

Item No. 18.	Classification: Open	Date: 18 July 2022	Meeting Name: Cabinet
Report title:		Gateway 1 - Procurement Strategy Approval Contractor Partner for delivery of new council homes, private homes and commercial space on Old Kent Road	
Ward(s) or groups affected:		Old Kent Road	
Cabinet Member:		Councillor Darren Merrill, Council Homes and Homelessness	

FOREWORD – COUNCILLOR DARREN MERRILL, CABINET MEMBER FOR COUNCIL HOMES AND HOMELESSNESS

In 2020 the council bought the freehold to a plot which currently houses PC World and B&M supermarket, with the ambition that this land would provide council homes that are much needed for our residents. At present the land is under used and the council has a purposed scheme which will deliver 180-190 council homes. This Gateway 1 details the procurement process to find a partner to deliver these 2 sites with high quality homes for local people. As well as replacement business space and private homes to help with the funding of the council homes we so desperately need.

The council will retain the freehold and will lease back the council homes and the commercial space meaning these homes will be under the control of the council and will help meet our target of 11,000 Council homes by 2043. The planning application is due to be submitted in 2024 and the council is committed to work with local residents and business to make sure this development meets the housing and business need in this location.

RECOMMENDATIONS

1. That the Cabinet approve the procurement strategy outlined in this report for the appointment of a partner to deliver the new council homes development on the PC World and B&M Supermarket site on the Old Kent Road via the Greater London Authority's (GLA) London Developer Panel 2 Framework (LDP2) or its replacement for a period of five years, commencing on 29 November 2022.
2. That the cabinet delegates to the Strategic Director of Housing and Modernisation in consultation with the Cabinet Member for Council Homes and Homelessness the contract award for the partner for delivery of new council homes, private homes and commercial space on Old Kent Road for the reasons noted in paragraph 26.
3. That the cabinet delegates to the Director of Planning and Growth in

consultation with the Head of Property the grant of a building lease(s) for the partner for delivery of new council homes, private homes and commercial space on Old Kent Road.

BACKGROUND INFORMATION

4. During 2019/20 the council bought the freehold of the PC World and B&M Supermarket sites on the Old Kent Road to deliver new council homes.
5. Southwark Council has the ambitious target of building 11,000 new council homes by 2043.
6. This scheme will provide around 180-190 new council / affordable rental (key workers) homes. Southwark has over 15,000 households on its housing waiting list, and these new homes are desperately-needed by our residents.
7. In addition, the proposed scheme includes private homes, class E commercial space and class F learning and community space. The use classes will allow flexible use meaning it can be used for different uses without the need for further planning permission.
8. The council considered its options at the Housing Delivery Board on 13 July 2021, which supported the decision to partner with a constructor. This is the best way to deliver new council homes that will contribute towards the 11,000 homes target.
9. The two sites will be delivered under a singular development agreement with a partner.
10. The council proposes to grant a long lease of the site to the partner and take a lease-back of the council housing and commercial space once delivered. The council will retain the freehold of the site.
11. The council will utilise the sale of the site leasehold and receipt of GLA grant (Affordable Homes Programme 2021-2026), but Housing Investment Programme funding may be required to meet some of the delivery costs of the homes and commercial space, the viability of which will be assessed pre tender.
12. A planning application will be submitted by the partner with a view to works starting on site in 2024. These timings are aligned to the release of the current lease agreements that are currently in existence.

Summary of the business case/justification for the procurement

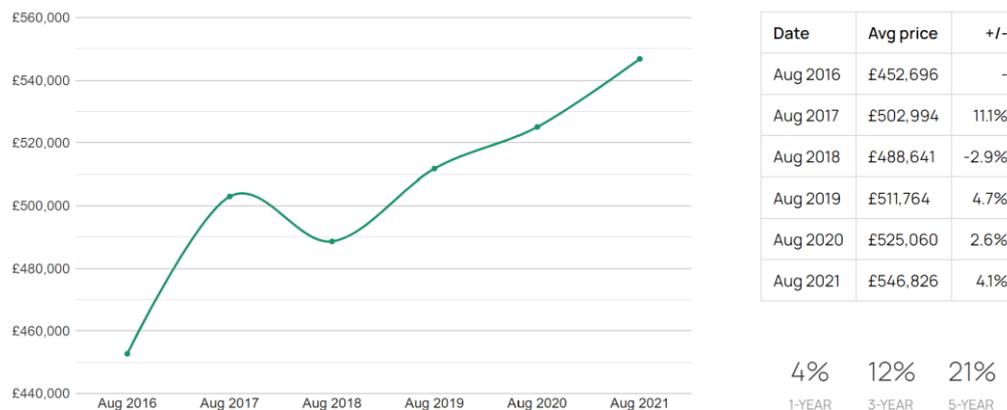
13. This scheme is part of the Old Kent Road regeneration programme. The driving force behind the Old Kent Road regeneration is the need to build new housing for people of all incomes.
14. The proposed scheme will deliver circa 50% (by habitable room) council

homes (social rent or key worker) which can be allocated to Southwark residents in housing need, possibly with some key worker housing for local people. This will help reduce the current cost of temporary accommodation to the council. The planning process measures the amount of affordable housing by habitable rooms, with larger homes having more habitable rooms than smaller ones. This approach means that the council can deliver more of the family sized homes as council homes, to better address housing need in Southwark.

Market considerations

- The Old Kent Road is attracting a lot of interest from developers because of the plan to extend the Bakerloo Line. The area is perceived by the development market as being one of growth, due to the planned transport link improvements and, despite the recent pandemic, house prices have remained relatively stable. Source - PropertyData.co.uk. If the extension were to proceed the council would likely see a Public Transport Access Level rating improvement (PTAL is a measure of access to the public transport network).

5-year price growth



KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

- Do nothing** - This is not an option as the council has made a commitment to submit a planning application for this site, to deliver homes as part of an 11,000 new council homes commitment.
- Direct Delivery** - Although this option could work, getting a contractor partner on board is considered a better balance of risk.
- Procure through Public Contracts Regulations route** – This is not an option as the length of the process would likely take longer and would result in a delay in delivering homes. Further, all time extensions to programmes will only mean that costs will continue to rise over that extended period and further the site

would become unoccupied and warrant further risk of problems and anti-social behaviour or similar.

19. **Use an existing third-party framework (contractor)** – This is not an option as the council want the experience of a developer for a mixed use scheme of this scale, and this would cost the council more as the council would have to pay for the whole of the development, and the council is exposed to greater risk and it would put a greater strain on the borrowing capacity of the council.
20. **Use of an existing third-party framework (developer). Options include:**
 - **GLA's London Developer Panel 2 (LDP2) Framework** –This framework is a single-lot framework of 29 well established developers, house builders, contractors and Registered Providers of Social Housing (RPs). Projects are bid under the framework using a mini-competition. The council must enter into an access agreement with GLA. This framework is specifically for developments in London. This framework will end in August 2023. There are no fees and charges.
 - **Pagabo Developer Led Framework** - This framework has nine lots and there are six developers in the relevant lot. This framework will run until April 2026. It is perhaps more flexible than the GLA framework and focused on partner working, however, it has fewer developers than the GLA framework, and is a national framework rather than just for London. There is a charge to use (a one off charge of £150k and 1% of the construction cost).
 - **Scape Construction framework** - This framework has two potential partners in the relevant lot, Mace Construction and John Sisk and Sons. There is a limited number of developers. There are no fees and charges.

Proposed procurement route

21. The proposed procurement route is a mini-competition process via the GLA's LDP2 Framework, as described above. The council is required to enter into an access agreement to use the framework.
22. The attraction of using the panel to procure a partner, from the council's perspective, is access to developers procured in a competitive environment, with experience of the London market. For the panel members, partnering with a council (or other public body) often negates the need to purchase the site upfront. By leasing the site from the council and delivering affordable homes in lieu, the developer has saved the capital and interest costs associated with a freehold land purchase.
23. The developers and contractors on this framework are:
 - A2 Dominion
 - Be Living
 - Bellway
 - Berkeley Group

- Barratt
- Catalyst
- Countryside
- Durkan
- Engie Consortium (Engie, HUB and Delancey)
- Vistry Partnership Ltd (formerly Galliford Try Partnerships Ltd)
- Hadley Property Group
- Higgins
- Hill
- Hyde
- Lendlease
- London & Quadrant Housing Trust
- Morgan Sindall Consortium (Morgan Sindall, Muse and Lovell)
- Native Land
- Notting Hill Genesis
- Optivo
- Peabody
- Pinnacle Group
- Prospect House Consortium (Stanhope, Network Homes and Laing O'Rourke)
- Quintain
- Redrow
- Swan Igloo Consortium (Swan Housing Association and Igloo)
- Telford Homes
- U + I
- United Living.

24. The council has carried out soft market testing and developers are interested in this project.
25. Once tenders are received the council will have an interview process to clarify the tenders and final clarifications to derive best value for money. This is permitted under the framework.
26. This report recommends to cabinet that the gateway 2 contract award for the partner is delegated to the Strategic Director of Housing and Modernisation in consultation with the Cabinet Member for Council Homes and Homelessness. This will avoid delay to the award of the contract.

Identified risks for the procurement

Risk No.	Identified Risk	Likelihood	Risk Control
1	Partners not interested.	Low	The project is large enough. The external Project Manager did soft market testing. This opportunity has been added to the GLA's site pipeline which the panel can see and interest has already been received by the Council.
2	Challenge based on the framework used.	Low	Framework is fully compliant.
3	Does not achieve competitiveness and value for money.	Low	Competitive bidding will be used. We will compare with what our current programme is delivering.
4	Partner becomes insolvent or no longer has the capacity to deliver scheme.	Low	Developers will be asked how they are funding the project and their detailed proposals for delivering the project. Credit checks have already been undertaken as part of the framework. Credit checks will be made prior to award.
5	Delays and additional costs caused by Covid, BREXIT and the Russia-Ukraine war.	Medium	Bidders will be asked for a response to Covid, BREXIT and the Russia-Ukraine war. The council will keep cost under review and report at gateway 2.
7	Developers don't think the project is viable to them.	Medium	The council will consider options to secure council homes from the site.
8	Presence of existing buildings and timescales may impact.	Medium	The council will carry out and programme intrusive surveys and investigations, giving tenderers detailed information on existing site conditions.

Key / Non Key decisions

27. This report deals with a key decision.

Policy Framework Implications

28. The Old Kent Road Area Action Plan is a new plan for the Old Kent Road and surrounding area. The development will be in conformity with the masterplan.
29. The council has made a commitment to be carbon neutral by 2030, and this application needs to seek to achieve this target.
30. Southwark Stands Together is a borough-wide initiative in response to the injustice and racism experienced by Black, Asian and minority ethnic communities, and to the inequalities exposed by COVID-19:

Procurement Project Plan (Key Decisions)

Activity	Complete by:
Enter Gateway 1 decision on the Forward Plan	26/07/2021
DCRB Review Gateway 1	06/09/2021
CCRB Review Gateway 1	16/06/2022
Brief relevant cabinet member (over £100k)	13/06/2022
Notification of forthcoming decision - Cabinet	10/07/2022
Approval of Gateway 1: Procurement strategy report	18/07/2022
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	28/07/2022
Completion of tender documentation	29/07/2022
Closing date for Sifting exercise	19/08/2022
Completion of short-listing of applicants	26/08/2022
Invitation to tender	30/08/2022
Closing date for return of tenders	25/10/2022
Completion of any clarification meetings/presentations/evaluation interviews	08/11/2022
Completion of evaluation of tenders	22/11/2022
DCRB Review Gateway 2:	28/11/2022
CCRB Review Gateway 2	01/12/2022
Notification of forthcoming decision	05/12/2022
Approval of Gateway 2: Contract Award Report	13/12/2022

Activity	Complete by:
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision	22/12/2022
Debrief Notice and Standstill Period (if applicable)	28/12/2022
Draft Development Agreement Execution	29/12/2022
Add to Contract Register	29/12/2022
Place award notice on Contracts Finder	29/12/2022
Contract start	01/04/2023
Contract completion date	31/03/2028

TUPE/Pensions implications

31. None.

Development of the tender documentation

32. Faithful+Gould is acting as the external Project Manager and will draft a tender pack, which will include the council's Employer's Requirements. The tender documents will further include a draft copy of the GLA's Development Agreement. The Development Agreement will provide the bidders with early sight, which will allow the developer to comment and issue contractual questions throughout the tender process.
33. The GLA Development Agreement reflects the standard GLA contract.
34. Bonds and Parent Company Guarantees are not stated under the GLA Development Agreement. However, Warranties are mentioned through the Agreement. Third parties to the Development Agreement will be required to enter the suggested Warranties, if and where applicable to the scheme.
35. Bonds or Parent Company Guarantees will be written into the contract to protect London Borough of Southwark from developer default. Other contractual mechanisms may be considered such as holding back land interest, which would provide a significant level of control and enforcement to ensure compliance with development obligations.

Advertising the contract

36. The tender will be issued via the council's platform ProContract.

Evaluation

37. The Most Economically Advantageous Tender assessment will be used. Quality will be weighted 40% and price will be weighted 60%. 10% of quality will be social value. The framework allows the council to vary the weightings.

38. The council will seek specialist advice to interrogate development models. Each bidder's tender will be assessed on residual land value and any additional council contribution that may be required. Assessments of the bidders financial tenders will compared against the LDP2 panel price scenarios, submitted by each panel member as part of their appointment to the framework, and they will be used as a benchmark, in addition to comparison with the council's appraisal. All tenders (price and quality) will be assessed using a pre-agreed scoring matrix, against a weighted criteria.
39. The Social Value Portal will be used.
40. The tender documents will include the tender evaluation criteria.
41. Consensus scoring and post tender clarifications will be used.
42. The quality and price scores are added together to give a total score. The tender with the highest combined score is recommended for award of the contract.

Community, equalities (including socio-economic) and health impacts

Community impact statement

43. Pre-application consultation to determine community impact will be run by the developer and council and undertaken with:
 - Local residents
 - Local businesses
 - Community review panel
 - Local schools and colleges.
44. The council is preparing an Equality Impact Assessment (EQIA) to understand the potential impact of the project on people with protected characteristics. This will be a living document to be submitted with a planning application.

Equalities (including socio-economic) impact statement

45. 50% affordable housing improves access to secure and high quality housing. 10% of all new housing is wheelchair accessible or easily adaptable.
46. The development will include new jobs. 10% of workspace will be affordable. There is a potential business boost for local businesses due to new residents.
47. Noise during construction can have an effect on people who stay at home. Construction and demolition work will be carried out within specified hours or with permission from the council and there will be monitoring during construction.

Health impact statement

48. New and affordable housing and new jobs will improve the health and wellbeing of people of all ages. Accessible housing and facilities will improve disabled people's health and wellbeing.

Climate change implications

49. The council are considering multiple strategies. Appropriate material options are being explored with our sustainability consultants encouraging use of local materials and suppliers where possible. Our designers are Passive House trained and aim to embed these principles in the design of our buildings to ensure the building fabric is of high performance. Although this development will not be certified in Passive House it will still benefit from design based on those principles. This, coupled with the use of more sustainable energy strategies that are being considered, will minimise the amount of energy used during the operation of the building, ensuring a long-term approach is considered. The council are currently developing our strategy further and can present our progress back at a later date.

Social Value considerations

50. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the wellbeing of the local area can be secured. The details of how social value will be incorporated within the tender are set out in the following paragraphs.

Economic considerations

51. The contract will maximise social value including employment, apprenticeships and utilising local suppliers.
52. The Section 106 planning targets are:
- One job lasting a minimum 26 weeks for an unemployed Southwark resident per 500sqm GEA.
 - One Southwark resident trained in pre- or post-employment short courses per 500sqm GEA.
 - One new apprenticeship start or in work NVQ per 2000sqm.

Social considerations

53. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. It is expected that payment of the LLW by the successful contractor for this contract will result in quality improvements for the council. These should include a higher calibre of multi-skilled operatives that will contribute to the

delivery of works on site, more experienced staff and continuity of service provision resulting from reduced turnover of staff and will provide best value for the council. It is therefore considered appropriate for the payment of LLW to be required. The successful contractor will be expected to meet LLW requirements and contract conditions requiring the payment of LLW will be included in the tender documents. As part of the tender process, bidders will also be required to confirm how productivity will be improved by payment of LLW. Following award, these quality improvements and any cost implications will be monitored as part of the contract review process.

54. The council can exclude companies who break the law by blacklisting from public contracts if they are either still blacklisting or have not put into place genuine actions concerning past blacklisting activities.
55. Where a company has been found to be using blacklisting, the council can require "self cleaning" which enables a potential contractor to show that it has or will take measures to put right its earlier wrongdoing and to prevent them from re-occurring and to provide evidence that the measures taken by the economic operator are sufficient to demonstrate it has:
 - (a) "Owned Up": clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities;
 - (b) "Cleaned Up": taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct, and
 - (c) "Paid Up": paid or undertaken to pay compensation in respect of any damage caused.
56. The council will include a request for the necessary information from tenderers (using the council's standard documentation in relation to blacklisting). The council's contract conditions will include an express condition requiring compliance with the blacklisting regulations and include a provision to allow the contract to be terminated for breach of these requirements.

Environmental/Sustainability considerations

57. The scheme will aim to be net zero carbon. Environmental/sustainability considerations will be provided as part of the planning application.

Plans for the monitoring and management of the contract

58. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.
59. Annual performance reports will be presented in line with the council contract standing orders.

60. Under the terms of the Development Agreement there will be procedures in place to monitor and input into the design and construction of the project. These will be undertaken by the appointed representative(s) of the London Borough of Southwark and Faithful+Gould. Other appointments can be made to cover additional monitoring as required.

Staffing/procurement implications

61. The Project Manager is responsible for the procurement processes. The council will seek external Project Manager and legal advice.

Financial implications

62. For construction (works) contracts, the council's end user status will be clarified in relation to Domestic Reverse Charge (DRC) in the Gateway 2 report and appropriate advice sought if necessary.
63. The estimated construction cost based on a detailed RIBA Stage 2 design is £218,000,000 including inflation for the entire scheme and will need to be revised and updated as the scheme progresses.
64. The council's contribution to the development will be the sale of the leasehold and GLA grant (Affordable Homes Programme 2021-2026), but funding from resources supporting the council's Housing Investment Programme may be necessary to meet some of delivery costs of the council homes and commercial space. Viability will be assessed taking into account the extent to which further funding from the council is required.
65. Within the current GLA funding programme (GLA Affordable Homes Programme 2021-2026), there is £165k grant for each social rent unit and £90k grant for each key worker unit and this project can be accommodated within the current grant allocation. To meet the grant conditions, the development will need to start on site by March 2026.

Investment implications

66. Please see concurrent from the Strategic Director of Finance and Governance.

Legal implications

67. Please see concurrent from the Director of Law and Governance.

Consultation

68. The scheme will be the subject of informal and formal public consultation as part of the planning process.
69. The consultation programme is being delivered over three stages aligned with the design process. Stage 1 and Stage 2 is already complete. Stage 1 gave an understanding of the local area and communities, raising awareness on the

project, building partnerships and informing the consultation and social value activities in Stage 2. Stage 2 was active consultation on the design scheme across all the areas of influence. The aims of Stage 3 would be to share the final outcomes of the consultation process with the local community and stakeholders, addressing any outstanding issues and concerns. The council will still be leading on the resident engagement process.

Other implications or issues

70. None.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance H&M (22/036)

71. This report is seeking Cabinet approval for the procurement strategy outlined in paragraphs 17 to 22 of this report to appoint a partner for the sites currently occupied by PC World and B&M Supermarket on the Old Kent Road. The development is intended to deliver new council homes as well as private homes and commercial space. There are no financial implications arising directly from the recommendations in this report, however should the procurement proceed to contract award, the council will contribute land and GLA grant funding to the development and it may be necessary to provide additional funding from resources supporting the council's Housing Investment Programme. Before any contract award is made a viability assessment will be undertaken once costs are known as outlined in the financial implications section of this report.

Head of Procurement

72. This report seeks approval from cabinet to appointment of a partner for delivery of new homes and commercial space on Old Kent Road via the Greater London Authority's (GLA) London Developer Panel 2 Framework (LDP2) or its replacement for a period of five years, commencing on 29 November 2022.

73. This report also seeks to delegate the award of the partner via a gateway 2 report to the Strategic Director of Housing and Modernisation in consultation with the Cabinet Member for Council Homes and Homelessness.

74. Cabinet notes the procurement route is detailed in paragraphs 12 to 22 and 28 to 38, the risks are detailed in paragraph 23, the impact on equalities, health and climate change is detailed in paragraphs 42 to 46, social value commitments are detailed in paragraph 49, confirmation of the payment of LLW is detailed in paragraph 50, the management and monitoring of the contract is detailed in paragraphs 55 to 57.

Director of Law and Governance

75. This report seeks the approval of the Cabinet to the procurement strategy for the appointment of a partner for delivery of new council homes, private homes and commercial space on Old Kent Road via the LDP2 framework as further detailed in paragraphs 1-3. As this decision relates to a strategic procurement, then the gateway 1 decision is reserved to Cabinet.
76. As the estimated value of this development agreement exceeds the Public Contract Regulations 2015 (PCR15) threshold then the procurement of this agreement is subject to the full tendering requirements of those Regulations. However as noted in paragraph 17, the proposed procurement strategy is to undertake a mini-competition through the GLA's LDP2 framework. This framework has been established following a PCR 15 compliant tendering process, and allows local authorities to use for their own requirements. The tendering requirements of the PCR15 are therefore satisfied by using this framework.
77. Cabinet is also asked to delegate the approval of the gateway 2 decision for the reasons noted in paragraph 22 to facilitate award of the development agreement.
78. The Cabinet's attention is drawn to the Public Sector Equality duty (PSED General Duty) under the Equality Act 2010, which requires public bodies to have regard, when making decisions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it. The Cabinet is specifically referred to the community, equalities (including socio-economic) and health impacts at paragraphs 40-46 setting out the consideration that has been given to equalities issues which should be considered when approving the recommendations in this report.

Director of Exchequer (For Housing contracts only)

79. None.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
None		

APPENDICES

No	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Darren Merrill, Council Homes and Homelessness	
Lead Officer	Michael Scorer, Strategic Director of Housing and Modernisation	
Report Author	Cat Janman, Project Manager	
Version	Final	
Dated	4 July 2022	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Governance	Yes	Yes
Director of Exchequer (For Housing contracts only)	No	No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		4 July 2022