

NOTICE OF MEETING

OVERVIEW AND SCRUTINY COMMITTEE

**Thursday, 2nd March, 2017, 7.00 pm - Civic Centre, High Road,
Wood Green, N22 8LE**

Members: Councillors Charles Wright (Chair), Pippa Connor (Vice-Chair),
Makbule Gunes, Kirsten Hearn and Emine Ibrahim

Co-optees/Non Voting Members: Uzma Naseer (Parent Governor Representative),
Luci Davin (Parent Governor representative), Yvonne Denny (Co-opted Member -
Church Representative (CofE)) and Chukwuemeka Ekeowa (Co-opted Member -
Church Representative (RC))

Quorum: 3

- 6. CALL-IN - RECOMMENDATION OF A PREFERRED BIDDER FOR THE
HARINGEY DEVELOPMENT VEHICLE (PAGES 1 - 34)**
 - a. Report of the Monitoring Officer
 - b. Report of the Director of Regeneration, Planning and Development

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Tuesday, 28 February 2017

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Report for: Special Overview and Scrutiny Committee, 2 March 2017

Title: Call-in of Cabinet's decision on Haringey Development Vehicle – Appointment of Preferred Bidder

Report authorised by : Lyn Garner, Director of Regeneration, Planning & Development

Lead Officer: Dan Hawthorn, Assistant Director for Regeneration

Ward(s) affected: All

**Report for Key/
Non Key Decision:** Non-key

1. Describe the issue under consideration

- 1.1 On 14 February 2017, the Council's Cabinet approved a report noting the progress on the procurement of a partner with which to establish the proposed Haringey Development Vehicle ((HDV); recommending Lendlease as the preferred bidder as a result of that process; and describing the process to be followed following the agreement of a preferred bidder.
- 1.2 Following two call-ins of that decision made in accordance with Council procedures, this report provides further information to support the Overview and Scrutiny Committee's consideration of the issues raised in the call-ins.

2. Cabinet Member Introduction (Councillor Alan Strickland, Cabinet member for Housing, Regeneration & Planning)

- 2.1 My introduction to the original report considered by Cabinet on 14 February set out the case as I see it for that decision. This report deals with the specific points raised in the call-in, and I have nothing to add beyond my strong conviction that nothing raised in the call-in or set out in this report changes my view that the decision taken on 14 February was both a sound one, and the right one.

3. Recommendations

- 3.1 It is recommended that the Committee take into account the information in this report when considering its decision on this matter.

4. Background information

The decision and the call-ins

- 4.1 On 14 February 2017, Cabinet approved the recommendations set out in a report entitled 'Haringey Development Vehicle – Appointment of Preferred Bidder'. The decision and the report are available on the Council's website, at the link given in section 11 below.

4.2 Following the issuing of the draft minutes for the Cabinet meeting, two separate call-ins of that decision were received and validated, in line with agreed Council procedures. Accordingly, the matter is now to be considered by the Overview and Scrutiny Committee.

4.3 Sections 5 and 6 of this report describe and respond to each of the reasons given for the call-ins, and to the variations of action proposed.

5. Call-in 1 (Councillor Bob Hare)

Reasons for call-in

5.1 **“We are concerned by the choice of Lendlease as the preferred bidder for the HDV for the following reasons:”**

(a) “The recent Heygate Estate renewal by Lendlease in Southwark, has in our view, not led to good outcomes for local residents or the council. A large council estate was replaced with many homes for sale and only a small number of social homes on site.”

As discussed in the 14 February Cabinet meeting, the approach to replacement of social rented homes at the site of the former Heygate estate (now known as Elephant Park) was agreed between Southwark Council and Lendlease in line with the terms of Southwark Council’s procurement specification. Elephant Park is one part of Southwark Council’s wider provision of affordable housing across the Elephant & Castle opportunity area.

Given these locally specific circumstances, and the fundamentally different structure of the relationship between Haringey Council and Lendlease under the proposed HDV compared to the arrangement in Southwark, the issue of reprovided homes at the former Heygate estate has no bearing on the current evaluation and award of preferred bidder status.

5.2 **(b) “Lendlease have been sued by unions for blacklisting construction workers.”**

As discussed in the 14 February Cabinet meeting, this issue relates to the historical activity of a company subsequently acquired by Lendlease. This is addressed by Lendlease on its website at:

<http://www.lendlease.com/uk/expertise/what-we-do/construction/>

This matter has no bearing on the current contractual relationships of Lendlease and its employees, or on the current evaluation and award of preferred bidder status.

5.3 **(c) “Lendlease has admitted it overbilled clients for more than a decade and has agreed to pay \$56 million in fines and restitution in the United States of America.”**

This matter relates to historical practices of a US construction subsidiary of Lendlease, whereby guaranteed overtime hours for the best site foremen were charged to its clients. The charge was then paid out to the relevant foremen, and not retained by the subsidiary. Lendlease Corporation Ltd and the senior management of Lendlease Americas co-operated fully with the investigation by the US Attorney's office and undertook numerous remedial actions. In 2012, the subsidiary entered into a Deferred Prosecution Agreement (whereby a prosecutor agrees to suspend prosecution in exchange for a defendant agreeing to fulfil certain requirements) and all charges were dismissed in May 2014.

This matter has no bearing on the current evaluation and award of preferred bidder status.

5.4 **“We are concerned by the particulars of the HDV and the agreement with Lendlease as mentioned in the public Cabinet report:**

(a) We are concerned that the commitment to affordable and social housing is weak.”

The Council's strong commitment to affordable housing is clearly set out in published policy and delivery documents that inform the Council's work on housing and regeneration including:

- the Corporate Plan (Priority 5, Objective 1):

“We will build more council-owned homes, alongside housing association/registered provider homes – including those for social/affordable rent and low cost home ownership”

“We will deliver more shared ownership housing and support low and middle income residents to get on the housing ladder.”

- the Housing Strategy (Section 5, Objective 1: Achieve a step change in the number of new homes built)

“Our priorities are to...increase the supply of affordable homes for rent and for home ownership”

“On a site by site basis we will seek the maximum reasonable proportion of affordable housing on all sites with a capacity of ten or more homes.”

- The Local Plan (Strategic Policies DPD, SP2 Housing)

“Provision and access to high quality and affordable housing is a key priority.”

“The Council will seek to ensure that everyone has the opportunity to live in a decent home at a price they can afford and in a community where they want to live”

These core policy documents were fundamental to the procurement of a partner in the HDV, and all bidders were clear about the role of the HDV in delivering the Council's priorities in this area. This has been considered in the evaluation of the bids. The delivery of more and better affordable housing is a core driver of the Council's proposal to create the HDV.

Given that there are not yet any specific proposals or agreed business plans for schemes to be taken forward by the HDV, and without any more detailed information on which elements of the HDV proposals are considered 'weak' in this area, it is not possible to respond in greater detail on this point.

5.5 **“(b) We are concerned that there is no guarantee that council tenants and leaseholders will have the same rights they currently have or will be offered a similar home in the same area. In our view ‘aim’ and ‘seek’ to provide protections are not sufficient assurances.”**

The Council's Estate Renewal Rehousing and Payments Policy states (at paragraph 7.2) that *“The Council will aim to offer secure tenants the option of returning to a new home on their estate where possible if they choose to do so.”* This policy was the subject of public consultation before its adoption by Cabinet in July 2016.

This policy covers all estate renewal projects, however they are delivered. For the projects proposed to be delivered by the Haringey Development Vehicle, including at Northumberland Park, the Council leadership has made a clear commitment to go further and offer a guarantee of return to every resident that wants it.

Each estate renewal project is unique so detailed work has to be done before the precise options for residents can be set out. This includes understanding the circumstances and wishes of each individual household and how they match up with the new homes being built and the timetable for development. Only then is it possible to determine how best to accommodate every family that wants to stay in the area. But that doesn't change the overall commitment. The Council has already been able to make such a guarantee on other estates in the borough, such as the High Road West development in North Tottenham.

Any estate renewal project will be of concern to people directly affected, which is why there will be extensive consultation with all residents and businesses (including statutory consultation with secure tenants) to ensure both that they help shape the plans and that they understand their rights and options.

- 5.6 **“(c) We are concerned that council tenants, leaseholders, local businesses and residents in general, have not been consulted on the proposal to form the HDV and the consequences it will have for these groups.”**

As set out in the Cabinet response to the Housing & Regeneration Scrutiny Panel’s view of HDV governance, also agreed at Cabinet on 14 February 2017 (in the response to recommendation 2(c)) *“existing residents will be heavily involved in shaping and responding to the redevelopment proposals for each site. In respect of Council secure tenants, statutory consultation under the Housing Act 1985 will be carried out with tenants as appropriate in future. Existing residents and tenants in the commercial portfolio have been kept informed about the HDV proposals as they have emerged.”*

Wider stakeholders will also have ample opportunity to engage in these proposals.

- 5.7 **“(d) We are concerned that the construction exclusivity clause that will see a percentage of construction contracts going to Lendlease’s construction arm may not represent the best value for money.”**

Construction exclusivity clauses in an agreement of this sort are not unusual. It is also worth noting that there will likely be times when the commitment of a known construction company to prioritise the work of the HDV will be an advantage.

However, it is accepted that such an approach could – managed badly – risk poor value for money for the HDV as developer, and therefore for the Council given its 50% stake in the HDV. On that basis, the Council has been clear that such an approach can only be agreed if sufficient safeguards are in place which guarantee value for money.

The principles around such safeguard requirements are already agreed with the preferred bidder. These terms will be further clarified and specified during the preferred bidder stage. The Council cannot reach a determination on whether the necessary safeguards are fully in place until the Council’s discussions with the preferred bidder are concluded at the end of the preferred bidder period, and the final agreements are proposed to Cabinet, as expected in summer 2017. Therefore, a detailed response on how value for money will be satisfied is not yet available.

- 5.8 **“(e) There are several instances in the Cabinet report where it is suggested Lendlease may charge for their expertise, management etc. We understood that one of the reasons for the HDV was to save the council money and avoid paying for such expertise.”**

It has never been suggested that the HDV could be a mechanism whereby the Council could avoid contributing to the costs of development. As set out in paragraph 6.18 of the 14 February Cabinet report, the joint venture model gives an ‘opportunity for *reduced* costs’ in that development costs are shared with the private partner. The model proposed by the Council to all prospective bidders

always envisaged that normal costs of development and asset management would be payable by the HDV; the existence of these fees was not unique to the Lendlease proposal. These costs would be payable in any of the development options considered in the November 2015 Cabinet report.

5.9 **“(f) We believe that overall, the risk of the proposed actions, outweigh the suggested benefits.”**

As set out in the Cabinet response to the Housing & Regeneration Scrutiny Panel’s view of HDV governance, the lengthy procurement and negotiation process which has led to the recommendation of a preferred bidder has included the development of detailed legal agreements where the Council’s principal preoccupation has been to manage its exposure to risks associated with the HDV, whether those be financial risks, reputational risks or risks that jeopardise the achievement of key HDV outcomes. The risks of not securing growth on council land – of inadequate housing and economic opportunity for Haringey residents, and of unsustainable council finances – have also been a major consideration in the decision to proceed with the HDV proposals.

It is also worth noting that, in pursuing the joint venture approach, the Council has deliberately chosen a model which shares the development risk with a partner, and in particular a partner that brings expertise and resources that can contribute to the management of that risk.

Without more detail on the specific risks that are of concern, it is not possible to respond in greater detail on this point.

Variation of action proposed

5.10 **“To refer this matter to Full Council for consideration as recommended by the Scrutiny Committee, with the proposal to not choose Lendlease as a preferred bidder and to stop the HDV being formed.”**

The decision taken by Cabinet on 14 February does not entail the formation of the HDV, nor does it commit the Council to form the HDV. The formation of the HDV will be the subject of a separate recommendation to Cabinet, expected in summer 2017.

The decision on the appointment of the preferred partner is for the executive (i.e. Cabinet) only to make. Paragraphs 5.2 – 5.4 of the 14 February Cabinet report set out the Council’s options in considering a recommendation for preferred bidder, and the implications of those options.

It is not considered necessary, appropriate or proportionate based on the evidence supporting this call-in to not appoint a preferred bidder.

5.11 **“We do not believe the HDV should proceed; there are clearly other ways to deliver regeneration and build new council and affordable homes. Some of these options are laid out in the Cabinet report.”**

The report considered by Cabinet on 14 February clearly sets out (in paragraph 6.16) why the other possible options for delivering the Council’s objectives were

rejected in favour of the joint venture model. The consideration of that analysis, and the decision to pursue this option, was made by Cabinet in November 2015, and is not the subject of this call-in.

6. Call-in 2 (Councillor Stuart MacNamara)

6.1 This call-in refers to the report of the Housing and Regeneration Scrutiny Panel on the governance of the proposed Haringey Development Vehicle. Cabinet agreed a detailed response to the report at its meeting on 14 February, at the same meeting as the decision which is the subject of this call-in. Where appropriate, this report refers back to that response.

6.2 Of the issues set out below, the call-in highlights four as being “the most significant”. They are:

- “The potential breach of the Council’s Public Sector Equality Duty.” (addressed in paragraph 6.11 below)
- “The potential legal risks of the decision being challenged in the High Court.” (paragraph 6.19)
- “The construction exclusivity clause proposed for the preferred bidder possibly representing a conflict of interest.” (paragraph 6.17)
- “The legal question of whether a varying of the terms of the partnership to reflect recent commitments which are beyond those set out in the original agreed procurement process requires a re-opening of the procurement process itself.” (paragraph 6.18)

Reasons for call-in

6.3 **The Cabinet is proceeding despite “Not having consulted fully, transparently or properly with affected tenants, leaseholders and businesses regarding the crucial and specific details regarding transfer of the land where they reside; or, relating to businesses not having regard to the impact of choices they face concerning the business which they lease, rent or have on license.”**

This issue was also raised in the other call-in, and is addressed in paragraph 5.6 above.

6.4 **The Cabinet is proceeding despite “There being a lack of transparency in newsletters and communications issued by the Council to tenants and leaseholders, on the named estates, regarding what exactly ‘estate renewal’ and/or ‘regeneration’ in this context could mean for their current homes.”**

All residents on the estates named in the November 2015 cabinet report have been engaged over a period of many months in the possibility of, and options for, estate renewal that could affect their homes. This has included formal consultation on the Local Plan Site Allocations DPD and (where relevant) the Tottenham Area Action Plan, as well as estate-specific engagement through meetings and other means.

- 6.5 **The Cabinet is proceeding despite “A lack of clarity and consistency regarding the verifiably deliverable security of tenure and conditions on which tenants will be able to return to their homes. This is evidenced by the clear commitments in para 2.4 of the report - ‘to do our utmost to rehouse council tenants in the area where they currently live and on similar terms’. This contrasts with guarantees and commitments regarding security of tenure and rent levels which have been made elsewhere, including the minuted response to Cllr Bevan’s question regarding Council tenants’ rents on HDV property. These minutes make clear the Cabinet position that there was a ‘Clear commitment to Council tenants on rent rates, ensuring the rents on the new estates match rents for equivalent Council homes’.”**

The issue of a right to return, and the issue of commitments made in the Council’s general policy as opposed to specifically for the HDV, was also raised in the other call-in, and is addressed in paragraph 5.5 above.

A clear commitment has been made that any existing Council tenant that moves into a new home built by the HDV (or a new Council home) will be offered a new tenancy which will be as close as possible to the existing tenancy (with the exception of right to buy) and on a council level social rent.

- 6.6 **The Cabinet is proceeding despite the fact that “The above assurances, although demonstrating the utmost good intentions, nevertheless from the viewpoints of tenants, do not constitute a legally binding guarantee; nor do they reflect either the Council’s own Estate Renewal, Rehousing and Payments Policy para 7.30, or the agreed terms within the procurement process to which the appointment of a development partner will be subject.”**

The issue of commitments made in the Council’s general policy as opposed to specifically for the HDV was also raised in the other call-in, and is addressed in paragraph 5.5 above.

The procurement process has not concluded, and the contractual terms are not finalised. Until then it is not possible to say whether the procurement process has appropriately addressed the assurances on these matters.

The Council’s commitments to tenants are clear, and appropriate for this stage of the estate renewal process for the estates potentially affected by the HDV. The Council (and in due course the HDV) will continue to reinforce them, and define how they will be delivered in each case, as those processes continue.

- 6.7 **The Cabinet is proceeding “Despite assurance being given verbally that there will be no loss of equivalent council housing, i.e. that the new estates will contain at [e]ast an equivalent equal number of council homes at target rents and secure tenancies, there is no written and legally enforceable guarantee of this.”**

There has been no commitment that the new estates will contain at least an equivalent number of Council homes. It is not and never has been expected that replacement homes built by the HDV will be owned by the Council.

The Council's Housing Strategy states (at section 5.4 'Promoting Estate Renewal') that: *"We recognise that not all our estates will be viable for like for like replacement in terms of the number of social homes. We will aim to ensure that there is no net loss of affordable habitable rooms".*

- 6.8 **The Cabinet is proceeding despite "Having no completed and detailed risk assessment which sets out the liabilities and benefits of such a venture in a clear and transparent way for councillors, in order for them to make an informed decision, and so Haringey residents have assurance that their elected councillors have fully considered impact and risks."**

The issue of risk was also raised in the other call-in, and is addressed in paragraph 5.9 above.

A commitment was made at Cabinet on 14 February that a detailed account of the risks to the Council, and the way they are being managed, will be published ahead of any final decision to establish the HDV.

- 6.9 **The Cabinet is proceeding despite "Not having conducted a full and complete due diligence regarding the companies bidding to become the preferred bidder, including their record with regard to trade union activities, blacklisting of certain workers, previous contracts and legal disputes regarding public sector contracts."**

These elements of Lendlease's record, and their relevance to the current procurement process, were also raised in the other call-in, and are addressed in paragraphs 5.2 and 5.3 above. Without any detail on other specific issues relating to Lendlease or other bidders which should have been considered during the procurement process, it is not possible to respond further on this point.

As part of the procurement process, all bidders go through a pre-qualification process which includes disclosure of any relevant past convictions or violations. The Procurement Regulations clearly state what can be considered in relation to exclusion of suppliers. The project team, in consultation with the Head of Procurement, found no reason to exclude any of the bidders for any such convictions or violations.

- 6.10 **The Cabinet is proceeding despite "Issues being identified regarding the preferred bidder's company structures and tax arrangements which should form part of any due diligence."**

The Procurement Regulations are very clear in relation to what can be considered when excluding bidders from procurement. A company's structure or tax arrangements are not in themselves sufficient reason not to award a contract. This procurement process undertook due diligence in relation to the company structures and found no valid reason that would prevent the Council entering into an agreement with the Preferred Bidder. Provided a company is not in breach of its legal obligations in relation to its tax affairs, there are no grounds to exclude a bidder.

Without further clarity on the nature of the issues identified, it is not possible to respond further on this point.

- 6.11 **The Cabinet is proceeding despite “Not having conducted detailed and specific Equality Impact Assessments (EQIAs) of the impact this decision will have on key groups such as black and minority ethnic individuals and families; older people; lone parents; people with physical and or mental ill health and other vulnerable groups, despite already having publicly named particular sites, land and assets to be transferred in Category 1, and potential assets to be transferred in Category 2. The official paperwork refers to EQIAs being done when sites are identified, yet, as evidenced from the Council’s own documentation, they have been named already. This may be in contravention of the Public Sector Equality Duty to which all local authorities are subject.”**

As noted in the report considered by Cabinet on 14 February, an Equality Impact Assessment was considered by Cabinet as part of its in-principle decision to proceed with a joint venture development vehicle in November 2015, and was considered satisfactory by Cabinet for the purposes of that decision.

The decision in question here – to proceed to the next stage of the procurement process – does not entail any decision on the transfer of sites or the work the HDV would do on such sites. As set out in the 14 February Cabinet report, this decision does not require an Equality Impact Assessment.

Equality Impact Assessments relating to the business plans for the first phase of sites proposed for transfer will be presented alongside those business plans, at the same time as the decision to establish the HDV.

- 6.12 **The Cabinet is proceeding despite the fact that “Case law indicates that these assessments should be done before decisions are made, and that a written record is useful for demonstrating compliance, as per the Equality and Human Rights Commission guidance.”**

Building on the Equality Impact Assessment prepared to support the November 2015 Cabinet decision, Equality Impact Assessments will be prepared and refined at the necessary stages in the development of the business plans in order that they appropriately inform their development and finalisation. This is not relevant to the decision to appoint a preferred bidder.

- 6.13 **The Cabinet is proceeding despite the fact that Cabinet is “Relying on a business case some eighteen months out of date which has no reference to the potential impact of Brexit on the economy, or other current economic indicators, and which appears to minimise the risks of the overarching joint venture recommended as the way forward when compared to the risks highlighted for the other five (rejected) options.”**

As set out in the Cabinet response to the Housing & Regeneration Scrutiny Panel’s view of HDV governance, it is true that the referendum result has prompted a degree of economic and political uncertainty which was not present when the 2015 Business Case was approved. However, it is not considered

that this uncertainty fundamentally changes either the long-term demand for homes and jobs which underpins the case for development on Council land, nor the fundamentals of the property market which underpin the financial case for setting up the HDV; this latter point is borne out by the unwavering interest of the shortlisted bidders in the HDV in the wake of the referendum. Over the lifetime of the proposed HDV – expected to be at least 15-20 years – it would always have been the case that the property market would experience ups and downs; a long-term investment like that proposed by the HDV is particularly well-designed to withstand such cyclical movements, including by making adjustments to its business plans in order to adjust the phasing and mix of housing in response to market conditions.

- 6.14 **The Cabinet is proceeding despite “Selecting a preferred bidder about which very clear and evidenced concerns have been raised including their development of the Heygate Estate in Southwark, with a huge loss of social homes and very poor outcomes for tenants and leaseholders, as well as the recent legal case brought against the developer by the District Attorney in New York City.”**

These elements of Lendlease’s record, and their relevance to the current procurement process, were also raised in the other call-in, and are addressed in paragraphs 5.1 and 5.3 above.

- 6.15 **The Cabinet is proceeding despite “Providing no verifiable evidence that this private partnership would achieve the regeneration outcomes or indeed generate income/profit for the council. The Cabinet report asserts that this will be the case – para 4. 7 of the report provides an example of this , stating ‘*the Council accepts a degree of risk in that it will commit its commercial portfolio to the vehicle, and will (subject to the satisfaction of relevant pre-conditions) also commit other property, as its equity stake in the vehicle. It has also to bear the costs of the procurement and establishment of the vehicle, and a share of development risk. However, in return, the contribution to its Corporate Plan objectives, including high quality new jobs, new homes, including affordable homes, and economic and social benefits, would be at a scale and pace that would otherwise be unachievable. The Council will also receive a financial return, principally through a share of profits, that it can reinvest in the fulfilment of its wider strategic aims as set out in the Corporate Plan*’. There is no verifiable evidence to back up these claims, although there is written evidence from other authorities that in fact, similar partnerships have been dissolved, with significant losses to the public purse. In addition, accounts filed at Companies House from such joint ventures disclose losses to local authorities.”**

The Business Case considered and approved by Cabinet in November 2015 sets out in some detail how the joint venture model proposed could deliver the Council’s stated objectives, in ways that other potential options could not (or not as well). It also set out some of the important elements of such a model that would need to be secured in any work by Haringey to establish one.

While it is the case that some joint ventures established by local authorities have been less successful than hoped, with long-term impacts on the

authorities in question in some cases, this is down to the specific objectives, business plans and management of those joint ventures rather than to the joint venture structure itself. As noted in the November 2015 Business Case, there are several local authority joint ventures – including some with similar objectives to those proposed for the HDV – which have a successful record.

- 6.16 **The Cabinet is proceeding despite “Opacity regarding the equity which the Haringey Development Vehicle partner would be providing to match the Council’s transfer of assets. In response to clear questions about this, the Cabinet minutes record that the HDV partner was ‘not expected to write a cheque on the day that land transfers to the Haringey Development Vehicle, but commit cash or make a binding guarantee to commit the cash when the vehicle needs it.’ This answer raises many questions with regard to the contributions being made by the private partner, and the financial model being pursued.”**

Upon the establishment of the HDV, both partners will make a legally binding commitment to provide equity of equal value to the HDV; this is fundamental to the structure.

The answer given in Cabinet simply relates to the timing of these contributions. Where the HDV does not need a cash contribution from the private partner of equivalent value to the Council’s contribution of land at the time that the land transfers, rather than have unneeded cash sitting unused in the HDV accounts the private partner will instead make a binding commitment to provide that cash when it is needed. In the meantime, the Council will receive interest on the difference between the value of its land contribution and the cash contribution already made by the private partner.

- 6.17 **The Cabinet is proceeding despite “Admissions, not known until the meeting, that the preferred bidder would also have exclusive status as a contractor within the partnership. This raises questions regarding the financial model and the assertions throughout the report that the Council will make profits from these joint venture developments. This may also create a conflict of interest which has not been adequately addressed, in that the development partner will have the right to both vote at board meetings on decisions to allocate sites for development and also act as paid construction contractor on those same sites.”**

This issue was also raised in the other call-in, and is addressed in paragraph 5.7 above.

- 6.18 **The Cabinet is proceeding despite “Lack of clarity about what the Council can legally seek to achieve within the preferred bidder stage given that key assurances which have recently been made were not specified or agreed during the procurement process itself.”**

When procuring a partner for a long-term joint venture relationship of this kind, both sides accept that it will never be possible to address all issues and eventualities upfront in the procurement documentation. While the formal relationship between the partners does move to a new footing once a preferred bidder is selected, both sides will expect to agree refinements, for example to

optimise or confirm terms contained in the tender. This is consistent with Procurement regulations and the Council's established procurement approach.

- 6.19 **The Cabinet is proceeding despite “There being delivered to the Council a sixteen page Letter before Action. This was confirmed as being received prior to the Cabinet meeting and is in the public domain, setting out the legal risks the Council may now face of the Cabinet decision being challenged in the High Court.”**

The Assistant Director for Corporate Governance, having taken external legal advice, was able to confirm that nothing in the Letter Before Action received on 13 February should prevent the Cabinet from considering – and, if it chose, approving – the report on the preferred bidder for the Haringey Development Vehicle at its meeting on 14 February.

- 6.20 **The Cabinet is proceeding despite “Cabinet members making a number of promises and commitments during the Cabinet meeting which may not be deliverable or enforceable due to potential tensions with the plans and approaches set out in the Housing strategy as indicated above (bullet point 3 [paragraph 6.5]) and below in the section on the Policy Framework [paragraph 6.23].”**

These substantive issues are addressed in paragraphs 6.5 and 6.23.

- 6.21 **In addition, Recommendation 3.5 of Cabinet Report on the Appointment of the Preferred bidder says:**

““[Cabinet] Agrees to proceed to the Preferred Bidder Stage (“PB Stage”) so the preferred bidders proposal can be refined and optimised, in particular to formalise the structure of the vehicle, finalise legal documents and further develop site and portfolio business plans, as required to establish the HDV...””

“However, this appears to contrast with the Legal Advice set out in the previous report agreed at the same Cabinet meeting (*Governance Arrangements for the HDV [Item 8]*) which states:”

““Under Regulation 30 of the Public Contracts Regulations 2015 any further negotiations between the Council and the preferred bidder must not have the effect of materially modifying the essential aspects of the procurement (including the needs and requirements set out in the contract notice or the descriptive document) and does not risk distorting competition or causing discrimination. So any proposal that would have such an effect on the Members Agreement or any other legal agreements relating to the HDV would be in breach of these Regulations and must therefore be avoided.””

“Aspects of the decision made by Cabinet might possibly be legally unsound and/or unenforceable, and should hence be revisited by Cabinet.”

This issue is addressed in paragraph 6.18 above.

- 6.22 **“The Cabinet report itself, makes several references to risk, and the acceptance that there is risk, yet these are never quantified or detailed. Neither are the benefits set against the liabilities and risks in an objective and clear structure which is necessary for an informed decision on such a huge and complex project.”**

This issue is addressed in paragraph 6.8 above.

- 6.23 **“The Policy Framework.”**

“The HDV is included within the Housing Strategy and it is accepted that this is within the policy framework. However, the HDV is promoted as the means of ‘unlocking the considerable growth potential of the Council’s own land and meeting a number of core Council ambitions’ and it is asserted within the Housing Strategy that this will contribute to achieving the Council’s goals. However, there is no substantiating evidence to back up these assertions and aspirations. Indeed, the Housing Strategy makes no clear commitments to Council tenants regarding their future homes should their estates be subject to estate renewal. Moreover, it states there may be a loss of social homes and promotes private renting and affordable housing as options, along with working with private sector partners including the HDV.”

“This is in contrast to recent public statements issued regarding right to return, housing terms and tenancies for current council tenants living on, for example, the Northumberland Park estate. The work undertaken so far by the HRSP raises fundamental concerns as to whether the HDV can indeed achieve these new commitments to provide homes at equivalent social rents, on equivalent tenancies, and at the number needed to provide equivalent homes for all the families who are displaced.”

“There are significant risks associated with the joint venture in relation to governance, as well as with regard to investment of Council land and assets as equity in this project. In summary, we are concerned that despite well-intentioned assurances and promises, there is, and can be, no legally enforceable guarantee that the HDV proposal in its current form will provide an equivalent number of social homes for rent, given identified issues of viability, density, cost, land assembly, demolition, contractor costs (with the preferred bidder acting as construction contractor) and the need to ensure profit. Indeed this is confirmed by the wording and aspirations in the Housing Strategy.”

The issue of whether evidence has been put forward to support the claim that the joint venture approach can deliver the Council’s objectives is addressed in paragraph 6.15 above.

The issue of commitments made to residents is addressed in paragraphs 6.4 and 6.5 above.

The issues raised by the Housing and Regeneration Scrutiny Panel on the governance of the proposed Haringey Development Vehicle were addressed in the detailed response to the Panel's report approved by Cabinet on 14 February.

It was never intended that the Housing Strategy would be the principal mechanism whereby the Council would detail its commitments to existing residents, or detail how the HDV might deliver the Council's objectives.

Council decisions do not normally require a 'legally enforceable guarantee' that the outcomes they envisage will be achieved. However, they are made based on evidence that the greatest possible effort has been made to maximise the chances of that happening, including by legal means where appropriate and possible, and on an evidence-based judgement that those outcomes can indeed be delivered. Such evidence has underpinned all Council decisions on the HDV to date.

Variation of action proposed

6.24 **“To refer the appointment of the preferred bidder back to Cabinet with a view to the decision being delayed in order that further scrutiny work can take place in relation to the significant risks as outlined, including:**

- **concerns regarding the preferred bidder for the HDV having exclusivity rights over construction contracts;**
- **unresolved issues regarding financial and legal risks; consultation and EQIAs of insufficient depth which could potentially render the Council in breach of its Public Sector Equality Duty;**
- **the possibility of action in the High Court;**
- **the questions relating to how any assurances recently made over housing and tenancy offers for stakeholders can be achieved or enforced without having to return to the formal procurement process.”**

The issue of a possible delay is addressed in paragraph 5.10. The substantive issues given for delay are addressed the relevant paragraphs of section 6 above.

7. The scope of this call-in

7.1 The principle of pursuing a joint venture with a private partner to drive growth on Council land was agreed by Cabinet in November 2015. The actual decision to establish the HDV is not expected until summer 2017. Neither of these decisions is therefore the subject of this call-in. The issues set out in paragraphs 5.4, 5.5, 5.6, 5.8 and 5.9 and paragraphs 6.3 – 6.8, 6.11 – 6.13, 6.15, 6.16, 6.20, 6.22 and 6.23 above relate to the HDV approach itself, rather than to the selection of a preferred bidder, and therefore are more relevant to those past and future decisions than to the specific question before the Committee here.

7.2 The recommendation of Lendlease as preferred bidder was made in line with the procurement approach agreed by Cabinet in November 2015, and in

subsequent decisions made under delegated authority from Cabinet. As those decisions are not the subject of this call-in, the question before the Committee now cannot be about whether it was correct to start the process, or whether the process was defined in the right way, but whether the outcome presented to Cabinet on 14 February was the right one based on the process as defined by those earlier decisions.

8. Contribution to strategic outcomes

8.1 The contribution of the decision in question to strategic outcomes was set out in the report to February 14 Cabinet.

9. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

9.1 The Chief Financial Officer and Head of Procurement have been consulted in the preparation of this report.

Legal

9.2 The Assistant Director of Corporate Governance has been consulted in the preparation of this report.

Equality

9.3 N/A.

10. Use of Appendices

N/A

11. Local Government (Access to Information) Act 1985

11.1 The report to 14 February 2017 Cabinet to which this report relates can be found on the Council website at:

<http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=7850&Ver=4>

(item 184, Approval of preferred bidder for the Haringey Development Vehicle)

11.2 The report of the Housing and Regeneration Scrutiny Panel on the governance of the HDV – and the Cabinet response to the report – which were also considered at 14 February Cabinet can be found at item 183 on the same page of the Council website.

11.3 Previous decisions of Cabinet relevant to the decision in question were set out in the report to 14 February Cabinet. They are:

- February 2015: Development vehicle feasibility study and business case (item 822)
<http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=6977&Ver=4>
- September 2015: Report of the Steering Group on the Future Housing Review (item 68)
<http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=7299&Ver=4>
- November 2015: Haringey Development Vehicle (item 112)
<http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=7301&Ver=4>
- October 2016: Office Accommodation Strategy (item 98)
<http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=7846&Ver=4>

11.4 Other background documents referred to in this report are:

- The Council's Corporate Plan
<http://www.haringey.gov.uk/local-democracy/policies-and-strategies/corporate-plan-2015-18>
- The Council's Housing Strategy
<http://www.minutes.haringey.gov.uk/documents/s88249/Housing%20Strategy%20App2%20Strategy%20v1%200.pdf>
- The Council's Local Plan
<http://www.haringey.gov.uk/planning-and-building-control/planning/planning-policy/local-development-framework>
- The Council's Estate Renewal Rehousing and Payments Policy
http://www.minutes.haringey.gov.uk/documents/s86244/ERRP%20Policy_Cabinet%20July16_App%202%20policy%20v1%200f.pdf

11.5 Information about Lendlease is available on the company's website at www.lendlease.com/uk.

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Report for: Special Overview and Scrutiny Committee
2nd March 2017

Title: Monitoring Officer's Report on the Call-In of a Decision taken by the Cabinet on 14th February 2017 relating to the Haringey Development Vehicle – Appointment of Preferred Bidder

Report authorised by : Bernie Ryan, Monitoring Officer

Lead Officer: Raymond Prince Deputy Monitoring Officer

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** N/A

1. Describe the issue under consideration

To advise the Overview and Scrutiny Committee on the call-in process, and in particular whether the decision taken by Cabinet on 14th February 2017 relating to the appointment of a preferred bidder for the Haringey Development Vehicle (HDV) is within the Council's policy and budgetary framework.

2. Cabinet Member Introduction

N/A

3. Recommendations

That Members note:

a. The Call-In process

b. The advice of the Monitoring Officer and Chief Financial Officer that the decision taken by the Cabinet was inside the Council's policy and budgetary framework.

4. Reasons for decision

The Overview and Scrutiny Committee is expected to take its own decision with regard to whether a called-in decision is outside or inside the policy and budgetary framework when considering action to take in relation to a called-in decision.

5. Alternative options considered

N/A

6. Background information

Call-in Procedure Rules

- 6.1** The Call-In Procedure Rules (the Rules) appear at Part 4, Section H of the Constitution, and are reproduced at Appendix 1 to this report.
- 6.2.** The Rules prescribe that once a validated call-in request has been notified to the Chair of Overview and Scrutiny Committee (OSC), the Committee must meet within 10 working days to decide what action to take. In the meantime, all action to implement the original decision is suspended.
- 6.3** If OSC Members determine that the original decision was within the policy framework, the Committee has three options:
- (i) to not take any further action, in which case the original decision is implemented immediately.
 - (ii) to refer the original decision back to Cabinet as the original decision-maker. If this option is followed, the Cabinet must reconsider their decision in the light of the views expressed by OSC within the next five working days, and take a final decision.
 - (iii) to refer the original decision on to full Council. If this option is followed, full Council must meet within the next 10 working days to consider the call-in. Full Council can then decide to either:
 - take no further action and allow the decision to be implemented immediately, or
 - to refer the decision back to the Cabinet for reconsideration. The Cabinet's decision is final
- 6.4** If OSC determine that the original decision was outside the budget/policy framework, it must refer the matter back to the Cabinet with a request to reconsider it on the grounds that it is incompatible with the policy/budgetary framework.
- 6.5** In that event, the Cabinet would have two options:
- (i) to amend the decision in line with OSC's determination, in which case the amended decision is implemented immediately.
 - (ii) to re-affirm the original decision, in which case the matter is referred to a meeting of full Council within the next 10 working days. Full Council would have two options:
 - to amend the budget/policy framework to accommodate the called-in decision, in which case the decision is implemented immediately, or
 - to require the decision-maker to reconsider the decision again and to refer it to a meeting of the Cabinet, to be held within five working days. The Cabinet's decision is final.

The Policy Framework

- 6.6 A definition of The Policy Framework is set out in the Constitution at Article 4 of Part Two (Articles of the Constitution) which is reproduced as follows:

“Policy Framework

These are the plans and strategies that must be reserved to the full Council for approval:

- *Annual Library Plan*
- *Best Value Performance Plan*
- *Crime and Disorder Reduction (community safety) Strategy*
- *Development Plan documents*
- *Youth Justice Plan*
- *Statement of Gambling Policy*
- *Statement of Licensing Policy*
- *Treasury Management Strategy*

Any other policies the law requires must be approved by full Council.

Such other plans and strategies that the Council agrees from time to time that it should consider as part of its Policy Framework:

- *Housing Strategy”*

- 6.7 The policy framework is intended to provide the general context, as set by full Council, within which decision-making occurs. In an Executive model of local government, the majority of decisions are taken by the Executive – in Haringey’s case this being the Cabinet/Leader/Cabinet member. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 the determination of a matter in the discharge of an Executive function nonetheless becomes a matter for the full Council if the proposed determination would be contrary to a plan or strategy adopted or approved by the full Council in relation to the function in question. Case law makes it clear that it would not be a proper use of a full Council approved plan or strategy to seek to make it a means for full Council to micro-manage what ought to be Executive decisions.

7. Current Call-Ins

- 7.1 On 17th February 2017, a call-in request was received in relation to the Cabinet decision taken on 14th February 2017 on the recommendation to appoint Lendlease as the preferred bidder for the HDV.
- 7.2 On 24th February 2017, a second call-in request was received in relation to the same issue.
- 7.3 A copy of the public report to Cabinet, the draft minutes and the call-ins are reproduced as part of the meeting agenda pack.
- 7.4 Whilst neither request asserts that the decision taken was outside of the Council’s policy framework – and the Chief Financial Officer also confirms her

view that the Cabinet decision is within the budgetary framework; see paragraph 11 below - it does make a number of points in support of an overall assertion that the process for choosing a preferred bidder, and the creation of the HDV should not be allowed to proceed / delayed pending further scrutiny.

7.5 Key concerns in the call-ins are as follows:

The First Call-In

- Lendlease has a record which demonstrates that it is not a suitable partner for the project
- The project will not deliver positive outcomes for the Council's tenants and leaseholders
- There has been a lack of consultation on the proposals with those likely to be affected
- The project will not deliver value for money
- The risks of the project outweighs any perceived benefits

The Second Call-In

- The potential breach of the Council's Public Sector Equality Duty
- The potential legal risks of the decision being challenged in the High Court
- The construction exclusivity clause proposed for the preferred bidder possibly representing a conflict of interest
- The legal question of whether a varying of the terms of the partnership to reflect recent commitments which are beyond those set out in the original agreed procurement process requires a re-opening of the procurement process itself

7.6 The requests also detailed alternative courses of action, namely to refer the matter to Full Council with the proposal not to choose Lendlease as a preferred bidder and stop the HDV being formed, and consider alternative proposals to deliver regeneration and build new Council and affordable homes, some of which were detailed in the report to Cabinet (the first call-in); and to refer the appointment of Lendlease back to Cabinet with a view to delaying the process to facilitate further scrutiny of the issues set out at paragraph 7.5 above (the second call-in).

7.7 The purpose of this report is to address whether a decision falls outside of the policy and budgetary framework. However, the Monitoring Officer is aware that a report from the Director Regeneration, Planning & Development to this Committee will address all of the issues raised in the call-ins.

8. Monitoring Officer's Assessment

8.1 The Call-In Procedure Rules require that:

"The [Overview and Scrutiny] Committee shall consider any report of the Monitoring Officer / Chief Finance Officer as to whether a called-in decision is

inside or outside the policy / budget framework. The Overview and Scrutiny Committee shall have regard to that report and any advice but Members shall determine whether the decision is inside or outside the policy/ budget framework.”

8.2 The Monitoring Officer considered the requests on 20th February 2017 (the first call-in) and 24th February 2017 (the second call-in), and determined that they both met the 6 criteria for validity as set out in the Rules. Following investigation and consideration, the Monitoring Officer made an assessment of whether the decision was outside of the policy framework and concluded that – in agreement with both call-ins - it was not for the reasons which appear at paragraphs 8.5 and 8.6 below.

8.3 The call-in requests made the following points:

The First Call-In

“We are concerned by the choice of Lendlease as the preferred bidder for the HDV for the following reasons:

(1) “The recent Heygate Estate renewal by Lendlease in Southwark, has in our view, not led to good outcomes for local residents or the council. A large council estate was replaced with many homes for sale and only a small number of social homes on site.

(2) “Lendlease have been sued by unions for blacklisting construction workers.”

(3) “Lendlease has admitted it overbilled clients for more than a decade and has agreed to pay \$56 million in fines and restitution in the United States of America.”

(4) “We are concerned by the particulars of the HDV and the agreement with Lendlease as mentioned in the public Cabinet report:

(a) We are concerned that the commitment to affordable and social housing is weak.”

(b) We are concerned that there is no guarantee that council tenants and leaseholders will have the same rights they currently have or will be offered a similar home in the same area. In our view ‘aim’ and ‘seek’ to provide protections are not sufficient assurances.”

(c) We are concerned that council tenants, leaseholders, local businesses and residents in general, have not been consulted on the proposal to form the HDV and the consequences it will have for these groups.”

(d) We are concerned that the construction exclusivity clause that will see a percentage of construction contracts going to Lendlease’s construction arm may not represent the best value for money.”

(e) There are several instances in the Cabinet report where it is suggested Lendlease may charge for their expertise, management etc. We understood that one of the reasons for the HDV was to save the council money and avoid paying for such expertise.”

- (f) We believe that overall, the risk of the proposed actions, outweigh the suggested benefits.”

The Second Call-In

“In deciding to proceed to the Preferred Bidder stage the Cabinet has, in our view, given insufficient or perhaps minimal weight to the evidenced recommendations of the HRSP, as ratified by the Overview and Scrutiny Panel. (O&SP) and issued by the Council. The Cabinet is therefore proceeding despite:

- Not having consulted fully, transparently or properly with affected tenants, leaseholders and businesses regarding the crucial and specific details regarding transfer of the land where they reside; or, relating to businesses not having regard to the impact of choices they face concerning the business which they lease, rent or have on license
- There being a lack of transparency in newsletters and communications issued by the Council to tenants and leaseholders, on the named estates, regarding what exactly ‘estate renewal’ and/or ‘regeneration’ in this context could mean for their current homes.
- A lack of clarity and consistency regarding the verifiably deliverable security of tenure and conditions on which tenants will be able to return to their homes. This is evidenced by the clear commitments in para 2.4 of the report - ***‘to do our utmost to rehouse council tenants in the area where they currently live and on similar terms’***. This contrasts with guarantees and commitments regarding security of tenure and rent levels which have been made elsewhere, including the minuted response to Cllr Bevan’s question regarding Council tenants’ rents on HDV property. These minutes make clear the Cabinet position that there was a ***‘Clear commitment to Council tenants on rent rates, ensuring the rents on the new estates match rents for equivalent Council homes’***.
- The above assurances, although demonstrating the utmost good intentions, nevertheless from the viewpoints of tenants, do not constitute a legally binding guarantee; nor do they reflect either the Council’s own Estate Renewal, Rehousing and Payments Policy para 7.30, or the agreed terms within the procurement process to which the appointment of a development partner will be subject.
- Despite assurance being given verbally that there will be no loss of equivalent council housing, i.e. that the new estates will contain at least an equivalent equal number of council homes at target rents and secure tenancies, there is no written and legally enforceable guarantee of this.
- Having no completed and detailed risk assessment which sets out the liabilities and benefits of such a venture in a clear and transparent way for councillors, in order for them to make an informed decision, and so Haringey residents have assurance that their elected councillors have fully considered impact and risks.
- Not having conducted a full and complete due diligence regarding the companies bidding to become the preferred bidder, including their record with regard to trade union activities, blacklisting of certain workers, previous contracts and legal disputes regarding public sector contracts

- Issues being identified regarding the preferred bidder's company structures and tax arrangements which should form part of any due diligence
- Not having conducted detailed and specific Equality Impact Assessments (EQIAs) of the impact this decision will have on key groups such as black and minority ethnic individuals and families; older people; lone parents; people with physical and or mental ill health and other vulnerable groups, despite already having publicly named particular sites, land and assets to be transferred in Category 1, and potential assets to be transferred in Category 2. The official paperwork refers to EQIAs being done when sites are identified, yet, as evidenced from the Council's own documentation, they have been named already. This may be in contravention of the Public Sector Equality Duty to which all local authorities are subject.
- Case law indicates that these assessments should be done before decisions are made, and that a written record is useful for demonstrating compliance, as per the Equality and Human Rights Commission guidance.
- Relying on a business case some eighteen months out of date which has no reference to the potential impact of Brexit on the economy, or other current economic indicators, and which appears to minimise the risks of the overarching joint venture recommended as the way forward when compared to the risks highlighted for the other five (rejected) options.
- Selecting a preferred bidder about which very clear and evidenced concerns have been raised including their development of the Heygate Estate in Southwark, with a huge loss of social homes and very poor outcomes for tenants and leaseholders, as well as the recent legal case brought against the developer by the District Attorney in New York City.
- Providing no verifiable evidence that this private partnership would achieve the regeneration outcomes or indeed generate income/profit for the council. The Cabinet report asserts that this will be the case – para 4. 7 of the report provides an example of this , stating ***'the Council accepts a degree of risk in that it will commit its commercial portfolio to the vehicle, and will (subject to the satisfaction of relevant pre-conditions) also commit other property, as its equity stake in the vehicle. It has also to bear the costs of the procurement and establishment of the vehicle, and a share of development risk. However, in return, the contribution to its Corporate Plan objectives, including high quality new jobs, new homes, including affordable homes, and economic and social benefits, would be at a scale and pace that would otherwise be unachievable. The Council will also receive a financial return, principally through a share of profits, that it can reinvest in the fulfilment of its wider strategic aims as set out in the Corporate Plan'***. There is no verifiable evidence to back up these claims, although there is written evidence from other authorities that in fact, similar partnerships have been dissolved, with significant losses to the public purse. In addition, accounts filed at Companies House from such joint ventures disclose losses to local authorities.
- Opacity regarding the equity which the Haringey Development Vehicle partner would be providing to match the Council's transfer of assets. In

response to clear questions about this, the Cabinet minutes record that the HDV partner was ***'not expected to write a cheque on the day that land transfers to the Haringey Development Vehicle, but commit cash or make a binding guarantee to commit the cash when the vehicle needs it.'*** This answer raises many questions with regard to the contributions being made by the private partner, and the financial model being pursued.

- Admissions, not known until the meeting, that the preferred bidder would also have exclusive status as a contractor within the partnership. This raises questions regarding the financial model and the assertions throughout the report that the Council will make profits from these joint venture developments. This may also create a conflict of interest which has not been adequately addressed, in that the development partner will have the right to both vote at board meetings on decisions to allocate sites for development and also act as paid construction contractor on those same sites.
- Lack of clarity about what the Council can legally seek to achieve within the preferred bidder stage given that key assurances which have recently been made were not specified or agreed during the procurement process itself
- There being delivered to the Council a sixteen page Letter before Action. This was confirmed as being received prior to the Cabinet meeting and is in the public domain, setting out the legal risks the Council may now face of the Cabinet decision being challenged in the High Court.
- Cabinet members making a number of promises and commitments during the Cabinet meeting which may not be deliverable or enforceable due to potential tensions with the plans and approaches set out in the Housing strategy as indicated above (bullet point 3) and below in the section on the Policy Framework

In addition, Recommendation 3.5 of Cabinet Report on the Appointment of the Preferred bidder says:

"[Cabinet] Agrees to proceed to the Preferred Bidder Stage („PB Stage“) so the preferred bidders proposal can be refined and optimised, in particular to formalise the structure of the vehicle, finalise legal documents and further develop site and portfolio business plans, as required to establish the HDV..."

However, this appears to contrast with the Legal Advice set out in the previous report agreed at the same Cabinet meeting (*Governance Arrangements for the HDV [Item 8]*) which states:

Under Regulation 30 of the Public Contracts Regulations 2015 any further negotiations between the Council and the preferred bidder must not have the effect of materially modifying the essential aspects of the procurement (including the needs and requirements set out in the contract notice or the descriptive document) and does not risk distorting competition or causing discrimination. So any proposal that would have such an effect on the Members Agreement or any other legal agreements relating to the HDV would be in breach of these Regulations and must therefore be avoided

Therefore, aspects of the decision made by Cabinet might possibly be legally unsound and/or unenforceable, and should hence be revisited by Cabinet.

The Cabinet report itself, makes several references to risk, and the acceptance that there is risk, yet these are never quantified or detailed. Neither are the benefits set against the liabilities and risks in an objective and clear structure which is necessary for an informed decision on such a huge and complex project.

Consequently, we the undersigned contend that the decision to select Lendlease as preferred bidder with whom the Council will establish the joint venture HDV, to 'proceed to the Preferred Bidder Stage ('PB Stage') and to give Delegated Authority to the Director of Regeneration, Planning and Development after consultation with the Leader of the Council to agree any further documentation as is required at the PB Stage,' is premature and should be reconsidered by Cabinet with a view to more extensive scrutiny work taking place beforehand".

- 8.4 As stated at paragraph 7.4 above, both requests also set out alternative courses of action.
- 8.5 This decision is a decision on a preferred bidder following a procurement process, and could not in itself be contrary to the Council's policy framework.
- 8.6 It is the Monitoring Officer's view, the Cabinet's decision was consistent with, and not contrary to, the commitment to affordable housing as detailed in the Local Plan, Housing Strategy and other published policy and delivery documents that inform the Council's work on housing and regeneration. I also accept the assertion made in the report of the Director Regeneration, Planning & Development to this Committee, that all bidders were clear about the role of the HDV in delivering the Council's priorities in this area.

9 Conclusion

For the above reasons, the Monitoring Officer concludes that the Cabinet's decision was not outside the policy framework.

10. Contribution to strategic outcomes

N/A

11. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

Article 4.01 as written in the Council's constitution states that the meaning of the budget includes "the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits. The determination of the

Council Tax Base is delegated to the Chief Finance Officer in consultation with the Cabinet Member for Finance and the Cabinet Advisory Board.

Further, this decision is a decision on a preferred bidder following a procurement process, and could not in itself be contrary to the Council's budgetary framework.

Whilst there is no claim by the call-in that the decision is outside the budgetary framework, the Chief Financial Officer has confirmed that the decision is not outside the budget framework.

Legal implications

The Monitoring Officer's views are set out above.

Equality

N/A

12. Use of Appendices

Appendix 1 Call-In Procedure Rules

13. Local Government (Access to Information) Act 1985

N/A

Part Four, Section H

Call-In Procedure Rules

1. When a key decision is made by the Executive (that is, the Leader, Individual Cabinet Members or the Cabinet) or a committee of the Cabinet, the decision shall be published and shall be available for inspection at the Civic Centre and on the Council's website, normally within 2 working days of being made. The right to Call-In does not apply to a decision by way of an appeal hearing or a quasi-judicial procedure.
2. The notice of the key decision will be dated and will specify that the decision will come into force, and may then be implemented, on the expiry of 5 working days after the publication of the decision, unless a valid request has been received objecting to the decision and asking for it to be called-in. This does not apply to "urgent" decisions.
3. The Monitoring Officer will deem valid a request that fulfils all of the following 6 criteria:
 - (a) it is submitted by any five Members of the Council.
 - (b) it is received by the Democratic Services Manager by 10am on the fifth day following publication.
 - (c) it specifies the decision to which it objects.
 - (d) it specifies whether the decision is claimed to be outside the policy or budget framework.
 - (e) it gives reasons for the call-in and outlines an alternative course of action.
 - (f) it is not made in relation to a decision taken in accordance with the urgency procedures in paragraph 18 below.
4. The Democratic Services Manager will forward all timely and proper call-in requests, once deemed valid by the Monitoring Officer, to the Chair of the Overview and Scrutiny Committee and the Overview and Scrutiny Manager and will notify all Cabinet Members including the decision maker and the relevant Chief Officer.
5. A key decision will be implemented immediately after a call-in request is deemed invalid by the Monitoring Officer or after the expiry of ten working days following the receipt of a valid call-in request by the Chair of the Overview and Scrutiny Committee, unless a meeting of the

Overview and Scrutiny Committee takes place during the 10-day period.

6. If a call-in request is deemed valid, the Democratic Services Manager will forward the call-in request to the Monitoring Officer and/or Chief Financial Officer for a report to be prepared for the Overview and Scrutiny Committee advising whether the decision does fall inside or outside the policy or budget framework.
7. Unless a key decision is designated "urgent" pursuant to paragraph 18, when it shall be implemented immediately, no action shall be taken to implement the decision until 5 working days have elapsed after the date of the publication of the decision. In the event that a call-in request has been received, no action shall be taken until the Monitoring Officer has determined the validity of the request.
8. Subject to paragraph 5, when a request for call-in is deemed valid, all action to implement the key decision is suspended until the Overview and Scrutiny Committee has met to decide what action to take. The Committee must meet no later than 10 working days after the Chair has received a valid call-in request.
9. Discussion of any called-in decisions shall precede all other substantive items on the agenda of the Overview and Scrutiny Committee. Any reports of the Monitoring Officer and Chief Financial Officer shall be part of that agenda.
10. The Committee shall consider any report of the Monitoring Officer / Chief Finance Officer as to whether a called-in decision is inside or outside the policy / budget framework. The Overview and Scrutiny Committee shall have regard to that report and any advice but Members shall determine whether the decision is inside or outside the policy / budget framework. If the Overview and Scrutiny Committee determine that the decision was within the policy / budget framework, the Committee has three options:
 - (a) The Overview and Scrutiny Committee may decide not to take any further action, in which case the key decision is implemented immediately.
 - (b) The Overview and Scrutiny Committee may decide to refer the decision back to the decision maker, in which case the decision maker has 5 working days to reconsider the key decision before taking a final decision.
 - (c) The Overview and Scrutiny Committee may decide to refer the decision to Full Council.

11. When the Overview and Scrutiny Committee refers a decision to Council (when the decision is deemed to fall within the policy / budget framework), any Council meeting must be held within 10 working days (with an extraordinary meeting being called if necessary) of the date of the Overview and Scrutiny Committee's referral.
12. When considering a called-in decision (when this decision is deemed to fall within the policy / budget framework) the Council has two options:
 - (a) The Council may decide not to take any further action, in which case the decision is implemented immediately.
 - (b) The Council may refer the decision back to the decision maker, in which case the decision maker has 5 working days to reconsider the decision before taking a final decision.
13. Once a final decision has been made there is no further right of call-in. This decision or any other key decision having the same effect may not be called-in again for a period of six months following the date at which the final decision was taken.
14. If the Overview and Scrutiny Committee determines that the decision is outside the policy / budget framework, the Committee shall refer the decision to the decision maker and with a request to reconsider it on the grounds that it is incompatible with the policy / budget framework. The decision maker shall have 5 working days in which to reconsider the decision.
15. The decision maker has two options:
 - (a) Amend the decision in line with the Overview and Scrutiny Committee's determination, in which case the decision is implemented immediately.
 - (b) Reaffirm the original decision, in which case the decision goes to a Council meeting which must convene within 10 working days of the reaffirmation of the original decision.
16. When considering a called-in decision where a decision maker fails to amend a decision in line with the Overview and Scrutiny Committee's determination, that it falls outside the policy / budget framework, the Council has two options:
 - (a) Amend the policy / budget framework to accommodate the called-in decision, in which case the decision is implemented immediately.

- (b) Require the decision maker to reconsider the decision again and refer it to a meeting of the Cabinet to be held within 5 working days of the Council meeting. The Cabinet's decision is final.

17. Abuse of Call-in

- (a) Members are expected to ensure that call-in is not abused, or causes unreasonable delay to the functioning of the Cabinet.
- (b) The call-in procedure is to be reviewed annually (see paragraph 18 g), if such a review leads to the conclusion that the call-in procedure is being abused, the Constitution may be amended to include greater limitations.

18. Call-In and Urgency

- (a) The call-in procedure set out above shall not apply when the action being taken is urgent or time-critical in terms of (b) below.
- (b) A key decision will be urgent if any delay in implementation likely to be caused by the call-in procedure would seriously prejudice the Council's or the public's interests.
- (c) A key decision which has not been given the requisite publicity for a key decision or a private meeting and which the Chair of Overview and Scrutiny Committee has agreed is 'urgent and cannot reasonably be deferred' is not regarded as urgent for the purposes of call-in unless it fulfils the criteria of paragraph (b) above.
- (d) If a key decision is urgent and therefore not subject to call-in, this will be stated on the record.
- (e) In order for a key decision to be deemed urgent, the Chair of the Overview and Scrutiny Committee must agree that the decision is both reasonable in all circumstances and that it should be treated as a matter of urgency. In the absence or unavailability of the Chair the consent of the Mayor is required. In the absence of both, the consent of the Deputy Mayor shall be required.
- (f) Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (g) The operation of the provisions relating to call-in and urgency shall be monitored annually and a report submitted to Council with proposals for review if necessary.

19. Call-In and the Forward Plan

- (a) The Overview and Scrutiny Committee should consider the Forward Plan as its chief source of information regarding forthcoming Cabinet decisions.
- (b) The Overview and Scrutiny Committee may select a forthcoming decision and examine the issues around it.
- (c) In order not to obstruct the Council in its business, the Overview and Scrutiny Committee may call-in a key decision in advance of its actually being taken. In such a situation all the time-limits apply as above, except that a key decision cannot actually be implemented any sooner than it would have been had the Overview and Scrutiny Committee not called it in.
- (d) Where the Overview and Scrutiny Committee has called-in a key decision from the Forward Plan before its due date, the decision cannot be called-in again after the final decision has been taken.

20. Monitoring Arrangements

The operation of the provisions relating to call-in and urgency shall be monitored by the Democratic Services Manager, and a report submitted to Council annually with proposals for review if necessary.

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