

Cabinet

Tuesday 2 November 2010

10.00 am

Ground Floor Meeting Room, GO2(C), 160 Tooley Street, London SE1 2TZ

Membership

Councillor Peter John
Councillor Ian Wingfield
Councillor Fiona Colley
Councillor Dora Dixon-Fyle
Councillor John Friary
Councillor Barrie Hargrove
Councillor Richard Livingstone
Councillor Catherine McDonald
Councillor Abdul Mohamed
Councillor Veronica Ward

Portfolio

Leader of the Council
Deputy Leader and Housing Management
Regeneration and Corporate Strategy
Health and Adult Social Care
Community Safety
Environment, Transport and Recycling
Finance and Resources
Children's Services
Equalities and Community Engagement
Culture, Leisure, Sport and the Olympics

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Contact

Everton Roberts on 020 7525 7221 or Paula Thornton 020 7525 4395 or email:
everton.roberts@southwark.gov.uk ; paula.thornton@southwark.gov.uk

Members of the committee are summoned to attend this meeting

Councillor Peter John

Leader of the Council

Date: 25 October 2010



Cabinet

Tuesday 2 November 2010

10.00 am

Ground Floor Meeting Room, GO2(C), 160 Tooley Street, London SE1 2TZ

Order of Business

Item No.	Title	Page No.
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PART A - OPEN BUSINESS

MOBILE PHONES

Mobile phones should be turned off or put on silent during the course of the meeting.

1. APOLOGIES

To receive any apologies for absence.

2. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

In special circumstances, an item of business may be added to an agenda within five clear working days of the meeting.

3. DISCLOSURE OF INTERESTS AND DISPENSATIONS

Members to declare any personal interests and dispensation in respect of any item of business to be considered at this meeting.

4. AYLESBURY REGENERATION - PHASE 1: SITES 7 & 10 REVISED DELIVERY ROUTE	1 - 15
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To agree that Aylesbury sites 7 and 10 are offered on the open market with a view to securing one or more regeneration partners for their regeneration in accordance with the Aylesbury Area Action Plan and for officers to report back to cabinet following marketing and subsequent bid appraisals with recommendations on the regeneration partner and the principal contractual structure for the transfer of the sites.

OTHER REPORT

The following item is also scheduled to be considered at this meeting:

Item No.

Title

Page No.

- Comprehensive Spending Review Update

5. COMPREHENSIVE SPENDING REVIEW UPDATE

DISCUSSION OF ANY OTHER OPEN ITEMS AS NOTIFIED AT THE START OF THE MEETING

EXCLUSION OF PRESS AND PUBLIC

The following items are included on the closed section of the agenda. The Proper Officer has decided that the papers should not be circulated to the press and public since they reveal confidential or exempt information as specified in paragraphs 1-7, Access to Information Procedure Rules of the Constitution. The specific paragraph is indicated in the case of exempt information.

The following motion should be moved, seconded and approved if the cabinet wishes to exclude the press and public to deal with reports revealing exempt information:

“That the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraphs 1-7, Access to Information Procedure Rules of the Constitution. “

PART B - CLOSED BUSINESS

DISCUSSION OF ANY OTHER CLOSED ITEMS AS NOTIFIED AT THE START OF THE MEETING AND ACCEPTED BY THE CHAIR AS URGENT

Date: 25 October 2010

Agenda Item 4

Item No. 4.	Classification: Open	Date: 2 November 2010	Meeting Name: Cabinet
Report title:		Aylesbury Regeneration – Phase 1: sites 7 & 10 - revised delivery route	
Ward or groups affected:		Faraday Ward residents of the Aylesbury Estate	
Cabinet Member:		Councillor Fiona Colley, Regeneration and Corporate Strategy	

FOREWORD – COUNCILLOR FIONA COLLEY, REGENERATION AND CORPORATE STRATEGY

1. When embarking on a regeneration project of the scale of the Aylesbury Estate the one thing we can be certain of is that we will have to adapt our plans along the way. However, we must be crystal clear that whilst the paths we take may change, our destination, the transformation we are seeking for Aylesbury Estate residents, is unchanged.
2. This report recommends that, in the light of new information, rather than use the HCA Developer Panel to procure a partner for sites 7 and 10 on the Aylesbury we should instead proceed via a land transfer – a mechanism we have used successfully on other regeneration projects such as Bermondsey Spa.
3. While this route is less prescriptive, it is far faster than a full EU procurement process and should allow us to deliver the development of sites 7 and 10 on schedule ahead of the following PFI phases. This is an absolutely critical factor in the current climate of swingeing cuts to housing finance.
4. In accordance with our pledge that we will make regeneration work for the community, not just property developers, Creation Trust and resident representatives from the Aylesbury Regeneration Sub-Group will play a crucial role in the marketing and evaluation of the bids for sites 7 and 10 as set out in paragraphs 29-37. Similarly the requirements of the Aylesbury Area Action Plan will apply both via the contract and the planning process.
5. This is the first stage of the process to appoint a regeneration partner for sites 7 and 10. Following the marketing and evaluation of bids we will take a further report at Cabinet before any final decision is taken on a transfer.

RECOMMENDATIONS

That Cabinet agrees

6. That Aylesbury sites 7 and 10 be offered on the open market with a view to securing one or more regeneration partners for their regeneration in accordance with the Aylesbury Area Action Plan.

7. That officers report back to Cabinet following marketing and subsequent bid appraisals with recommendations on the regeneration partner and the principal contractual structure for the transfer of the sites.

BACKGROUND INFORMATION

8. This report proposes a revised approach to securing the regeneration of two Aylesbury sites with new housing and community and health accommodation.
9. On October 20, 2009, the council's Executive agreed an approach to the procurement of regeneration partners for Phase 1 of the Aylesbury. This resolution included the redevelopment of sites 7 & 10 (1-59 Wolverton and 300-313 Missenden, respectively), these are shown edged red (site 7) and green (site 10) on the plan at Appendix 1. This report considered delivery options, including a land transfer, for regenerating the sites and recommended the use of the HCA Delivery Partner Panel process. HCA officers indicated that the Panel would be suitable for the council's purposes of providing new homes on these sites although at that time the composition of the Panel in terms of development partners was not yet clear.
10. Since the October 2009 decision,
 - A Gateway 1 report, dated March 19, 2010, confirmed the use of the HCA's Developer panel to regenerate sites 7 and 10
 - the HCA's Delivery Partner Panel (DPP) was formally established
 - Creation Trust (the successor body to the Aylesbury New Deal for Communities and the Aylesbury Steering Group) was established to deliver social improvements on the Aylesbury Estate and to act a focus for consultations with residents.
11. In January of this year, the council adopted the Aylesbury Area Action Plan (AAP), this planning policy document sets out the framework for the regeneration of the Estate and its policies must be adhered to no matter how a partner is identified. The principal policies in the AAP include:

General (over the entire regeneration)

- Social housing to be provided to Parker Morris + 10%
- 70% of homes to have two or more bedrooms
- Design excellence and high quality
- Delivery of an excellent range of quality private and open space
- All developments to connect to a combined heat and power system
- All homes to meet at least Level 4 of the Code for Sustainable homes
- The cost of key infrastructure will be met by way of a tariff
- Across the regeneration area 0.4 car spaces per dwelling

Site 7 specific

Capacity for 165 homes made up of the following types:

Property Type	AAP provision	Currently			AAP Addition
		Rent	Sold	Total	
Studios	4	0	0	0	+4
One bedrooms	39	5	1	6	+33
Two bedrooms	61	10	6	16	+45
Three bedrooms	41	14	8	22	+19
Four bedrooms	13	12	3	15	-2
Five bedrooms	7	0	0	0	+7
Total	165	41	18	59	+106

- 97 (59%) of the 165 homes are to be affordable
- of these 73 will for be social rent and 24 for intermediate [shared ownership]
- net addition: this results in 32 more homes for social rent than existing
- 68 41% of the homes are to be for sale

Site 10 specific

2,500m² of health facility space
500m² of community space

Capacity for 112 homes made up of the following types:

Property Type	AAP provision	Currently			AAP Addition
		Rent	Sold	Total	
Studios	4	0	0	0	+4
One bedrooms	42	0	0	0	+42
Two bedrooms	46	0	0	0	+46
Three bedrooms	16	6	1	7	+9
Four bedrooms	3	0	0	0	+3
Five bedrooms	1	7	0	7	-6
Total	112	13	1	14	+98

12. The composition of the HCA's DPP for the Southern area, which covers Southwark, comprises only one Registered Provider (Social Landlord), nine housing developers and seven construction companies. Given the proportion of social housing required on sites 7 and 10, as described in the Aylesbury Area Action Plan, it is evident that the Panel may not be able to deliver a value for money solution to the council because of the relevant competitors on the panel. In addition, further clarification on the detailed operation of the DPP raised doubts about the appropriateness of its use for procuring a housing management service. For these reasons, further legal advice was sought on the suitability of the HCA's DPP for developing sites 7 and 10 as currently intended. This external legal opinion identifies several factors that could pose significant risks for the proposed procurement process. These risks include:

- confirmation that long term housing management falls outside the scope of the HCA's DPP

- the DPP precludes any negotiation taking place after procurement commences, in a similar manner to a restricted public procurement process. (Given the complex nature of the development process for these sites, it will be likely to require specific contract terms, such as profit sharing, or 'overage', to be negotiated.)
13. This advice led the Strategic Director of Communities, Law & Governance to conclude that the use of the HCA's DPP could result in a successful legal challenge by a potential developer or unsuccessful bidder.

KEY ISSUES FOR CONSIDERATION

14. The Aylesbury development timetable has been based on the council's decision to proceed with using the HCA's DPP. Now that it has shown that it would be imprudent for the council to use this procurement framework, there is a possibility that delivery of new homes on the above sites will be further delayed. Such delays also have the potential for this phase to overlap with the Aylesbury PFI Housing Project that was approved in principle by the Cabinet in July 2010.
15. The council needs to avoid such an overlap for the following reasons:-
- Whichever contract is let first, the successful developer is likely to want to 'lock out' any other developments from selling similar properties until nearly all of its properties for sale are sold. This has the potential for delaying the subsequent phase of development.
 - It would be helpful to the rehousing programme if the properties for social rent being developed on sites 7 and 10 were available to re-house residents being displaced from subsequent phases of the Aylesbury Estate. While this is not possible for the residents likely to be displaced by Aylesbury PFI Housing Project, if this project was delayed for any reason then the new homes on sites 7 & 10 may become a useful rehousing resource.
16. In the absence of the HCA's Panel process, two broad options are available for taking forward the regeneration of the sites: a public procurement (which follows an EU compliant public procurement procedure) or a land transfer. Both routes are understood and well used means of securing regeneration although a land transfer is generally a faster method of securing a partner than an EU public procurement (depending on the public procurement procedure adopted). A land transfer may require a smaller initial commitment of resources from both the council and prospective partners than a public procurement so it reduces the barriers to participation. A land transfer or a public procurement process should also expose the regeneration opportunity to a wider variety and greater number of prospective partners than the HCA's DPP.
17. As a result of the current property market climate and the obligations required under the AAP (including content of affordable housing, accommodation sizes and other costly requirements) it is anticipated that both sites have negative land values i.e. the cost of regenerating them will exceed the income derived from their sale. In these circumstances, regeneration can only take place with funding to bridge this deficit and

the source of this would be from the HCA. As a consequence of the recently announced Comprehensive Spending Review, the amount of funding available to the HCA has been halved and other changes are to be made to social housing policy. At the time of writing, the full implications of this reduced funding and policy changes are being assessed. The HCA is supportive of the Aylesbury regeneration but it may not be able to provide the necessary funding to make the regeneration of either site viable whether the partner is procured by a land transfer or a EU public procurement. Informal discussions indicate however that the sooner a submission is made the better its chance is of obtaining funding. This is a very important consideration in recommending a land transfer over a public procurement.

18. During the preparation of the Aylesbury Area Action Plan, commitments were made to residents that they would be involved in the regeneration of the sites comprising the Aylesbury Estate, including:
 - The appointment of developer partners
 - The development of scheme designs
 - Choice of materials and room layouts, etc.
 - The drafting of requirements for housing management.
19. Both the procurement and transfer options can accommodate the involvement of residents throughout the regeneration cycle. However, while the council can be prescriptive with its requirements under a public procurement, its ability to do so under a transfer is less; this is because there is a risk that if the council is too prescriptive the regeneration agreement may be interpreted as a 'public works contract' under EU public procurement rules.
20. Under a land transfer, the regeneration partner will lead on the stakeholder engagement process up to and beyond the making of a planning application. This represents a change of approach from a procurement whereby the council can prescribe engagement requirements. In reality, engagement is likely to be a tri-partite approach (council, stakeholders and regeneration partner). There are also some concerns about our ability to specify how the regeneration partner's housing management policies will be applied. The approach to housing management will be an evaluation criterion for partner selection. Therefore established council policies relating to nominations, allocations etc will be unaffected.
21. The use of land transfers to regenerate areas is tried and tested and has been used successfully elsewhere in the Borough including at Bermondsey Spa and Canada Water. It is also the mechanism for the proposed regeneration of the vacant Elmington and Wooddene sites. There is a heightened risk however, following recent case law, that the council could be challenged if its requirements under a land transfer are too prescriptive, such that it could fall within the definition of being a 'public works contract' for the purposes of EU public procurement law.
22. Whatever the process, prospective partners will have to regenerate the sites in accordance with current planning policies, i.e. the Aylesbury Area Action Plan and the emerging Core Strategy. The AAP in particular sets out a range of requirements for the sites with regard to design, densities, tenure, dwelling size and community facilities. These have been set out in paragraph 7. Under a land transfer this will enable the council in its planning role to exercise considerable control over the standards required

of a proposed scheme in policy terms.

23. It is estimated that it is possible to identify a regeneration partner under a land transfer within 90 days, it will take considerably longer before actual regeneration work starts on each site. Vacant possession of the sites will be required and designs will need to be developed and appropriate planning permissions obtained. Overall it is estimated that the land transfer route could achieve regeneration over a period of around three years, while using the EU procurement route would take about a year longer to achieve. These timescales are, however, subject to the prevailing economic and funding climate (see paragraph 11) and the agreement/approach of the selected partner.
24. Part of site 10 shown hatched green on the plan is being considered as a possible location for a replacement energy centre for the Aylesbury Estate under the Multi Utility Service Company [MUSCo] initiative. An energy centre is a requirement in the Aylesbury Area Action Plan and is needed to enable the regeneration programme to meet level 4 of the Code for Sustainable Homes. If for any reason, the council does not proceed with its MUSCo project, then the land on which the proposed energy centre is identified will be included in the land transfer and other means will be sought to achieve the council's energy objectives.
25. Overall, there is a balance to be struck between the need to progress the redevelopment in a timely manner and the need to be able to specify precisely, through a procurement route, what the council requires on the site. The risks of taking the longer public procurement route are considerable, particularly in relation to the subsequent PFI phase of the development and deficit funding. The council has extensive experience of taking forward regeneration effectively through the land transfer route. The clear and strong planning policies contained in the Aylesbury AAP are also helpful in facilitating the delivery of new homes. On balance, the recommendation is to progress sites 7 and 10 by way of land transfers.

Policy implications

26. Taking forward the Aylesbury Regeneration Programme is a council commitment and the revised approach advocated here is in pursuance of that.
27. The sites currently house secure tenants, temporary leaseholders and some empty dwellings. Vacation of the occupied properties will be achieved in accordance with existing policies approved by Executive on 26 September 2006. Every effort will be made within the statutory framework to purchase leasehold properties by agreement but in recognition that this may not be possible, the council's Executive on 9 February 2010 resolved to make a compulsory purchase order to acquire any outstanding third party interests.

Land Transfer Framework

28. The term land transfer is used extensively throughout this report. A land transfer in this context is the grant of a long lease which it is envisaged will be granted when each site has been built out. To enable the sites to be built the partner will be permitted (by licence or building lease) to enter the sites and build upon them. This machinery has worked successfully on other regeneration schemes and it is proposed to use this structure here. The grant of a long lease rather than a freehold transfer is considered

preferable in these circumstances because it enables the Council to retain long term control and influence over the sites.

29. Set out below are the key stages of a seeking a partner by way of a land transfer together with appropriate commentary particularly in relation to stakeholder involvement.

Offer the opportunity to the market

30. The regeneration will be advertised in the national property press with an invitation for prospective partners to come forward. It is proposed that the draft advertisement will be presented to the board of Creation Trust for approval.

Issue appropriate documentation to potential bidders

31. The initial marketing might give rise to interest from realistic partners and others that don't appreciate fully what is needed i.e. they may only wish to purchase part of a site. The initial enquiries will therefore be sifted and full background documentation will be issued to realistic potential partners.

Full bids to be received by a particular date

32. Bidders will have a cut off date by which to submit their submissions these will be required to address the following aspects:
 - Professional Team/Experience/Track record
 - Quality/Design/Regeneration approach
 - Stakeholder Engagement
 - Management including the social housing of completed regeneration
 - Financial matters

Evaluation of bids

33. The submissions will be evaluated in line with the criteria described above and recommendations will be made to the Council's Cabinet. Resident stakeholders from Creation Trust and Housing Management officers will form part of the Evaluation Team and input into the recommendation that will be made to Cabinet. One outcome of the evaluation may be that none of the bidders can be recommended as a partner.

Contract

34. If Cabinet resolve to select a regeneration partner discussions will take place to ensure there is a legal agreement that will deliver the Council's policies for the sites and in particular those set out in the Area Action Plan and emerging Core Strategy. The contract will have a number of conditions that will have to be satisfied prior to there being a land transfer including:
 - A satisfactory planning consent being in place
 - The regeneration being viable and adequately funded
 - Vacant possession of the sites being available
 - A long stop date by which regeneration of the sites must have commenced

- An agreed housing management regime for the regenerated sites

Planning

35. The regeneration partner will lead on designing the area to be regenerated and ultimately submitting a planning application. The partner will be required to involve stakeholders in this process. The legal agreement will require the partner to obtain the council's approval to the contents of any planning application before it can be submitted. In considering granting such approval to submit, the council will have regard to the level of stakeholder involvement in the design process and if applicable any unresolved design issues.
36. In considering the submitted application the Council's Planning Committee will have regard to its compliance with appropriate policies including the Aylesbury Area Action Plan and emerging Core Strategy. As part of the planning process neighbours to the sites in question will be formally consulted and their views reported to the Committee.

Construction

37. This will commence once all the conditions set out at 24.5 are satisfied. To facilitate such works there will need to be practical agreements between all parties; residents, contractor, sub-contractors, regeneration partner and the Council. In particular, attention will need to be paid to ensuring continuity of service provision from the buildings on Tykes Corner (part of Site 10) whilst construction.

Approximate timeline

2010		2011											2012					2013														
N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F					
Cabinet report		Marketing			Bid Evaluation	Recommendation to Cabinet							Regeneration Agreement signed	Planning application submitted												Planning approval			Vacant possession of sites	Construction commences		

Community impact statement

38. A full impact assessment was carried out and submitted as part of the process in the adoption of the Aylesbury Area Action Plan.

Resource implications

39. The costs associated with resourcing the land transfer process are less than those for other delivery routes. This approach will therefore free up some staff resources that can be used to develop the business case for regeneration of the remainder of the Aylesbury Programme.

Legal implications

40. These are set out in the concurrent of the Strategic Director of Communities, Law & Governance

Financial implications

41. These will depend largely on the valuation of the sites having regard to the profile of tenures to be contained on each; given the presence of social and intermediate tenure units there is likely to be a need for some form of deficit funding, probably Social Housing Grant or equivalent to fund any residual deficits arising. The likely quantum of the funding required by regeneration partners will crystallise as a consequence of the marketing exercise.

Consultation

42. The proposed change in the regeneration partner identification route does not require fundamental changes to be made to the phasing of the development of sites 7 and 10 or to the council's current rehousing plans that impact on other residents on the Aylesbury. Nor will the proposed change in route have any implications for current housing policy. Indeed, in many respects, a land transfer should help recover some of the time lost in regenerating these sites since the council opted to use the HCA's DPP. Moreover, while the approach routes are different both deliver similar levels of resident engagement. The key difference in the approach (apart from a public procurement potentially taking longer) is that a land transfer relies more on the planning process delivering its requirements, as set out in the Aylesbury Area Action Plan whereas, a public procurement has a stronger contractual arrangement. However, irrespective of the route chosen the council's ultimate sanction is to abandon the procurement should the regeneration partner fail to deliver the council's requirements (conditions, such as obtaining planning permission, vacant possession, etc.) or if its preferred bidder fails to fulfil its obligations (similar to those under a land transfer) prior to financial close. As a result, there is no clear need for any wide ranging resident consultation on the Aylesbury Estate regarding the change in procurement route.
43. Throughout the life of the Aylesbury Regeneration Programme there has been extensive consultation between the council and the programme's stakeholders. In respect of the proposed change of delivery route, this has been presented to and discussed with the Aylesbury Regeneration Sub-Group and Creation Trust.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

44. It is recommended that the council does not procure a developer for Sites 7 and 10 (Phase 1) of the Aylesbury Estate regeneration scheme through the Homes and Communities Agency's Developer Partner Panel (HCA DPP). This is on the basis that there are a number of commercial, legal and procurement risks with adopting this approach. The main concerns include the lack of RSLs available (either on the HCA DPP or through link-ups with HCA DPP members) and the lack of the council's ability to negotiate complex project documentation with developers due to the restricted nature of the procurement of the HCA DPP.

45. On this basis, it is recommended that the council seeks an alternative procurement approach to the HCA DPP for Phase 1.
46. A key aim for the council is to adopt a procurement approach which will be time and cost efficient but still meets the council's requirements for development of Sites 7 and 10. On this basis, it is recommended that the council procures a developer through a private land transfer (by advertising through the Estates Gazette for example). Land transfers are not subject to the requirements of the Public Contracts Regulations 2006 (the Regulations) and as such, the council is not obligated to follow an EU public procurement competitive tendering process to transfer the land to a regeneration partner.
47. The council will need to ensure that the transfer of Sites 7 and 10 complies with the meaning of a land transfer for the purposes of the Regulations and is not a "public works contract" – which is subject to the Regulations and for which the council would be legally obligated to follow an EU public procurement competitive tendering process. There is a growing body of case law, and also guidance issued by the Office of Government Commerce (OGC), which can assist in distinguishing between a development agreement which is a pure land transfer and a development agreement which may be construed as a public works contract and therefore caught by the Regulations.
48. To qualify as a pure land transfer, the council will need to ensure that the primary purpose of the development agreement is to transfer Sites 7 and 10. The council may not put any obligation on the developer to carry out works or to provide housing management services, unless such works and services are incidental to the transfer of the land and such obligation falls within the council's powers as a planning authority and can be captured in a section 106 agreement. The council must not give any pecuniary interest to the developer to carry out any works and the council must not derive an immediate economic benefit from the developer carrying out any works. Paragraph 16 of the report gives further details as to how the requirements of the council can be met in accordance with planning policy.
49. The report envisages regeneration of Sites 7 and 10 of the Aylesbury through the land transfer route subject to planning permission being granted for regeneration. The Council as local planning authority will determine any planning application(s) for sites 7 and 10 in accordance with the development plan unless other material considerations dictate otherwise. As noted in the report at paragraph 16, the most relevant policies of the development plan guiding development on the site would be the Aylesbury Area Action Plan and the emerging Core Strategy (among others).
50. It should be noted that unless revised by the current coalition government, the Community Infrastructure Levy Regulations 2010 ("CIL Regs") are in force and would apply to a "relevant determination" (if made on or after 6 April 2010). Therefore the CIL Regs would apply to any planning permission issued in respect of Sites 7 and 10. As such, the section 106 obligations in respect of the site would be subject to Regulation 122 "limitation on use of planning obligations", namely in order to constitute a reason for granting planning permission any obligation(s) must be:
 - necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.

51. As the transfer and any proposed scheme progress, the CIL Regs and in particular any infrastructure requirements triggered by the scheme and the appropriate mitigation mechanisms should be kept under review. Section 106 obligations would be used to mitigate adverse impacts flowing directly from and reasonably related to the proposed development. As noted in the report Section 106 obligations attaching to any permissions issued in respect of Sites 7 and 10 could be used to prescribe the standards of development set out in policy in terms of design, housing and tenure mix (and other relevant planning considerations). Members should note that the Section 106 obligations take effect in the event that any consented scheme is implemented to mitigate the adverse impacts of development. Section 106 agreements would not generally prescribe timescales for delivery of a scheme. Planning permissions have a lifespan of 3 years within which a scheme must be implemented before it lapses. There may be good planning reasons for granting shorter planning permissions. Section 106 agreements must be used for proper planning purposes and as with development agreements may be subject to similar constraints arising from EU Procurement Directives.
52. As to consultation with affected secure tenants, section 105 of the Housing Act 1985 requires a landlord local authority to consult on matters of housing management in certain circumstances. Broadly, this requirement is engaged where, in the opinion of the landlord council, a matter of housing management represents a new programme of maintenance, improvement or demolition or a change in the practice or policy of the landlord authority and is likely to substantially affect secure tenants as a whole or a group of them. Paragraph 28 of the report indicates that secure tenants on the Aylesbury or generally are not likely to be substantially affected by the proposals in the report and consequently the statutory requirement to consult on the revised disposal route relating to sites 7 and 10 is not engaged. The report indicates that there has been consultation with stakeholders throughout the life of the Aylesbury programme; residents may therefore have expectations of continued engagement in the process. The report indicates that the continued involvement of residents during the disposal process is envisaged; this is considered good practice and legally prudent.
53. The report envisages vacation of occupied properties on the sites being achieved in accordance with existing policies approved by the Executive. While the council will endeavour to secure possession of the properties by agreement, in the absence of this, the council will need to apply the appropriate legal processes. In the case of leaseholders, in the absence of agreement, the council could only acquire their interests in the property via a compulsory purchase order. While the council may also obtain possession of properties occupied by secure tenants via a compulsory purchase order, in the absence of agreement the council's usual practice is to secure possession via a court order using housing legislation. A court order however will only be granted if the council is able to satisfy the court that one of the grounds set out in Schedule 2 of the Housing Act 1985 is made out. Schedule 2 contains two mandatory 'regeneration' grounds; Ground 10 and Ground 10A. In respect of both grounds, the council must provide suitable alternative accommodation to the tenant. Ground 10A may be relied on where the secretary of state has approved a redevelopment scheme and it is intended to dispose of the properties on the approved scheme within a reasonable time of obtaining possession. The process involved in an application for approval for the purpose of ground 10A means that it is likely to take longer to obtain possession pursuant to this ground than with ground 10 where the approval of the secretary of state is not required. Ground 10 may be relied on where the council intends, within a

reasonable time of obtaining possession to demolish or reconstruct the buildings or part of the building or carry out work on the building and can't reasonably do so without obtaining possession.

Finance Director

54. The Finance Director notes the change in methodology for the release of the two Aylesbury Estate sites 7 and 10, from the use of the Homes and Communities Agency's (HCA's) Developer Partner Panel to release of the land as a land transfer, for the reasons described in this report. It is also noted that Grant Thornton (financial advisors to the council) having reviewed legal advice concerning the disposal, were of the professional opinion that a land transfer would be likely to be quick, low cost and competitive and so could be a viable disposal route from a commercial and financial perspective.
55. It is observed that land transfer has been used successfully as a mechanism on other regeneration schemes elsewhere in the borough.
56. Despite this and following recent case law, care will need to be taken to avoid being excessively prescriptive in placing requirements upon developers which could potentially lead to the council being challenged. Expert advice will need to be sought on these issues as required to mitigate such risks.
57. Irrespective of the disposal mechanism, there will be a need for extensive financial input from the council and the HCA to fund any residual site deficits. Work is underway to review the financial implications likely to fall on the council. Removal of any site deficits will be required to allow the disposal to progress so must also be a prominent feature of dialogue with the HCA in order that financial impacts are fully quantified and removed, mitigating financial risks as far as is possible.
58. In light of likely reductions in funding allocations in Central Government it will be of particular importance to the viability of the scheme to ensure that adequate HCA funding is identified and earmarked for this scheme early on in the process.

Head of Procurement

59. This report is seeking approval to deliver sites 7 & 10 via a land transfer. This is a different approach to that which was previously approved by the Executive in March 2010 and is no longer a procurement process.
60. With the full details of the HCA development partner panel now published and understood, the report confirms that the previously approved route is no longer viable and one that cannot be endorsed by Strategic Director of Communities, Law & Governance.
61. The report explains that the council now has two choices for the delivery of sites 7 & 10. These are to either procure a partner for the delivery of housing and housing management services (via an alternative procurement route) or to transfer the land to a partner and rely on the planning process to cover off any requirements it may have in relation to housing built on the land.
62. It would appear that no route is without risk. Paragraph 25 confirms that on balance,

the risks associated with a land transfer are outweighed by the risks associated with a procurement process, in particular the implications of an extended delivery date.

63. Going forward, the ongoing management of risks will be vital. As highlighted in the legal concurrent it is important that the council ensures the land transfer process remains pure and does not include any additional requirements that may lead to it being defined as a procurement and therefore becoming subject to EU regulations. Appropriate governance arrangements surrounding the project should help ensure adequate risk management is maintained and this does not happen.

BACKGROUND DOCUMENTS

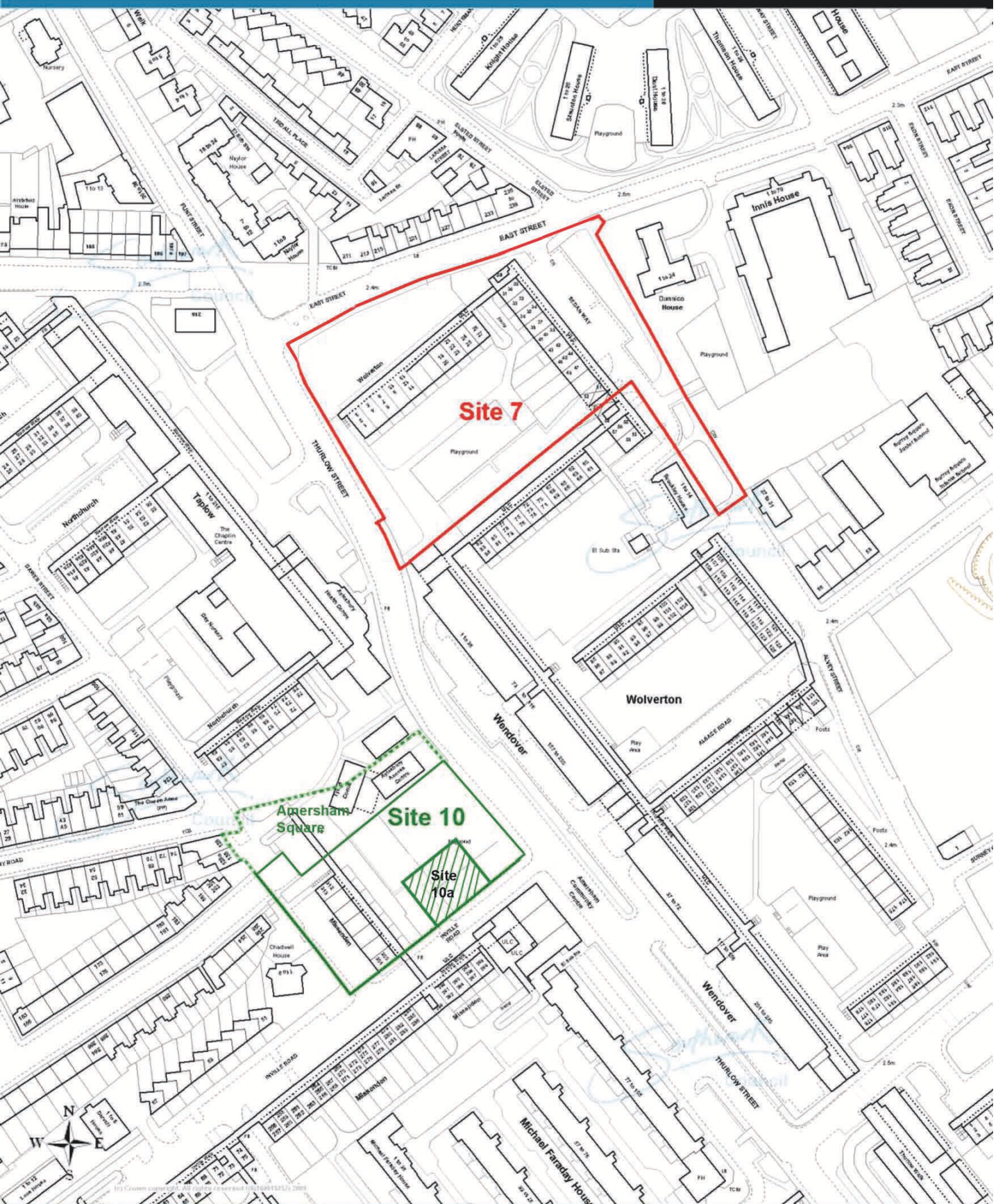
Background Papers	Held At	Contact
Aylesbury Area Action Plan	160 Tooley Street, SE1 2TZ	Julie Seymour 020 7525 0508
Executive report of 26 September 2006 Executive minute of 26 September 2006	160 Tooley Street, SE1 2TZ	Everton Roberts 020 7525 7221
Executive report of 20 October 2009 Executive minute of 20 October 2009	160 Tooley Street, SE1 2TZ	Everton Roberts 020 7525 7221
Executive report of 9 February 2010 Executive minute of 9 February 2010	160 Tooley Street, SE1 2TZ	Everton Roberts 020 7525 7221
Cabinet report of 20 July 2010 Cabinet minute of 20 July 2010	160 Tooley Street, SE1 2TZ	Everton Roberts 020 7525 7221

APPENDICES

No.	Title
Appendix 1	Site Plan

AUDIT TRAIL

Cabinet Member	Councillor Fiona Colley, Regeneration & Corporate Strategy	
Lead Officer	Eleanor Kelly, Deputy Chief Executive	
Report Author	Stephen Platts, Head of Property and Geri McLeary, Aylesbury Programme Director	
Version	Final	
Dated	21 October 2010	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Property	Yes	Yes
Planning Policy Manager	Yes	Yes
Procurement	Yes	Yes
Housing Management	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional/Community Council/Scrutiny Team	22 October 2010	



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NOTE: Original held by Constitutional Team; all amendments/queries to
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		Jennifer Seeley	1
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Paul Green, Asst. to the Opposition Group	1		
		Others	
		Shahida Nasim, Audit Commission	1
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South London Press	1		
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		Dated: 21/10/10	