

<b>Item No.</b> 12.	<b>Classification:</b> Open	<b>Date:</b> 20 September 2016	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Aylesbury Regeneration Delivery	
<b>Ward(s) or groups affected:</b>		Faraday	
<b>Cabinet Member:</b>		Councillor Mark Williams, Regeneration and New Homes	

## **FOREWORD – COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION AND NEW HOMES**

The regeneration of the Aylesbury Estate is a key priority for Southwark Council and will deliver thousands of new homes, including new social rented homes, new open spaces and jobs for our residents. It will also overcome the problems that have affected the estate's residents for many years, not least the flawed heating system and poor design of the blocks. In 2014 we signed a Development Partner Agreement with Notting Hill Housing Trust to deliver this ambitious programme, and this report sets out how we will bring forward the council's investment into the regeneration of the Aylesbury to maintain pace of delivery.

As set out in the report the council will bring forward its funding for the demolition of the First Development Site (Bradenham, Arklow, Chiltern and Chartridge) and for Plot 18 (the blue huts, 300-313 Missenden and Northchurch 56-76), this will be repaid to the council by Notting Hill through an increased land payment for these sites. The First Development Site will deliver 800 new homes, with 400 being at social rent or shared ownership and shared equity, Plot 18 will deliver a new library, an early years centre, health centre, GPs practice, an office for the Creation Trust and 122 homes, including over 55s housing.

In addition to bringing forward funding for the demolition of the First Development Site and Plot 18 the council will also underwrite the costs for the detailed planning application for Plot 18 and also for Phase 2 of the Aylesbury (Wendover and the eleven blocks to its east). These steps are essential to maintain pace of delivery for the residents of the estate and deliver the new homes and other benefits that are so desperately needed. Bringing forward this investment into the regeneration of the Aylesbury will have an impact on the HRA, but will not impact upon our other major council housing investment programmes such as new kitchen and bathrooms, new build council homes, ongoing maintenance, and heating systems. We firmly believe that bringing forward this investment in one of our flagship projects is in the best interests of residents on the Aylesbury and will allow us to maintain momentum in delivering truly affordable high-quality homes for local people.

## **RECOMMENDATIONS**

1. To approve a series of actions as set out in paragraphs 10 to 14 of this report to bring forward the delivery of the Aylesbury regeneration programme namely:
  - The council funding directly the demolition of the First Development Site and Plot 18
  - The council underwriting design fees on Plot 18 and Phase 2 in order to progress planning applications
  - The council bringing forward funding for the Approved Premises Facility

2. To delegate approval of the final terms of the agreed actions, as set out in paragraphs 9 to 13 of this report to the director of regeneration.
3. To note that the capital programme monitor in November will include funding provision for Phases 3 and 4 and the community facilities included in Plot 18.

## **BACKGROUND INFORMATION**

4. In April 2014 the council and Notting Hill Housing Trust (NHHT) agreed a Development Partnership Agreement (DPA) as a framework for the regeneration of the Aylesbury Estate over a period of 15 years. This decision followed over 15 years of discussion with residents and key stakeholders about the regeneration of the estate. The DPA was drafted as a flexible document which would take account of the range of issues which may occur over the lifetime of this complex regeneration programme. The DPA includes a business plan which sets out the detail of how individual phases would be implemented and funded. Given the length of the programme, it was always anticipated that the detail of the business plan would be varied as the programme was implemented.
5. Since that date the following key activities have taken place:
  - All tenants from the First Development Site (Chiltern, Bradenham, Chartridge and Arklow) have been rehoused
  - All but 8 of the leaseholder interests from the First Development Site (FDS) have been acquired
  - Community organisations and all tenants have moved from Plot 18 (Thurlow Street). The site is now vacant.
  - Outline planning permission for the regeneration of the estate has been granted
  - Detailed planning consent for the FDS has been granted
  - A detailed planning application for Plot 18 (new library, early years centre, GPs practice, office for Creation Trust and 122 homes) has been submitted by NHHT
  - 442 tenants from Phase 2 have been rehoused. The majority of these properties are now being used for temporary accommodation.
  - 32 leaseholder interests in Phase 2 have been acquired. The majority of these properties are now being used for temporary accommodation.
  - 32 leaseholder interests from later phases have been acquired. The majority of these properties are now being used for temporary accommodation.
  - 145 Southwark residents have benefitted from NHHT's programme of employment support and training, including 31 job starts, 76 training places, 14 apprenticeships, 30 young people receiving 1:1 support and 51 Working Communities bursaries awarded
  - 1,136 Walworth residents and 38 businesses have engaged with the Aylesbury regeneration project since April 2016
  - 19 local groups have received a combined £22,500 in community grants from NHHT to deliver projects to benefit Aylesbury residents
  - A four year funding agreement (using funding from NHHT) has been negotiated with Creation Trust to provide key social and economic activities.

## **KEY ISSUES FOR CONSIDERATION**

6. Earlier this year, the following key work streams were identified as being capable of being taken forward at an earlier point than that anticipated in the Development Partnership Agreement:

- The submission of a planning application for Plot 18. This planning application comprises a new library, early years centre, health centre, gps practice, office for Creation Trust and 122 homes. The planning application has recently been submitted by NHHT.
- The demolition of Plot 18. The buildings on this site are vacant. The contract is ready to be let.
- The phased demolition of the First Development Site. There are currently 8 leasehold interests in the site. A decision on the CPO is anticipated shortly. A large proportion of the site is vacant. Planning permission is in place.
- The design work associated with Phase 2. A planning application is anticipated by April 2017.
- The submission of a planning application for the Approved Premises Facility. This building is the replacement for Ellison House and its completion will enable the First Development Site development to be fully implemented. The planning application is scheduled to be submitted by November 2016.

### **Bringing forward delivery**

7. Under the terms of the DPA, Notting Hill are not obliged to start the demolition of the First Development Site until vacant possession is given (anticipated as 2018 due to the need to relocate Ellison House). The demolition of these blocks is a key point in the regeneration of the estate and will bring forward the point that new homes can be delivered in the area. There has been uncertainty about the demolition programme due to the protracted delays in the outcome of the FDS CPO inquiry.
8. The delays in starting the demolition programme on the FDS and the impact of measures in the Housing and Planning Act have reduced the ability of NHHT's Board to progress Phase 2 and Plot 18 at this stage. Under the terms of the DPA the longstop date for starting construction of these phases is 2024. The council is keen to progress Plot 18 and the Phase 2 planning application in order to bring forward the delivery of new homes and community facilities and to enable the CPO process to commence.
9. As the council is keen to get the regeneration of the estate underway, officers have negotiated a series of proposals with NHHT. These negotiations have sought to achieve early delivery whilst also minimising risk to the council. External lawyers have advised on the risks and relationship to the DPA and these proposals are set out in a Deed of Variation to the DPA. The proposals do not significantly alter the financial aspects of the DPA as they are mainly focused on bringing forward funding for elements that the council is responsible for delivering. For example, rather than as was anticipated the demolition cost of the FDS being netted off the land value receipt, the council will receive the full land receipt. The proposals are as follows at paragraph 10 to 14 below.

### **Plot 18 submission of planning application**

10. The planning application has been submitted. Under the current arrangements, the council is already funding the costs associated with its elements of the contract directly. The council's share of fees to planning which has already been paid is £750k. A position has been agreed with NHHT that the planning application has been

submitted subject to the council underwriting their costs of circa £2m. These costs include a development management fee payable to NHHT of £150k. A final date of 31 October 2017 has been agreed which would trigger payment of these fees by the council to NHHT at NHHT's request if the scheme has not proceeded to be built. At NHHT's request reimbursement at this stage can only be triggered by NHHT, but a subsequent final date of 31 March 2018 has also been agreed which if the scheme has not proceeded to be built would trigger payment of these fees by the council to NHHT at the request of either party. If either of these events are triggered all ownership of the design work will pass to the council thereby enabling the council to market the site with planning permission in place. At that point the site will be taken out of the DPA enabling the council to procure the development.

### **Plot 18 demolition**

11. The site is vacant. Tender prices have been received by NHHT. A position has been agreed with NHHT whereby the council will instruct them to carry out the demolition on the council's behalf in accordance with the DPA for the above ground demolition at Plot 18. These works will be funded directly by the council at a cost of £0.8m.

### **FDS demolition**

12. Erith (the contractor appointed by NHHT) have commenced soft stripping of the vacant blocks. A tender price has been received by NHHT, which includes £3.4m below ground demolition costs (under the existing provisions in the DPA the council are responsible for funding above ground demolition). In addition a further £1.2m has been agreed with the contractor for soft strip, advanced utilities work and site holding costs due to delays in vacant possession. The total cost of the contracts including fees is £16.8m. Due to the scale of the costs and uncertainty about the programme due to the CPO delay, NHHT are unwilling to proceed on the basis of underwriting. It is proposed that NHHT provide a development management service to the council for the management of such works with the council funding directly. If unconditionality occurs and NHHT continue to develop the site under the DPA there will be a repayment of the below ground costs and an enhanced land payment to the council to reflect this position.

### **Phase 2 planning application**

13. A position has been agreed with NHHT that the council will underwrite £2m of design fees. This has been agreed so as to enable design work to continue until end of September 2016 and will enable the viability of the Phase to be assessed. After the threshold has been reached the council can opt to continue design work but will need to fund directly. A final date of 31 October 2017 has been agreed which would trigger payment of the £2m by the council to NHHT if the scheme has not proceeded in accordance with the DPA. At that point all design work will pass to the council enabling the council to market the site. At that point the site will come out of the DPA enabling the council to procure the development.

### **Approved premises facility**

14. Consultation on the construction of the facility has taken place. It is anticipated that NHHT will submit planning application in November 2016. The council is funding the costs (£0.5m) directly. A position has been agreed with NHHT whereby this position will continue and the planning application will be submitted as per programme. A payment for the development management service (£60,000) will be made at the point

of submitting the planning application rather than as set out in the DPA on start of construction.

### Community impact statement

15. The actions set out above will bring forward the regeneration of the estate thereby providing new homes and facilities at an earlier stage.

### Financial implications

16. The implications of these agreements are as follows

Scheme	2016/17	2017/18	2018/19	Total
Plot 18 planning	300,000	1,700,000*		2,000,000
Plot 18 demolition	800,000	0		800,000
FDS demolition	6,700,000	9,100,000	1,000,000	16,800,000
Phase 2 planning	0	2,000,000*		2,000,000
APF planning	500,000	0		500,000
Total	8,300,000	12,800,000	1,000,000	22,100,000

\*Payment triggered if scheme not being progressed by NHHT in accordance with the DPA.

In terms of total spend on the regeneration programme it is now as follows:  
HRA funded -Phases 1 and 2

Scheme	2016/17	2017/18	2018/19	Total
FDS demolition	6,700,000	9,100,000	1,000,000	16,800,000
APF planning	500,000	0		500,000
Tenant rehousing Phases 1 and 2	1,200,000	1,200,000	100,000	2,500,000
APF build	500,000	2,500,000	2,500,000	5,500,000
Leaseholder buyback Phases 1 and 2	9,100,000	8,300,000	6,700,000	24,100,000
CPO costs Phase 2	100,000	300,000	0	400,000
Total	18,100,000	21,400,000	10,300,000	49,800,000

#### Phases 3 and 4

Scheme	2016/17	2017/18	2018/19	Total
Leaseholder buyback Phases 3 and 4	1,300,000	1,400,000	0	2,700,000
Total	1,300,000	1,400,000	0	2,700,000

#### Total

	2016/17	2017/18	2018/19	Total
Phases 1 and 2	18,100,000	21,400,000	10,300,000	49,800,000
Phases 3 and 4	1,300,000	1,400,000	0	2,700,000
Total	19,400,000	22,800,000	10,300,000	52,500,000

17. The current HRA balance for Aylesbury (which was anticipated for Phase 1 and 2) is £49.1m. The expenditure set out above (which includes elements of Phases 3 and 4) totals £52.5m. There is a deficit of £3.4m. The Capital Programme Monitor report in November will set out the additional HRA requirement for the later financial years. In addition as set out in paragraph 12 above, if Phase 2 is not progressed in accordance with the DPA, the Council would be liable to spend of £2m in 2017/18.
18. In bringing forward this funding from the HRA, the council recognises that there will be some knock-on impact on other housing investment projects. However, we do not anticipate that this will affect major investment priorities in our housing stock, such as new kitchens and bathrooms, ongoing maintenance projects, and various infrastructure improvements including boilers. The additional investment of £3.4m will assist with early buy-back for leaseholders in phases 3 and 4, avoiding long delays for leaseholders who wish to move on. This extra expenditure should be recouped by the HRA through land and property sales as agreed in the DPA.

#### General Fund and Section 106 funded

Scheme	2016/17	2017/18	Total
Plot 18 planning	300,000	0	300,000
Plot 18 demolition	800,000	0	800,000
Total	1,100,000	0	1,100,000

19. This shows that the forecast expenditure for 2016/17 can be contained with the existing Section 106 allocation for Aylesbury. In addition as set out in Paragraph 9 above, if Plot 18 is not taken forward under the DPA, the Council would be liable for spend of an additional £1.7m on planning fees in 2017/18. The Capital Programme Monitor report in November will set out the General Fund implications of the Plot 18 construction contract.
20. The impact on the HRA if all the funding is required is as follows

Year	Current programme	Revised proposal	Variation
2016/17	7,100,000	19,400,000	12,300,000
2017/18	9,400,000	22,800,000	13,400,000
2018/19	32,600,000	10,300,000	- 22,300,000
Total	49,100,000	52,500,000	3,400,000

21. NHHT have applied to the Government under the Estate Regeneration Programme for additional funding in the form of a low interest loan. If successful this loan which would be made to NHHT could potentially assist in funding leaseholder acquisitions thereby reducing the call on the HRA in these years.
22. It is assumed that there will be an increase in the capital receipt from the FDS as the council is providing a cleared site.

#### Legal implications

##### Plot 18 demolition contract

23. The revised proposals are to enable the above ground demolition works at Plot 18 to be carried out by NHHT or by Walworth Homes Limited on NHHT's behalf. In addition NHHT/ Walworth Homes have the option to also include the below ground demolition works and services diversions in the relevant demolition contract, provided that the

parties have agreed (acting reasonably) the extent of such works and how they are to be funded.

24. As the council are not procuring the demolition works directly they are to receive warranties from the Demolition Contractor(s) and Developer's Agent prior to start on site (in a form approved by the council pursuant to the DPA). The Deed of Variation includes a requirement for step-in rights for the council to enable council step-in where the Agreement is terminated before the Plot 18 Demolition Works are completed.
25. The developer is to be released from liability for the Demolition Works at Plot 18 on completion of the demolition, or when the Agreement comes to end (although they are not to be released from any breaches of the Agreement that have arisen prior to the date of the Agreement coming to an end.)
26. Please refer to paragraph 11 for the financial obligations accepted by the council in relation to the Plot 18 Demolition. Costs are to be payable on a monthly basis on receipt of VAT invoices addressed to the council and valuation certificates certified by the Developer's Agent. If the DPA subsequently becomes unconditional and NHHT proceed with the Development, the DoV requires that the Demolition Costs funded by the council are not treated as Development Costs (so the Council are effectively reimbursed through an enhanced land receipt).
27. **CIL:** It is accepted by the council that CIL may be triggered by the carrying out of the demolition works upfront, and the council are to indemnify NHHT against such costs. It is agreed that if unconditionality subsequently occurs such costs are to be reimbursed on drawdown of the building lease
28. **Indemnity for claims:** It has been agreed that council are to indemnify NHHT, Walworth Homes Limited and its contractor against claim made by third parties due to the works being carried out- this has been required as NHHT are concerned that nearby residents (not yet vacated) could make claims due to disturbance. It has been agreed that the council will cover such claims save that the indemnity excludes:
  - a) claims for physical damage to property, death, and/or injury directly arising as a result of the works; and/or
  - b) due to the negligence/misconduct of any of NHHT, Walworth Homes Limited or any person employed by them.
29. There is also a requirement to mitigate any claims made.

#### **First development site demolition**

30. It is agreed that the council will reimburse the costs of the Above Ground and Below Ground Demolition at the FDS, as well as service diversions required.
31. Please refer to paragraph 12 for the financial obligations accepted by the council in relation to the FDS demolition. Costs are to be payable on a monthly basis on receipt of VAT invoices addressed to the council and valuation certificates certified by the Developer's Agent. If the DPA subsequently becomes unconditional and NHHT proceed with the Development, the DoV requires that the Below Ground Demolition Costs funded by the council are not treated as Development Costs (so the council are effectively reimbursed through an enhanced land receipt).
32. The same position has been agreed on the FDS as on Plot 18 in relation to CIL recovery and an indemnity for third party claims, Please see the comments in the

section on Plot 18 for discussion of those aspects.

### **Approved premises facility**

33. The Deed of variation sets out the agreed approach for the delivery of the new approved premises, to be delivered by NHHT (or Walworth Homes Limited) on NHHT's behalf as council Works under the DPA. It notes that for the purposes of planning the APF is to be treated as a Plot, to enable the the planning schedule of the DPA to be used to bring forward the APF planning permission
34. Please refer to paragraph 14 for the financial obligations on the council. Costs are to be payable on a monthly basis on receipt of VAT invoices addressed to the council and valuation certificates certified by the Developer's Agent).
35. The Developer is to provide warranties from the Professional Team and the Building Contractor to the council and the Ministry of Justice in accordance with the DPA. Such warranties are to be provided prior to start on site (in a form approved by the Council pursuant to the DPA). The Deed of Variation includes a requirement for step-in rights for the council to enable council step-in where the Agreement is terminated before the Plot 18 Demolition Works are completed.
36. The Developer is to be released from liability for the APF on the later of the provision of the warranties and the completion of the works, or when the Agreement comes to end (although they are not to be released from any breaches of the Agreement that have arisen prior to the date of the Agreement coming to an end.)
37. The same position has been agreed on the APS as on Plot 18 in relation to CIL recovery and an indemnity for third party claims, Please see the comments in the section on Plot 18 for discussion of those aspects.
38. It has been agreed that the arrangements agreed in relation to the APS may be terminated by either party by the giving of 20 days notice on the receipt of detailed planning permission for the APS.

### **Plot 18 planning application**

39. Please refer to paragraph 10 for the financial obligations on the council. If the council are obliged to reimburse the Developer must assign or procure the right to use all planning documents and design work for Plot 18.

### **Consultation**

40. The individual projects have been subject to a range of consultation exercises. The detail of these proposed actions have not been discussed with any party apart from NHHT.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

41. It is understood that the proposed changes have been negotiated with the objective of minimising the impacts of delays in the site vacation and CPO process which may otherwise have the potential to de-rail the development project (and undermining the achievement of the benefits for its administrative area which it is intended the development project should deliver).



42. The council must consider the proposals in the context of its public law responsibilities including its fiduciary and best value duties (requiring the council to take appropriate steps to ensure that it obtains value for money in the use of public funds) and compliance with procurement rules. The decision makers should be satisfied that having regard to all relevant matters the proposals are an appropriate means, balancing all respective risks including its public law responsibilities, of enabling the council to achieve the objectives of the project.
43. All of the changes will fall to be considered in the context of regulation 72 of the Public Contracts Regulations 2015 (as confirmed in the updated guidance from CCS).
44. The advice set out in Appendix 1 of the closed report considers the proposed changes in the context of compliance with regulation 72 and the making of a fully informed decision in respect of the proposals in this report (being matters to which decision-makers must therefore have regard).

#### **Strategic Director of Finance and Governance (FC16/017)**

45. This report makes proposals to bring forward the delivery of the Aylesbury Estate regeneration programme. This involves the forward funding of demolition costs, the underwriting of design costs and the re-profiling of expenditure with consequent cash-flow implications given the wider demands of the HIP and DD programmes.
46. The indicative financial implications arising from the proposed actions are set out in the report. With regards funding, in November 2013 cabinet approved the current tranche of HIP funding of £76.7m, (plus an existing resource of £0.3m), giving total resources of £77m for phases 1 and 2, including the early buy-back of leasehold properties as they became available on phases 3 and 4. At 1 April 2016, the residual budget allocation was £49.1m. The indicative sum required for phases 1 and 2 is £49.8m over the period 2016/17 to 2018/19, plus £2.7m for further phase 3 and 4 leasehold acquisitions up to 2017/18, giving rise to a shortfall of £3.4m (£49.1m - £52.5m), based on current estimates.
47. The report also proposes to underwrite design/planning costs on phases 1 and 2 and plot 18 to a value of £4m were NHHT not to proceed with the development. In the event, the sites would be taken out of the DPA and ownership of the design work would pass to the council enabling the council to market the sites and procure the development.
48. Cabinet will be aware that there is an estimated resource shortfall in the overall 2016/17 HIP (as reported to cabinet in February 2016). Whilst this position is likely to be moderated to some extent during the year as expenditure phasing and resourcing forecasts are updated in light of better information, programme commitments do need to be managed such that they match more closely the available resources in year and minimise any external borrowing requirement.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet April 2014. Gateway 2 - Contract Award Approval Development partner for the regeneration of the Aylesbury Estate	Regeneration South, 5 <sup>th</sup> Floor, 160 Tooley Street, SE1	Neil Kirby 020 7525 1878
<b>Link:</b> <a href="http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=4612">http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=4612</a>		

## APPENDICES

No.	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Mark Williams, Regeneration and New Homes	
<b>Lead Officer</b>	Eleanor Kelly, Chief Executive	
<b>Report Author</b>	Neil Kirby, Head of Regeneration (South)	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
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