

Report for: Special Overview and Scrutiny Committee
Item number:

Title: Call-in of Cabinet's decision on the High Road West Regeneration Scheme ("the Scheme") – appointment of a preferred bidder and next steps

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

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Ward(s) affected: Northumberland Park Ward

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

1. Describe the issue under consideration

1.1 On 12th September 2017, the Council's Cabinet resolved:

- To approve Lendlease Europe Holdings Limited ("Lendlease") as the preferred bidder with whom the Council will enter into a Development Agreement to deliver the Scheme.
- To proceed to the preferred bidder stage of the procurement process for the appointment of a development partner for the Scheme.
- To give Delegated Authority to the s151 Officer and the Director of Regeneration, after consultation with the Cabinet Member for Housing, Regeneration and Planning, to approve the final Development Agreement, Compulsory Purchase Indemnity Agreement, the Lease and any associated legal documentation following the preferred bidder stage.
- To agree the disposal of (subject to the approval of full Council to make the application to the Secretary of State and the consent of the Secretary of State) the properties belonging to the Council and situated within the High Road West Area held within the Housing Revenue Account and the properties held for planning and general fund purposes.
- To acquire the 145 replacement social rented units and 46 shared equity which will be delivered by Lendlease and to give delegated authority to the S151 Officer and the Director of Regeneration, after consultation with the Cabinet Member for Housing, Regeneration and Planning, to approve the final terms of the option to acquire these properties in the Development Agreement.

- 1.2 Following a call-in of that decision made in accordance with Council procedures, this report provides further information to support the Overview and Scrutiny Committee's consideration of the issues raised in the call-in.

2. Cabinet Member Introduction

- 2.1 My introduction to the original report considered by Cabinet on 12th September 2017 set out the case as I see it for that decision. This report deals with the specific points raised in the call-in, and I have nothing to add beyond a clear confirmation that nothing raised in the call-in or set out in this report changes my view that the decision taken on 12th September 2017 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 On 12th September 2017, Cabinet approved the recommendations set out in a report entitled 'High Road West Regeneration Scheme – appointment of a preferred bidder and next steps.' The decision and the report are available on the Council's website, at the link given in section 10 below.
- 4.2 Following the issuing of the draft minutes for the Cabinet meeting, a call-in of that decision was received and validated, in line with agreed Council procedures. Accordingly, the matter is now to be considered by the Overview and Scrutiny Committee.
- 4.3 Section 5 of this report describes and responds to each of the reasons given for the call-in, and the variations of action proposed.

5. Call in

Reasons for the Call-in

- 5.1 Reason 1: "***We are concerned that the commitment to affordable and social housing is weak with only 30% affordable homes on what is currently a council-owned site.***"
- 5.2 Through the procurement process and the negotiation of the Development Agreement, the Council has guaranteed the delivery of 30% affordable housing as a minimum across the High Road West Site (not just the Love Lane Estate). This is a core requirement set out in the Development

Agreement and will ensure the delivery of a minimum 751 affordable homes, which is a net increase of 539.

- 5.3 The actual percentage of affordable housing delivered by the Scheme will be tested through the planning process but will not be less than the 30% set out in the Development Agreement.
- 5.4 Through the planning process an increase in the percentage of affordable housing may prove possible, as the Local Planning Authority will seek to test the Scheme and maximise affordable housing.
- 5.5 Reason 2: ***“We are concerned that a number of leaseholders on the Love Lane Estate do not feel they are getting a fair deal.”***
- 5.6 The Council has been working with Leaseholders on the Love Lane Estate for the past 5 years. This has included developing the Leaseholder Guide and the Resident Charter, which both set out the principles for a fair offer to leaseholders and were agreed at Cabinet in 2014 following extensive engagement and consultation.
- 5.7 The Council has also successfully worked with 11 leaseholders to acquire their properties and is currently in negotiation to acquire a number of leaseholders on the estate.
- 5.8 As set out in the Cabinet report, the Council has agreed a process to develop a more detailed leaseholder offer with leaseholders on the Love Lane Estate, once the Estate Renewal, Rehousing and Payments Policy (“ERRP”)¹ is agreed at Cabinet. This detailed offer will build on the principles, in the Love Lane Resident Charter and the Love Lane Leaseholder Guide and the Council’s ERRP- which has been subject to a public consultation exercise.
- 5.9 Engagement with leaseholders on the detailed offer, will commence in November 2017, with a number of leaseholder workshops. The information gathered at the workshops will be utilised to help develop the offer, which will be subject to a 6-week consultation process with leaseholders. The Council has agreed to work with the leaseholders to co-design the consultation process. The draft detailed offer and the feedback received from leaseholders will be brought back to Cabinet for Cabinet to consider.
- 5.8 Reason 3: ***“We are concerned about council tenants’ right to return on similar terms.”***
- 5.9 The recommendation within the 12th September 2017 Cabinet report for the Council to acquire the replacement homes (recommendation ix), ensures that existing Council tenants who choose to move to these new homes, will be

¹ The ERRP sets out the Council’s guarantees to leaseholders and tenants (and freeholders) across the whole borough. These include a clear guarantee of a right to return, for all residents who choose to do so, and clear commitments about the terms on which such a return will take place, as well as a range of other commitments and clear explanation of the options available to each category of household. Consultation on the policy has closed and Cabinet will be asked to approve the policy in due course.

given a new secure Council tenancy-meaning the terms will remain in line with Council policy.

- 5.10 Reason 4: ***“We are concerned that the council will no longer be the landlord of the Love Lane Estate and we have concerns about the long lease being given to Lend Lease (250 years).”***
- 5.11 The Council will remain the landlord of the social housing and will retain the freehold of the whole of the High Road West site, granting a number of 250-year leases to Lendlease as and when each phase within the site becomes unconditional under the Development Agreement. Access rights for the Council and people living on the estate will be protected through the Lease terms. An inclusive, transparent single estate management company will be responsible for the management and maintenance of high quality public realm.
- 5.12 The management company will include representatives from each tenure and business area and will seek to train and support residents, businesses and community partners so that once ready, they will be able to run the management and maintenance of the area, fostering long-term civic pride and community ownership.
- 5.13 Without more detail on the specific concerns, it is not possible to respond in greater detail on this point.
- 5.14 Reason 5: ***“We are concerned that there are fewer council homes/homes for social rent than originally planned.”***
- 5.15 The Scheme will deliver 145 new high quality, safe and appropriately designed social rented homes. This is in addition to the 29 social rented properties that the Council specifically negotiated and Newlon provided in the north of the High Road West area, to rehouse residents from the Love Lane Estate. 29 families from the Love Lane Estate moved to these properties in 2014.
- 5.16 The Scheme will provide, as a minimum, a net increase of 539 genuinely affordable homes and 751 affordable homes in total. This includes:
- 191 high quality, safe, replacement homes for council tenants and resident leaseholders which meet resident aspirations as set out in the Resident Charter and will be built to new fire and safety standards
 - 155 London affordable rent properties, which is a genuinely affordable rental product introduced by the Mayor of London. Once let, the rent paid for these properties will follow the target rent formula, which are currently being reduced by 1% a year.
 - 405 ‘lower cost’ shared ownership properties, which will be affordable to local people, with the cost of owning the home, not exceeding 45% of the net income received by the owner and affordable to households with a gross household income of £40k.

- 5.17 Following Cabinet approval on the 12th September, the Council will also be acquiring a further 29 affordable homes on the 500 White Hart Lane site, which will provide further rehousing options for Love Lane residents.
- 5.17 Reason 6: ***“We are concerned about density, size and quality of homes on the regeneration site, given the dramatic increase in the number of homes proposed (up from 1,400 to 2,500).”***
- 5.18 The High Road West masterplan principles, which were enshrined in the Tottenham Area Action Plan referred to the scheme delivering a minimum of 1400 new homes.
- 5.19 Through the procurement process for the selection of a development partner for the Scheme the Council has been able to work with bidders to develop their proposals to provide the benefits and community facilities making up a successful new neighbourhood. Increasing the number of homes from the minimum number provides more benefits to the community, while providing an attractive, successful and sustainable residentially led scheme. The number of homes will help to meet the demand for more affordable and market rate homes for residents of our borough and will also help support the local businesses and community facilities in the area.
- 5.20 The Council has sought expert advice throughout the development of the design proposals from London Design Council and have ensured that issues such as daylight and sunlight are considered and that public spaces are of the highest quality, based on design guidance (including that developed with the Resident Design Panel) and planning policy documents so that the Scheme delivers a place where people will want to live, work and socialise.
- 5.21 The eventual number, the density, the size and quality of the homes will all be robustly tested through the planning process and the planning applications will be decided by the Planning Committee.
- 5.22 Reason 7: ***“We are concerned that local businesses will be moved out of the Peacock Industrial site when as yet there is no clear plan for their return.”***
- 5.23 Through the procurement process for the selection of a development partner for the Scheme, bidders were tested on their approach to site assembly and the support they will be offering local businesses, particularly the businesses that will need to be relocated.
- 5.24 Lendlease have a robust site assembly strategy, which sets out their approach for engaging, supporting and working with existing businesses. This strategy includes re-providing new commercial space within the Scheme and a phasing plan which seeks to minimise disruption to businesses. The phasing strategy seeks to maximise opportunities for businesses relocating within High Road West to have one move only. To formalise these commitments, the Development Agreement requires that a relocation strategy be agreed before development can commence, to include the timing of

delivery of new commercial units for existing commercial operators and for the number and size of commercial units to meet occupiers' specific needs.

- 5.25 It should be noted that it may not be appropriate for some businesses, and some businesses may choose not to be relocated within the Scheme. Lendlease's approach confirms that they will work with each individual business to understand their needs and aspirations and come up with a clear plan to meet that business's needs.
- 5.26 Reason 8: ***"We are concerned that the whole scheme depends on the ability of the council to secure a very large number of Compulsory Purchase Orders."***
- 5.27 The Council will be seeking to acquire all third party interests through negotiation. If acquisition through negotiation is not possible the Council will as a last resort consider use of its Compulsory Purchase Order (CPO) powers.
- 5.28 At this stage, the Council does not know with any certainty if and how many CPOs may be required.
- 5.29 Reason 9: ***"We are also concerned that the so called third-party guarantee is in fact being provided by another Lend Lease company."***
- 5.30 The guarantor for Lendlease is their Australian parent company, Lendlease Corporation Limited. The financial status and standing of the guarantor was assessed at Pre Qualifying Questionnaire stage of the procurement process and officers are satisfied that the guarantor is financially sound and would be able to meet its potential liability.
- 5.31 The Council will also complete checks of the financial status and standing of the guarantor ahead of entering into the legal documentation.
- 5.32 Reason 10: ***"We are concerned that the 100% indemnity offered by Lend Lease would not be enforceable if Lend Lease were to collapse or cease trading."***
- 5.33 It is not unusual to have a parent company acting as guarantor for legal agreements in circumstances such as this. Prior to entering into the Development Agreement and the CPOIA, confirmation will be obtained from a firm of lawyers operating within the Australian jurisdiction that the guarantor is able and has the necessary authority to enter into the agreements and that their obligations will be enforceable under Australian Law. This will give the Council assurance that the indemnity is enforceable.
- 5.34 Reason 11: ***"We are concerned that the council does not have a majority on the steering group."***
- 5.35 The Council and Lendlease will be members of the Steering Group. The Steering Group will oversee and make decisions throughout the

implementation of the Scheme. The Steering Group will have equal representation from both the Council and the preferred bidder comprising three members from each organisation with each organisation having one collective vote. The Steering Group is to be chaired by the Council or Lendlease on an annually rotating basis. No party has a casting vote therefore the Council has the ability to veto matters that it cannot agree. Detailed minutes are to be taken of each meeting, providing an audit trail for decision-making. To allow a way forwards if the parties are not agreed at Steering Group, the Development Agreement contains a mechanism for escalation to first and then second senior representatives of each organisation, following which there is allowance for suitable matters to be referred to an independent expert for determination.

- 5.36 Key decisions which the Council wanted a high degree of control over, including approval of the Resident Relhousing Strategy and the Commercial Occupier Relocation Strategy, approval of changes to the specification for the Energy Centre Shell, the Library and Learning Centre and the Replacement Homes specifications may be discussed at the Steering Group as to their content, but approval is reserved exclusively to the Council as landowner, acting reasonably. Separately to the Steering Group process, the Council is to approve planning applications before submission to the Local Planning Authority. acting reasonably, where the application accords with amongst other things the objectives, core requirements and agreed specifications for the Scheme.
- 5.37 Reason 12: ***“We believe that overall the risk of the proposed actions outweighs the suggested benefits.”***
- 5.38 Understanding, managing and mitigating the risks associated with the Scheme has been a key priority for the Council since work on the Scheme began.
- 5.39 The Council has sought to minimise risk through; undertaking an extensive community consultation which has led to the development of a shared vision for the area; through deliberately pursuing a development agreement approach, which minimises risk to the Council and through securing c.£60m of Housing Zone funding which minimises any financial and cash flow risks.
- 5.40 The lengthy 15-month procurement (carried out using the Competitive Dialogue procedure) and negotiation process which has led to the recommendation of a preferred bidder has included the development of detailed legal agreements where the Council’s principal objective has been to manage its exposure to risks associated with Scheme, whether those be financial risks, reputational risks or risks that jeopardise the achievement of key outcomes.
- 5.41 The risks of not securing growth on Council land – of inadequate housing and economic opportunity for Haringey residents – have also been a major consideration in the decision to proceed with the High Road West proposals as have the risks of not delivering the following benefits for the community:

- Over 2,500 high-quality, sustainable homes of which at least 30% (approx. 750) will be affordable, in accordance with the requirements of the Council's housing strategy on affordability. This will include 191 high-quality, safe, replacement homes for council tenants and resident leaseholders which meet resident aspirations as set out in the Resident Charter and will be built to new fire and safety standards.
- A cutting edge new library and learning centre and a refurbished Grange Community Hub which will provide improved community facilities early in the scheme.
- 13,361.81m² of green spaces for the community including a large new linear community park with an outdoor gym, children's play area and Grange Gardens; a safe, central green space for local people.
- A welcoming new civic square which will be an important focus of local events and activities, bringing the community together, promoting cultural activities and enhancing activity and safety at night.
- Over 200,000ft of commercial, retail and leisure space throughout the scheme providing a wide range of leisure, employment space, shops, cafes and restaurants around a new civic square.
- Over 3,300 construction jobs and more than 500 end-user jobs once the development is complete.

5.42 The subject of risk is addressed in more detail in the report to 12th September 2017 Cabinet. In the interests of transparency, the Council has also published its High Road West risk register at Appendix 13 to the 12th September Cabinet report.

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

5.44 Reason 13: ***"We are concerned by the choice of Lendlease as the development partner for the following reasons:***

1. ***The Heygate Estate renewal by Lendlease in Southwark, has in our view, not led to good outcomes for local residents or the council. A large council estate was replaced with many homes for sale and only a small number of social homes on site.***
2. ***Lendlease have been sued by unions for blacklisting construction workers.***
3. ***Lendlease has admitted it overbilled clients for more than a decade and has agreed to pay \$56 million in fines and restitution in the United States of America."***

5.45 In respect of affordable housing, the approach to replacement of social rented homes at the site of the former Heygate estate (now known as Elephant Park) was agreed between Southwark Council and Lendlease in line with the terms of Southwark Council's procurement specification. Elephant Park is one part of Southwark Council's wider provision of affordable housing across the Elephant & Castle opportunity area. Given these locally specific circumstances, the former Heygate estate has no bearing on the choice of Lendlease as partner for the High Road West Scheme.

- 5.46 On blacklisting, the issue concerns historical activity of a company subsequently acquired by Lendlease. This is addressed by Lendlease on its website at: <http://www.lendlease.com/uk/expertise/what-we-do/construction/>. This matter has no bearing on the current contractual relationships of Lendlease and its employees, or on choice of Lendlease as partner for the High Road West Scheme.
- 5.47 On alleged over-charging, the issue concerns the historical practices of a US construction subsidiary of Lendlease, where guaranteed overtime hours for the best site foremen were charged to its clients. The charge was then paid out to the relevant foremen, and not retained by the subsidiary. Lendlease Corporation Ltd and the senior management of Lendlease Americas cooperated fully with the investigation by the US Attorney's office and undertook numerous remedial actions. In 2012, the subsidiary entered into a Deferred Prosecution Agreement (whereby a prosecutor agrees to suspend prosecution in exchange for a defendant agreeing to fulfil certain requirements) and all charges were dismissed in May 2014. This matter has no bearing on the choice of Lendlease as partner for the High Road West Scheme.
- 5.48 The Council knows of no reason that the position on these three topics has changed since that report was published, and no further evidence is offered in this call-in to suggest that new information or evidence has come to light.
- 5.49 Reason 14: ***"We are concerned that the development partner for this major £1 billion scheme is the same company as the council's HDV partner with whom they have recently entered into a £2 billion agreement. It is vitally important that councils work with different development partners to reduce risk. We believe this also raises concerns about the bidding process and how the council chooses their development partners."***
- 5.50 The HDV development and the High Road West development have been subject to separate procurement processes led by different officers within the Council. Both procurement processes have been subject to robust internal and external audits, which have demonstrated that the procurements were conducted in a sound manner. The ability of all three bidders taken forward to dialogue stage in the High Road West development was tested at the PQQ stage of the process, with all three showing that they had the required capacity to undertake the development. Any bidder who did not have the requisite capacity would have been excluded at the PQQ stage. The PQQ set out the qualification criteria for the High Road West development, which Lendlease passed. The Council cannot preclude them now by applying different qualifying criteria based on the ability to deliver both development schemes.
- 5.51 Having followed the procurement process and evaluated final tender submissions, Lendlease proved themselves to be the best bidder, achieving the highest overall score across a range of evaluation criteria set by the Council and communicated to the market, which tested the quality of their

masterplan proposals, their proposals to support the Tottenham People Priority, their proposals for community facilities, including the replacement homes and the Library and Learning Centre, their proposals for site assembly and estate management and their legal and commercial offer.

- 5.52 It would be wholly inappropriate for the Council to stop the procurement process at this stage on the grounds of perceived increased risk due to the identity of the winning bidder. The proposed award of the contract to Lendlease follows the outcome of a robust, open and transparent procurement process, which included assessment of their ability to undertake the development at PQQ stage. Stopping the procurement at this stage on these grounds would expose the Council to serious risk of legal challenge under the Public Contract Regulations 2015.

Variation of action proposed

- 5.53 Action 1: ***Halt the current proceedings and not choose Lend Lease as a preferred bidder. We do not believe the scheme should proceed as proposed. There are clearly other ways to deliver regeneration and build new council and affordable homes.*** “
- 5.54 The report considered by Cabinet on 12th September 2017 clearly sets out why the other possible options for delivering the Council’s objectives were rejected in favour of the contractual Development Agreement and undertaking a Competitive Dialogue procedure under the Public Contract Regulations 2015. The consideration of that analysis, and the decision to pursue this option, was made by Cabinet in December 2015. As set out above, without further information about the specific risks, benefits or protections which it is felt have not been satisfactorily addressed, it is not possible to respond in greater detail on this point.
- 5.55 It should however, be noted that If the Council decided to halt the current procurement process it would be under a statutory obligation to provide bidders with reasons for its decisions in terms of Regulation 55 of the Public Contracts Regulations 2015. Should those reasons indicate that the Council has failed to take account of relevant matters or has taken irrelevant matters into account in making its decision – as it appears would be the case if the Council were to not appoint the bidder based on the bidders identity, the Council is exposed to serious risk of legal challenge.

6. The scope of this call-in

- 6.1 Members should note that the scope of this call-in procedure is limited to the decision taken at 12th September 2017 Cabinet which was to appoint Lendlease as the preferred bidder and enter into the Development Agreement with them, dispose of Council owned land in the High Road West area and acquire 191 replacement homes. Several of the matters raised in this call-in notice relate to previous or future decisions, most notably:

- The approval of the delivery option for the High Road West Scheme (approved at Cabinet in December 2015).
- The decision to pass Lendlease at PQQ stage as having sufficient capacity to undertake the development and to take them forward to dialogue stage.
- The detailed leaseholder offer, which will be subject to the approval of the revised draft Estate Renewal, Rehousing and Repayments Policy, which establishes the commitments to tenants, leaseholders and freeholders affected by estate renewal projects and the approval of the Love Lane Leaseholder Offer both of which will be agreed at Cabinet.

6.2 These decisions cannot be reviewed through this call-in procedure.

7. Contribution to strategic outcomes

7.1 The contribution of the decision in question to strategic outcomes was set out in the report to Cabinet on 12th July 2017.

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

Finance

8.1 The Chief Finance Officer has been consulted in the preparation of this report.

Procurement

8.2 The Head of Procurement has been consulted in the preparation of this report.

Legal

8.3 The Assistant Director of Corporate Governance has been consulted in the preparation of this report and comments are detailed below.

8.4 The Council carried out a Competitive Dialogue procedure pursuant to the Public Contracts Regulations 2015. Lendlease has been selected as the preferred bidder on the basis of the evaluation carried out in accordance with the procedure, the Council must not in making its selection seek to distort competition. The Council must treat the bidders equally, without discrimination and act in a transparent and proportionate manner.

8.5 The Council may halt the procurement process and choose not to select Lendlease as the preferred bidder, however the Council runs the risk of being subject to legal action.

8.6 Members should note that at the preferred bidder stage the legal documentation (i.e. the DA and the CPOIA) will be finalised provided that this does not materially modify the essential aspects of the tender or the procurement and does not risk distorting competition or causing discrimination.

Equality

8.7 N/A.

9 Use of Appendices

9.1 N/A

10 Local Government (Access to Information) Act 1985

10.1 The report to the 12th September 2017 Cabinet to which this report relates can be found on the Council website at: <http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=8289&Ver=4>

10.2 Previous decisions of Cabinet relevant to the decision in question were set out in the report to 3 July Cabinet. They include:

- 13th September 2016 Cabinet Report- Tottenham Housing Zone Phase 2- North Tottenham
- 15th December 2015 Cabinet Report- High Road West Regeneration Scheme Update and Next Steps
- 16th December 2014 Cabinet Report- High Road West Regeneration Scheme- Masterplan and Next Steps
- 15th July 2014 Cabinet Report- High Road West Regeneration Scheme Consultation.
- 28th November 2013- High Road West Regeneration Project - Master Plan Option Consultation Feedback and Next Steps.