

Report for: Cabinet 18th June 2019

Report Title: Tottenham Hale Strategic Development Partnership - draw-down of sites and Development Agreement waiver

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Ward(s) affected: Tottenham Hale

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

1.0. Describe the issue under consideration

- 1.1. On 12th July 2016 Cabinet agreed to the council entering a Strategic Development Partnership (SDP) with Argent Related as one of the key means of delivering the vision for the comprehensive development of a new district centre at Tottenham Hale. On 21st March 2017 the two parties entered into a Development Agreement ('DA').
- 1.2. Under the terms of the DA between the council and TH DM Limited (a group company of Argent Related referred to hereafter as 'the Developer'), the parcels of land which are currently owned by the council will be transferred to the Developer to progress construction once planning permission has been granted and certain other conditions precedent have been met. The parcels of land that are directly relevant to this report are listed below (site 1 has not been included as this relates to land in the bus station that will form part of later phases of the development):
 - Site 2 - Welbourne site (labelled 1 in Appendix A)
 - Site 3 - Ashley Road West (labelled 10 in Appendix A)
 - Site 4 - Ashley Road East (labelled 2, 3 and 4 in Appendix A).
- 1.3. This report seeks authority to waive the Building Contract Condition for sites 3 – Ashley Road West and 4 – Ashley Road East (the Building Contract Condition would remain in respect of site 2 – Welbourne).
- 1.4. The SDP development was granted planning permission on 27th March 2019 and both parties now wish to progress with the transfer of the council's land to the developer to enable construction to commence. In order to ensure that development progresses in a manner that minimises the delivery risk, both

parties have concluded that one of the conditions precedent, the 'Building Contract Condition' (which requires the Developer to have agreed a final form of building contract with a contractor for development of the relevant site prior to transfer and subsequent granting of the long leases for each site) should be waived in respect of sites 3 and 4.

- 1.5. It follows that consequential amendments to the DA will be required and this report also seeks authority to extend the Construction Commencement Date (which requires the developer to commence construction within six months of the date of the lease) contained in the Development Agreement and the Construction Commencement Longstop Date contained in Schedule 3 of the Lease for site 3 – Ashley Road West and site 4 – Ashley Road East. This extension would be from six months to twelve months to reflect the fact that the lease would be granted in advance of a building contract condition being in place for all of the sites.
- 1.6. The report sets out the reasons behind these recommendations and the benefits of this approach to the council. The report is not about the principle of whether the SDP development can progress; it is about the detail of how and when the draw down of the council's land will occur, while ensuring that the council's exposure to risk is limited and protecting the council's interests throughout.

2.0. Cabinet Member Introduction

- 2.1. The aim of the Strategic Development Partnership between Haringey Council and Argent Related is to create a new town centre for Tottenham Hale, including the delivery of new homes, workspace and a much-needed new health centre.
- 2.2. On becoming Leader, I was clear that the SDP scheme would also need to deliver a significant number of council homes at council rents. The council subsequently worked with Argent Related to change their planning application to include 131 council homes on the Welbourne site. This represents 13% of the council's 1,000 council homes target.
- 2.3. Planning permission has now been granted and the council signed a contract on 9th May 2019 to bring the 131 homes into council ownership. I look forward to seeing this development move forward into construction this autumn, as a tangible example of us using all the tools at our disposal to secure the delivery of council homes.
- 2.4. I support the recommendations of this report as they will ensure that this delivery happens without delay, securing the council homes, and just as importantly the district healthcare facility.

3.0. Recommendations

- 3.1. Cabinet agrees:
 - a. To waive the Building Contract Condition in respect of site 3 – Ashley Road West and site 4 - Ashley Road East contained in clause 9.5 of the

Development Agreement dated 21st March 2017 for the reasons set out in section 4 of this report to allow these sites to be transferred prior to the end of the Initial Period, on the condition that the developer complies with all the conditions precedent in respect of site 2 – Welbourne and that this site is drawn down prior to site 3 and site 4.

- b. To an extension of the Construction Commencement Date as defined in the Development Agreement dated 21st March 2017, for site 3 and site 4 from six months to twelve months; and to an extension of the Construction Commencement Longstop Date contained in Schedule 3 (Landlord's Right to Break) of the Lease to be granted for site 3 and site 4 from six months to twelve months.
- c. To give delegated authority to the Director for Housing, Regeneration and Planning to agree any further non-material amendments to the Development Agreement dated 21st March 2017 after consultation with the Cabinet Member for Regeneration, the Assistant Director of Corporate Governance and the S151 Officer.

4.0. Reasons for decision

- 4.1. The Building Contract Condition is included in the Development Agreement in order to limit the time between transfer of land to the Developer and the commencement of the development on site, and to evidence the Developer's commitment to that commencement.
- 4.2. In considering the recommendation to waive the Building Contract Condition and to subsequently vary the Construction Commencement Date and the Construction Commencement Longstop Date in respect of sites 3 and 4, the council has sought advice from Avison Young (contained in full at Appendix B) on the risk that this poses of the commencement of development stalling. Avison Young concluded that *'the extent of the Developer's investment in this development to date would appear to be strong evidence that they will indeed progress development with as little delay as possible and that the risk of sites stalling, whether transferred early or not, is small.'*
- 4.3. Further to this, in bringing the transfer of land forwards ahead of 31st October the land value the council will receive will be as per the agreed deal. From a Best Consideration perspective, the value will also still be reflective of the original deal and the approvals obtained in entering it at the time.
- 4.4. The risks of the council not taking the recommended course of action are set out below.
- 4.5. **Programme risk**
 - If a mechanism cannot be agreed to enable the transfer of sites before the end of the Initial Period and therefore at the indexed values as originally envisaged in the DA, the Developer has indicated that they would delay the transfer of any single site until all the sites were ready, which would be after the Initial Period.

- This would cause significant delays to the construction programme for sites 2, 3 and 4. The extent of this delay is currently estimated to be about 6 months. This would likely push the delivery of the 131 council homes beyond the term of this council.

4.6. **Outcomes risk**

- Delay to the start on site date for construction of the Welbourne development could put at risk the GLA grant funding for 131 council homes at council rent on the site and NHS England funding for the Welbourne health centre.

4.7. **Liabilities risk**

- The Welbourne site, Ashley Road West and Ashley Road East are currently the responsibility of the council to manage and have been vacated in order to enable predevelopment surveys to be carried out and to allow the developer to set up their marketing suite.
- The developer currently occupies the sites under a license arrangement and has no responsibility for security when they are not in attendance.
- Welbourne and Ashley Road East have both been occupied by trespassers over the last six months which has taken a significant amount of officer time to resolve and has incurred costs to the council of an estimated £100,000 for site security and clearance of fly-tipped material.
- The ongoing costs of security of these sites are being borne by the council until the sites are transferred to the developer. These costs are estimated at £2,900 per week.
- The timely transfer of the land will relieve the council of the significant burden of security and management and transfer the risk and cost of security to the Developer.

4.8. **Financial risk**

- Advice that the council has received from Avison Young asserts that the market is currently facing unprecedented levels of uncertainty, as will remain the case in October.
- This means that the value of the sites if left to a revaluation is far from certain and could be higher or lower than that which the council will receive on an indexed basis if transferring before October.

4.9. As described above, the risks associated with waiving the Building Contract Condition and varying the Construction Commencement Longstop Date in respect of sites 3 and 4 (the proposed mechanism) are significantly less than the alternative scenario of delaying transfer until after the end of the Initial Period.

5.0. **Alternative options considered**

Building Contract Condition - proposed option

5.1. Waive the Building Contract Condition in the Development Agreement between the Developer and the council in respect of the Ashley Road West and Ashley Road East sites (labelled 10 and 2, 3, 4 in Appendix A) to allow these sites to be transferred prior to the end of the Initial Period.

Building Contract Condition - alternative option: do nothing

- 5.2. Under this option, the transfer of all sites would be delayed until after the end of the Initial Period to allow for the sites to be revalued together. This would require the parties to agree the form of appraisal that will be used to re-value the land in the whole Development Agreement, including agreeing to all the inputs such as values, cost and developer return. This is likely to be a time consuming, costly and risky process for the council for the reasons set out in this report. For these reasons this option has been rejected.

Vary the Construction Commencement Date and Construction Commencement Longstop Date - proposed option

- 5.3. Should the recommendation to waive the Building Contract Condition in respect of Sites 3 and 4 be approved, it follows that the Construction Commencement Date and Construction Commencement Longstop Date would need to be varied to account for the date of transfer being brought forward prior to the building contracts for each site being agreed.

Construction Commencement Date and Construction Commencement Longstop Date - alternative option: do nothing

- 5.4. Should the recommendation to waive the Building Contract Condition be approved but the Construction Commencement Date and Construction Commencement Longstop Date not be varied, the developer would then have a six month period from the date of the transfers in which to negotiate the building contracts and commence construction on all three sites (site 2 – Welbourne, site 3 – Ashley Road West and site 4 – Ashley Road East). Based on the current estimated programme (paragraph 6.7.3), it is acknowledged that this timescale is unlikely to be achievable and as a result this option has been discounted as unrealistic.

6.0. Background information

- 6.1. On 12th July 2016 Cabinet agreed to the council entering a Strategic Development Partnership with Argent Related and on 21st March 2017 the council entered into a Development Agreement ('DA') with TH Ferry Island Limited Partnership (a group company of Argent Related). On 2nd April 2019 Cabinet agreed to novate the DA to TH DM Limited ('developer').
- 6.2. On 30th July 2018 the Developer submitted a planning application to the council's Planning Service for the development of the SDP sites.
- 6.3. Following the 2018 local elections, the council's incoming administration made a commitment to deliver 1,000 council homes during their electoral term. On October 4th 2018 the Leader of Haringey Council issued a statement confirming that the council was seeking 100% genuinely affordable homes on the Welbourne site and that the developer had agreed to amend their plans accordingly. An assessment of a number of options to achieve this was carried out and the council and the developer reached agreement that the Welbourne site would be acquired by the council to deliver 131 council rented units.
- 6.4. Planning permission for the SDP Core of District Centre sites was granted on 27th March 2019 and on 2nd April 2019 Cabinet approved the acquisition for

housing purposes of 131 homes and a ground floor non-residential space that are to be constructed at site 2 - Welbourne site.

- 6.5. In order to progress the development of sites 2, 3 and 4 and deliver much needed affordable homes and social infrastructure for Tottenham, the council wishes to avoid delay to the transfer of the land. A start on site for the Welbourne of September 2019 would give greater certainty to the delivery of 13% of the 1,000 new council homes by 2022, in keeping with Priority 1: Housing of the 2019 Borough Plan.
- 6.6. A number of influencing factors currently affect the date that these sites can be transferred from the council to the developer, as detailed below. These factors have been addressed through the recommendations set out in this report.

Land value

- 6.7. The land value of each site will be fixed at the date of transfer. In order to protect the council's interest and provide commercial certainty the value of these sites was agreed at the signing of the DA. Provision was included to index these values to further protect the council's interest.
- 6.8. Within the DA it was agreed that the indexation of the land values would be from the signing of the DA until the 31st October 2019 (known as the 'Initial Period'), after which the land would need to be revalued with reference to market conditions prevailing at the time.
- 6.9. The current estimated start on site dates for sites 2, 3 and 4 are as follows:
- Site 2 - Welbourne – September 2019
 - Site 3 – Ashley Road West – November 2019
 - Site 4- Ashley Road East – February 2020.
- 6.10. If some sites were to be transferred before the end of the Initial Period (as per the current programme) and others transferred afterwards, under the terms of the DA those sites transferred afterwards would be subject to a revaluation in isolation, ie. without taking into account the overall distribution of tenures across the SDP application.
- 6.11. At the time of drafting the DA it was envisaged that the tenure mix would be relatively consistent across the sites and there is no provision for the value/price/tenure of previous sites to be accounted for in the price of later transfers. The developer may therefore be required to pay land values associated with a balanced tenure mix for land drawn down during the Initial Period (Welbourne and potentially Ashley Road West), under the provisions for fixed land values, and then to pay re-valued site prices for predominantly private tenure uses on Ashley Road East. Officers acknowledge that this is an issue and if left unresolved would impact on the commercial position enshrined in the DA.

Conditions precedent

- 6.12. Before these sites can be transferred from the council to the developer, the conditions precedent contained in the DA must be satisfied. These conditions (in respect of Sites 3 and 4) are:
- a. Obtaining Satisfactory Planning Permission (‘Planning Condition’)
 - b. Delivery of the Programme for the relevant Site (‘Programme Condition’)
 - c. Carrying out a Financial Appraisal and Cashflow for the relevant Site (‘Viability Condition’)
 - d. Delivery of Certificate setting out the Developer’s commitment (‘Commitment Condition’)
 - e. Delivery of Business Plan for the relevant Site (‘Business Plan’)
 - f. Delivery of a Building Contract for each of Site 3 and Site 4 (‘Building Contract Condition’).
- 6.13. All of these conditions (in respect of Sites 3 and 4) have either been met already or will be met prior to the end of the Initial Period, with the exception of the Building Contract Condition (f) which requires the Developer to have agreed a final form of building contract with a contractor for development of the relevant site prior to transfer.
- 6.14. Planning permission was secured later than anticipated when the Development Agreement (DA) was drafted in 2017. This was due in-part to the scale and complexity of the development, but delays were also caused by late changes to the tenure mix in the development to allow for a greater proportion of genuinely affordable homes on the Welbourne site. As a result, there has been insufficient time between the granting of planning consent and the end of the Initial Period to conclude the construction contract negotiations on all three sites.
- 6.15. Both parties have concluded that the preferred course of action in order to maintain their commercial positions and avoid delay to the construction commencement dates, is for the Building Contract Conditions for site 3 – Ashley Road West and site 4 – Ashley Road East to be waived to allow both sites to be transferred from the council to the Developer prior to the end of the Initial Period and before the building contracts are agreed.
- 6.16. It follows that if the Building Contract Condition is waived to allow the sites to be transferred prior to the end of the Initial Period, the Construction Commencement Date and Construction Commencement Longstop Date (as defined in the DA and in Schedule 3 (Landlord’s Right to Break) of the Lease) would need to be varied to extend the period from six months to twelve months. This extension reflects the requirement for more time to be allowed for the negotiation and signing of the building contracts and the lead-in to commencement of construction activity on site, given the early draw down of the land without the building contracts in place.

7. Contribution to strategic outcomes

- 7.1. The recommendations in this report will contribute towards the following strategic priority outcomes in the Borough Plan:
- *Housing - a safe, stable and affordable home for everyone, whatever*

their circumstances. By securing the timely delivery of 13 per cent of the council's target of delivering 1,000 council homes on council land.

- *Place - a place with strong, resilient and connected communities where people can lead active and healthy lives in an environment that is safe, clean and green:* By delivering high quality new affordable homes for local people, a new district health centre and local retail facilities, set in a high quality, open and inclusive urban environment that contributes to the creation of a place for all of Tottenham Hale's communities to be proud of.
- *Economy - a growing economy which provides opportunities for all our residents and supports our businesses to thrive:* By contributing to the delivery of the heart of a new district centre at Tottenham Hale and unlocking opportunities for the local community to gain access to learning, skills and employment.

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

Finance

- 8.1. This report is recommending that the council agree to waive a specific term (the Building Contract Condition) of the DA between TH DM LP and the council in relation to the Ashley Road West and Ashley Road East sites for the reasons set out in the report. The report is also recommending that consequential amendments are made to the DA as a result of waiving the Building Contract Condition.
- 8.2. The DA envisages that the council will, on the satisfaction of the conditions precedent as explained in the report, transfer land from its ownership to the Developer. The values of the land to be transferred have been written into the DA at the point of its signature. These land values have been indexed using a pre-agreed indexation factor.
- 8.3. If the recommendation of this report is agreed Members will, in effect, be crystallising the value of the council's land. These values are in line with the assumptions with the DA so there is no financial effect to this decision. The agreement of the recommendation has a minor positive financial effect on the council as the council will be relieved of the expense of securing the sites of approximately £2,900 per week.

Strategic Procurement

- 8.4. Procurement note the contents of the report. Procurement comments are not applicable for property and land transactions as they are outside of the Procurement Contract Regulations.

Legal

- 8.5. This report seeks authority to (1) waive the Building Contract Condition in respect of Site 3 – Ashley Road West and Site 4 – Ashley Road East; and (2) vary the length of the Construction Commencement Date as defined in the Development Agreement dated 21st March 2017 and the Construction

Commencement Longstop Date as defined in Schedule 3 of the Lease attached as Appendix 2 of the DA.

- 8.6. The Building Contract condition is satisfied when the Developer has complied with the obligation contained in clause 9.5 of the DA. This requires the Developer to deliver to the council a final form of Building Contract for each of the two sites before the Developer can be granted a Lease of each of the sites. By waiving this condition, the council will not be provided with a final form of building contract but can still insist on it being provided after the site has been drawn down. It is unlikely that the waiver of this condition would have any legal effect on the DA. This is because provisions of the building contract do not by themselves ensure the development will be carried out and there are other assurances built into the Lease to ensure that land banking does not happen.
- 8.7. The form of Lease to be granted is attached to the DA. The Lease contains a break clause which allows the council to terminate the Lease if the development of that site has not commenced or completed by the longstop dates. The Developer must commence the development of the site within 6 months of the date of the lease otherwise the council can within 3 months of the longstop date serve notice and terminate the lease. The break clause allows the council to take the land back if development has not started. By extending the longstop the Developer would have a longer period to start the development but would not affect the council's ability to terminate if construction is not commenced.

Equality

- 8.8. 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 people who do not
 - Foster good relations between people who share those characteristics and people who do not.
- 8.9. 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.
- 8.10. This report seeks authority to waive the Building Contract Conditions for the sites Ashley Road West and Ashley Road East. This report also seeks authority to extend the Construction Commencement Longstop Date for the two sites from six months to twelve months. The overarching purpose of the decision is to enable timely commencement to construction on the two sites while preventing additional expense to the Council associated with any delay.
- 8.11. The decision falls within the scope of the Tottenham Hale Strategic Development Partnership, which was adopted by Cabinet in July 2016. This decision was informed by an Equality Impact Assessment (EqIA), which noted that all groups of residents should benefit from the proposals including

improved transport links and the local network of streets, improvements in access to green open spaces and new public spaces, a mixture of new housing developments and plans to increase jobs and training opportunities in the area.

- 8.12. This decision relates specifically to the benefit arising from new housing developments. It is noted that development on the two sites will deliver 13 per cent of the council's target of 1,000 council homes on council land. Delivery of new council housing 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.
- 8.13. Allocations of council homes will be made in accordance with the Council's Housing Allocations Scheme, which has been subject to an EqIA.
- 8.14. Arrangements will be put in place in accordance with planning policies to ensure that any adverse effects on individuals or groups who share the protected characteristics arising from development on the two sites are prevented and mitigated as far as possible.

9. Use of Appendices

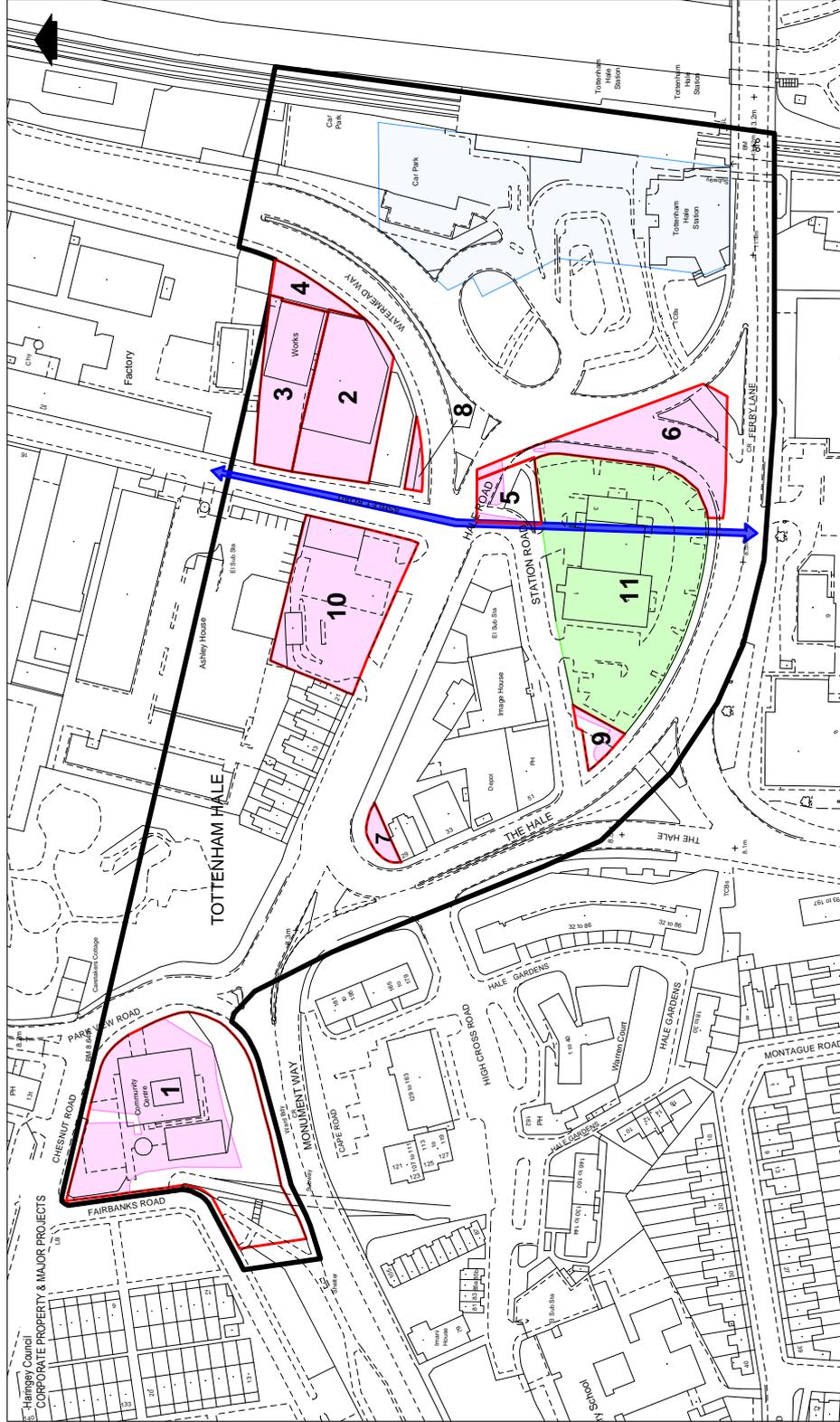
Appendix A: SDP site plan

Appendix B: Avison Young Briefing Note: Potential transfer of Tottenham SDP sites (May 2019)

10. Local Government (Access to Information) Act 1985

Table 1 in Appendix B is exempt from publishing for the reason that it relates to the financial or business affairs of any particular person (including the authority holding that information).

Appendix A: SDP site plan



APPENDIX 1
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- Strategic Development Partnership Area & Key Sites**
- Thick black veiging - Strategic Development Partnership Area
 - Pink shading - Haringey Council ownership
 - Blue shading - TfL ownership
 - Green shading - Private ownership
 - Blue arrow - DCF North-South Link
1. Former Welbourne Centre 3816m²
 2. Site 4 Ashley Road 1383m²
 3. Site 5 Ashley Road 938m²
 4. Land rear of sites 4 & 5 Ashley Road 241m²
 5. Land on SE side of Junction Station Road & Hale Road 353m²
 6. Tottenham Hale Bus Station, Bus stands land 1372m²
 7. Land on S side of Junction Hale Road & The Hale 111m²
 8. Land fronting Waterhead Way E of Ashley Rd 92m²
 9. Land on SE side of Junction Station Road & The Hale 173m²
 10. BP garage 1877m²
 11. Ferry Island Retail Park 4079m²
- Scale 1:1250 @ A3
 Overlay: Regen JAD
 Plan produced by Janica Dabnatt on 20/06/2016
 BVES Drawing No. A3 0375c Revision 2

Briefing Note

Potential Early Transfer of Tottenham SDP Sites – DRAFT

1. In discussion with Argent Related it is proposed that some of the land transfers of parcels in the SDP occur earlier than originally envisaged in the Development Agreement (DA). We have been asked to comment on the commercial considerations and implications of this proposal.
2. Amongst others, there is a pre-condition for the transfer of land that requires Argent Related to have agreed a Building Contract with a contractor for development of the relevant site prior to transfer (“Building Contract Condition”). It is proposed that for some sites, a contract for site preparation works only (servicing, demolition, site clearance etc.) be treated as sufficient to satisfy this condition and therefore to draw down land. As per the latest programme, some sites will be transferred as envisaged with a full building contract in place. However, others are at a less advanced stage and by the time a revaluation of land would be triggered a build contract will only be in place for site preparation works, not full development.
3. The objective is to draw down land prior to provisions within the DA that require a revaluation of the land transfer price becoming operative. The DA includes agreed land values per site which are fixed, subject to indexation, up to 31st October 2019. In the event land transfers after this date the transfer price will be the Market Value reassessed at that time, defined as per broadly the RICS definition, subject to accounting for the DA itself. On an overall basis if all sites were valued this way, as acknowledged by Argent Related, it is not obvious that any such revaluation would actually entail a greater transfer price than currently allowed for under the fix and indexation provisions.

Potential Transfer Prices

4. To illustrate this we have run estimates of the transfer prices that will apply per site in the event they are transfers on an indexed fixed price basis, i.e. before October.
5. For the forecast scenarios we have taken an assumed forecast annual RPI rate of 2.9% (consensus compiled by AY of forecasts published by HM Treasury) and broken that back to a per month rate, then applied that to the number of months beyond Feb 19 applicable in each case. We have undertaken the analysis for a number of different potential completion dates, from the most recent RPI index available, to October 2019. As per the terms of the DA indexation is up to the month before the completion date.

The results are contained in the exempt part of the report – Table 1.

6. In considering how the values contained in the exempt part of the report (Table 1) may compare to alternative reassessment of the site values on a Market Value basis, we have not formally valued or estimated the Market Values of the sites. However, the reassessed values would have to take account of DA provisions in relation to planning overage and profit share, deducting much of the increased value associated with the density increases since the values originally set in the DA. Since signing the DA, Land Registry data suggests house prices have been stagnant in Haringey, falling by 1%, and in the meantime the BCIS All-in TPI index of build costs has risen 10%. This suggests there may also not have been a significant improvement in the underlying economics of development over the period. The market is also currently facing unprecedented levels of uncertainty, as will remain the case in October. Whilst the potential alternative value of the sites has not been formally estimated, all of this means the value if left to a revaluation is far from certain and could be lower than that which the Council will receive on an indexed basis if transferring before October.

Reason for the Minimum Period (October Transfer Deadline)

7. It is important to note that the use of a Minimum Period in the DA, after which the fixed land value approach would expire and a Market Value approach be used instead, was not to penalise Argent Related in the event of slow delivery. Rather, this was part of the overall commerciality of the agreement and included as part of demonstrating best consideration per s123 Local Government Act 1972.
8. The period, originally 2 years but agreed at 2.5 years in negotiation, was inserted to avoid the possibility of Council land being transferred at values on the basis (albeit indexed) agreed some years previously, in case there was considerable divergence from that basis and Market Value at the point of transfer. This was intended to protect the Council in the event of significant growth in development land values, ahead of RPI.
9. However it was also envisaged that after the Initial Period the value of the land may actually have fallen below the indexed values. The principle more to limit divergence and thereby keep in line with the principles of best consideration, than to necessarily preserve enhanced land receipts for the Council. The length of the Initial Period was also negotiated as a reasonable and representative length of time for the original land values to apply as a result of the overall terms of the DA, including other forms of consideration (e.g. the Welbourne health centre) and overage provisions.
10. In the event, it may be the case that there is not significant divergence between the indexed values and current Market Value. A formal valuation exercise would be required to confirm this for certain, but the point remains that part of the original justification of best consideration may be compromised if transfer were to be deferred to after the Initial Period but the land values were to remain on an indexed basis.

Commercial Issues and Transfer of Risk

11. Rather than necessarily for valuation reasons, Argent Related wishes to bring the transfer of some sites ahead of the 31st October 2019 deadline because the current programme would provide that some sites are transferred before the deadline and some afterwards. The issue is that as per the now proposed tenure distribution, the sites to be transferred afterwards include predominantly or entirely private residential units rather than affordable. At the time of drafting the DA it was envisaged that tenure mix would be relatively consistent across the sites and there is no provision for the value/price/tenure of previous sites to be accounted for in the price of later transfers. Currently therefore Argent Related may be caught paying land values associated with a balanced tenure mix for the earlier sites under the provisions for fixed land values, and then to pay re-valued site prices for predominantly private tenure uses on the later sites. The Council acknowledges that this is an issue and unintended consequence in principle.
12. In bringing the transfer of land forwards ahead of 31st October the Council may receive less land value than it would have done otherwise for the sites concerned, compared to having some sites valued on one basis and others on another. The land value it will receive will, however, be reflective of the original deal and will meet expectations. From a Best Consideration perspective, the value will also still be reflective of the original deal and the approvals obtained in entering into it at the time. It should also be noted that planning overage provisions will also be applied to the base transfer price.
13. Early transfer of the sites is proposed as a solution to the problem of inconsistent valuation approaches being taken across the portfolio of sites as a whole. It should be noted that there is a potential alternative remedy which is that the revaluations of the transfer of the later sites take account of the previous site transfer prices paid and tenures across the portfolio. This will be difficult in practice – the valuation exercise would have to cover all sites, adjusting in some way for time given the varied timing of transfers, and subtract from the value of the whole the prices already paid. This may be a complex valuation approach to agree and would require amendment to the terms of the DA through a Deed of Variation.
14. Argent Related has made clear its multi-million pound investment in the delivery of the SDP sites so far, the return from which will not be realised until the sites are developed. The extent of the spend commitment to date is not contested. Argent Related is of the view that it has no exit from the current commitment other than to progress with developing the sites and realising receipts from the completed uses. Under the terms of the Agreement, Argent Related does have to use reasonable endeavours to develop the sites in accordance with programme. We are not aware of any provisions that allow Argent Related to dispose of serviced (or indeed unserviced) land to a third party without development. Argent Related is able to alienate the entire agreement, but only with the Council's approval, which is not qualified in the DA. In our view it does appear correct that Argent's only ability to realise a return on its investment is through the development of the sites. The Council will need to satisfy itself that this is the case legally. In this case, the extent of the investment to

date would appear to be strong evidence that Argent will indeed progress development with as little delay as possible and that the risk of sites stalling, whether transferred early or not, is small.

15. There are provisions for slowdown of delivery in the event of adverse market conditions. This is however typical for a DA and is already drafted into the agreement regardless of the proposed early transfer. As such this does not represent any change in risk profile.
16. We also note that Argent Related is further obligated to deliver through Housing Zone Funding Agreement provisions, which require delivery of homes with the potential for millions of pounds of funding to have to be repaid in the event of non-delivery. We have not had sight of this agreement but we understand this cannot be assigned unless the DA itself is assigned, and therefore the comment above regarding the Council's approval to this still applies. We would note that the commitment to the number of homes to be delivered is probably now materially less than the total of homes Argent Related intends to deliver, given the evolution of scheme design. The obligation may not therefore incentivise the delivery of all the sites, only part, but is nevertheless an added consideration.
17. We also note finally that the earlier transfer of the sites would transfer another form of risk in the other direction. Namely, Argent Related would take over responsibility for securing the sites and security, which we understand is a current issue and cost for the Council.
18. Overall in our view if the Council is satisfied that Argent Related is not able to realise its investment through any means other than delivery of the development of the sites, then the risk of non-delivery is low and this is not materially impacted whether the land is transferred earlier or later. This is not to say there is no risk of non-delivery, indeed the sites may be stalled under the market slowdown provisions of the DA, but this is the case regardless of the transfer timing and is not a new or increased risk. The Housing Zone provisions further strengthen the case that Argent Related will deliver with minimal delay. We must state the potential for the earlier land transfer to result in a lower land payment than may be realised if the transfer only occurs when originally envisaged. We accept however that the resulting inconsistency in valuation approach across the sites, which have varying tenure mixes, would penalise Argent Related in a manner not envisaged or intended in the DA, and that the only alternative remedy in that case may be a protracted and complex amendment to the DA valuation approach. In our view the Best Consideration approval for the DA as a whole still applies given as at the date of transfer the land valuation terms originally agreed will still apply. The Council should seek legal advice to confirm this point.
19. We would also comment that the desire to value all sites on the same basis should work both ways. That is, in avoiding the potential for lower value sites to be valued on an indexed basis and higher value sites to be based on Market Value, the opposite should also not be possible. Specifically, in theory it would be possible to transfer more valuable sites early, and delay the transfer of the Welbourne site until after the Initial Period. In the event this does happen this would be detrimental to the Council as given the revised tenure mix there is less value in Welbourne.

20. Our understanding is that Welbourne is due to be delivered first and so the practical risk of this should be small. Nevertheless the whole argument above is to prevent the valuation of some sites on one basis and other sites on another. In our view it must therefore be agreed with Argent Related that if the Council goes ahead with early transfer this must cover all sites not just some. The principle must be that all sites are valued on the same basis, i.e. transfer early, and that none can be deferred.

21. We would be happy to respond to any queries arising in respect of the above advice.