meets Strategic Objectives 1-4 of the Housing Development Strategy 2019-24

4. Resources and Legal Considerations

Financial

- 4.1** Any disposals of interests in land will be valued in accordance with Section 123 of the Local Government Act 1972 and the consents under the Housing Act 1985.
- 4.2** An external valuer will certificate the value of the sale of the Freehold interest in the land pursuant to S123 of the Local Government Act 1972.
- 4.3** There will be legal and valuation costs associated with the sale of the freehold, however these can be resourced from existing budgets.

Employment

- 4.4** There are no other resource issues to report currently.

Legal (Including Equalities)

- 4.5** As set out in the body of the report above.
- 4.6** The Vale of Glamorgan Council owns the freehold interest in the land containing the St Garmon and St Dyfrig Court development but is subject to a long lease with NHA.
- 4.7** The Council has the ability to dispose of land held for housing purposes in accordance with s.32(1) of the Housing Act 1985 subject to obtaining the consent of the Welsh Ministers pursuant to section 32(2) of the Housing Act 1985.
- 4.8** In the event that the Council did not agree to negotiate the sale of the land then Newydd would be able to pursue the purchase of the land by virtue of the enfranchisement process established in the Leasehold Reform Act 1967 as amended by the Commonhold and Leasehold Reform Act 2002.

5. Background Papers

None