

For General Release

REPORT TO:	CABINET 12th July 2021 COUNCIL 11th October 2021
SUBJECT:	Ongoing Review of Brick by Brick Croydon Ltd and the future of the company
LEAD OFFICER:	Katherine Kerswell – Interim Chief Executive Chris Buss - Interim Director of Finance , Investment and Risk
CABINET MEMBER:	Councillor Hamida Ali - Leader of the Council
CORPORATE PRIORITY/POLICY CONTEXT Delivery of the Croydon Renewal plan, to minimise the financial impact to the Council of Brick by Brick Croydon Ltd and to resolve the future of the company.	

FINANCIAL IMPACT

This report considers the future of Brick by Brick Croydon Limited (Brick by Brick) and recommends that the offer from the bidder be rejected and that Brick By Brick builds out 23 of the 29 sites in its ownership and returns the other 6 sites back to the Council for sale.

The impact of the decision means that the Council may need to write off a portion of the outstanding loan to Brick by Brick estimated at between £25.6 million and £52.7 million depending upon the performance of the company during the period in which the build out (and consequent sales) are completed. These costs will be offset in part by capital receipts arising from sites which may be sold following initial design work undertaken by Brick by Brick. This debt write-off may increase revenue capital financing costs by up to £1.85 million p.a dependent upon the level of loan written off.

There will be one-off revenue costs estimated at £160,000 arising from this proposal.

FORWARD PLAN KEY DECISION REFERENCE NO.: 3321CAB

The notice of the decision will specify that the decision may not be implemented until after 13.00 hours on the 6th working day following the day on which the decision was taken unless referred to the Scrutiny and Overview Committee.

1. CABINET RECOMMENDATIONS

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below.

Cabinet is recommended (acting, where relevant, on behalf of the Council exercising its functions as sole shareholder of Brick by Brick Croydon Ltd) to:

- 1.1 Reject the offer for the purchase of Brick by Brick (Croydon) Ltd.
- 1.2 Agree that a modified build out scenario of 23 sites will be implemented and to

note that in order to deliver that, Brick by Brick will require additional management and technical support, the costs of which are factored into the costs shown in this report and as further consequence of this decision that Brick by Brick will return 6 sites to the Council on the basis that they will be marketed for sale (and on the basis that site ownership will either remain with Brick by Brick or transfer to the Council, whichever is most efficient for maximizing value or the efficiency of the sale process).

- 1.3 Agree that the decisions made under this Report shall take effect as amendments to the current Business Plan of Brick by Brick (and as a shareholder decision under the Articles of the company). In addition, and also as shareholder, the Council will require Brick by Brick to issue monthly reports to the Council to update on its financial position, progress with development of sites, sales, any key contractual issues and any other relevant matter (as needed). Such reports are to be presented to the Cabinet on a quarterly basis.
- 1.4 Confirm that, in accordance with the February Cabinet report, sales receipts may continue to be recycled by Brick by Brick and agree that the S151 Officer, in consultation with the Chief Executive and Monitoring Officer be given authority to approve those ad-hoc sales receipt recycling requests from Brick by Brick, up to a total amount of £5m in any one transaction and following the terms of the consolidated loan agreement, reporting on a quarterly basis to Cabinet.
- 1.5 Delegate authority to the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer, to make any necessary formal shareholder resolutions in order to give effect to the above recommendations and to authorise the entering into any of the necessary formal legal documentation that arise as a consequence (including (i) to confirm the appointment of consultants to provide the necessary additional management and technical support, and (ii) in respect of the sale of the 6 sites, as are referred to in recommendation 1.2).
- 1.6 Delegate authority to the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer, to vary the loan agreement in respect of the sites returned to the Council sites (subject to SDLT and various other tax advice) and with any such modifications being reported in the quarterly report to Cabinet.
- 1.7 Otherwise note the progress made with regard to Brick by Brick.
- 1.8 To thank the Improvement and Assurance Panel for their advice and support in the production of this report.

COUNCIL RECOMMENDATIONS

- 1.9 Council is asked to note the recommendations set out above, which were considered by Cabinet on 12th July 2021 and that Council shall receive a verbal update in respect of the outcome.

2. EXECUTIVE SUMMARY

- 2.1 This purpose of this report is to receive and note the proposal for the future of Brick by Brick and considers the evaluation of the three options decided by Cabinet in February 2021 namely a partial build out, a full build out or possible sale of the company. The Council has continued to engage PwC to undertake financial work and engaged Savills to undertake additional technical and professional due diligence. In light of the now urgent need to make decisions and take forward the recommended course of action, none of the other options previously considered (e.g. seeking market offers for the company) remain valid and do not merit re-consideration.
- 2.2 The partial build out option was intended to be a build out of sites until October 2021 and then a novation of existing sites to a developer to complete. The fact that six sites are not yet under contract means that if these were started now, considerably more sites than originally envisaged would require novation.
- 2.3 Advice has been taken from Savills (as independent property consultants with relevant experience) and they advise that the assumptions made on cost recovery on novation are optimistic and that novation itself may be difficult to undertake. In the light of this professional advice, this partial build out option is not now recommended in that form.
- 2.4 The full build out option was originally envisaged to be all 29 sites. However, 6 sites are not at present under formal contract. As the value of the 6 sites is close to the estimated net revenue from those sites, it is proposed to return those sites to the Council for sale (either by way of a land transfer back to the Council or by other means which maximise value and enable an efficient sale process). This option is in effect now the partial build out option without novation. It is currently forecast that the remaining 23 sites will be completed by February 2023 but that unit sales will extend beyond that date. It is estimated that 22 of the sites will be completed in the current financial year. This will require Brick by Brick to engage additional management and technical support which has been costed into the financial impact. This option will involve the Council incurring additional direct costs estimated at £100,000 in 2021/22 and £60,000 in 2022/23. Based on the modelling undertaken, the net loan written off with this option will be between £26.6 million and £52.7 million excluding any land value which may accrue to the Council.
- 2.5 In the sale option the loan write offs would be between £54 million and £68.4 million. As will be explained further in the report, this option is not recommended.
- 2.6 Upon conclusion of the process recommended under this report, Brick by Brick will have delivered 774 residential units in the Borough.

3. UPDATE ON THE REVIEW

Background

3.1 The Cabinet at its meeting on the 18th February 2021 received a report on the way forward on Brick by Brick and agreed a number of specific recommendations concerning Brick by Brick.

These were in summary to:

- a. Agree to proceed with the option set out as scenario 2 of that report, which is a build out of sites by Brick by Brick combined with a sale of sites under construction whilst still considering the option of a sale of the business, with a further report to Cabinet in April / May 2021.
- b. Agree that revised funding arrangements be entered into with Brick by Brick to reflect the current loan positions and proposals for the future, including, where relevant, moving to a 100% debt funding position (as opposed to 25% equity and 75% debt); extending relevant loans and repayment periods; allowing delays with repayments of existing loans; agreeing to further funding of no more than £9.99 million in relation to sites proposed for Brick by Brick to continue developing (and only where absolutely necessary within an appropriate repayment period),
- c. Agree for the necessary steps to be taken, in accordance with the Council's Tenders and Contracts Regulations, to appoint marketing agents to consider the disposal options for the College Green site (note, this is the site adjacent to Fairfield Halls which was due to transfer to Brick by Brick, but is currently held by the Council);
- d. Agree for the Council to review those sites Brick by Brick propose not to develop and to receive a future report to Cabinet on the potential use and future of each site
- e. Approve that the Council's Housing Revenue Account (HRA) can acquire residential units from Brick by Brick as part of this review.

Update on Options.

3.2 Following the Cabinet decision in February 2021, the Cabinet considered at its meeting on the 17th May 2021, actions concerning Fairfield Halls and the purchase of social rented units. It also noted the agreement of a revised loan agreement between the Council and the Company. It was also reported that a bid had been received from a single bidder for the company, and that a best and final offer was received from the bidder on April 19th.

Due diligence has subsequently been undertaken on that bid both with regards to the company making the offer but also on whether the bid reflects what might have been receivable if the Council had marketed the opportunity to acquire Brick by Brick. Unless otherwise mentioned, all costs and values are based on cash flows produced by Brick by Brick as at March 2021.

The Bid

- 3.3 The February 2021 Cabinet report detailed the fact that the Council had received an unsolicited expression of interest for the purchase of Brick by Brick. Cabinet agreed to proceed with exploring this offer alongside the other options as explained in this report. The expression of interest has materialised into an offer. As part of the bid and offer process the Council granted the bidder a period of exclusivity to enable them to have a degree of comfort whilst they invested in the initial due diligence on Brick by Brick. The detail of the offer is contained in the restricted agenda.
- 3.4 The Council has undertaken both independent financial due diligence on the bidder and independent technical due diligence on their offer to assess it. As it is a sole bidder the Council has to satisfy itself that the offer is reasonable and in particular that it is comparable to a bid that it might have received in competition. The financial and technical reports from PwC and Savills are attached as appendices 2 and 3 to the restricted paper.

Savills have taken the same base information as the bidder and their approach was to *“undertake a series of development appraisals for each site utilising standard appraisal methodologies to understand the underlying potential value of the real estate within the Brick by Brick portfolio.”* This is the same approach that any purchaser would undertake.

Analysis of the bid and the company.

- 3.5 Savills analysis of the bid can be summarised as follows: *“On the basis of the information we have reviewed, the principles of the offer are not unreasonable but further due diligence and negotiation is required.”* In that regard, see the comment made at the end of paragraph 7.1 regarding further due diligence and negotiation of the sale, and therefore the risks that attach to any sale process of this kind.
- 3.6 PwC have undertaken financial due diligence on the bidder and this is included in Appendix 2 on the restricted agenda. The summary of their analysis is that *“Overall our view is that we have seen no evidence that the financial standing of the bidder should rule them out as a suitable acquirer of BBB.”*

Part Build out option

- 3.7 The February 2021 Cabinet agreed that Brick by Brick would be funded to build out 29 sites, the majority of which were expected at that time to be completed by October 2021. In the PwC analysis, this is described as Scenario 2. The intention then was to attempt to sell on the two larger sites that were in progress with anticipated sell dates post 2021 and to have a phased wind down of the activities of Brick by Brick. The position has moved on since then and the table below shows the position at the end of May 2021 on each of the 29 sites.

Site	No of units	Revised date
Faithful	9	Dec-19
Windmill Place	24	May-20
Pump	14	Jul-20

Drummond	28	Aug-20
Chertsey	7	Nov-20
Flora	27	Mar-21
Longheath	53	Jun-21
Marston	12	Jun-21
Northbrook	11	Jun-21
Ravensdale	30	Jun-21
Auckland	57	Jul-21
Montpelier	34	Jul-21
Tollers	40	Jul-21
Tollgate	42	Jul-21
Warbank	36	Jul-21
Heathfield	20	Aug-21
Oxford	9	Aug-21
Thorneloe	10	Aug-21
Warminster	6	Sep-21
Avenue	12	Oct-21
Coldharbour	8	Oct-21
Kindred	128	May-22
Lion green road	157	Feb-23
Academy	9	Not on site
Belgrave and Grosvenor	102	Not on site
Coombe road	9	Not on site
Eagle Hill	8	Not on site
Malton	9	Not on site
Regina road	19	Not on site
	930	

3.8 The February report to Cabinet indicated that all of the above sites were either transferred to Brick by Brick or were required to be transferred to Brick by Brick. The latter was required to enable some of the requirements of the section 106 agreements relating to those sites to be fulfilled although this was not explicit in the February report. At that time it was assumed that works would commence on all sites. However, the table above shows that based on information provided by Brick by Brick in June 2021, 6 of the sites have not commenced. The Savills report indicates that there is limited viability in these sites and it is recommended that the Council instruct Brick by Brick not to commence development of those sites and that they be returned to the Council. The non development of these sites reduces the Council's risk exposure. These sites will be marketed for sale by the Council together with any adjacent land acquired by Brick by Brick in anticipation of development. It had been the intention in the February report that sites that were uncompleted were marketed by Brick by Brick, and those sites would have all have involved the novation of a building contract as well. This does not apply to these sites not yet in development and it is considered that the Council would be better placed to maximise value. The return and sale of these sites will be undertaken to ensure best consideration is obtained and on a basis which is tax efficient (as reflected in recommendation 1.2).

With regard to the remaining 23 sites, 21 sites are expected to be completed by the end of the calendar year. The remaining two sites would both run beyond the end of the year. Of the two the Kindred site could be completed whilst Brick by Brick is being wound down if Scenario 2 was chosen as originally envisaged in the February Cabinet report.

3.9 The above leaves one significant site which would straddle into the new financial year which is Lion Green Road. The four main alternatives for that site are as follows:

- that the site is built out by Brick by Brick;
- the site is transferred to the Council along with novation of the building contract(s) and the build out is undertaken directly by the Council;
- the site is sold mid-build at the same time as the other sales (as envisaged in Scenario 2); OR
- the building contract is terminated and the site sold as is now.

The analysis of these options is contained in Appendix 5 on the restricted agenda. The appendix indicates that of the four options, the direct build is not practicable, the termination and sale of site option would lead to significant additional cost, the option of transferring to the Council and novation of building contract(s), although possible is practicable but difficult and unlikely to recover costs leaving the build out option as the most viable for the Council.

3.10 Discussions with the directors of Brick by Brick, have led to the conclusion that the company would need additional support in any build out option as the company is likely to lose staff. The Council has, after discussion, with Homes England, approached three organisations to enquire about providing that support and two of whom responded with written submissions which have been examined by the Council and passed to the Directors of Brick by Brick and the costs are factored into the cash flows for winding down and closure costs. The two firms have subsequently been interviewed by the Council & members of the Improvement and Support Panel to gain assurance that they can provide the level of management support necessary to enable Brick by Brick to continue to deliver the build out of the 23 sites and to maximise the net returns to the Company (enabling as much of the consolidated loan as possible to be repaid.) It is a matter for the directors of Brick by Brick to make the appointment, but either firm are in the view of Council officers capable of providing the level of support required by Brick by Brick, and subject to the agreement of terms one of them would be the preferred provider. The appointment will be decided by the directors and then confirmed by the Council. The costs of the appointment have been included in the estimates provided by PwC and Savills.

In the event that the recommendations are approved the Council will also incur costs of additional support above that incurred to date during the build out estimated at £100,000 in the current year and £60,000 in 2022/23 and a yet to be determined cost of providing an ongoing level of support to private house purchasers over a number of years after the completion on site either through a residual Brick by Brick or through other means. The nature of support to private house purchasers will be the subject of a further report in due course.

Full build out option.

- 3.11 The February 2021 Cabinet report contained the option of a full build out of the 29 sites (scenario 1). This is still a potential option to the Council, and the costs and benefits of that are included in Appendix 2. The costs do include the costs of additional management support to Brick by Brick and assume that contracts are completed in line with the programme. This would mean that for the six sites not yet under construction as detailed above, contracts would be let with eventual conclusion of the programme in 2024. These sites have marginal additional return over and above the assessed sale value of the land (£8 million-). Additionally-, the Council would need to provide in house support to Brick by Brick-, who would also require increasing levels of external support as projects completed. In addition arrangements would be required post completion to support private house purchasers over a number of years. In the light of the marginal potential gain from building out the last 6 sites, this option is not recommended for further evaluation.

Analysis of options

- 3.12 Two analyses of the options are contained in the PwC report in Appendix 2 and the Savills report in Appendix 3 both on the restricted agenda. Both reports analyse the build out options from slightly different but complementary perspectives.
- 3.13 The net loan written off of the build out option would be between £ 25.6 million and £-52.7 million.

In the Sale option the loan write offs would be between £54 million and £68.4million.

In addition to the loans written off, the Council would incur additional costs arising from any of the options. These costs would be charges to the revenue budget. These are in addition to the costs incurred to date since the original report from PwC on Brick by Brick. These costs are detailed in paragraphs 6.1 and 6.2

There are also potential cash flow advantages to the Council in the build out option. Under the sale offer, no repayments of loans are expected until 2022-. Whereas in the build out option model, repayments are forecasted to be made in 2021/22. These repayments in both options are of course dependent upon sales receipts arising and as such any advantage is dependent upon the timing of receipts from sales.

The Council would under the build out option continue to act as funder for Brick by Brick, because the revised loan agreement noted in the May report and as agreed in February allows Brick by Brick to recycle with the Council's permission proceeds from sales. However, neither report detailed how this would be authorised. Accordingly, it is requested that the Cabinet agree that sales receipts may continue to be recycled on the agreement of the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer with specific authority to approve ad-hoc sales receipt recycling requests from Brick By Brick, up to a total amount of £5m in any one transaction and following the terms of the consolidated loan agreement, reporting on a quarterly basis to

Cabinet. It should be noted that there may be more than one such transaction a month.

- 3.14 The legal advice set out in below and in Appendix 4 (based on a set of initial queries regarding the initial offer of sale) of the restricted agenda gives the Council clear guidance as to what it can and must consider when making this decision which may include both financial and non-financial considerations. However, when taking decisions, the Council needs to be mindful of ensuring that it only considers relevant issues, and disregards irrelevant ones.
- 3.15 The Cabinet when considering the February 2021 report took the view that in constraining its involvement in Brick by Brick to the 29 sites the Council was minimising its liabilities and risk exposure. Neither of the two options are risk free. The sale of the company to the party making an offer does significantly negate risk however at the cost of lower receipts to the Council. The table below is a summary of the range of risks under the two options to be read in conjunction with the body of this report and its supporting material..

KEY FACTOR	OPTION 1 – SELL TO BIDDER	OPTION 2 – BUILD OUT
Funding risk	Additional working capital to be funded by bidder	Additional working capital to be funded by the Council
Revenue / profit risk	Risk shared Partial incentivisation for bidder Forward fund arrangements for affordable packages likely to transfer	No transfer of risk Forward fund arrangements for affordable packages likely to transfer
Construction risk	All transfers (subject to contract)	No transfer of risk
Development / planning / land risk	All transfers albeit requiring Council resource to resolve outstanding planning/land issues	No transfer of risk

Post development risk	All transfers (subject to contract)	No transfer of risk
Management risk	Substantial transfer of delivery risk (subject to contract) but the incentivized nature of the deal would require client side resource	Partial transfer to new Development Manager. Will still require significant client-side resource.
Reputational risk	Partial transfer (residual risk because of former ownership and status as public body)	No transfer of risk
Control risk	Very limited control for LBC (some controls possible through sale contract)	Full control for LBC
Land/portfolio transactional risk	Risk of exclusivity with one party; lack of competitive tension	Transactional risk associated with sale of the six sites where development not underway
Plot transactional risk (consumer or bulk)	All transfers (subject to contract)	No transfer of risk
Counterparty risk	bidder covenant strength TBC (PWC providing report) Limited exposure to London development / sales market	Scope and form of contract with new DM team TBC.

For each of the above, mitigations will need to be put into place to reflect the risk involved. The largest risk of build out is management failure and collapse of Brick by Brick. The cost of additional support to Brick by Brick to mitigate this risk has been priced into the both sets of figures.

Based on the modelling work by PwC the effective “price” or potential loss of value to the Council of that risk transfer is £19 million. Savills estimate of the price of the risk transfer is between £15.7 million and £28.4 million.

- 3.16 There is no disputing the fact that the build out option has higher levels of risk than the sale option and that the latter would enable the Council to concentrate resources which could otherwise be utilised on the delivery of other parts of the Croydon Renewal Improvement Plan. The Council has to decide on the balance of risk and reward and fully consider the reduced level of loan write offs from building out the 23 sites.

On the one hand there is the greater certainty offered by the sale option (as illustrated in the Savills' report) but which comes with additional potential costs incurred in terms of loan write-off; whether this is outweighed by the potential reward accompanying the risks in the build out option is a key consideration.

On balance, although the build out option has a higher element of risk, a number of those risks can be mitigated. On that basis, together with the potential of a higher return, it is recommended that the sale option and offer from the bidder is rejected. Savills' in their advice have suggested that the Council go back to the bidder and see if there is any improved offer available. This has been done and no improved offer has been received. Accordingly the sale offer is not recommended for acceptance.

Next Steps

- 3.17 The Cabinet could chose to see if it is possible to obtain another purchaser for the company. PwC estimate that to do that to the stage of the current bidder's offer would take in the region of 8 weeks. That would then need to be assessed by the Council. By the time that had been undertaken, based on the scheme completion dates shown in para 3.7, and the time required for further due diligence, most of the sites would be completed. In addition, on the basis of the Savills' assessment that the bid is structured in line with how other purchasers might bid, it is very uncertain as to whether a marketing exercise would produce a substantially better financial outcome.
- 3.18 If the Cabinet accepts the recommendation to build out as described in paragraphs 3.7 to 3.10, Brick by Brick will need to release from its programme (and the build out) land that has been transferred to the Company together with any other adjacent sites that the Company has acquired which are now not being built out. This land will then be marketed by the Council. The 6 sites affected by this are shown in para 3.7 "as not on site". In addition, the company will need to engage additional management support to ensure that the build out occurs in a cost effective way and a risk reduced manner. This will need to be undertaken in a timely manner with full support from the Council.
- 3.19 Under the Articles of Association the company is required to operate in accordance with its Business Plan, as approved and updated by the Council as shareholder. The adoption of this proposed course of action will therefore take effect as a variation to the current Business Plan. In light of the level of investment the Council has made via loans to the Company, monthly reports will be required to be made updating the Council of the financial position, giving progress on sites, sales and any key contractual issues. This will form the basis of a proposed quarterly report to Cabinet.

4. CONSULTATION

- 4.1 No formal consultation has been made on this report, other than factual accuracy checks with external third parties including with the Directors of Brick by Brick.
- 4.2 Officers have worked closely with colleagues on the Improvement and Assurance Panel who have provided considerable advice on the options. They have also suggested follow up work with outside parties which has been undertaken. Thanks need to be placed on record for the advice that has been provided.

5. PRE-DECISION SCRUTINY

- 5.1 This report has been submitted to the Scrutiny and Overview Committee for comment prior to submission to the Cabinet.

6 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 6.1 Since the original report by PwC the Council has incurred direct external costs of £215,000.
- 6.2 In the event of the sale of the Company, additional revenue costs of £250,000 are likely to be incurred in terms of additional financial, technical and legal costs as part of the due diligence and sale process. In addition the Council will need to provide additional support from existing staff. In the build out option the costs of additional support are estimated at £160,000. In either case these costs can be met from an earmarked reserve.
- 6.3 The key financial exposure for the Council in relation to Brick by Brick is the £161 million of loans that it has provided to the company which includes accrued interest income. In both options the accrued interest will be repaid however in both options there will be unpaid debt interest-. As of 2021/2022 the Council has now started to provide for Minimum Revenue provision (MRP) within its General Fund revenue budget for the amount that the Council assess to be at risk of non-payback. The MTFS includes a provision for the revenue effects of writing off of £31 million of loans to Brick by Brick, after allowing for the provision of the capital costs of the redevelopment of Fairfield Halls. Additional unbudgeted MRP costs of between nil and £1.85 million p.a could be incurred depending upon the eventual level of debt unrecovered. These costs could be reduced by the sale of sites not transferred to Brick by Brick but which have been subject to planning applications . The transfer and sale of the six unbuilt sites will result in any consolidated debt on those sites within the loan agreement being reclassified under the Loan agreement with Brick by Brick as Category B debt, which will be lower priority and will no longer accrue further interest. This will require the existing loan agreement to be modified, and in line with previous delegations it is recommended that authority to modify the loan agreement be granted to the the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer and that any such modifications be reported in the quarterly report to Cabinet.

Approved by: Chris Buss, Interim Director of Finance Investment and Risk.

7. LEGAL CONSIDERATIONS

- 7.1 External legal advice has been sought in relation to this report. Under the Council's general power pursuant to Section 1 of the Localism Act 2011, the Council may exercise its rights as sole shareholder of Brick by Brick Croydon Ltd to take the steps identified in this report. Under the Articles of the company, the matters addressed are within the scope of "reserved matters", i.e. matters for which the company needs shareholder approval and where the Council (as shareholder) may direct the company (and its directors).
- 7.2 In making decisions under this report, Members will need to be mindful of the Council's financial position, its fiduciary duties and the requirement to have regard to all relevant factors and to disregard irrelevant ones. The Council must act in accordance with the principles of Wednesbury reasonableness, meaning to make decisions that a rational person might make, having regard to all relevant considerations.
- 7.3 In particular, Members should (i) weigh up the risks and benefits under the main options presented (as well as taking into account the other options that may be available but which are ruled out), (ii) take note of the risks under the recommended approach and especially the financial exposure that may accrue by way of the writing off of a portion the consolidated loan made to the company.
- 7.4 Detailed Legal advice is included as Appendix 4. In that advice attention is drawn to paragraph 5 which reminded the Council of general principles that apply to decision-making (as also described above). The advice also touched on the fact that on any sale of a company the offer made will be subject to due diligence and agreement of commercial terms. Accordingly, the offer made for the purchase of the company carries the inherent risk that either it may not get to completion, or that the offer price might be reduced. Moreover, any sale would be subject to certain warranties (made by the Council as seller) and therefore which involve a residual risk post-sale; an example being as to whether the company has outstanding tax or other undisclosed financial liabilities.

Approved by Nigel Channer, Interim Head of Commercial & Property Law on behalf of Doutimi Aseh, the Interim Director of Law & Governance

8. HUMAN RESOURCES IMPACT

- 8.1 There are no immediate HR considerations in this report for Council employees or staff. If any should arise these will be managed under the Council's policies and procedures.

Approved by Gillian Bevan, Head of HR Resources, on behalf of the Director of Human Resources

9. EQUALITIES IMPACT

- 9.1 There are no equalities impacts arising from this report. However the implications of the issues raised and how they are addressed may have an effect on the medium-term financial plan. Any subsequent savings plans that have a staffing impact or impact on vulnerable and/or groups that share a protected characteristic will be subject to agreed HR procedures, formal consultation and equality analysis.

Approved by: Yvonne Okiyo, Equalities Manager, Resources Department

10. ENVIRONMENTAL IMPACT

- 10.1 There are no environmental impacts arising from this report

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There are no Crime and disorder reduction impacts arising from this report

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 12.1 The reasons for the decision are embedded within the report. As stated, there is a balance of risk and reward to be considered and on analysis, the additional potential costs incurred in terms of loan write off under the sale option outweigh the risks of the build out option. This assessment is based on the professional opinion of officers with the benefit of expert independent professional advice. The recommendations presented for consideration by Members are made in the context of the loans to Brick by Brick and the costs of the alternative options, and are considered therefore to be those that will achieve a best value outcome in the interests of the local taxpayer.

13. OPTIONS CONSIDERED AND REJECTED

- 13.1 The Council had considered earlier a range of options ranging from immediate closure to continued build out of the full portfolio. These were reduced to three options in February. The paper details the review of the remaining options available now to the Council of either building out or selling the company-, the option of remarketing is rejected due to time constraints-.

14. DATA PROTECTION IMPLICATIONS

- 14.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

- 14.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

NO

CONTACT OFFICER: Chris Buss, Interim Director of Finance,
Investment & Risk

APPENDICES TO THIS REPORT: All on restricted agenda

Appendix 1 – Offer

Appendix 2 – PwC report on offer and analysis with other scenarios

Appendix 3 – Savills report on offer

Appendix 4 – Legal Advice from Browne Jacobson LLP

Appendix 5 – Lion Green Road analysis

BACKGROUND DOCUMENTS: None