

NOTICE OF MEETING

CABINET (SPECIAL MEETING)

**Monday, 5th August, 2019, 6.30 pm - George Meehan House 294
High Road Wood Green London N22 8YX**

Members: Councillors Joseph Ejiofor (Chair), Zena Brabazon (Vice-Chair), Charles Adje, Kaushika Amin, Mark Blake, Gideon Bull, Seema Chandwani, Kirsten Hearn, Emine Ibrahim and Sarah James

Quorum: 4

1. FILMING AT MEETINGS

Please note that this meeting may be filmed or recorded by the Council for live or subsequent broadcast via the Council's internet site or by anyone attending the meeting using any communication method. Although we ask members of the public recording, filming or reporting on the meeting not to include the public seating areas, members of the public attending the meeting should be aware that we cannot guarantee that they will not be filmed or recorded by others attending the meeting. Members of the public participating in the meeting (e.g. making deputations, asking questions, making oral protests) should be aware that they are likely to be filmed, recorded or reported on.

By entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings.

The chair of the meeting has the discretion to terminate or suspend filming or recording, if in his or her opinion continuation of the filming, recording or reporting would disrupt or prejudice the proceedings, infringe the rights of any individual or may lead to the breach of a legal obligation by the Council.

2. APOLOGIES

To receive any apologies for absence.

3. DECLARATIONS OF INTEREST

A Member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

- (i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and
- (ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A Member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 5-7 and Appendix A of the Members' Code of Conduct.

4. MATTERS REFERRED TO CABINET BY THE OVERVIEW AND SCRUTINY COMMITTEE - DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE HELD ON THE 29 JULY 2019 REGARDING MINUTE 192 &201 (PAGES 1 - 54)

The Acting Democratic Services and Scrutiny Manager to report that the Overview and Scrutiny Committee of the 29 July 2019 on consideration of the call in of the Cabinet's decision of the 9 July 2019, minute number 192 &201, resolved that the decision relating to the agreement of **Red House Yard, 432 West Green Road N15 3PJ** be referred back to Cabinet to reconsider the decision before taking a final decision within 5 working days in light of the views expressed by the Overview and Scrutiny Committee.

Part Four Section H(Call in Procedure Rules) paragraph 10(b) of the Constitution requires that when the Overview and Scrutiny Committee decides to refer a decision back to a decision maker then the decision taker has 5 working days to reconsider the decision before taking a final decision.

The following documents are attached:

- a) Report of the Chair of Overview and Scrutiny setting out the recommendations of the Overview and Scrutiny Committee to Cabinet following consideration of the Call In form, verbal representations considered at the Overview &Scrutiny meeting, the Cabinet reports, minutes and exempt information, relating to the Cabinet decision **Red House Yard, 432 West Green Road N15 3PJ – Report to follow**

Additional Information

- b) Copy of the Call In form
- c) Excerpt from the draft minutes of the Cabinet held on 9 July 2019
- d) The public Cabinet Report and public appendices on **Red House Yard, 432 West Green Road N15 3PJ**

e) Report of the Monitoring Officer considered by the Overview and Scrutiny meeting.

f) Report of the Director for Housing, Planning and Regeneration considered by the Overview and Scrutiny meeting.

5. EXCLUSION OF THE PRESS AND PUBLIC

TO RESOLVE

That the press and public be excluded from the remainder of the meeting as the items below contain exempt information as defined under paragraph 3 and 5, Part 1, schedule 12A of the Local Government Act.

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

6. RED HOUSE YARD, 432 WEST GREEN ROAD N15 3PJ (PAGES 55 - 80)

To consider exempt information [Part B] Red House Yard, 432 West Green Road N15 3PJ which is not for publication by virtue of paragraphs 3&5 of Part 1 of schedule 12A of Local Government Act 1972 as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and information in respect of which a claim relating t to legal professional privilege could be maintained in legal proceedings.

To consider the exempt minutes relating to the Cabinet decision on Red House Yard, 432 West Green Road N15 3PJ.

To further consider the exempt part of the Director of Housing, Regeneration and Planning's report, responding to the call in.

Ayshe Simsek, Acting Democratic Services & Scrutiny Manager
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Bernie Ryan
Assistant Director – Corporate Governance and Monitoring Officer

River Park House, 225 High Road, Wood Green, N22 8HQ

Wednesday, 31 July 2019

'CALL IN' OF DECISIONS OF THE CABINET

This form is to be used for the 'calling in' of decisions of the above bodies, in accordance with the procedure set out in Part 4 Section H.2 of the Constitution.

TITLE OF MEETING	Cabinet
DATE OF MEETING	9 July 2019
MINUTE No. AND TITLE OF ITEM	Item 22 Red House Yard, 432 West Green Red, N15 3PJ (pages 679 - 694)

1. Reason for Call-In/Is it claimed to be outside the policy or budget framework?

Outside the policy and budget framework and non-compliance with priorities outlined in the Borough Plan.

1. PLANNING:

The proposal is not compliant with the current DPD brief which envisages the inclusion of the Mitalee Community Centre in SA57. The Pub is also not part of SA57 and contravenes policy DM50 on Public Houses (paragraphs 7.19 and 7.20). Insufficient evidence has been provided on the non-viability of the existing pub as per paragraph 7.21 of DM50.

There is a lack of clarity on the ownership of 435 West Green Road and lack of evidence around the rights the church holds to land or access to land. Councillors are concerned to receive clarity over this ownership of the pub and the church and whether the Council should have considered opening up negotiations with the other interested parties to the red line site. A call-in of the decision would enable clarity and further investigation into this matter.

2. VALUE FOR MONEY & OJEU:

The proposal, to dispose of this significant council asset to a private interest by private treaty (i.e. without marketing it, inviting other interests to bid and evaluating/comparing alternative bids), appears contrary to procurement guidance. The purchasing of 46 units of housing on the site suggests this is more than a land disposal as Haringey Council will (a) receive an economic benefit from the site (the 46 units) and (b) be involved in specifications of those units to meet Homes for Haringey standards (see Cabinet Report 6.14 and Borough Plan below).

The report states officers consulted a QC for assurance and councillors would like more clarity about the nature of that QC advice on whether the land disposal with the purchase of housing requires procurement/tender under OJEU procurement law. Calling in this decision would provide OSC with a chance to satisfy councillors that the absence of a bidding process for the development was value for money and transparent.

3. NON-COMPLIANCE WITH THE BOROUGH PLAN.

Priority 1 of The Borough Plan states: *“One of our very highest priorities is to start a new era of council housebuilding in the borough, particularly using our own land. We will set and publish clear standards for the quality and design of these homes, and ensure every subsequent new council homes meets those standards”*. The proposed sale of Council-owned land to Paul Simon seems not to align with this very high priority.

4. ALTERNATIVE OPTIONS:

There has been an inadequate exploration and evaluation of alternative courses of action that appear more in line with the council's current stated policy preferences. The case for a less risky development plan that could deliver more social housing units needs further consideration.

The option for building/contracting directly has not been adequately addressed. The alternative of an in-house option lacked costings and denied councillors a proper assessment of the viability of this course of action. The possibility of more social housing units, better control over the speed, quality and timing of delivery by developing the site ourselves has not been taken fully into account. The risks of a private partner failing is also not adequately addressed.

There have been contradictory reports given to councillors over the council's capacity to develop the site. The report appears to have drawn its recommendations a priori without providing a detailed account of risks or advantages of the Council developing the site. There is an unwarranted assertion that Paul Simon could develop the site more quickly than the Council. The only evidence available suggests the reverse. Paul Simon applied for planning permission which expired after three years (in 2018) with no development taking place.

We would like the decision paused at this stage to allow further exploration and investigation of both the alternative options and to fully clarify the recommended decision is within the budget framework.

5. DUE DILIGENCE ON THE DEVELOPER

There appears a lack of due diligence carried out on Paul Simon Magic Homes (PSMHG) and any assessment of risk to the council. This is particularly important given the uncertainty in the UK construction sector over Brexit, general overheating in the London market and the collapse in the past month of Keir, Shaylor and (last week) Aspin. Councillors would like assurance that PSMH is sufficiently financially healthy to take on such a large development and whether there is any underwriting or collateral being provided by the Council. We believe that a call-in would allow time for scrutiny to assess what guarantees/liabilities the Council has in relation to any financial underwriting (advance deposits due to PSMHG) and whether that would fall outside the budgetary framework?

6. THE CABINET REPORT

The report to the cabinet meeting is not thorough enough and could prove misleading because it includes assumptions and assertions that have, on subsequent questioning and investigation, found to be either erroneous, or inadequately supported by facts. For example: the inconsistency with current planning brief for the site; the estimation of any likelihood of planning complications for alternative options brought by the Authority; assertions about presumed lack of organisational capacity

within the authority and HfH; the lack of adequate comparisons of actual and likely financial costs and benefits and potential risks to the Authority.

2. Variation of Action Proposed

The Cabinet to:

- Defer the decision at this stage
 - Refer the issue to the relevant Scrutiny Panel for a full examination of all the possible valid options and in particular the direct development of the whole of part of the council owned site for social housing, against VFM and current policy criteria.
- Revisit the decision of how to proceed, taking into account the findings of Scrutiny.

Signed:

Councillor: Julie Davies (Please print name): JULIE DAVIES

Countersigned:

1. Councillor: M. Iwata (Please print name): M. IWE Iwakata
2. Councillor: Ruth Gordon (Please print name): RUTH GORDON
3. Councillor: Patrick Berryman (Please print name): PATRICK BERRYMAN
4. Councillor: Yvonne Say (Please print name): YVONNE SAY
5. Councillor: Azra Ahmet (Please print name): AZRA AHMET
6. Councillor: Sarah Williams (Please print name): SARAH WILLIAMS
7. Councillor: Isidoros Dharlbes (Please print name): ISIDOROS DHARLBS
8. Councillor: Dana Carlin (Please print name): DANA CARLIN

Report for: Cabinet 9th July 2019

Title: Disposal of Red House, 423 West Green Rd N15, to Magic Living Ltd (part of the Paul Simon Magic Homes Group) and agreement to acquire completed homes within the proposed site development for retention as social rented Council housing.

Report authorised by: Dan Hawthorn, Director of Housing, Regeneration & Planning

Lead Officer: Steve Carr, Interim Assistant Director of Economic Development & Growth (and Strategic Property) 0208 489 612

Ward(s) affected: St Ann's

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

1. Describe the issue under consideration

- 1.1 The report recommends the disposal of the Council's freehold interest in The Red House, 423 West Green Rd N15, to Magic Living Ltd, part of Paul Simon Magic Homes Group (PSMHG), and the acquisition by the Council of the freehold interest in two blocks of property comprising 46 new-build homes within the proposed site development, as well as open green space. The two blocks of housing totalling 46 apartments comprise 64% of the 72 homes to be constructed on the Council's current ownership of the land. The acquisition of these 46 homes will attract grant from the Mayor of London along with the Council's financial commitment as set out in **Part B**, the exempt part of the report.
- 1.2 The disposal will remove the current cost of maintaining and securing the vacant site. It will result in the early move out of temporary accommodation (TA) by many families thereby reducing the cost to the Council's TA budget and will also lever the creation of community facilities and public realm improvements.
- 1.3 The current proposal replaces a previous contract with the Paul Simon Magic Homes Group agreed at Cabinet 10th February 2015, which lapsed in September 2018. This previous contract with the developer was due to create only 25 affordable homes (30% of the total at that time), of which none would have been Council rent homes.
- 1.4 The purpose of this report is to seek Cabinet approval for the disposal of the Council's freehold interest in the Red House site to Magic Living (PSMHG) and the acquisition by the Council of 46 new-build homes for Council rent which are to be contained within two blocks that are to be delivered by Magic Living (PSMHG), and also the acquisition of a parcel of green space which will be added to the Council's open space provision in St Ann's ward.

- 1.5 The report also seeks Cabinet approval to the transfer of the Council's ownership of a small strip of land on the Red House site fronting the Derby Hall Church of God Church to the Derby Hall Christian Assembly Church of God (DHCA) organisation, thereby divesting the Council of any remaining residual interest in the parts of the site which will be part of the wider development scheme.
- 1.6 The Red House project by Magic Living Ltd (PSMHG) is part of the Council's wider housing delivery programme which includes different means of delivering social housing. Cabinet are also considering at its July 2019 meeting a programme setting out progress on the overall Council housing delivery programme. As well as acquiring new homes, the Council is intending to pursue an ambitious programme of new Council homes directly delivered by the Council. As the delivery capacity of the Council gears up to deliver more homes on Council land there will be less such reliance on private developer delivery of Council homes. The strategic report elsewhere on this agenda identifies a number of sites on which the Council can deliver these homes and notes that over the next 12 months the Council is aiming to achieve 500 planning consents for new Council homes and for 350 new Council homes to have started on site by the Council delivering directly.

2. Cabinet Member Introduction

- 2.1 This report sets out the agreement by the Council to acquire homes within the site redevelopment for retention as social rented council housing towards achieving the priority of 1000 new Council homes over the Borough Plan period.
- 2.2 The wider project on the site will also deliver private homes in support of the Council's overall obligation to meet housing supply targets set for the borough under the Mayor's London Plan. The heads of terms will allow for profit share (overage) payment to the Council if the private sale units exceed sales prices assumed in the Planning viability study.
- 2.3 The scheme is compliant with the Council's Budget and Policy framework as set out in part 4, section E of the constitution, and the housing funding element of the project is part of the Council's budget setting process which was the subject of a Council decision in February 2019.
- 2.4 Officers have worked within benchmarks for affordable housing provision and, I am pleased that the social housing is supported by the Mayor of London's affordable housing programme grant. The use of the grant by the Council is time limited however.
- 2.5 I am also pleased that this scheme will not only count towards the Council's 1,000 social rented housing priority, but will also help tackle the housing long waiting list and creating savings in the cost of providing temporary accommodation to families as well as assist in tackling homelessness in the borough.

- 2.6 I concur with the recommendations as set out, and in Annex B in Part B of the report.

3. Recommendations

That Cabinet:

- 3.1. Agrees to the disposal of the Council's freehold interest in the Red House Site, 423 West Green Rd, N15 (land identified in the attached plan at **Appendix A**) to Magic Living Ltd (Paul Simon Magic Homes Group) for a sum as provided in the exempt **Part B** of the report, under Heads of Terms which are also attached in **PART B**, with the land receipt to the Council to be hypothecated against any repayment of a NHS grant in respect of the former Red House care home, should such a payment to the NHS be required; and
- 3.2. Agrees to the acquisition by the Council for housing purposes of the freehold interests in two blocks of flats, comprising a total of 46 social rented homes, to be constructed by Magic Living Ltd (PSMHG) on sites B and C on the attached plan, for a maximum sum of provided in **Part B** of the report plus the Council's acquisition costs, and according to the terms which are also set out in the Heads of Terms document attached as the annex A in **PART B**, the exempt part of this report; and
- 3.3. Gives delegated authority to the Director of Housing, Regeneration and Planning, in consultation with the Director of Finance to agree the final contracts; and
- 3.4. Agrees that the Council should make financial provision as detailed in **Part B of the Report**, including Council on-costs for the project, provision for which exists within the Council's Housing Revenue Account, and thereby making use of the housing grant the authority has been allocated by the Mayor of London's affordable housing programme; and
- 3.5. Agrees to the acquisition by the Council for a consideration, as set out in **Part B of the report**, of green space shown green at **Site D** on the attached plan at Appendix A, following the completion of the development, in order to provide for the creation of new public open space in the St Ann's area which will be managed by the Council.
- 3.6. Agrees to transfer, for a sum provided in **Part B**, the exempt part of the report, of the Council's freehold interest in the small strip of land (identified as **site E** on the attached plan at Appendix A) fronting the church to the owners of the DHCA church, in order to enable the church to participate fully in the development of the overall Red House site and in accordance with the proposed planning application. This transfer is to be on condition that the owners of the DHCA church remains party to the wider site development partnership with Magic Living (PSMHG) and makes use of this land in support of the scheme as granted under the future planning determination.
- 3.7. **Recommendation 3.7 is fully contained in PART B, the exempt part of the report.**

4. Reasons for decision

- 4.1. The disposal of the freehold of The Red House site will enable the development by Magic Living (PSMHG) of a wider site which incorporates adjacent land ownerships of the church and the former pub. This development will deliver 46 affordable homes which the Council will be able to acquire on completion of the developer's scheme. The new homes will then be managed by Homes for Haringey as social tenure homes for Council rent and enable the provision of further new private homes in the wider scheme. In addition, a new community space and new public open space will be created.
- 4.2. This project responds to the Borough Plan commitment for the delivery of 1,000 homes at Council rent in Haringey and contributes to the wider housing supply targets set for the borough by the Mayor of London under the London Plan. The development by Magic Living (PSMHG) is subject to the grant of a planning consent, and is expected to start on site in 2019 with completion in 2021.
- 4.3. The disposal of the Red House site will enable this site to be developed together with the adjoining sites to make a much more comprehensive development than were it to be able to be developed on its own. A total of 88 homes, of which 4 are for the clergy use by the DHCA organisation, are to be constructed as part of the wider project. As part of this wider project 72 homes are to be developed on the Council's Red House site itself of which 46 (64%) will be acquired by the Council as new affordable homes, meaning that along with the transfer back of green space, 53% of the Council's existing land by area will come back to the Council. The project delivers the completed Council rent homes at least two years faster than would be possible were the Council to set aside this ongoing relationship with the developer and instead seek to develop the Red House site on its own. The housing programme investment by the Council will result in this private led housing scheme delivering more than fifty percent of the homes as affordable, which would not otherwise have been possible through planning requirements alone. As well as contributing to the Council's target of 1,000 Council rent homes the wider project promoted by the developer will also deliver private homes in support of the Council's overall obligation to meet housing supply targets set for the borough under the Mayor's London Plan.

5. Alternative options considered

- 5.1. **Option A:** The Council could provide grant funding to a Housing Association in order to deliver affordable homes on the Red House. This option would involve the Council providing grant funding to secure the delivery of lower cost affordable housing. This option was discounted on the basis that the Council's newly adopted Borough Plan prioritises the delivery of Council owned homes on its own land, in order to maximise the delivery of affordable homes of the right type and tenure for the local community.

- 5.2. **Option B:** The Council could decide against proceeding with acquiring homes on the Red House site and default to the original scheme proposed by the developer under the now defunct disposal agreement. The developer's original scheme was submitted in the belief that it was fully compliant with planning policy. However, this has been rejected in favour of the recommended option because the Magic Living (PSMHG) proposed scheme on its own, without the Council as purchaser of the affordable homes, would have delivered only 30% affordable housing on the site, comprising 25 homes at London Affordable Rent and no Council rent homes.
- 5.3. **Option C:** The Council could decide not to proceed with the disposal of the site to Magic Living Ltd (part of PSMHG) and instead seek to promote a scheme on its own land, commissioning a contractor to build the units directly on behalf of the authority.
- 5.4. Whilst this direct development by the Council is possible given the Council's housing strategy and the new capacity being built up in the Housing team to deliver directly, taking forward our own scheme has several disadvantages for several reasons:
- (i) Timing: It could take at least eighteen months - and most likely as long as two years - for the Council to work up an alternative scheme and achieve planning a consent. The start on site for a direct delivery route may therefore not be until 2022 and completion of Council rent homes would not be until 2024. This compares with a potential start on site in 2019 (depending on when planning is granted) for the Magic Living (PSMHG) scheme and practical completion anticipated 2021.
 - (ii) Planning Risk: A Council-led scheme would carry a planning risk, because the planning status (DPD) of the site requires that the church be brought together into a single development with the former Red House site. Were the Council to promote a scheme on its own land in such a way, there is no guarantee that the Council's planning officers could be in a position to recommend such a scheme for approval. There are major challenges in assembling the whole site and reaching an agreement with the pub and church owners and so it is likely that the Council would only be able to pursue a scheme on its own land if it wanted to expedite the development and start on site.
 - (iii) Fewer Homes: An alternative Council scheme only on the Red House site, even if it were to be permissible in planning terms, is unlikely to be able to achieve anywhere as near that many residential units as the current development proposed by the Magic Living (PSMHG). This is because issues such as rights-to-light and access challenges from neighbouring users would need to be factored into the design of the scheme, reducing the overall density of a stand-alone development on Red House alone. There is no guarantee that the owners of the church and the pub would wish to collaborate directly with the Council in submitting a scheme for planning given that they have a settled position with the developer dating back many years. The Church has a right of way and a right to park over the existing car park so the car park land

would effectively be outside of the curtilage of the Council's alternative development scheme, resulting in far fewer units achievable on the Red House. Even were the Council able to promote its own scheme, not all of the homes on the Red House site would be Council rent because there would not be sufficient viability in such as scheme without some form of cross-subsidy from private sale housing.

- (iv) No community space: Even were the Council to promote its own scheme on the Red House without the church and achieve a planning consent, the scheme would not achieve an improved church building, community space, café and nursery provision which the Magic Living (PSMHG) scheme will achieve. The green space at area D on the plan would also not become green space, being needed to improve the Council's development platform, given the constraints presented from existing and neighbouring users (below).
- (v) Temporary Accommodation: There is a cost of keeping those on the housing waiting list who are in temporary accommodation – for these households/families and for the Council's budget. A two year wait for the Council rent homes to be delivered over the private developer route of delivery would cost £288,000 plus the cost of temporary accommodation staff and other Council costs in supporting these households (as further set out in the value for money section below).

6. Background information

- 6.1. The Red House, 423 West Green Rd, N15 was operated by the Council as a Residential Care Home for older people. The 34 bed 2-storey care home provided services for the physically frail and older people with dementia until its closure following a Cabinet resolution on the 19th July 2011 to shut the home along with other Council-owned older people's residential care homes. This was decided by Cabinet on 12 February 2013. See the attached Ordnance survey extract plan in **Appendix A** which shows the Red House site currently owned by the Council outlined in red.
- 6.2. Adjacent to the Red House is a building occupied by the Derby Hall Christian Assembly (DHCA), 425-431 West Green Rd, N15, a small multi-community church which also lets a small space within its grounds to the Destiny Haven Nursery. This is shown in yellow on the Ordnance Survey extract plan. The DHCA church also has the benefit of a mutual pedestrian and vehicular right of way along with 6 car-parking spaces which was granted under a Deed dated 25 March 1980 (Land Registry Charges register, AGL345742) entered into by the Council. This gives the church effective control over a sizeable car park that forms part of the Red House site. There was no term (length) set for this deed, so in effect it was granted in perpetuity. Consequently, this car park could not be developed without the DHCA's consent and compensation. The carpark can be seen hatched in black on the Ordnance Survey extract plan in the Appendix A.
- 6.3. The DHCA church have been in possession of a small strip of land which is within the Red House title which is shown marked E and hatched in pink on the

Ordnance Survey extract plan. The DHCA church have built on this small strip of land and have consequently occupied the subject land for a number of years which gives them legal authority over this land. The proposal is that the Council agree to complete the legal transfer of this strip of land as part of the wider collaboration with the developer with which the church as a JV agreement. A transfer to the DHCA has been agreed in principle, subject to the strip of land forming part of the DHCA's joint venture with the Magic Living (PSMHG).

- 6.4. The former Duke of Cambridge pub (now Golden Sands café), 433-435 West Green Rd, N15 is located adjacent to the DHCA church and the Red House car-park. The Magic Living (PSMHG) have acquired an interest in it by way of an option agreement with the owner. This was agreed to ultimately widen the development envelope in accordance with their planning application HGY/2018/1806 – see Planning section below. The ownership of the former pub is shown in blue on the Ordnance Survey extract plan at Appendix A.
- 6.5. On 10 February 2015 Cabinet agreed the following:
- a. That the original decision by Cabinet on 12 February 2013 that the Red House, 423 West Green Rd, N15 is surplus to requirements be reconfirmed.
 - b. That the Assistant Director of Property & Capital Projects be authorised to dispose of the Council's freehold interest in the Red House, 423 West Green Rd, N15 for best consideration reasonably obtainable to Magic Living Ltd/Leonard Cheshire Disability.
 - c. That In the event that Magic Living Ltd/Leonard Cheshire Disability is unable to proceed with the acquisition, officers engage with Derby Hall Christian Assembly/Aitch in an attempt to agree a holistic policy compliant scheme.
 - d. That In the event that Derby Hall Christian Assembly/Aitch are unable to present a holistic policy compliant scheme and proceed to an acquisition, that the Red House, 423 West Green Rd, N15 is offered for sale on the open market for best consideration reasonably obtainable
- 6.6 On 21 June 2016 the Council entered into a conditional contract with Magic Living Ltd (PSMHG), with completion subject to the following conditions being satisfied: (a) entering into a joint venture (JV) between themselves and Derby Hall Christian Assembly as owners of the Derby Hall Church of God church; and (b) securing a satisfactory planning consent with a longstop date for completion, extended to the 28th September 2018. The original mixed-use development scheme that Magic Living Ltd (PSMHG) were looking to bring forward included 51 residential units of which, 11 were for assisted living for Leonard Cheshire Disability. However, as Leonard Cheshire Disability consequently withdrew from the acquisition because of continued opposition to the scheme by the church, the development evolved through the planning process culminating in the present scheme proposed in the planning application HGY/2018/1806.

- 6.7 Magic Living Ltd (PSMHG) agreed a JV with the owners of the DHCA church by the 28th September 2018 deadline, but they were unable to fulfil the other condition precedent of a satisfactory planning consent by the longstop date.
- 6.8 This presented the Council with the opportunity to renegotiate terms of the disposal that would be more favourable to the objectives of the Borough Plan, including the delivery of greater affordable housing provision. This report represents the result of the renegotiation process over the past few months and the final recommended scheme to be approved by the Council.

Planning

- 6.9 The Red House site was identified within the Council's Site Allocations Development Plan Document (DPD) as Site Allocation SA57 'Red House Care Home' and as a development opportunity capable of supporting a mixed-use scheme that could deliver residential accommodation along with community space.
- 6.10 The Magic Living/Paul Simon Magic Homes Group are seeking to re-develop the Red House together with the Derby Hall Christian Assemblies church (DHCA), 425-431 West Green Rd, N15 and the owners of the Duke of Cambridge public house, 433-435 West Green Rd, N15. This culminated in a planning application ref no: HGY/2018/1806 being submitted to reflect the aspirations of the DPD in bringing forward comprehensive redevelopment with improved townscape. PSMHG's originally submitted a scheme with only 30% affordable homes (23 flats) when first considered by the Council's Planning Service. This previous scheme evolved with duplex units being removed by the developer following advice from a meeting with the Planning Service on the 31st October last. The Mitalee community centre was also originally envisaged to be part of the wider DPD development brief, but planners are content that it can be omitted from the proposed scheme by the developer. This would, however, not prevent the Mitalee site being brought forward as a separate development project in future. The scheme has since been revised by the developer to provide a final scheme for planning of 88 units of which 46 units (64% of the homes on Council's portion of the land) are to be Council rent and no other affordable tenure included.
- 6.11 The planning application as revised in its final form proposes a relocated Church and nursery, café, flexible use commercial unit along with 84 market residential units and four clergy homes for retention by the church, 88 homes in total, associated car and cycle parking spaces and improved connections to the adjacent park. The revised planning application proposes that 46 of the homes will be allocated for social rent, the remainder for private sale and private rent including the clergy designated homes. Over half the homes on the wider scheme will therefore be affordable through the investment approach taken by the Council.
- 6.12 The Council is expected determine the application at its planning meeting in July 2019.

Council Acquisition of 46 Residential Units

- 6.13 It is proposed that the Council enters into an agreement for the disposal of the Red House site and at the same time enter into a contract to acquire 46 of the affordable homes that are to be constructed. These homes will be located in 2 self-contained blocks shown as sites B & C on the attached Ordnance Survey extract plan at Appendix A. The Council will acquire the freehold of these two blocks and associated land around these blocks. This will lead to the Council owning two self-contained blocks of apartments for management as social housing for Council rent by Homes for Haringey, thereby avoiding complex service charge arrangements with third parties.
- 6.14 The design quality and environmental quality have been deemed to be good by the Council's quality review panel. Magic Living (PSMHG) has agreed to provide the homes to the standard required by Homes for Haringey. In accordance with the updated Building Regulations all the homes are designed for long-term adaptability and accessibility. Two of the units are to be wheelchair accessible. The wider scheme is car free other than disabled parking bays. The larger 4 bedroom homes are large, one of them being 147 sq metres and the 1 bed units are typically 50 sq metres. There is at least one cycle space allocated to the 46 units, all provided in communal cycle stores throughout the wider development.

The type of homes that the Council will acquire on completion are in summary:

Block B comprises:	2 no. 4 bed flats
	4 no. 3 bed flats
	9 no. 2 bed flats
	<u>6 no. 1 bed flats</u>
Total:	21 flats
Block C comprises:	6 no. 3 bed flats
	13 no. 2 bed flats
	<u>6 no. 1 bed flats</u>
Total:	25 flats

Housing Need

- 6.15 There are therefore thirty-four 2 bed and 3 bed properties within the forty-six homes. There are twelve one bedroom homes, two of which are at ground floor level. There are 22 no. two bedroom flats in the property to be acquired by the Council. A recent housing needs study by Homes for Haringey has identified a particular shortage of 2 bed social homes in this part of the borough as well as larger family units. The availability of these 2 bed flats makes it possible for Homes for Haringey to release more 3 and 4 bedroom flats from their existing stock, many of which are being under occupied by current residents, offering such people a smaller but more modern and more energy efficient home they can afford to run without the impact of the bedroom tax on their incomes.
- 6.16 The Council bases its affordable housing mix on the Strategic Housing Market Assessment, which is in the recently revised Housing Strategy and comprises 10% of need being for 1 bedroom homes, 45% need for 2 bedroom homes and 45% for 3 bedroom+ properties. Whilst this is a strategic requirement, rather

than a site-specific requirement, it gives an indication that the Red House project is supportive of the strategic housing requirement of the borough.

- 6.17 Once acquired the two blocks will be held within the Council's Housing Revenue Account. This approach was not considered previously due to the HRA borrowing cap that has been in place since the introduction of the HRA self-financing regime in 2012. However, the Government's recent lifting of the borrowing cap has allowed for a different model for the delivery of social rented homes and the Council has adopted its own new approach based on this new fiscal regime.
- 6.18 The Council has already identified HRA funding to support the acquisition of the new Council homes, using further support from the grant allocation achieved from the GLA's Building Council Homes for Londoners (BCHfL) programme. As part of the Council's approved funding under that programme, this site has a specific allocation for 25 homes, but as there is some flexibility in the bid to switch allocations or bring forward funding, and officers have reached an in-principle agreement with the GLA to fund all 46 homes. Homes for Haringey has already been involved in agreeing the draft specification for the 46 homes and will be further involved as the detailed design for the scheme that comes forward on the site.
- 6.19 Through negotiation with the PSMHG, several changes have been made to the original agreement made in 2015 which have enabled the Council to secure early development of social housing for Council rent. The freehold transaction enables the PSMHG to develop the site and for the Council to acquire the completed affordable homes.
- 6.20 The proposal enables the Council to apply the highest level of grant available from the Mayor of London's affordable housing programme, achieving a good value for money against benchmarks, as detailed in Part B, the exempt part of the report per unit. This is because the proposed blocks on sites B and C are within the curtilage of the land currently owned by the Council within the overall scheme and the units are part of a wider scheme.

Value for Money

- 6.21 The Council has a pre-allocation of GLA Building Council Homes for Londoners (BCHfL) Grant for this scheme as provided in the exempt **Part B** report. This revised scheme has an in-principle agreement from the GLA for an additional of grant to be allocated to the scheme toward the Council's total costs of acquiring the units. This GLA funding is time limited and therefore by taking advantage of its availability now reduces the cost burden to the Council's HRA programme as a whole in support of the total goal of achieving 1,000 new Council homes over the Borough Plan period.
- 6.21 The Council has appraised the developer's delivery programme and examined it in comparison with other affordable housing schemes using standard financial appraisal tools in order to arrive at an agree minimum price to be paid for the 46 affordable homes. The details of this are contained in Part B, the exempt part of the report.

- 6.22 Officers have worked within the benchmark values for affordable housing provision of 2 bed homes in determining the acceptability of the proposed purchase price for individual units within the proposed scheme. As the finance table sets out in para Part B, the exempt part of this report, the public sector cost from the purchase of these units is within the Council's current housing programme benchmarks.
- 6.23 In order to further confirm value for money several other factors have been considered. The alternative cost of the Council purchasing homes on the open market rather than through this proposed agreement has also been reviewed. Given that there are, on average, 2 bedrooms per unit across the 46 homes, a comparison could be with an average cost of purchasing a 2 bedroom flat in this area, this benchmarking being fully set out in Part B of the report. The Red House properties will be newly built homes, so the running costs and maintenance are going to be less than for general market homes that would otherwise need to be purchased to meet housing need. There is also a time factor in this value for money judgement. The agreement with Magic Living (PSMHG) will deliver homes two years or more faster than were the Council to seek to develop the site itself, creating savings in the cost of providing temporary accommodation to families on the housing waiting list and other savings arising from the early provision of Council housing in the borough.
- 6.24 The Council has further established value for money from the investment by securing an independent valuation of the disposal to determine the extent to which the developer can afford to commit to affordable housing in the absence of the Council's agreement to purchase of competed homes and the value of the land interest under the final planning application submitted.
- 6.25 PSMHG scheme delivers Council homes 2 years earlier than a Council scheme. This means a two-year saving from the Temporary Accommodation Budget (TA). Assuming that 32 of the 46 units are likely to go to those on the TA list there will be considerable savings to the TA budget. There are also savings to the management and maintenance budgets of the Council from protecting and maintain a vacant site for two further years. In addition, there is the blight and general negative impact that a vacant site would continue to have on the surrounding community and economy which would impact on values, housing transactions and business confidence and ultimately in the rateable and tax base of the Council.

Procurement Issues

- 6.26 The Council has satisfied itself that the disposal agreement and acquisition of the homes that are to be constructed by Magic Living/PSMHG does not constitute any form of works contract covered by Public Contracts Regulations 2015. Independent legal advice from a QC has been obtained whose opinion is that the terms agreed in the Heads of Term attached is for all intent and purposes a sale and purchase contract of land and therefore outside the scope of the Regulations.

Heads of Terms

- 6.27 The Heads of Terms have been agreed and are attached in the **Annex A to Part B**, the exempt part of the report and a delegated authority to the Director of

Housing, Regeneration and Planning, in consultation with the Director of Finance to agree the final contracts is required to agree the final contracts.

- 6.28 Magic Living PSMHG will not be able to acquire the site until it has obtained planning consent. The Council will have the ability to buy back the site if the site is not developed within certain time scales. On acquisition, the Council will be paying a deposit for the 46 homes, but the balance of the acquisition monies will not be paid until the 46 homes have been completed with a small retention subject to satisfying all quality checks on the completed homes. This arrangement therefore does not put Council's capital at risk.

Paragraphs 6.30 – 6.42 are contained in Part B, the exempt part of this report.

Homes for Haringey Operation and Management

- 6.29 The Council's arm's-length housing operation and management organisation, Homes for Haringey, will take on the management and maintenance at practical completion along with repairs at the end of the Defects Liability Period. Whilst the scheme has been fully designed, there is a degree of influence over the final product that the development agreement with the developer will afford the Council over what would otherwise be achieved were the Council not to collaborate in the delivery of the scheme submitted for planning. The finish and completion of the homes will be managed to ensure that they accord with the standard required by Homes for Haringey and otherwise meet LB Haringey's expectations in terms of housing quality.

7 Contribution to strategic outcomes

- 7.1 The approach outlined in this report would deliver 46 social rented homes for Council rent. The emerging Borough Plan prioritises the delivery of safe, stable and affordable homes for everyone, whatever their circumstances. This agreement will contribute significantly to the Council's objective to deliver 1,000 Council homes at Council rent over the lifetime of the current administration. It will also contribute to the borough's requirement to deliver new homes in support of the Mayor of London's housing plans.

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

Finance

- 8.1 The Council is proposing the disposal of land known as the Red House for a sum (as set out in the exempt part B report) to Magic Living Ltd (part of the Paul Simon Magic Living Group), the provision of an indemnity to Magic Living (PSMHG), and the acquisition of 46 residential units. Carter Jonas, the Council's appointed external valuers, have confirmed that the disposal at represents best consideration in relation to the proposed planning scheme with 46 Council rent homes included within it as the affordable housing element of the wider planning scheme. This information is in the exempt **Part B** report.
- 8.2 The Council at its budget setting meeting of 25th February 2019 agreed the

Housing Revenue Account (HRA) business plan and capital programme for the period 2019/20 to 2023/24. This provides the resources to fund the acquisition of social rented homes programme over that period.

Financial Summary

A full financial summary is in the exempt Part B report.

- 8.3 The draft heads of terms that are attached to **Part B**, the exempt part of the report, include payment provisions relating to the homes to be acquired. Under these agreed terms, the Council will take possession of the units at practical completion.
- 8.4 There will be a protection in the agreement for the Council to safeguard its funds. This is set out in the attached Heads of Terms document at **Part B** whereby only a nominal deposit will be paid and the balance of the purchase price paid on practical completion of the 46 units, save for a percentage paid at the end of the Defects Liability period. These will be drafted into the detailed sales agreement.

Full Finance comments are contained in Section 7 & 8 of the Exempt Part B of the report.

Procurement

- 8.5 Strategic Procurement notes the contents of this report; however, comments are not applicable for property and land transactions as they sit outside of the Public Contracts Regulations 2015.

Legal

- 8.6 This report seeks authority to dispose of the freehold interest in Red House and then acquire affordable housing units on completion. The Council has authority pursuant to Section 120 of the Local Government Act 1972 to acquire for the purposes of any of its functions under the 1972 Act or any other enactment, by agreement any land, whether situated inside or outside its area. The properties will be acquired for housing purposes held within the Housing Revenue Account.
- 8.7 The Council has the power under section 123 of the Local Government Act 1972 to dispose of the site but must obtain the best consideration reasonably obtainable.
- 8.8 Any disposal would be subject to the right of way and parking rights in favour of the owners of the Derby Hall Church Assembly (DHCA) and it will be for the developer, PSMHG, to deal with this matter. However, it is not considered that this will be an issue as the PSMHG has entered into an agreement with the owners of the DHCA for the redevelopment of their site as part of the whole scheme.
- 8.9 The properties are yet to be built and the Heads of Terms for the disposal and acquisition of the properties are set out in Part B.

Equality

- 8.10 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and those people who do not
 - Foster good relations between people who share those characteristics and people who do not
- 8.11 The three parts of the duty applies to the following protected characteristics: age disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 8.12 It is not expected that this decision will have any negative impacts on individuals or groups who share the nine protected characteristics. The council will ensure that new housing stock acquired by this decision will be subject to the Housing Allocations Policy, which has been subject to an Equalities Impact Assessment as part of the homelessness strategy.
- 8.13 This decision will increase the supply of homes which are genuinely affordable to local residents by delivering new build council-rented homes. This is likely to have a positive impact on individuals in temporary accommodation as well as those who are vulnerable to homelessness. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics, as well as those who identify as LGBT+ and individuals with disabilities are known to be vulnerable to homelessness, as detailed in the Equalities Impact Assessment of the council's Draft Homelessness Strategy. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

9 Use of Appendices

Appendix A - Ordinance Survey Plan of the Red House, 423 West Green Rd, N15 (which denotes the location of sites "B" & "C")

Red Line Site: LB Haringey Freehold Ownership 'The Red House' to be disposed to Magic Living Ltd/PSMHG. Site C and Site B: Housing Blocks to be acquired by LB Haringey on completion. Site D: green space to be transferred back to LB Haringey. Yellow, Blue and White Areas to be retained by Magic Living (PSMHG) and its partners for development as community space and private

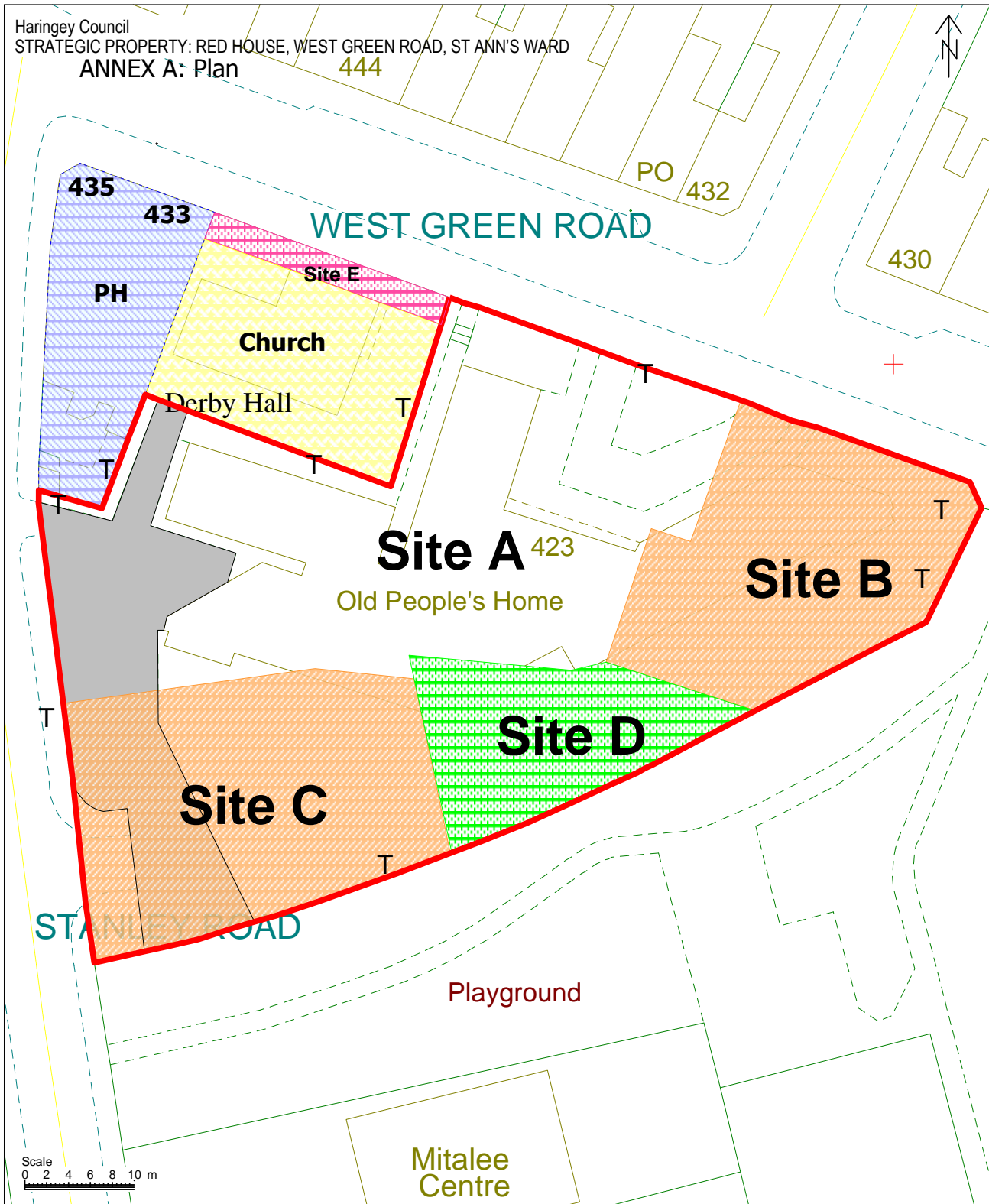
housing. Site E: small strip of land occupied by the DHCA church organisation to be transferred by the Council to the church as part of its joint venture agreement with Magic Living (PSMHG);

10 Local Government (Access to Information) Act 1985

Appendices which are NOT FOR PUBLICATION is by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Part of this report is not for publication as it contains information classified as exempt under Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

PART B (the exempt part of the report) also contains **Annex A** –Heads of Terms for The Disposal/Development Agreement (exempt from publishing).



The Red House
423 West Green Road
Tottenham
London
N15 3PJ

RED HOUSE : LBH freehold ownership disposal : (EDGED IN RED)
RED HOUSE : CAR PARK : (BLACK HATCHING)
DHCA : (YELLOW HATCHING)
DUKE OF CAMBRIDGE PUB: (BLUE HATCHING)

SITE A: (White Shading) : PSMHG retained site.
SITE B: (Orange Shading) : Acquisition of 25 no. Residential homes by LBH.
SITE C: (Orange Shading) : Acquisition of 21 no. Residential homes by LBH.
SIDE D: (Green Shading) : Land to be transferred to LBH + incorporated into Stanley/Culcross pocket park.
SITE E: (Pink Shading) : Strip to be transferred to DHCA.

192. RED HOUSE YARD, 432 WEST GREEN RD, N15 3PJ - Public Minutes

The Cabinet Member for Finance and Strategic Regeneration introduced the report which recommended the disposal of the Council's freehold interest in The Red House, 423 West Green Rd N15, to Magic Living Ltd, part of Paul Simon Magic Homes Group (PSMHG), and the acquisition by the Council of the freehold interest in two blocks of property comprising 46 new-build homes within the proposed site development, as well as open green space. The report set out the agreement by the Council to acquire homes within the site redevelopment for retention as social rented Council housing towards achieving the priority of 1000 new Council homes over the Borough Plan period.

The Cabinet Member highlighted that the wider project on the site would also deliver private homes in support of the Council's overall obligation to meet housing supply targets set for the borough under the Mayor's London Plan. The heads of terms would allow for profit share (overage) payment to the Council if the private sale units exceed sales prices assumed in the Planning viability study.

The Cabinet Member informed the meeting that Officers had worked within benchmarks for affordable housing provision and was pleased to note that the social housing was supported by the Mayor of London's affordable housing programme grant.

The Cabinet Member noted the scheme would not only count towards the Council's 1,000 social rented housing priority but would also help tackle the housing long waiting list and create savings in the cost of providing temporary accommodation to families as well as assist in tackling homelessness in the borough. The scheme was compliant with the Council's Budget and Policy framework as set out in part 4, section E of the Constitution, and the housing funding element of the project is part of the Council's budget setting process which was the subject of a Council decision in February 2019.

In response to questions from Councillors: Gordon, Davies, das Neves and Barnes, the following information was noted:

- Regarding how quickly the homes could be built, the Cabinet Member confirmed that these would be completed within 3 years, by 2022.
- In relation to the revised terms of the agreement, the Cabinet Member noted this allowed the Council to acquire the 46 properties intended for Council rent with the freehold of the land for these properties and the green space. The previous scheme had included only 30 units under shared ownership terms.
- With regards to the value of the land, this normally decreases when adding social housing.
- In response to the potential for the developer land banking, Officers advised that the terms on which the Council agree to sell the land would include clauses such as longstop dates for completion of the homes and binding the developer to develop directly, thus protecting the Council from land banking or onward sale of the land to another party.

- Regarding the procurement, the Cabinet Member advised that this was in the exempt part of the report and that this could not be commented on in the public meeting.
- In relation to the gates being included in the development, Officers advised that these would only be used at the request of Metropolitan Police and were not a Council requirement. Officers confirmed that it was possible that public pedestrian routes into the scheme could be closed at night as was clear in the scheme approved at Planning Committee. This was at the discretion of the police and if they required this so not a Council decision. In addition, this feature was also being considered for schemes in the past and future in Wood Green as well as Tottenham so not unique to this project.
- Officers clarified that the previous agreement with Paul Simon Magic Homes in 2015 for disposal of the land had expired in September 2018. There had not ever been a planning consent for the previous scheme.
- Officers advised that with every disposal of land that the Council made, it is legally obliged to get a Best Consideration of a report from a valuer. This would confirm that, based on the use of the land and the market value of the land, the price that the Council disposes of it would be the best use of public resources.
- Given the proportion and type of affordable housing that was being developed on the land in accordance with the planning application and consent, the price that the Council was selling the land for was the appropriate price and best consideration.
- Officers further provided more information on how the values relating to this development had been reached and were value for money. It was noted that there were two value calculations involved in this transaction, the appropriate price in disposing of the freehold of the land to the developer. This first calculation which is supported by, professional advice from an independent valuer, reflects the tenure and the amount of affordable homes that are intended to be built on the site. The second calculation is based on cost considerations for the homes when the Council buys these back from the developer for use as Council homes. It was noted that the benchmark test will be applied to test the affordability of those homes within the overall HRA business plan and this currently shows that any rental income that will come in from the homes covers these costs. Officers were therefore, satisfied that the agreed price for acquiring the completed homes was within the benchmarks that have been set in the housing delivery programme.
- The Cabinet Member for Housing and Estate Renewal later added that many of the Council's housing estates had a concierge service who assisted residents in and out of their premises.
- Officers advised that the possible unfavourable consideration by the owners of church and pub to the possibility of an alternative Council-led development rather than the current Paul Simon Magic Homes scheme included an element of conjecture but was reasonably based on the long running discussions with these parties dating back to 2012 and a judgement on their appetite to wait still further a different Council led scheme.
- in relation to the option of leasing the site to developer, there would be constraints with a procurement process and tendering policy.

Further to considering exempt information at item 31,

RESOLVED

1. To agree to the disposal of the Council's freehold interest in the Red House Site, 423 West Green Rd, N15 (land identified in the attached plan at **Appendix A**) to Magic Living Ltd (Paul Simon Magic Homes Group) for a sum as provided in the exempt **Part B** of the report, under Heads of Terms which are also attached in **PART B**, with the land receipt to the Council to be hypothecated against any repayment of a NHS grant in respect of the former Red House care home, should such a payment to the NHS be required; and
2. To agree to the acquisition by the Council for housing purposes of the freehold interests in two blocks of flats, comprising a total of 46 social rented homes, to be constructed by Magic Living Ltd (PSMHG) on sites B and C on the attached plan, for a maximum sum of provided in **Part B** of the report plus the Council's acquisition costs, and according to the terms which are also set out in the Heads of Terms document attached as the annex A in **PART B**, the exempt part of this report; and
3. To give delegated authority to the Director of Housing, Regeneration and Planning, in consultation with the Director of Finance to agree the final contracts; and
4. To agree that the Council should make financial provision as detailed in **Part B of the Report**, including Council on-costs for the project, provision for which exists within the Council's Housing Revenue Account, and thereby making use of the housing grant the authority has been allocated by the Mayor of London's affordable housing programme; and
5. To agree to the acquisition by the Council for a consideration, as set out in **Part B of the report**, of green space shown green at **Site D** on the attached plan at Appendix A, following the completion of the development, in order to provide for the creation of new public open space in the St Ann's area which will be managed by the Council.
6. To agree to transfer, for a sum provided in **Part B**, the exempt part of the report, of the Council's freehold interest in the small strip of land (identified as **site E** on the attached plan at Appendix A) fronting the church to the owners of the DHCA church, in order to enable the church to participate fully in the development of the overall Red House site and in accordance with the proposed planning application. This transfer is to be on condition that the owners of the DHCA church remains party to the wider site development partnership with Magic Living (PSMHG) and makes use of this land in support of the scheme as granted under the future planning determination.
7. **Recommendation 7 is fully contained in PART B, the exempt part of the report.**

Reasons for decision

The disposal of the freehold of The Red House site will enable the development by Magic Living (PSMHG) of a wider site, which incorporates adjacent land ownerships of the church and the former pub. This development will deliver 46 affordable homes, which the Council will be able to acquire on completion of the developer's scheme. The new homes will then be managed by Homes for Haringey as social tenure homes for Council rent and enable the provision of further new private homes in the wider scheme. In addition, a new community space and new public open space will be created.

This project responds to the Borough Plan commitment for the delivery of 1,000 homes at Council rent in Haringey and contributes to the wider housing supply targets set for the borough by the Mayor of London under the London Plan. The development by Magic Living (PSMHG) is subject to the grant of a planning consent, and is expected to start on site in 2019 with completion in 2021.

The disposal of the Red House site will enable this site to be developed together with the adjoining sites to make a much more comprehensive development than were it to be able to be developed on its own. 88 homes, of which four are for the clergy use by the DHCA organisation, are to be constructed as part of the wider project. As part of this wider project 72 homes are to be developed on the Council's Red House site itself of which 46 (64%) will be acquired by the Council as new affordable homes, meaning that along with the transfer back of green space, 53% of the Council's existing land by area will come back to the Council. The project delivers the completed Council rent homes at least two years faster than would be possible were the Council to set aside this ongoing relationship with the developer and instead seek to develop the Red House site on its own. The housing programme investment by the Council will result in this private led housing scheme delivering more than fifty percent of the homes as affordable, which would not otherwise have been possible through planning requirements alone. As well as contributing to the Council's target of 1,000 Council rent homes the wider project promoted by the developer will also deliver private homes in support of the Council's overall obligation to meet housing supply targets set for the borough under the Mayor's London Plan.

Alternative options considered

Option A: The Council could provide grant funding to a Housing Association in order to deliver affordable homes on the Red House. This option would involve the Council providing grant funding to secure the delivery of lower cost affordable housing. This option was discounted on the basis that the Council's newly adopted Borough Plan prioritises the delivery of Council owned homes on its own land, in order to maximise the delivery of affordable homes of the right type and tenure for the local community.

Option B: The Council could decide against proceeding with acquiring homes on the Red House site and default to the original scheme proposed by the developer under the now defunct disposal agreement. The developer's original scheme was submitted in the belief that it was fully compliant with planning policy. However, this has been rejected in favour of the recommended option because the Magic Living (PSMHG) proposed scheme on its own, without the Council as purchaser of the

affordable homes, would have delivered only 30% affordable housing on the site, comprising 25 homes at London Affordable Rent and no Council rent homes.

Option C: The Council could decide not to proceed with the disposal of the site to Magic Living Ltd (part of PSMHG) and instead seek to promote a scheme on its own land, commissioning a contractor to build the units directly on behalf of the authority.

Whilst this direct development by the Council is possible given the Council's housing strategy and the new capacity being built up in the Housing team to deliver directly, taking forward our own scheme has several disadvantages for several reasons:

- i. Timing: It could take at least eighteen months - and most likely as long as two years - for the Council to work up an alternative scheme and achieve planning a consent. The start on site for a direct delivery route may therefore not be until 2022 and completion of Council rent homes would not be until 2024. This compares with a potential start on site in 2019 (depending on when planning is granted) for the Magic Living (PSMHG) scheme and practical completion anticipated 2021.
- ii. Planning Risk: A Council-led scheme would carry a planning risk, because the planning status (DPD) of the site requires that the church be brought together into a single development with the former Red House site. Were the Council to promote a scheme on its own land in such a way, there is no guarantee that the Council's planning officers could be in a position to recommend such a scheme for approval. There are major challenges in assembling the whole site and reaching an agreement with the pub and church owners and so it is likely that the Council would only be able to pursue a scheme on its own land if it wanted to expedite the development and start on site.
- iii. Fewer Homes: An alternative Council scheme only on the Red House site, even if it were to be permissible in planning terms, is unlikely to be able to achieve anywhere as near that many residential units as the current development proposed by the Magic Living (PSMHG). This is because issues such as rights-to-light and access challenges from neighbouring users would need to be factored into the design of the scheme, reducing the overall density of a stand-alone development on Red House alone. There is no guarantee that the owners of the church and the pub would wish to collaborate directly with the Council in submitting a scheme for planning given that they have a settled position with the developer dating back many years. The Church has a right of way and a right to park over the existing car park so the car park land would effectively be outside of the curtilage of the Council's alternative development scheme, resulting in far fewer units achievable on the Red House. Even were the Council able to promote its own scheme, not all of the homes on the Red House site would be Council rent because there would not be sufficient viability in such a scheme without some form of cross-subsidy from private sale housing.
- iv. No community space: Even were the Council to promote its own scheme on the Red House without the church and achieve a planning consent, the scheme would not achieve an improved church building, community space,

café and nursery provision which the Magic Living (PSMHG) scheme will achieve. The green space at area D on the plan would also not become green space, being needed to improve the Council's development platform, given the constraints presented from existing and neighbouring users (below).

- v. Temporary Accommodation: There is a cost of keeping those on the housing waiting list who are in temporary accommodation – for these households/families and for the Council's budget. A two year wait for the Council rent homes to be delivered over the private developer route of delivery would cost £288,000 plus the cost of temporary accommodation staff and other Council costs in supporting these households (as further set out in the value for money section below).

Report for: Special Overview and Scrutiny Committee
29th July 2019

Title: Joint report of the Monitoring Officer and the Chief Finance Officer on the Call-In of a Decision taken by the Cabinet on 9th July 2019 relating to the disposal of The Red House Yard, 423 West Green Rd N15 3PJ

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 9th July 2019 relating to the disposal of the Council's freehold interest in The Red House, 423 West Green Rd N15, to Magic Living Ltd, part of Paul Simon Magic Homes Group (PSMHG), and the acquisition by the Council of the freehold interest in two blocks of property comprising 46 new-build homes within the proposed site development, as well as open green space, is within the 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-In

- 7.1** On 19th July 2019, a call-in request was received in relation to the Cabinet decision taken on 9th July 2019 on the recommendation to dispose of the Council's freehold interest in The Red House, 423 West Green Rd N15, to Magic Living Ltd, part of Paul Simon Magic Homes Group (PSMHG), and the acquisition by the Council of the freehold interest in two blocks of property comprising 46 new-build homes within the proposed site development, as well as open green space. A copy of the Cabinet report dated 9th July 2019; the published draft minutes and the call-in request all form part of the published Agenda pack

distributed to Members of the Overview and Scrutiny Committee, and so are not reproduced again here as appendices to this report. A copy of the exempt Part B report and exempt minutes also form part of the Agenda pack distributed to Members of the Overview and Scrutiny Committee, and so are not reproduced again here as appendices to this report.

7.2 The request asserts that the decision was outside the policy framework, and so it is that assertion which this report focuses on. The Chief Financial Officer also confirms his view that the Cabinet decision is within the budgetary framework. The request also asserts that the decision does not comply with priorities outlined in the Borough Plan.

7.3 In summary, a key concern in the call-in, is the assertion that the decision is not compliant with the current Development Plan Document approved by full Council, a document which forms part of the Policy Framework. It is also asserted that the disposal may not deliver value for money in questioning whether procurement guidance / law has been followed. It is also asserted that the disposal is not in line with the Borough Plan priority on Council house building in the Borough. It is also asserted that greater due diligence needs to be undertaken into the financial viability of PSMHG in the current financial climate in the UK construction sector. It is also asserted that the report to Cabinet was not thorough enough and could prove to be misleading.

7.4 The request also detailed alternative courses of action, namely:

- “Defer the decision at this stage”.
- “Refer the issue to the relevant Scrutiny Panel for a full examination of all the possible valid options and in particular the direct development of the whole or part of the council owned site for social housing, against VFM and current policy criteria. Revisit the decision of how to proceed, taking into account the findings of Scrutiny”.
- Pause the decision

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 request on 19th July 2019, and determined that it met the 6 criteria for validity as set out in the Call-In Procedure Rules. Following investigation and consideration, The Monitoring Officer made an assessment of whether the decision was outside the policy framework and concluded that it was not for the reasons which appear at paragraph 9 below.

8.3 The call-in request made the following points:

- a. That the decision is outside the policy framework in planning terms in that it contradicts the Development Plan Documents brief which envisages the inclusion of the Mitalee Community Centre in SA57; the Pub is not part of SA57 and so contravenes policy DM50 paragraphs 7.19 and 7.20 of DM50; insufficient evidence has been provided on the non-viability of the pub contrary to paragraph 7.21 of DM50. In addition, greater clarity is required around the ownership of the neighbouring property at 435 West Green Road, and the need to investigate whether negotiations with other interested parties to the red line site is required.
 - b. That the disposal and subsequent purchase of 46 housing units may not represent value for money for want of compliance with procurement guidance / law.
 - c. That the disposal does not comply with Borough Plan Priority 1 around a new era of council housebuilding in the Borough in terms of the Council's ability to set quality and design standards.
 - d. That a further due diligence exercise needs to be undertaken into the financial viability of PSMHG given the prevailing financial climate in the UK construction sector.
 - e. That the report which Cabinet made its decisions on was "not thorough enough and could prove misleading"
- 8.4** As stated at paragraph 7.4 above, the request also set out alternative courses of action.
- 8.5** In the Monitoring Officer's view, only the points raised at paragraph 8.3 a. need to be considered in this report, on the basis that by their nature, the other points do not amount to policy framework issues – in particular as can be seen from paragraph 6.6 above, the Borough Plan does not form part of the policy framework - and as such are dealt with in the Director's report to this Committee.

9 Development Plan Document (DPD)

- 9.1** The Development Plan Document is part of the policy framework, and is adopted by full Council. The question of whether the Cabinet's decision on 9th July 2019 was contrary to the DPD (so as to be outside the policy framework, and one which it was for full Council to take) is to be determined by reference to the merits of the assertions made in the call-in document.
- 9.2** It is the Monitoring Officer's view that the Cabinet's decision was consistent with, and not contrary to, the DPD for the reasons given in the report of the Director Housing, Regeneration & Planning to this Committee. It is understood that Policy DM55 of the DM DPD states that, where development forms only part of a larger site allocation, a masterplan must be submitted with the application in order to demonstrate to the Council's satisfaction that the proposal would not prejudice the future development of other parts of the site allocation, or frustrate the delivery of the wider site allocation requirements. It is further understood that the applicant has provided an indicative masterplan for the entirety of SA57. The

masterplan would not prejudice any of the site-specific requirements or development guidelines of SA57. Against that background, the Director has concluded that the applicant has submitted a logical and workable masterplan that is acceptable as it complies with the requirements of Policy DM55.

- 9.3** It is also understood that DM50 of the DM DPD states that the Council will resist changes to the use of public houses unless it can be demonstrated that: (a) the public house is no longer viable financially; (b) all feasible options for re-provision of a public house on site have been explored; or (c) redevelopment of the site would secure an overriding public benefit. Paragraphs 7.19 and 7.20 referred to in the call-in are supportive text to the policy, but are not direct policy. The Council firstly considers that DM50 is not engaged, as the premises now operates as bar-restaurant (Use Class A3/A4) instead of a traditional public house (Use Class A4). Further, the public benefits arising out of the development as a whole (restoration of a visually prominent and locally listed heritage asset and comprehensive development of this allocated site for housing including 54.9% to be social rented units) would secure an over-riding public benefit and therefore, regardless of whether the premises was still in use a public house, a change of use would be acceptable under DM50(A)(c). Where DM50(A)(c) is engaged, there is no requirement to provide viability evidence pursuant to DM50(A)(a). Consequently, the Director has concluded that the development of those parts of the site comprising the 'Golden Sands' bar and restaurant does not contravene policy DM50.

10 Conclusion

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

11 The Section 151 Officer's Assessment

- 11.1** The current budget framework for the Council is detailed in the "2019/20 Budget and Medium Term Financial Strategy (2019/24)" report, approved by Full Council at its meeting on 25th February 2019. The decision to progress with this scheme falls within this framework.

12 Contribution to strategic outcomes

N/A

13 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities) Finance and Procurement

The Chief Finance Officer's comments are set out above.

Legal implications

The Monitoring Officer's comments are set out above.

Equality

N/A

14 Use of Appendices

Appendix 1 Call-In Procedure Rules

15 Local Government (Access to Information) Act 1985

N/A

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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

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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

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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

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- (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.

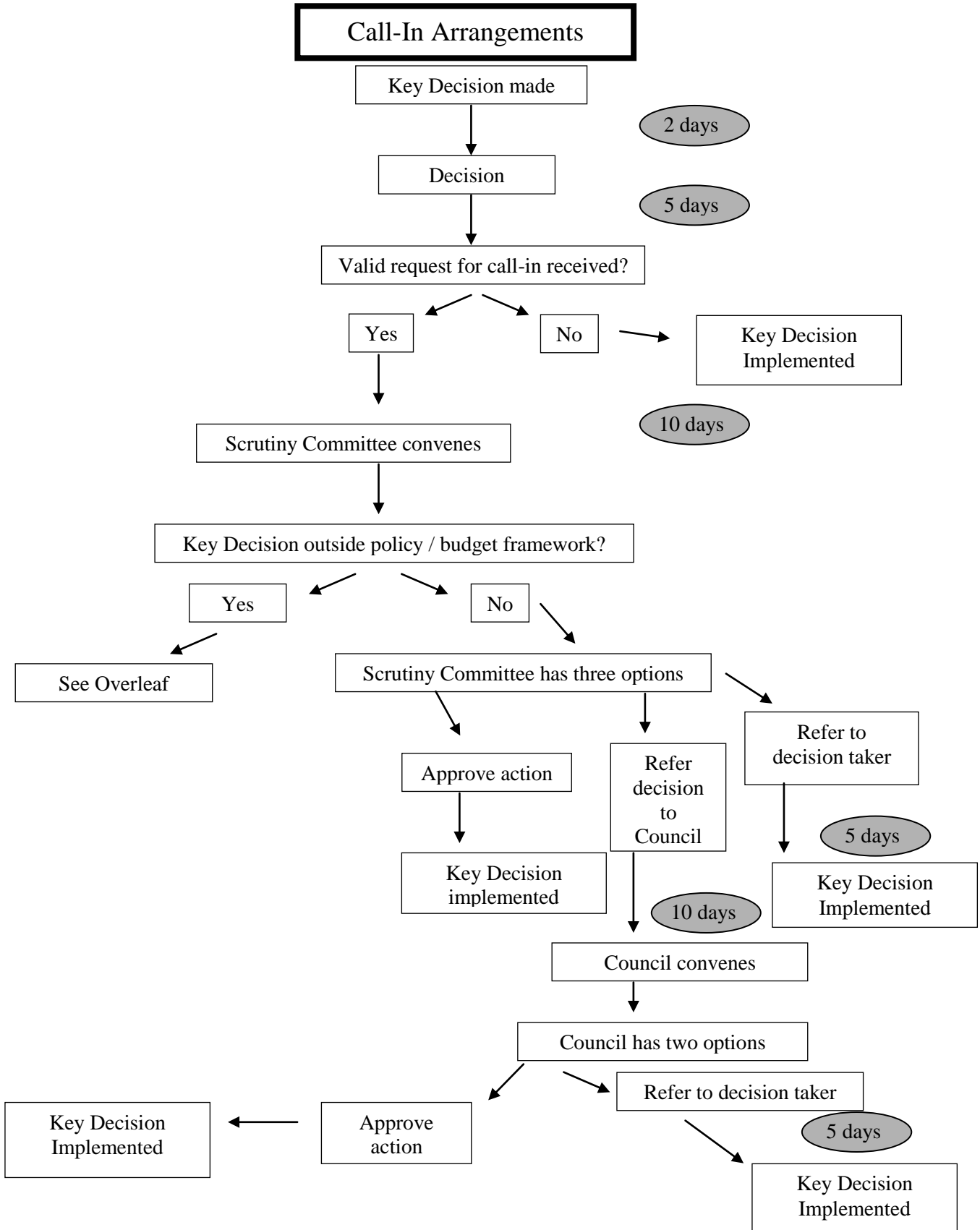
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- (b) The Overview and Scrutiny Committee may select a forthcoming decision and examine the issues around it.
- (c) In order not to obstruct the Council in its business, the Overview and Scrutiny Committee may call-in a key decision in advance of its 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.

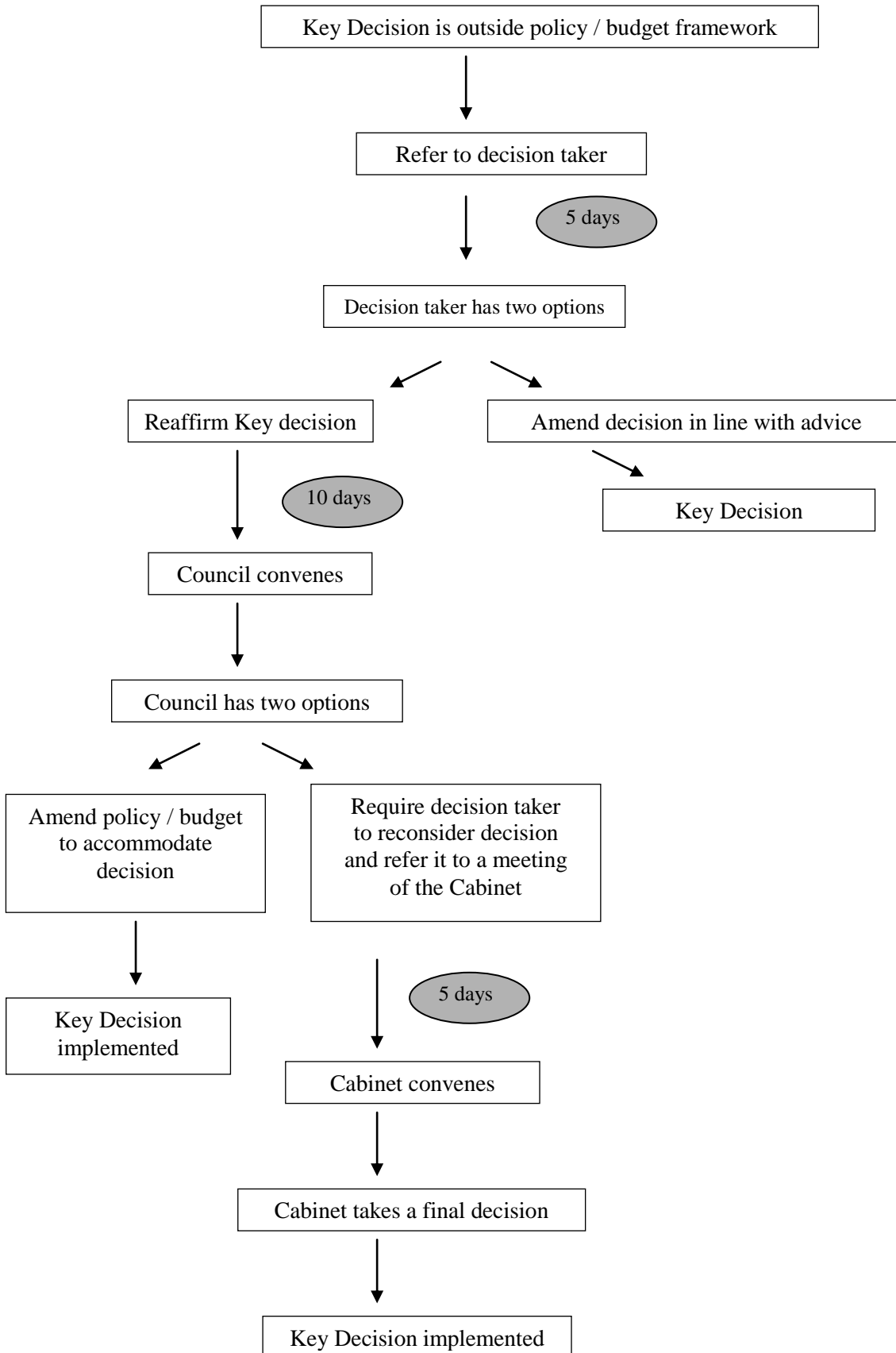
20. Monitoring Arrangements

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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Report for: **Special Overview and Scrutiny Committee on 29th July 2019**

Title: **Call-in of Cabinet’s decision relating to Disposal of Red House Yard, West Green Road, N15**

Report
Authorised by: **Dan Hawthorn, Director of Housing, Regeneration and Planning**

Lead Officer(s): **Steve Carr, Interim Assistant Director of Economic Development & Growth and Alan Benson, Interim Assistant Director, Housing**

Ward(s) affected: **St Ann’s**

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

1. DESCRIBE THE ISSUE UNDER CONSIDERATION

1.1. The purpose of this report is to provide further information to support the Overview and Scrutiny Committee’s consideration of the issues raised in the ‘call-in’ of the Cabinet decision of 9th July 2019 in relation to the disposal of Red House, 423 West Green Road N15, to Magic Living (part of the Paul Simon Magic Homes Group).

2. CABINET MEMBER INTRODUCTION

2.1. My introduction to the original report considered by Cabinet on 9th July 2019 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 would simply and clearly confirm my view that nothing raised in the call-in or set out in this report changes my view that the decision taken on 9th July 2019 was 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

The decision and the call-in

4.1. At its meeting on 9th July 2019, Cabinet made a number of decisions relating to the Disposal of Red House, 423 West Green Road to Magic Living/Paul Simon Magic Homes Group and acquisition of homes in the proposed site redevelopment for retention as social rented Council housing. The decisions and the report are published on the Council’s website and are accessible at the link provided in Section 10 below.

4.2. Following the publication of the draft minutes of the meeting on 9th July 2019, a ‘call-in’ of the decision was received and deemed valid in line with the criteria set out in

Part Four, Section H of the Council's Constitution. Accordingly, the matter is now to be considered by the Overview and Scrutiny Committee.

Reasons for the call-in

4.3. The call-in form gives six primary reasons for the call-in and several sub-reasons:

1. Outside the policy and budget framework and non-compliance with priorities outlined in the Borough Plan:

The proposal is not compliant with the current DPD brief which envisages the inclusion of the Mitalee Community Centre in SA57.

2. Value for money/OJEU:

The proposal, to dispose of this significant council asset to a private interest by private treaty (i.e. without marketing it, inviting other interests to bid and evaluating/comparing alternative bids), appears contrary to procurement guidance.

3. Non-Compliance with the Borough Plan:

Priority 1 of The Borough Plan states: "*One of our very highest priorities is to start a new era of council housebuilding in the borough, particularly using our own land. We will set and publish clear standards for the quality and design of these homes, and ensure every subsequent new council homes meets those standards*". The proposed sale of Council-owned land to Paul Simon seems not to align with this very high priority.

4. Alternative Options:

There has been an inadequate exploration and evaluation of alternative courses of action that appear more in line with the council's current stated policy preferences. The case for a less risky development plan that could deliver more social housing units needs further consideration.

5. Due Diligence on the Developer

There appears a lack of due diligence carried out on Paul Simon Magic Homes (PSMHG) and any assessment of risk to the council.

6. The Cabinet Report

The report to the cabinet meeting is not thorough enough and could prove misleading because it includes assumptions and assertions that have, on subsequent questioning and investigation, found to be either erroneous, or inadequately supported by facts.

4.4. The form lists these as the six primary reasons for call-in each with sub-reasons. This report provides an officer response to the given reasons for call-in, and the proposed variations to the decisions made by Cabinet on 9th July 2019. The report of the Monitoring Officer and Section 151 Officer, which is also presented as part of this item, makes recommendations about whether any of the decisions fall outside the financial and policy framework.

4.5. **REASON 1**

Outside policy/budget framework.

Reason 1a

“Planning: The proposal is not compliant with the current DPD brief which envisages the inclusion of the Mitalee Community Centre in SA57.”

Response

- 4.6 These planning matters were considered both as part of the planning application and the Cabinet report (Part A, para 6.10). The land agreement with Paul Simon Magic Homes as set out in the Cabinet Paper was based on the assumption that the project would be compliant with planning policy. Planning Committee on 8th July resolved to grant the planning application and the s.106 agreement is being finalised prior to the decision notice being issued. The background planning factors taken into consideration and summarised in Part A para 6.10 in the land disposal report to Cabinet are as below.
- 4.7 Policy DM55 of the DM DPD states that, where development forms only part of a larger site allocation, a masterplan must be submitted with the application in order to demonstrate to the Council’s satisfaction that the proposal would not prejudice the future development of other parts of the site allocation, or frustrate the delivery of the wider site allocation requirements. The applicant has provided an indicative masterplan for the entirety of SA57, within the submitted Design and Access Statement (Appendix A). The masterplan includes the community facility located immediately to the south of the application site (Mitalee Centre), which is located within the boundary of SA57 but is unable to form part of this development proposal as it is being rented on a long lease.
- 4.8 The indicative schematic submitted with the application shows how potential future development on the Mitalee Centre site can be achieved, with a similar building scale, massing and layout to Block C of the proposed development. The proposed development has been designed without windows on the southern side of Block C so that the potential masterplan can be completed without adversely affecting the living conditions of future occupiers of that block at a later date. This arrangement is considered an appropriate potential design for the remaining part of SA57 and demonstrates that the approved proposed development does not result in a reduction in capacity on the site.
- 4.9 The masterplan would not prejudice any of the site-specific requirements or development guidelines of SA57. As such, it is considered that the applicant has submitted a logical and workable masterplan that is acceptable as it complies with the requirements of Policy DM55.
- 4.10 The Secretary of State has considered two appeals in the borough, Cross Lane in 2017 and the Goodsyard Site, Tottenham in 2019, which involved the development of only part of a site allocation. The Secretary of State granted planning permission in both and confirmed that the sites in a site allocation do not need to be delivered in one planning application to be acceptable.

Mitalee/Planning

- 4.11 The Council is the freeholder of the land where the Mitalee Centre (which is also known as the West Green Community Centre) is situated and which is leased to the Bangladeshi Women's Association in Haringey Ltd (BWAH) on a long lease term as set out in **Part B**, the exempt part of this call in report.
- 4.12 – 4.13 The response on this is set out in **Part B**, the exempt part of this call-in report.

Reason 1b:

"The Pub is also not part of SA57 and contravenes policy DM50 on Public Houses (paragraphs 7.19 and 7.20). Insufficient evidence has been provided on the non-viability of the existing pub as per paragraph 7.21 of DM50".

Response

- 4.14 This was fully considered as part of the Planning Committee consideration of the planning application on 8th July. From a Planning point of view the inclusion of the former pub was considered to be a benefit of the scheme given the opportunity to improve the Locally Listed Building in particular. The planning issues were also considered in the Cabinet report Part A, Para 6.10.
- 4.15 The application site includes the 'Golden Sands' bar and restaurant, which was formerly the Duke of Cambridge public house. The building is locally listed. Policy DM50 Part A of the Development Management DPD 2017 states that the Council will resist changes to the use of public houses unless it can be demonstrated that: (a) the public house is no longer viable financially; (b) all feasible options for re-provision of a public house on site have been explored; or (c) redevelopment of the site would secure an overriding public benefit. All these tests were satisfied in the planning process.
- 4.16 The proposed development would refurbish and extend the former public house to enable its conversion to a church, including a street-facing café at ground floor and nursery at rear which would both be operated by the church.
- 4.17 The existing building has ceased operations as a traditional public house (Use Class A4) and instead now operates as a bar-restaurant (Use Class A3/A4). Bar-restaurant operations appear to have been active on this site since at least 2009. As such the viability limb of DM 50 is not considered to be engaged. The community element of the use is replaced in the street facing café which is proposed.
- 4.18 The relocation of the existing Derby Hall Church and associated nursery into an extended and renovated former public house building 'frees up' existing land adjacent to the former care home, which enables the remainder of the site to be redeveloped on a more comprehensive basis for residential purposes. This includes the provision of more than 50% social rented housing, plus other benefits including improvements to the size and landscaped quality of the adjacent park and an improved public realm.
- 4.19 The proposed development would also facilitate the refurbishment of the locally listed building, which has been significantly damaged and unsympathetically altered by unauthorised development over the years. The refurbishment would incorporate

improvements to important elements of the building's external fabric, with features such as the ground floor window openings reverting to their original design and appearance. Unauthorised extensions such as the visually dominant street-fronting awning would also be removed.

- 4.20 Although an informal community meeting place would be replaced, there are several other public houses and bar-restaurants on West Green Road and elsewhere in the vicinity, including on the nearby Green Lanes. Furthermore, the church would incorporate a self-contained café at ground floor level thereby replacing the existing bar-restaurant space, which would provide an alternative community space as well as enabling and retaining an active frontage on this part of the site.
- 4.21 Therefore, in any event, the proposed extension, renovation and conversion of the former public house into a church and nursery would facilitate the restoration of a visually prominent and locally listed heritage asset and would also enable the comprehensive development of this allocated site for housing including a substantial and policy-compliant provision of low-cost affordable rental housing. As such, it is considered that the change of use of the former public house as proposed would secure an over-riding public benefit and would therefore be acceptable in principle in accordance with Policy DM50 (A)(c).
- 4.22 There is also no policy restriction on the development containing parts outside of the site allocation. As set out above, there are a number of public benefits arising from including the former public house within the development and the change of use is acceptable in planning terms.

Reason 1c

“There is a lack of clarity on the ownership of 435 West Green Road and lack of evidence around the rights the church holds to land or access to land. Councillors are concerned to receive clarity over this ownership of the pub and the church and whether the Council should have considered opening up negotiations with the other interested parties to the red line site. A call-in of the decision would enable clarity and further investigation into this matter”.

Response

- 4.23 These issues were covered in Part A, Section 6 giving the background on the site. The history of the Council's relationship with the church is set out in the Cabinet Report of February 2013 and February 2015 cited as background documents for the July 2019 Cabinet report. The Council has no current direct relationship with the owners of the church or the owner of the pub. The Council's previous attempts to assemble this wider site and reach agreement with the church did not reach a satisfactory conclusion. The current development is therefore in response to a land assembly by Paul Simon Magic Homes and the proposed land agreement with Paul Simon Magic Homes will be contingent on PSMH securing these two land interests as part of the development of the wider site.
- 4.24 The Land Registry shows that the registered proprietor (title absolute number MX464250) of the public house known as 435 West Green Road is Violet Holdings

Ltd, a company incorporated and registered in Cyprus. As above, the Council does not have a direct relationship with the owner of the pub and will have an agreement in respect of the Red House site with Paul Simon Magic Homes.

4.25 **The background to the church interest in the car park is set in part B of the Cabinet Report and is further addressed in Part B, the exempt part of this report.**

4.26 **REASON 2:**

Value for Money/OJEU:

Reason 2a

“The proposal, to dispose of this significant council asset to a private interest by private treaty (i.e. without marketing it, inviting other interests to bid and evaluating/comparing alternative bids), appears contrary to procurement guidance”.

Response:

4.27 The interpretation in the Reason given on the form is not correct. The nature of the transaction is clearly described in the Part B of the Cabinet Paper, Section 6.27 onward. The main object of the contract between the Council and Paul Simon Magic Homes is not an obligation to carry out works for the Council but is rather a standard property transaction. This is an agreement for a land disposal and an acquisition of residential units after they have been completed. The Council will buy the new units if they comply to certain standards but the design and specifications of the development are not those of the Council and the Council has not procured or commissioned the scheme from Paul Simon Magic Homes.

4.28 As the Cabinet Paper clearly stated, the Council is disposing of its land interest, the sale of land and/or the acquisition of properties do not fall within the Public Contracts Regulations 2015. The Council can dispose of a land interest as long as it meets both its legal and fiscal duties. The sale of the Red House site is compliant in both these respects as it has satisfied s.123 Local Government Act 1972.

Reason 2b

4.29 *“The purchasing of 46 units of housing on the site suggests this is more than a land disposal as Haringey Council will (a) receive an economic benefit from the site (the 46 units) and (b) be involved in specifications of those units to meet Homes for Haringey standards (see Cabinet Report 6.14 and Borough Plan below).”*

Response:

4.30 The nature of the proposed agreement with Paul Simon Magic Homes is as set out above and in Part B, Heads of Terms, section of the Cabinet Report. As stated in the Cabinet Paper, the Council is disposing of its land interest, the sale of land and acquisition of properties do not fall within the Public Contracts Regulations 2015. The Council can dispose of a land interest as long as it meets both its legal and fiscal duties. The sale of the Red House is compliant in both these respects as it has satisfied s.123 Local Government Act 1972.

Reason 2c

“The report states officers consulted a QC for assurance and councillors would like more clarity about the nature of that QC advice on whether the land disposal with the purchase of housing requires procurement/tender under OJEU procurement law. Calling in this decision would provide OSC with a chance to satisfy councillors that the absence of a bidding process for the development was value for money and transparent”.

Response:

- 4.31 This is set out in **Part B**, the exempt part of this call-in report.

REASON 3

Non-Compliance with the Borough Plan:

“Priority 1 of The Borough Plan states: ‘One of our very highest priorities is to start a new era of council housebuilding in the borough, particularly using our own land. We will set and publish clear standards for the quality and design of these homes, and ensure every subsequent new council homes meets those standards’. The proposed sale of Council-owned land to Paul Simon seems not to align with this very high priority”.

Response

- 4.32 The Cabinet report cited the policy context under “reasons for decision” at paragraphs 4.1 - 4.3. Part of the recommendation was that two blocks of flats comprising the 46 new-build homes are to be constructed within the proposed development on the land which the Council is selling to Paul Simon Magic Homes, the freehold of these new build units will then be acquired (by the Council) when completed. These 46 new homes will directly contribute to the Council’s target of a 1,000 new homes.
- 4.33 The various means for delivering the 1,000 new homes target in the Borough Plan were fully set out in the report on the Council’s Housing Delivery Programme considered and approved at July 2019 Cabinet. The primary focus is on bringing forward direct delivery by the Council on its own land. But it was noted and approved that the Council will need to make full use of other opportunities as they arise that will enable the delivery of Council homes at greater pace and volume than might be possible through the direct delivery route alone. This includes entering into contracts with developers to acquire homes on new developments. Sometimes this will be homes that were already identified as affordable homes to rent through planning, sometimes homes that were shared ownership that the Council can convert to social rent and sometimes homes that were originally intended for market sale. And sometimes this approach will be used on schemes where Council land has been brought together with other land ownerships in order to achieve a better overall outcome. Homes acquired in this way will all come at different price points and will all have corollary benefits including supporting the delivery of overall housing numbers and supporting wider Borough Plan objectives.

- 4.34 Red House is just such an opportunity. The Council did consider the option for this site to be developed directly by the Council rather than acquiring them through the contractual relationship with Paul Simon Magic Homes. That option was not pursued for the reasons set out in answer to question 4 (alternative options) below.

REASON 4

“Alternative Options: *There has been an inadequate exploration and evaluation of alternative courses of action that appear more in line with the council’s current stated policy preferences. The case for a less risky development plan that could deliver more social housing units needs further consideration.*

The option for building/contracting directly has not been adequately addressed. The alternative of an in-house option lacked costings and denied councillors a proper assessment of the viability of this course of action. The possibility of more social housing units, better control over the speed, quality and timing of delivery by developing the site ourselves has not been taken fully into account. The risks of a private partner failing is also not adequately addressed.

There have been contradictory reports given to councillors over the council’s capacity to develop the site. The report appears to have drawn its recommendations a priori without providing a detailed account of risks or advantages of the Council developing the site. There is an unwarranted assertion that Paul Simon could develop the site more quickly than the Council. The only evidence available suggests the reverse. Paul Simon applied for planning permission which expired after three years (in 2018) with no development taking place.

We would like the decision paused at this stage to allow further exploration and investigation of both the alternative options and to fully clarify the recommended decision is within the budget framework.”

Response

- 4.35 The alternative delivery options were carefully considered, as set out in the Cabinet Report paragraphs 5.1 - 5.4, Options A – C. In summary, these are the factors which informed the Cabinet report consideration of options and were material to the recommendations and content of the report approved by Cabinet.
- 4.36 The option to provide grant funding to a Housing Association in order to deliver affordable homes on the Red House was discounted because of the Council’s stated aim to deliver its own Council housing. This option would have also had many of the disadvantages if the direct delivery option, discussed below. The option not to acquire any homes on the Red House site at all was also discounted because this would have resulted in a lower level of affordable housing and no Council rent homes.
- 4.37 The alternative option given the most consideration was the one alluded to in this reason for call-in, i.e. for the Council not to proceed with the disposal of the site to the Paul Simon Magic Homes entity Magic Living Ltd, but rather to develop the scheme directly. Cabinet decided not to pursue this option for the reasons set out in detail in the Cabinet report, that is:

- It would take significantly longer for the Council to work up an alternative scheme, achieve a planning consent and get a start on site, delaying the delivery of homes – including new Council homes – and delaying savings in the cost of Temporary Accommodation for the Council's General Fund.
- There is a planning risk, because the planning status of the site requires that the whole site be brought forward together into a single development. There would be major challenges for the Council in trying to bring in the land it does not own (the pub and the church) and it might not be able to achieve planning permission if it tried purely on the part that it already owns.
- Fewer homes would be delivered in any scheme solely on the Council-owned land, which would be directly in tension with the Borough Plan objectives on delivering new homes. Issues such as rights-to-light and access requirements for neighbouring users would reduce the overall density of any stand-alone development.
- Any such Council scheme would also not deliver the other benefits - an improved church building, community space, and café and nursery provision - which the Magic Living scheme will achieve, and would lose the green space.

4.38 Therefore, while it was accepted that the overall costs per home of direct delivery could be less than the costs of acquiring the homes from Magic Living, this was outweighed in the balance by this range of factors, which meant that the arrangement being entered into with Magic Living represented the best option overall.

4.39 **REASON 5:**

Due Diligence on the Developer

Reason 5a

“There appears a lack of due diligence carried out on Paul Simon Magic Homes (PSMHG) and any assessment of risk to the council.”

4.40 Due Diligence was carried out on Paul Simon Magic Homes. This was set out in Part B of the Cabinet Report. The detailed response to the call-in question are set out in **Part B**, the exempt part of this report.

Reason 5b

“This is particularly important given the uncertainty in the UK construction sector over Brexit, general overheating in the London market and the collapse in the past month of Keir, Shaylor and (last week) Aspin. Councillors would like assurance that PSMH is sufficiently financially healthy to take on such a large development and whether there is any underwriting or collateral being provided by the Council. We believe that a call-in would allow time for scrutiny to assess what guarantees/liabilities the Council has in relation to any financial underwriting (advance deposits due to PSMHG) and whether that would fall outside the budgetary framework?”

Response

- 4.41 The Construction Sector Risks in relation to PSMH were considered in Part B of the Cabinet Paper. The more detailed response to this call-in question is set out in **Part B**, the exempt part of this report.

REASON 6:

The Cabinet Report

“The report to the cabinet meeting is not thorough enough and could prove misleading because it includes assumptions and assertions that have, on subsequent questioning and investigation, found to be either erroneous, or inadequately supported by facts. For example: the inconsistency with current planning brief for the site; the estimation of any likelihood of planning complications for alternative options brought by the Authority; assertions about presumed lack of organisational capacity within the authority and HfH; the lack of adequate comparisons of actual and likely financial costs and benefits and potential risks to the Authority”.

Response

- 4.42 Officers are satisfied that the report is thorough and covers all the relevant considerations at the necessary level of detail.
- 4.43 Officers are not aware of any erroneous claims in the Cabinet Paper.
- 4.44 The report addresses the compliance with the DPD planning brief and indeed since the report was written the development has received planning consent as compliant with current planning policy.
- 4.45 As set out above, alternative direct delivery options were considered and set aside because of the timing of delivery and the risk of achieving planning, and this is referenced in the report.
- 4.46 To take on a new mixed use development of a church and its community space as well as housing – including a land assembly exercise requiring new dialogue with the pub and church owners – would have a significant detrimental impact on the Council’s capacity to deliver other projects in the Council housing delivery programme and across its wider property function. The Council does have capacity to deliver housing on its own land (Red House only) and officers did carry out an indicative comparable assessment which concluded that such a direct delivery scheme would take longer for the Council to deliver through its own capacity than through the developer and therefore did not meet policy objectives of early delivery of Council homes, and would also likely deliver less good outcomes.
- 4.47 It is not correct to say that no comparison with a Council scheme was carried out. Whilst no direct comparison between a Council scheme and the proposed developer scheme are made in the Cabinet paper itself, the conclusions are based on an indicative assessment carried out by officers, the conclusions of which were discussed in the Cabinet Paper (Part B).

SECTION 2 of Call-In form: Variation of Action Proposed:

- 4.48 Officers have considered the proposed section 2 of the Call-in form: Variation of Action Proposed:

“Defer the decision at this stage” – Response: The deferral of the decision may have consequences for the draft terms of the agreement with Paul Simon Magic Homes. A significant deferral would mean that the developer could not start on site in the autumn as was planned and would thus put at risk the delivery of Council homes beyond the timeframe and longstop date given in the draft heads of terms approved at Cabinet.

“Refer the issue to the Relevant Scrutiny Panel” – Response: Were the project to be referred for full review by Scrutiny there would be such a delay in the implementation of the developer scheme as to make it possible that it will be unable to proceed under the same terms as approved at Cabinet and either new terms and timing would need to be negotiated and agreed at Cabinet.

5. CONTRIBUTION TO STRATEGIC OUTCOMES

- 5.1. The contribution of the decision in question to strategic outcomes was set out in the report to July 9th 2019.

6. STATUTORY OFFICER COMMENTS

Finance

- 6.1. The Section 151 Officer has been consulted in the preparation of this report.
- 6.2. The financial implications of the decisions taken by Cabinet were detailed in the July 9th 2019 cabinet report.

Legal

- 6.3. The Assistant Director of Corporate Governance has been consulted in the preparation of this report, and his views are as set out in his Monitoring Officer report.

Equalities

N/A

9 USE OF APPENDICES

10. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Report to 8th July Cabinet regarding the proposed disposal of Red House Yard 423 West Green Rd, N15 to Paul Simon Magic Homes Group and agreement to acquire homes within the proposed site development for retention as social rented Council housing
Cabinet’s decisions: <https://www.minutes.haringey.gov.uk>

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