

Item No.	Classification: Open	Date: 26 July 2010	Meeting Name: Cabinet
Report title:		Joint Venture Agreement (Development Agreement) between Southwark Council and Berkeley Homes plc in respect to the formation of the One Tower Bridge Partnership and the development of Land at Potters Fields London SE1	
Ward(s) or groups affected:		Riverside Ward	
From:		Cabinet Member for Regeneration and Corporate Strategy	

FOREWORD - COUNCILLOR FIONA COLLEY, CABINET MEMBER FOR REGENERATION AND CORPORATE STRATEGY

Potters Fields is a key development opportunity at a world class location and I am pleased to recommend that we enter into a development agreement with Berkeley Homes on the same terms as those agreed by the previous Executive on the 29 July 2009. This will bring forward this site which has remained vacant and derelict for many years for development providing new homes, commercial and retail opportunities and cultural accommodation. In addition, significant capital will be generated to assist the Council in meeting its core objectives through the capital programme for the benefit of all residents in Southwark. This will form an important funding stream in this uncertain economic climate.

I have fully considered the report from officers, which commences at paragraph 5, and am putting forward the recommendations below.

RECOMMENDATIONS

1. That Cabinet agrees to enter into a Joint Venture Agreement (Development Agreement) between Berkeley Homes (South East London) Ltd and the London Borough of Southwark (and other parties), relating to the formation of the One Tower Bridge Partnership and the development of land at Potters Fields London SE1.
2. That Cabinet approve the disposal of the Council's interest in land as highlighted in orange diagonal lines on the plan attached at appendix 1.
3. That Cabinet notes that the Development Agreement is in accordance with the Heads of Terms as agreed at Executive on 29th July 2009 and the Executive decision on Future Options Co-Operation Agreement dated 19th March 2008.
4. That Cabinet note the reasons in paragraph 13 for the delegation by the Chief Executive not being exercised.

BACKGROUND INFORMATION

5. On 29 July 2009, the Council's then Executive agreed to Heads of Terms with Berkeley Homes (BH) for the development of the land at Potters Fields. The Heads of Terms were agreed following a period of discussion and negotiation based on the objectives that were set out in the Cooperation Agreement between the Council and BH which the Council entered into following the decision by the then Executive on 31 March 2008.

6. Since the decision by the Executive at their meeting on 29 July 2009, the Council has been in discussions with BH to finalise a Development Agreement (DA) based on the agreed Heads of Terms.
7. BH have been working on delivering a planning application for the site, consistent with the parameters set out in the Cooperation Agreement and Heads of Terms. Following a public exhibition held in May 2010, BH submitted a planning application for the site for a mixed use residential led development. The planning application for the scheme, known as 'One Tower Bridge' is currently being validated by the Council's planning authority and will then follow the statutory planning process. Nothing in the DA can or will bind the Council as statutory planning authority.

KEY ISSUES FOR CONSIDERATION

Development Agreement

8. The Development Agreement (DA) sets out in detail the key principles of the Heads of Terms which were outlined fully in the closed report to Executive of 29 July 2009, the open version of the report is attached here at Appendix 2. The terms of the DA remain consistent with the agreed objectives set out in the Cooperation Agreement and in the Heads of Terms as confirmed by the Council's legal advisers, Field Fisher Waterhouse (FFW).
9. To facilitate the development, it will be necessary to vary the boundary with Potters Fields Park. The Council in its lease to the Potters Fields Park Management Trust has a legal right to vary the boundaries of the park in order to facilitate the development and a key principle of any land swap is that there will be no net loss of Open Space. The current plans propose giving back to the park additional land as MOL over and above that required for the development together with the associated landscaping improvements. The Trust has been fully consulted throughout the development of the scheme. The Council and BH have considered future options for the management of the park in consultation with the Trust and have agreed Terms in principle as to boundary changes as part of the detailed drafting of the DA. The Secretary of State's consent will be required in order to proceed with this change in designation and will be applied through the appropriate statutory process.
10. The plan attached at appendix 1 highlights the areas of MOL that will be affected by the boundary change and they are marked in hatching on the plan attached.

Delegated Powers for the Chief Executive

11. The report to Executive of 29 July 2009 delegated to the Chief Executive authority to enter into a DA in accordance with the terms recommended and approved within that report. If the DA was not substantially in accordance with the agreed Heads of Terms, the DA would have to be referred back to the Cabinet for decision. Examples of substantial variations which would mean that the decision would not be within the delegated authority of the Chief Executive would include:
 - Change in principal parties
 - Variations to the terms which have a substantial financial impact
 - Material changes to the scope of the project including site boundaries
 - Changes to the principal objectives.
12. This report together with the legal report and concurrent concludes that the terms agreed within the DA remain the same as the Heads of Terms (in all material respects) and consequently do not need to be referred to the Cabinet for decision.

13. In view of the change of administration the Chief Executive proposed that the new Cabinet consider the decision for entering into the Development Agreement. This is a major development in a prominent location and is a key decision and as such the terms are more appropriately considered by the Cabinet.

FINANCIAL CONSIDERATIONS

14. The factors affecting best consideration are dealt with in detail in the 29 July 2010 closed report on the Heads of Terms. The Head of Property confirms that this transaction complies with the Council's statutory duty to achieve best consideration for the sale of its property assets in accordance with Section 123 of the Local Government Act 1972. It should be noted that the Council's position is further protected in the eventuality of uplift in property values through its profit share arrangements with BH.
15. Following signing of the DA, the Council will continue to incur additional cost in terms of legal fees, external advisors and ongoing officer time and monitoring and auditing of the development. Until a satisfactory planning consent has been achieved, monitoring surveyor costs will be the responsibility of the Council; the other fees (previously approved) will be Development Costs. Once planning consent has been obtained all these costs will be treated as Development Costs.

POLICY IMPLICATIONS

16. This development will contribute a significant capital receipt towards the Council's capital programme which will be used in line with Council priorities.

Consultation

17. The proposed plans for the development at Potters Fields have been consulted on with a wide range of community interests such as the Potters Fields Park Trust, Shad Thames residents association, South Bank Cultural Quarter, the local MP and ward councillors amongst others. In addition, key statutory and non-statutory stakeholders have been consulted on the plans and designs such as GOL, GLA, the City of London, Tower Hamlets, Historic Royal Palaces, CABE and the Environment Agency among many others. The consultation culminated in a recent public exhibition in May 2010, following on from the public exhibition held in December 2008. In view of the commercial sensitivity of the project, there has been no community consultation on this report, however, statutory officers have been consulted and their advice is below.

Legal Advice from External Advisors Field Fisher Waterhouse

18. The Heads of Terms have been carried in to the DA and, in the process, have been refined and, in some respects, improved, with an increased likelihood of a deliverable scheme; the onerous conditions have been drafted so as to protect both parties from being committed to a non viable scheme. The DA is, accordingly, consistent with the principles set out in the Heads of Terms.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Supplementary advice of Strategic Director of Communities, Law & Governance

Property Comment

19. The Cabinet is recommended to approve the disposal of land at Potters Fields, London SE1 as shown highlighted in orange diagonal lines on the plan attached at appendix 1 to this report ("the Land") to One Tower Bridge Partnership (a 50/50 partnership between the Council and BH) for a consideration plus further payments as calculated in accordance with the Heads of Terms and upon the terms of the DA.
20. The Cabinet is advised that Section 123 of the Local Government Act 1972 provides that except with the consent of the Secretary of State, a Council shall not dispose of non housing land, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.
21. The Head of Property at paragraph 14 of this report confirms that the consideration for the Land is the best that can reasonably be obtained. Provided that the Head of Property is satisfied that the consideration achieves the requirements of Section 123, the Cabinet may approve the recommendation to dispose of the Land.

Supplementary Advice of the Finance Director

22. This report recommends that the council enter into a Development Agreement with Berkeley Homes in respect of the development of land at Potters Fields London SE1. The Finance Director understands that the development agreement is substantially as agreed at Heads of Terms stage.
23. The Finance Director notes that the Head of Property has confirmed that this transaction complies with the Council's statutory duty to achieve best consideration for the sale of its property assets in accordance with Section 123 of the Local Government Act 1972. The Finance Director notes that the Council's position is further protected in the eventuality of uplift in property values through its profit share arrangements with Berkeley Homes.
24. The Council will also be responsible for its own legal and other fees which are to be met from this capital receipt, as outlined in paragraph 15.

REASONS FOR LATENESS

25. The discussions and negotiations on the DA have been ongoing between the Council and BH since the agreement of the Heads of Terms concluding only recently. The drafting of the DA and of this report required further technical and professional advice from the external consultancy team of legal, property and finance specialists. The final drafting of the report was, therefore, not concluded prior to the stage at which Cabinet papers would have been circulated under normal protocols.

REASONS FOR URGENCY

26. Under the signed Heads of Terms, both parties have committed to act in good faith. In recognition of this commitment and BH's submission of a planning application, it is essential that the Council shows reciprocal commitment to the partnership.

27. The next scheduled meeting of the Council's Cabinet is 21 September 2010 and as the planning application has now been submitted and the DA finalised, the programme for bringing forward development would be affected adversely if the decision was delayed until September 2010 as the Council and BH both require certainty that the DA has been agreed before the required resources can be committed to bring forward development.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Overview and Scrutiny report – Update on Potters Fields	Property Dept	Tom Branton / Jeremy Pilgrim
Executive Report – Potters Fields Site – Decision on Future Options (19.03.09)	Property Dept	Tom Branton / Jeremy Pilgrim
Chief Executive Delegated Report – Agreement to Heads of Terms on Potters Fields Development – 23/10/09	Property Dept	Tom Branton / Jeremy Pilgrim

APPENDICES

Appendix 1	Council Land plan
Appendix 2	Open Executive Report: Potters Fields Heads of Terms, 29 July 2009

AUDIT TRAIL

Cabinet Member	Cabinet Member for Regeneration and Corporate Strategy	
Lead Officer	Chief Executive	
Report Author	Stephen Platts – Head of Property Jeremy Pilgrim - Property Development Manager	
Version	FINAL	
Dated	23.07.10	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES		
Officer Title	Comments Sought	Comments included
Strategic Director – Communities, Law & Governance	YES	YES
Finance Director	YES	YES
Date final report sent to Constitutional Support Services	23.07. 10	