

Overview & Scrutiny Committee

Monday 10 October 2016

7.00 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

Membership

Councillor Gavin Edwards (Chair)
Councillor Rosie Shimell (Vice-Chair)
Councillor Anood Al-Samerai
Councillor Jasmine Ali
Councillor Catherine Dale
Councillor Paul Fleming
Councillor Tom Flynn
Councillor Rebecca Lury
Councillor Eleanor Kerlake
Councillor Michael Situ
Councillor Maria Linforth-Hall
Councillor Kieron Williams
Martin Brecknell
Lynette Murphy-O'Dwyer

Reserves

Councillor Sunny Lambe
Councillor David Noakes
Councillor James Barber
Councillor Karl Eastham
Councillor Jon Hartley
Councillor Ben Johnson
Councillor Leo Pollak
Councillor Martin Seaton
Councillor Cleo Soanes

INFORMATION FOR MEMBERS OF THE PUBLIC

Access to information You have the right to request to inspect copies of minutes and reports on this agenda as well as the background documents used in the preparation of these reports.

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Contact Shelley Burke on 0207 525 7344 or email: shelley.burke@southwark.gov.uk

Members of the committee are summoned to attend this meeting

Eleanor Kelly

Chief Executive

Date: 30 September 2019



Overview & Scrutiny Committee

Monday 10 October 2016
7.00 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

Order of Business

Item No.	Title	Page No.
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1. APOLOGIES

PART A - OPEN BUSINESS

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 interests and dispensations in respect of any item of business to be considered at this meeting.

4. AYLESBURY REGENERATION DELIVERY - CALL IN

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The following reports are enclosed in the agenda:

A scrutiny call in report setting out the resolutions of the Cabinet, at the cabinet meeting on 20th September 2016, on the Aylesbury Regeneration Delivery, and grounds for call in is enclosed, as well as the following cabinet papers:

- a) Aylesbury Regeneration Delivery – report to cabinet
- b) Aylesbury Regeneration Delivery – supplemental report to cabinet

Links to background papers, provided to cabinet, are below. These are also published online with this agenda:

- Department of Communities and Local Government (DCLG) letter to the council stating that the Compulsory Purchase Order will not be confirmed by the Secretary of State, setting out the objections:

<http://moderngov.southwark.gov.uk/documents/s64035/Background%20document%20DCLG%20letter.pdf>

- The Planning Inspectors report to the Secretary of State on the Compulsory Purchase Orders:

<http://moderngov.southwark.gov.uk/documents/s64036/Background%20document%20Inspectors%20report.pdf>

5. PEAK TIME TRAVEL

A report from the Transport Policy team is to follow.

6. SCRUTINY REVIEW REPORT ON SEXUAL HEALTH

Healthy Communities sub-committee review report on Sexual Health is to follow

7. WORKPLAN

To follow

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

PART B - CLOSED BUSINESS

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

Date: 30 September 2016

EXCLUSION OF PRESS AND PUBLIC

The following motion should be moved, seconded and approved if the sub-committee 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.”

Item No: 4	Classification OPEN	Date: 10 October 2016	Meeting Name: Overview & Scrutiny Committee
Report Title:		Call-in: Aylesbury Regeneration Delivery	
Ward(s) or Group affected:		Faraday	
From:		Head of Overview & Scrutiny	

BACKGROUND INFORMATION

1. On 20 September 2016 the Cabinet considered a report Aylesbury Regeneration Delivery.
2. The Cabinet agreed:
 - i). That a series of actions as set out in paragraphs 10, 11, 13 and 14 of the substantive report to bring forward the delivery of the Aylesbury regeneration programme be approved, namely:
 - a) The council funding directly the demolition of Plot 18
 - b) The council underwriting design fees on Plot 18 and Phase 2 in order to progress planning applications and
 - c) The council bringing forward funding and delivery of the approved premises facility.
 - ii) That in the light of the recent Secretary of State decision on the Compulsory Purchase Order (CPO) for the first development site, it is also further agreed that:
 - a) The council should proceed with funding the partial demolition of the first development site on land where there are no outstanding third party interests. The agreement to the scope of the contract and the revised cost to be delegated to the chief executive for approval
 - b) That it be noted that due to the CPO decision that any additional costs arising from the delay of the demolition of the first development site will need to be identified and will be subject to future approval by cabinet
 - c) The council should review the development proposals for the first development site to take account of the phased demolition; and
 - d) The council should make an application to the High Court for the Secretary of State decision to be reviewed.
 - ii). That approval of the final terms of the agreed actions, as set out on paragraphs 10, 11, 13 and 14 of the substantive report be delegated to the director of regeneration.
 - iv). That those remaining leaseholders in phase 1, that are not subject to land valuation tribunals, be allowed to enter non-binding arbitration, subject to legal advice.

REASONS FOR CALL-IN

3. On 28 September 2016 the cabinet decision was called in for scrutiny by Councillors Al-Samerai, Linforth-Hall and Shimell
4. The reasons for call-in were as follows:

There has been a complete lack of consultation about the decision to see seek a judicial review of the Secretary of State's decision. (Para 2d in the cabinet decision). This would qualify in our opinion as the “decision maker did not take the decision in accordance with the principles of decision-making as set out in Article 1.3 of the constitution.” There was a late report published in light of the Secretary of States decision which was then incorporated into the main report, and this was only circulated on the day of the Cabinet meeting last Tuesday.

Other grounds that also apply:

- a) Proportionality (i.e. the action must be proportionate to the outcome). Is it right that the Council seeks the expense of a judicial review to overturn a Secretary of State decision that goes against it?
- b) Due consultation and the taking of professional advice from officers. There is nothing in the report about the views of legal officers and no consultation with ward councillors or residents affected.
- c) Respect for human rights. The views, rights and status of the Aylesbury leaseholders are being ignored despite the Secretary of State’s decision and specific mention of their human rights being trampled on.
- d) Presumption in favour of openness. There is nothing in the report about the pros/cons of a judicial review so we do not know if it is a sound decision or whether Cabinet has decided it in spite of officer/legal advice.

CALL-IN MEETING

5. The committee will consider the call-in request and whether or not the decision might be contrary to the policy framework or not wholly in accordance with the budget.
6. If, having considered the decision and all relevant advice, the committee is still concerned about it then it may either:
 - a) refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns, or
 - b) refer the matter to council assembly if the decision is deemed to be outside the policy and budget framework.
7. If the committee does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the scrutiny meeting.

BACKGROUND DOCUMENTS

Background Papers	Held at	Contact
	160 Tooley Street London SE1 2TZ	

APPENDICES

Cabinet reports from the relevant item (12) at the Cabinet meeting on 20th September 2016 are published with the agenda.

Audit Trail

Lead Officer	Shelley Burke, Head of Overview & Scrutiny	
Report Author		
Version	Final	
Dated	30 September 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included

Item No.	Classification: Open	Date: 10 th October 2016	Meeting Name: Overview and Scrutiny Committee
Report title:		Aylesbury Regeneration Delivery	
Ward(s) or groups affected:		Faraday	
From:		Neil Kirby, Head of Regeneration South	

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.

RECOMMENDATION(S)

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
10. **Plot 18 submission of planning application**

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 31st 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 31st 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.

11. **Plot 18 demolition**

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.

12. **FDS demolition**

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.

13. **Phase 2 planning application**

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 31st 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.

14. **Approved Premises Facility**

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

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.

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

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.

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

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.

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

17. Plot 18 Demolition Contract

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.

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.

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.)

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).

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

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.

There is also a requirement to mitigate any claims made.

First Development Site Demolition

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.

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).

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

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

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).

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.

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.)

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.

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

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

18. 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

19. 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).
20. 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.

21. 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).
22. 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)

23. 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.

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.

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.

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 http://moderngov.southwark.gov.uk/i	Regeneration South, 5 th Floor, 160 Tooley Street, SE1	Neil Kirby 020 7525 1878

eDecisionDetails.aspx?ID=4612		
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AUDIT TRAIL

Lead Officer	Neil Kirby	
Report Author	Neil Kirby	
Version	Final	
Dated	9 th September 2016	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	Yes	
Strategic Director of Finance and Governance	Yes	Yes
List other officers here		
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team / Community Council / Scrutiny Team		

Item No.	Classification: Open	Date: 10 October 2016	Meeting Name: Overview and Scrutiny Committee
Report title:		Aylesbury Regeneration Delivery - Supplemental Report	
Ward(s) or groups affected:		Faraday	
Cabinet Member:		Councillor Mark Williams, Regeneration and New Homes	

RECOMMENDATIONS

Recommendations for the Cabinet

1. To approve a series of actions as set out in paragraphs 10, 11, 13 and 14 of the substantive report to bring forward the delivery of the Aylesbury regeneration programme namely:
 - a) The council funding directly the demolition of Plot 18;
 - b) The council underwriting design fees on Plot 18 and Phase 2 in order to progress planning applications; and
 - c) The council bringing forward funding and delivery of the Approved Premises Facility.

2. In the light of the recent Secretary of State decision on the CPO for the First Development Site, it is also further recommended that:
 - a) The council should proceed with funding the partial demolition of the First Development Site on land where there are no outstanding third party interests. The agreement to the scope of the contract and the revised cost to be delegated to the Chief Executive for approval;
 - b) That cabinet note that due to the CPO decision that any additional costs arising from the delay of the demolition of the First Development Site will need to be identified and will be subject to future approval by Cabinet
 - c) The council should review the development proposals for the First Development Site to take account of the phased demolition; and
 - d) The Council should make an application to the High Court for the Secretary of State decision to be reviewed.

3. To delegate approval of the final terms of the agreed actions, as set out on paragraphs 10, 11, 13 and 14 of the substantive report to the director of regeneration.

BACKGROUND INFORMATION

4. The substantive report on the open agenda sets out the background.

5. The Secretary of State decision on the application for confirmation of the Compulsory Purchase Order (CPO) for the First Development Site was received by the council on 16 September. The letter stated that the council's application for the use of compulsory purchase powers had met the criteria of:

- Viability and deliverability of the scheme;
 - Planning policy;
 - A range of social and economic benefits; and
 - That there was no alternative to demolition and regeneration should be progressed since the refurbishment of the estate was not an option.
6. The letter stated that the Secretary of State did not confirm the CPO as a compelling case in the public interest had not been made for the following reasons:
- The council had not fully met well-being criteria as the decision would have considerable economic, social and environmental dis-benefits in terms of consequences for existing leaseholders;
 - The council had not taken reasonable steps to acquire land interests by agreement;
 - Due to the impact on Human Rights, the Order was not justified or proportionate between the public interest and interests of the residents; and
 - That there would be significant negative impacts on groups with protected characteristics under the Equality Act 2010 although in this respect the Secretary of State did not follow the finding of the Inspector which was that the council had not failed to comply with section 149, Equality Act 2010.
7. The council is starting the process of bringing an application for judicial review of the decision by the Secretary of State.

KEY ISSUES FOR CONSIDERATION

8. Due to the success of the rehousing programme, Bradenham and Chartridge (blocks 77-105, 69-76 and 104-119) are currently vacant. It is considered that these blocks can be demolished whilst the Council is awaiting the decision on judicial review. Other blocks on the site, which are substantially vacant, may become fully vacated during the period of the judicial review, subject to successful negotiation with the remaining 8 leaseholders. Subject to these blocks becoming vacant by agreement with the leaseholders, it is proposed that these other blocks will be added to the demolition contract as they become available. This demolition of the vacant blocks on the FDS would meet the following objectives:
- Reducing the cost to the council of managing vacant buildings;
 - Reducing the need to secure the whole site;
 - Demonstrating momentum of regeneration and maximising acceleration of delivery; and
 - Bringing forward the opportunity to provide new homes for local residents.
9. The council will continue to negotiate under existing arrangements to acquire the outstanding leasehold interests on the FDS.

Resource implications

10. The terms of the phased demolition contract are currently being negotiated with the successful contractor. Due to the need to phase the contract and the uncertainty over vacant possession of the remainder of the blocks resulting from the Secretary of State's decision, it is anticipated that the overall costs of the FDS demolition contract may exceed the amount specified in paragraphs 12 and 16 of the substantive report. Any additional cost will need to be identified and reported to Cabinet at a later date.

Legal implications

11. Please see the concurrent from the director of law and democracy.

Financial implications

12. As set out in paragraph 10 above, the costs of the demolition of currently vacant sites can be contained within the budget set out in the substantive report. It is anticipated, however, that due to the phased nature of the contract the overall cost of demolition of the FDS may be higher. This situation will be kept under review and Cabinet approval sought in the event of costs increasing. All efforts will be made together with the contractor to contain these costs as far as is possible.

Consultation

13. External lawyers are advising on the judicial review process. Notting Hill Housing Trust has been consulted about the revised approach. A letter will go out to all Aylesbury Estate residents from the Chief Executive setting out the way forward.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**Director of Law and Democracy**

14. Comments have already been made in the original report and advice given in the closed report in the context of compliance with the Public Contracts Regulations. The same advice applies to the proposed demolition steps referred to in paragraph 2 of this report
15. As to the application to the High Court to seek a judicial review of the Secretary of State's decision, the council has six weeks from 16 September to lodge this claim, and urgent advice is being taken from counsel concerning the specific grounds.

Strategic Director of Finance and Governance (F&G 16/005)

16. This supplemental report addresses the latest development in relation to the delivery of the Aylesbury Estate regeneration programme following the Secretary of State's decision not to confirm the CPO for the FDS. Given the uncertainty that this creates and the potential delay in achieving vacant possession, re-phasing of the planned demolition may be required with associated cost implications, in addition to the resources reported in the substantive Aylesbury report on this agenda. Pending a judicial review of the decision being lodged, the council will continue to negotiate with the remaining leaseholders to vacate, to enable the delivery of new homes on the site as quickly as possible. Every effort will be made to contain demolition costs within the agreed approval, but any consequent costs attributable to this delay will be reported to Cabinet at a later date.

REASONS FOR URGENCY

17. The report is urgent due to the need for the council to lodge a claim for judicial review within a specified period and the need to direct the contractual negotiations with the demolition contractor.

REASONS FOR LATENESS

18. It has not been possible to circulate the report five clear days in advance of the meeting because the letter from the Secretary of State was received by the council on 16 September. The council needed to consider the implications of the letter and decide on the course of action.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Letter from Department of Communities and Local Government on the London Borough of Southwark (Aylesbury Estate Site 1B-1C) Compulsory Purchase Order 2014 16 th September 2016	Regeneration South, 5 th Floor, 160 Tooley Street, SE1	Neil Kirby 020 7525 1878
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MIId=5373&Ver=4		

APPENDICES

No.	Title
None.	

AUDIT TRAIL

Cabinet Member	Councillor Mark Williams, Regeneration and New Homes	
Lead Officer	Eleanor Kelly Chief Executive	
Report Author	Neil Kirby Head of Regeneration (South)	
Version		
Dated	20 th September 2016	
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
List other officers here		
Cabinet Member	Yes/No	Yes/No
Date final report sent to Constitutional Team		

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OVERVIEW & SCRUTINY COMMITTEE**MUNICIPAL YEAR 2016/17****AGENDA DISTRIBUTION LIST (OPEN)****NOTE:** Original held by Scrutiny Team; all amendments/queries to Shelley Burke Tel: 020 7525 7344

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