

Item No.	Classification: Open	Date: 1 November 2018	Decision maker: Strategic Director of Housing and Modernisation
Report title:		Southwark Regeneration in Partnership Programme – Termination of Contract	
Ward(s) or groups affected:		Rye Lane, Peckham, St Giles, Camberwell Green, Goose Green and South Bermondsey	
From:		Director of Regeneration	

RECOMMENDATION(S)

That the Strategic Director of Housing and Modernisation:

1. Approves the termination of the development agreement between the London Borough of Southwark and Clarion Housing Group Limited (Clarion) and Latimer Developments Limited (Latimer), to whom Affinity Sutton Homes Limited (Affinity) assigned its benefit in and rights under the Development Agreement.
2. Agrees that Latimer be paid the amount not exceeding £650,000 for intellectual property rights subject to sign off by the Director of Regeneration regarding content and warranties.
3. Authorises officers, subject to gateway approvals, to pursue a procurement approach for the development of the Copeland Road Car Park site as outlined in paragraphs 16 - 19 of the closed report.
4. Notes that, as per the requirements of Contract Standing Order 10, the Strategic Director of Finance and Governance and the monitoring officer have been consulted on and support the decision to terminate the development agreement.

BACKGROUND INFORMATION

5. In January 2015, Cabinet agreed to the development of the Southwark Regeneration in Partnership Programme (SRPP) to act as a delivery vehicle in achieving the council's target of 11,000 new homes.
6. In October 2015, Cabinet approved the use of the GLA London Development Panel Framework as a procurement route, and in September 2016, Cabinet approved the award of the SRPP Lot B contract to Affinity with Clarion as surety. In April 2017, Affinity and Clarion and the council signed a Development Agreement (DA), following which Affinity assigned the benefit in and rights under the Development Agreement to its subsidiary Latimer and appointed Latimer to perform the obligations of the Developer.
7. Lot B is composed of 10 sites on which the partnership would deliver 606 new homes, (including 285 council and 94 intermediate), 4,132m² of commercial space and community facilities including a new church, a community gallery,

workspace, and new community hall.

Site Name	Ward	Social Rent	Intermediate	Market	Grand Total
Car Park Site Copeland Road SE15	Rye Lane	24	18	25	67
21/23 Parkhouse Street SE5	St Giles	10	2	20	32
Land Wyndham Road and Redcar Street SE5	Camberwell Green	74	0	40	114
Fred Francis Centre, 269 Lordship Lane SE22	Goose Green	16	0	16	32
Peckham Library Square Peckham High Street SE15	Peckham	6	3	10	19
Flaxyard Site Sumner Road SE15	Peckham	96	24	0	120
Sumner House, Sumner Road SE15	Peckham	0	0	48	48
Petrol Station, 233-247 Old Kent Road SE1	South Bermondsey	13	0	11	24
Wickway Community Centre, St. Georges Way SE15	Peckham	20	15	30	65
Land at Angel Oak Academy Chandler Way SE15	Peckham	26	32	27	85
Total		285	94	227	606

8. Lot B was tendered with the following key priorities (see closed report for further details):
- a) Deliver a significant number (minimum of 150) of Council homes completed by 2018 to count towards the 1,500 new homes target. Clarion's bid (and the basis of their award) was to deliver 41 completions by December 2018 and an additional 107 completions by March 2019; with the first scheme, Copeland Road Car Park, on site by June 2017.
 - b) Recoup the council's feasibility costs. This was initially payable upon entering into contract but negotiated amendments to the DA required payment from Clarion by 31 March 2018 or start on site of the first scheme, whichever is later. This amount was included in Clarion's intervention sum.
 - c) Maximise the quantum of affordable homes (social and intermediate) whilst minimising the council's contribution to land and a fixed maximum intervention sum through cross subsidisation from the private sales and grant funding from the GLA with build costs inflation and market fluctuations accounted for in the profit share/overage arrangements. As such, the DA does not provide for termination of a scheme or the programme on the basis of viability. Clarion's bid required an intervention of £11.507m (which was to come from the council's Affordable Housing Fund) in addition to the £7.84m in Housing Zone funding that had been secured. Any additional grant was to be applied towards the reduction of the Council's intervention – both the council (£4.98m) and Clarion (£1.29m) have since made successful bids for GLA Affordable Housing Programme funding. Negotiated amendments to the DA allow for exceptional costs to be accounted against the council's 50% share of the overage.
9. A majority of the sites sit in the General Fund and all of them have been appropriated for planning purposes.
10. The council led on design and planning for 5 of the sites – Copeland Road Car Park (consented), Peckham Library Square (consented), Flaxyard and Sumner House (consented), Parkhouse (submission pending). The Old Kent Road Petrol Station was initially council led but, at Clarion's request, the application was withdrawn so they could redesign and resubmit (consented). Clarion was leading on the remainder.
11. The programme was meant to commence with start on site on Copeland Road

Car Park on 26 July 2017; however, for reasons outlined in paragraphs 6-12 of the closed report and despite the best efforts of both parties, it became clear that the programme could not be delivered as contracted. Following several meetings between officers from both organisations, it was agreed mutually that it was in both parties' interests to terminate the agreement.

KEY ISSUES FOR CONSIDERATION

Termination Terms

12. The commercial terms of the drafted settlement agreement that is being negotiated with Clarion are:
 - a) The council will be free to develop and/or procure the partners to develop the sites included in the Development Agreement.
 - b) The council will have immediate access to Purelake New Homes Limited, the contractor procured by Clarion to deliver Copeland Road Car Park, and all related sub contractors and consultants, including design and survey information for the purpose of developing the Copeland site.
 - c) Affinity/Clarion will transfer all intellectual property (IP) rights and collateral warranties to the council; giving it immediate rights and access to all technical, design and construction material which it will be able to share with third parties for the sole purpose of developing the sites in the programme.
 - d) Affinity/ Clarion will provide details of contractors and consultants and procure collateral warranties in favour of the council from all building contractors, professional team and sub-contractors that provides the council to grant sub-licences, exercise step-in rights and request additional collateral warranties in favour of new developers.
 - e) In consideration for the assignment of IP and collateral warranties that it determines are of direct benefit, the council will compensate Affinity/Clarion a maximum amount of £650,000.
 - f) The council will retain all rights to employ all architects, consultants and contractors procured by Affinity/ Clarion in order to maintain development work and will obtain the benefits of all technical and programme knowledge procured to date.
 - g) Affinity/Clarion shall remain responsible for payment of all design fees and any construction costs invoiced to date. Following termination, the council will meet all future costs of the development of each site.

Copeland Road Car Park Site

13. The council is considering its procurement options for Copeland Road, further details of which are noted in the closed report, and which will be subject to separate gateway 1 and gateway 2 approval.

SRPP Lot B Remaining Sites

14. Officers will re procure the remaining 9 sites that make up Lot B via a separate G1 and G2 report that will explore repackaging the sites into smaller lots via various delivery vehicles, including the option of joint ventures and direct delivery.

Risks

Risk No.	Identified Risk	Likelihood	Risk Control
1	Reputational damage to council due to failure to deliver promised housing	Medium	The council is committed to delivering the 10 sites that comprise Lot B.
2	Inability to raise finance direct delivery of Copeland	Medium	Use RTB receipts and council's borrowing headroom forward fund deliver
3	Unable to find new development partners/contractors for all 10 sites	Low	Will determine delivery methods of smaller packages of sites based on viability appraisals and soft market testing
4	Projected sales value on directly delivered schemes are not met	Medium	Sales projections have been very conservative and will continue to be tested against market trends
5	Further build costs inflations during intervening period between dissolution and award of new contracts	Medium	Procurement will be expedited using resources such as established frameworks
6	Planning refusal to vary consented schemes to make them more viable	Medium	Every effort will be made to keep to consented schemes, packaging marginal sites with more lucrative ones rather than seeking to vary tenure

Policy implications

15. Whilst the council has been keen to keep the programme on track, to agree to any significant changes to the scope of the programme the council would need to demonstrate that it is conforming to the obligations under Section 123 of the Local Government Act to achieve best consideration. However, based on the information Clarion provided thus far, their revised programme was unlikely to be justified as best consideration.

Community impact statement

16. SRPP Lot B will deliver 606 new homes of which 285 will be new council homes, 94 intermediate homes and 227 private sale homes. The programme is one of the delivery vehicles for the council's 11,000 new homes target. Non delivery of the programme not only impacts the council's target, but also those communities that have been consulted on a redevelopment which not only provides much needed new homes but also new community and commercial facilities.
17. The Equality Act 2010 imposes a general equality duty on public authorities (the Public Sector Equality Duty – PSED) in the exercise of their functions, to have due regard to the need to :
 - Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
 - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it;
 - Foster good relations between people who share a relevant protected characteristic and people who do not share it.
18. For the purposes of the PSED the following are “protected characteristic” considerations :
 - Age
 - Civil partnership
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex and sexual orientation
19. As the development of the sites proceeds, the council will routinely conduct equalities impact assessments and where necessary appropriate mitigation measures will be considered.

Resource implications

20. A new method of delivery of this programme can be contained within the existing resources.

Financial implications

21. The cost of re-tendering the remaining sites in Lot B in respect of officer time, updating feasibility studies, legal fees and planning fees will be outlined in the gateway reports.
22. See closed report for further details.

Legal Implications

23. In accordance with the Development Agreement, Affinity Sutton, as Developer, agreed to develop the relevant land for Southwark upon the terms and conditions

set out in the Development Agreement and Clarion Housing Group, as Surety, agreed to enter into the covenants contained in Schedule 10 of the Development Agreement.

24. The Parties have agreed to terminate the Development Agreement subject to the terms set out in paragraph 12.

Consultation

25. SRPP Lot B has undergone extensive resident and stakeholder consultation from inception in 2015. There have been 3 x public consultations per site, along with 1-1 meetings where needed, focus groups where applicable and Project Steering Group (PSG) established where necessary.
26. Upon dissolution of the agreement, officers will consult with the Future Steering Board, local stakeholders, PSGs and ward members about the procurement and delivery strategy for each of the sites.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

27. This report seeks the approval of the strategic director of housing and modernisation to the termination of the development agreement in respect of Lot B for the Southwark Regeneration in Partnership programme as further detailed in paragraphs 1-2. As noted in paragraph 11 of this report it is considered in both parties interest to agree termination of the agreement, as the programme cannot be delivered as contracted.
28. Contract Standing Order 8.1 requires that a contract may only be terminated early by a chief officer, and only after obtaining approval from the monitoring officer and Strategic Director of Finance and Governance. The director of law and democracy (as monitoring officer) supports the decision to agree a mutual termination of the contract, on the terms set out in paragraph 12.
29. Officers are asked to consider alternative procurement approaches for all sites in Lot B. This will be subject to separate gateway approval and advice will be given on those procurement options as they are brought for approval.

Strategic Director of Finance and Governance (H&M18/058)

30. The strategic director of finance and governance notes the recommendations made in this report to terminate the development agreement with Clarion Housing Group Limited and Latimer Developments Limited for Lot B of the Southwark Regeneration in Partnership Programme for the reasons given in the Background Information section of this report and to pursue a procurement approach for the development of the Copeland Road Car Park site.
31. With the exception of legal fees associated with the termination agreement, the council will retain the benefits of other costs incurred to date. Further negotiation

is needed for the assignment of intellectual property rights, which will also be of benefit to the council as it progresses with procurement options for the development of the Lot B sites.

32. As alternative delivery routes for the development sites have not yet been identified, the financial implications in terms of both cost and financing are unknown at this stage, and will be subject to the Gateway approval process in due course.

FOR DELEGATED APPROVAL

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council's constitution, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).

Signature  Date 12 November 2018
..... Date.....
Michael Scorer, Strategic Director of Housing and Modernisation

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers (including contract reports)
- 2) Any non-key decisions which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.

1. DECISION(S)
As set out in the recommendations of the report.

2. REASONS FOR DECISION
As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION
n/a

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION (IF APPLICABLE)*

n/a

*Contract standing order 4.5.1 states that for contracts with an Estimated Contract Value of over £100,000, the lead contract officer (LCO) must consult with the relevant cabinet member before a procurement strategy is implemented.

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST

If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.

n/a

6. DECLARATION ON CONFLICTS OF INTERESTS

~~I declare that I was informed of no conflicts of interests.*~~

or

I declare that I was informed of the conflicts of interests set out in Part B4.*

(* - Please delete as appropriate)

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Gateway 2: Contract Award Approval - Southwark Regeneration in Partnership Programme Development Partners http://moderngov.southwark.gov.uk/ie/DecisionDetails.aspx?Id=5921	Regeneration, Place and Wellbeing Department, 160 Tooley Street	Diana Hall ext 57724

APPENDICES

No.	Title

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Regeneration	
Report Author	Diana Hall, Housing Regeneration Manager	
Version	Final	
Dated	1 November 2018	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	n/a	n/a
Date final report sent to Constitutional Team		12 November 2018