

<b>Decision Taker:</b>	Director of Planning and Growth
<b>Date:</b>	12 August 2024
<b>Report title:</b>	Disposal of the council's freehold interest at Devonshire Grove, to rear of 745-775 Old Kent Road SE15
<b>Ward(s) or groups affected:</b>	Old Kent Road
<b>Classification:</b>	Open
<b>Reason for lateness (if applicable):</b>	To ensure the development can proceed in line with the timescales required by the Developer's funder and so ensure the deliver of 200 affordable housing units in the borough.
<b>From:</b>	Marcus Mayne, Principal Development Surveyor

## **RECOMMENDATION(S)**

1. That the Contract for Sale between the Mayor and Burgesses of the London Borough of Southwark and the adjoining owner in regard to Land on the South East Side of Devonshire Grove and 761 & 762 Old Kent Road, SE15 1NJ be terminated.
2. That on termination of the Contract an Option Agreement is entered into for the sale of three land parcels at Land to rear of 745-775 Old Kent Road, as shown edged red in Appendix 1 between London Borough of Southwark and the adjoining owner and their development partner.
3. That the Council enters into a Funder Agreement with the Developer's Funder containing the Council's consent to the Funder having security over the Option Agreement and the agreement by the council directly with the Funder to comply with the Step-In provisions of the Option.

## **BACKGROUND INFORMATION**

4. Cabinet on 18 September 2018 approved the disposal of the council's freehold interest in land at Devonshire Grove to rear of 745-775 Old Kent Road SE15 (as shown outlined in black in Appendix 2) to the adjoining owner for the development of a mixed-use scheme of commercial on the ground floor and residential development above, subject to planning permission being obtained.
5. On 22 March 2019 the council entered into a Contract for sale with the adjoining owner, conditional on the council delivering vacant possession of their site and planning permission for their development scheme.

6. Planning application 19/AP/1239 was received by the council's Planning department on 25 April 2019. This was considered by Planning Committee and approved subject to the developer entering into a Section 106 agreement with the council, which was done, and the decision notice confirming consent was issued on 17 February 2022.
7. Since February 2022 discussions have been ongoing with the developer regarding funding of the originally consented scheme. In part due to the current economic climate amended proposals were brought forward which required considerably less council land. This led to the existing agreement being not fit for purpose and so a new agreement has now been negotiated, reflecting the revised planning permission which has also now been consented.
8. In summary the proposed way forward includes:
  - a) The termination of the existing contract for sale of the council's land.
  - b) The adjoining owner entering into a Joint Venture arrangement with a national housebuilder, who are to bring forward new plans for the site.
  - c) The sale of three parcels of council land to the Joint Venture in order to achieve delivery of the new scheme.
  - d) A contribution by the council of some of its land, by way of adoption of the land as Highway (as shown hatched green Appendix 3), to enable the widening of Devonshire Grove and so enable the delivery of the proposed scheme.
  - e) The Developer delivering changes to the road network as part of their scheme, which will include the stopping up of the current egress road from the waste transfer station and the Old Kent Road, providing the council with a much larger and more valuable area of retained land as a result.
9. This report details the arrangements that have been agreed and seeks approval for both the termination of the existing contract for sale and the entering into an Option Agreement with the Developer which on drawdown will mean the sale of three parcels of council land to the Developer. This will not only deliver a financial benefit to the council but will also importantly enable the delivery of the Developer's new scheme and so facilitate 200 affordable housing units to be delivered on a key site along the Old Kent Road.

## **KEY ISSUES FOR CONSIDERATION**

10. The Closed version of the report details the key issues for consideration, covering the termination of the contract for sale on the basis of a mutual termination of the existing contract and the details of the Option Agreement to be entered into. This agreement is based on the new planning permission which has been brought forward and replaces the previous planning permission.
11. The new development under application reference 23/AP/1862, proposes a phased mixed-use redevelopment comprising 200 affordable residential dwellings (125 social rent and 75 shared ownership) and associated amenity, 941 purpose-built student accommodation units including associated amenity, as well as ancillary space flexible commercial business and service space, and community spaces within. The development will also include the provision of associated car and cycle parking, open space and landscaping,

means of access and highway alterations, installation of plant and utilities and all other associated ancillary works incidental to the development.

12. The new development does not build on any land sold under the Option Agreement, but the council's land enables the developer to join the development across the current egress road for the waste transfer station and provide play and other amenity space as part of the development.
13. Importantly, the development will bring forward 200 much needed affordable housing units in the borough.
14. The council's Planning Committee resolved on 12 December 2023 to grant the permission sought by the Developer's application (23/AP/1862) subject to concluding and entering into a s106 Agreement. Full consent was granted on 26 April 2024.
15. As under the Option Agreement the land does not transfer to the developer unless and until the pre-conditions are met, in order for the Developer to deliver the road widening and the moving of the substation, the council will enter into a licence with the developer so that the developer can proceed to undertake works on the Council's land.
16. Further licence agreements are required to deliver the works, but these are in relation to highway land and so the council's highway department will separately enter into a licence with the Developer over any Highway land.
17. As part of the development, some of the council's land alongside the existing Devonshire Grove will be offered up to be adopted as highway to support the widening of the road. The council as landowner will be required to enter into an agreement with the council's highways department for the adoption of that land. A full plan showing the land to be adopted as highway will be drawn up as part of the developer's completion of its s278 agreement with the council's Highways department. A further delegated report will come forward at a later date seeking approval for the entering into any agreement subject to officers agreeing the detailed extent of the land required as part of negotiations with the Highway department.
18. As what is proposed is an Option Agreement rather than an immediate sale of land, the Developer's funder has requested step in rights in the event that the Developer defaults. As these rights require the council to engage directly with the Developer's funder a Funder Agreement has been agreed to be entered into between the council and the Funder in which the council agrees to comply with the step-in arrangements as set out in the Closed version of the report.
19. At the end of the development period, including the development of the new highway on Devonshire Grove and the stopping up of the existing highway the council will hold the land shown as edged blue in Appendix 4. This land will be held in the General Fund and provide income opportunities for the council.
20. As part of the Highway works the developer will include a new entrance off Devonshire Grove into the council's retained land. The council will have an enlarged site which could be let to produce an income for the CPHA.

However, in the medium to long term and in line with the aspiration in the Old Kent Road Area Plan the site is proposed to be brought forward for development for housing. As part of the planning permission the developer has provided evidence that the capacity of the council's retained land to deliver the previously proposed quantum of housing will not be affected by the size and scale of the development proposed on the developer's site.

### **Policy framework implications**

21. The disposal of the council's interests will generate a capital receipt to the General Fund that can be used by the council to further its key strategic objectives as set out in the Fairer, Greener, Safer Council Delivery Plan 2022-2026. The delivery of new affordable homes on the Developer's site will support the key themes on the Council's Delivery Plan of delivery quality affordable homes and transforming our borough.
22. Redevelopment of a site within the Old Kent Road Opportunity Area will also assist in the delivery of Council's planning objectives and framework for the area as set out in the Southwark Plan and the Old Kent Road Area Action Plan.

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

23. The Public Sector Equality Duty (PSED) contained in Section 149 (1) of the Equality Act 2010 imposes a duty on public authorities to have, in the exercise of their functions, due regard to three "needs" which are central to the aims of the Act:
  - A. The need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
  - B. The need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
    - i. Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
    - ii. Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
    - iii. Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
  - C. The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.
24. The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership. In addition the council's constitution includes socio-economic status as a protected characteristic.

25. The council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights.
26. A comprehensive Equalities Impact Assessment accompanied the planning application and concluded that, overall, the proposed development will have a positive impact on EDI-related challenges and trends for future residents and users of the proposal itself, as well as on the wider community. Further information on this can be found in the planning officer's report for application 23/AP/1862.
27. The sale of the council's land will unlock and deliver the development on the developer's site. Without this, it is likely that the development may not come forward and therefore may not deliver the range of community and health benefits that are set out in the planning application.
28. The planning application includes the delivery of new homes, which will create a new residential community in this area of the Old Kent Road, which has traditionally been used as solely as industrial land. The development will include a new park and play areas for the community to encourage children and young people to be physically active, which has associated health benefits, none of which currently exist on the site. Contact with nature and spending time in green spaces in an urban environment has also shown to have benefits to mental health.
29. The planning application for the developer's site was accompanied by a Health Impact Assessment (HIA). The HIA considered a variety of criteria, baseline data and public health evidence to establish the likely effects of the proposed development on local health. Overall, the proposed development is predicted to have a number of minor to moderate beneficial effects on human health for future site residents and visitors, as well as on the existing community. The HIA predicts that the development would have no negative impacts.
30. The HIA makes number of recommendations which may help improve potential health outcomes and the developer will work to deliver these through the development. Some examples of these recommendation are given below:
  - the design of the development should follow good practice such as the Lifetime Homes standard and the Secured by Design and Safer Places frameworks;
  - the proposal could, through its Community Infrastructure Levy liability, assist the council to support and invest in relevant healthcare, educational and community bodies;
  - some of the proposed commercial space could potentially be used as a GP surgery facility;
  - continuing to consult with the local community and key stakeholders to ensure changing needs and priorities are met;
  - avoiding including any hot food takeaways on-site;
  - optimising potential for training and employment opportunities by working in collaboration with the council to develop a bespoke employment strategy.
31. The new development on the developer's site, will as a whole assist in tackling local health inequalities and delivering health outcomes.

## **Climate change implications**

32. The council has a climate change strategy which seeks to move towards Net Zero Carbon by 2030. The new development on the developer's site will be an almost entirely car free development, with the application proposing a total of 7 wheelchair car parking spaces and one car club bay. There is also a planning requirement that electric vehicle charging points must be provided for at least two of the seven spaces. Whilst there will be increased construction to the area during the period of the works the council's planning department through their approval of the plans and a construction management plan will ensure that any construction on the site will meet the various environmental and climate policies set out in the Southwark Plan and the London Plan.
33. The developer's application also contains plans to provide new open space in the area, including green space, which would be a benefit to the area as a whole as no green open space currently exists on the site.
34. On the council's retained site, there is currently no development planned, so there can be considered little or no climate change impact on the council's retained land.

## **Resource implications**

35. Negotiations have been led by the officers in the council's Sustainable Growth team. The costs of officer time and any professional fees incurred in negotiating the previous contract for sale and the new Option Agreement will be met as part of the agreement and as set out in the Closed report.

## **Legal/Financial implications**

36. The council has been advised by external solicitors in regard to the termination of the existing agreement and the entering into the Option Agreement. The Legal implications of the deal agreed are set out in the concurrent from the Assistant Chief Executive, Governance and Assurance below.
37. The financial implications of the deal agreed are set out in the closed version of the report, including the concurrent from the Strategic Director, Finance.

## **Consultation**

38. Ward Cllrs and local residents have been consulted on the new planning permission by way of statutory process as part of the planning approvals.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Assistant Chief Executive, Governance and Assurance**

39. The report proposes the termination of an existing agreement and the entering into by the council of an option which will, if exercised, require the council to

sell three parcels of land to facilitate the development of the site at the Old Kent Road, and to adopt part of the site as highway.

40. The Council has powers under s 123 of the Local Government Act 1972 to dispose of land, save that where land is disposed of for less than the best consideration that can reasonably be obtained, the consent of the Secretary of State will be required.
41. Pursuant to part 3C and part 3O of the council's constitution, the disposal of land with a market value of £3,000,000 or less is delegated to officers.
42. The closed report contains details about the consideration to be obtained for the land being disposed of and if the Director of Planning and Growth is satisfied that this represents best consideration he may approve the recommendation.


**Strategic Director, Finance**

43. See closed report.

**FOR DELEGATED APPROVAL**

**PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS**

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

Signature: 

Designation: Director of Planning and Growth

Date: 12<sup>th</sup> August 2024

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

- 1) All key decisions taken by officers (including contract reports)
- 2) Any non-key decisions which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see paragraph 41 of the guidance).

<b>1. DECISION(S)</b>
Approval of the recommendations as set out in this report.

**2. REASONS FOR DECISION**

As set out in the report.

**3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION**

Do nothing. This would not deliver 200 affordable homes and significant receipt to the council.

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

Not applicable.

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

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

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

None

**6. DECLARATION ON CONFLICTS OF INTERESTS**

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

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
Disposal of council's freehold interest at Devonshire Grove, SE15 <a href="https://moderngov.southwark.gov.uk/mglIssueHistoryHome.aspx?lId=50017404&amp;Opt=0">https://moderngov.southwark.gov.uk/mglIssueHistoryHome.aspx?lId=50017404&amp;Opt=0</a>	Sustainable Growth 160 Tooley Street	Simon Chambers 0207 525 7495



Hybrid Planning Application 19/AP/1239 <a href="https://planning.southwark.gov.uk/online-applications/simpleSearchResults.do?action=firstPage">https://planning.southwark.gov.uk/online-applications/simpleSearchResults.do?action=firstPage</a>	Planning Department 160 Tooley Street	Tim Cutts 020 7525 5380
Phased mixed-use redevelopment Planning Application 23/AP/1862 <a href="https://planning.southwark.gov.uk/online-applications/applicationDetails.do?keyVal=RXBMKLKB0C900&amp;activeTab=summary">https://planning.southwark.gov.uk/online-applications/applicationDetails.do?keyVal=RXBMKLKB0C900&amp;activeTab=summary</a>	Planning Department 160 Tooley Street	Patrick Cronin 0207 525 5535

## APPENDICES

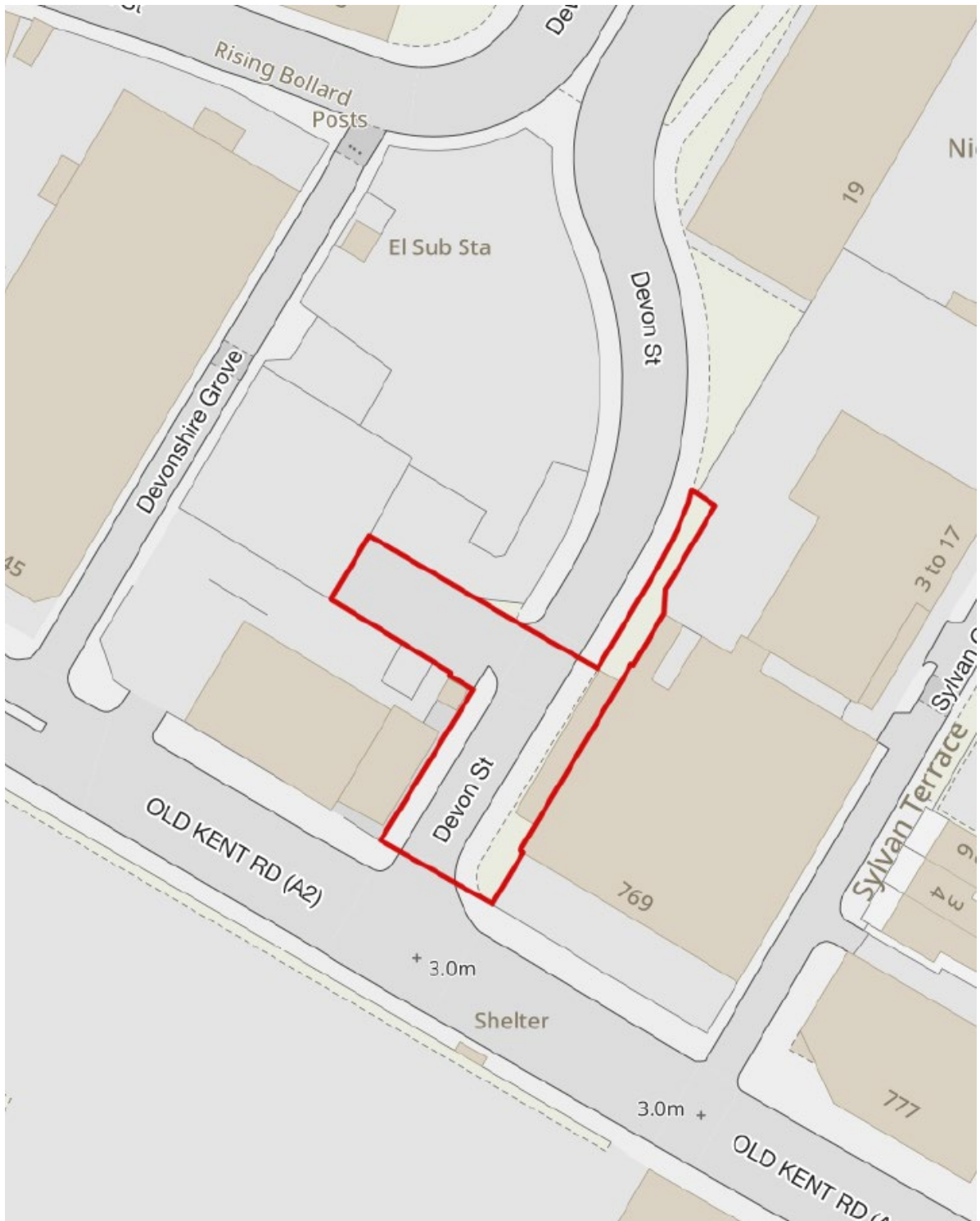
No.	Title
Appendix 1	Land shown edged red to be sold by the Council under the Option Agreement
Appendix 2	Freehold interest in land at Devonshire Grove to rear of 745-775 Old Kent Road SE15 to be disposed of under 2018 Cabinet approval
Appendix 3	Council land to be offered up as highway
Appendix 4	Council's retained land following draw down of the Option Agreement, stopping up of highway and release of land to highway

## AUDIT TRAIL

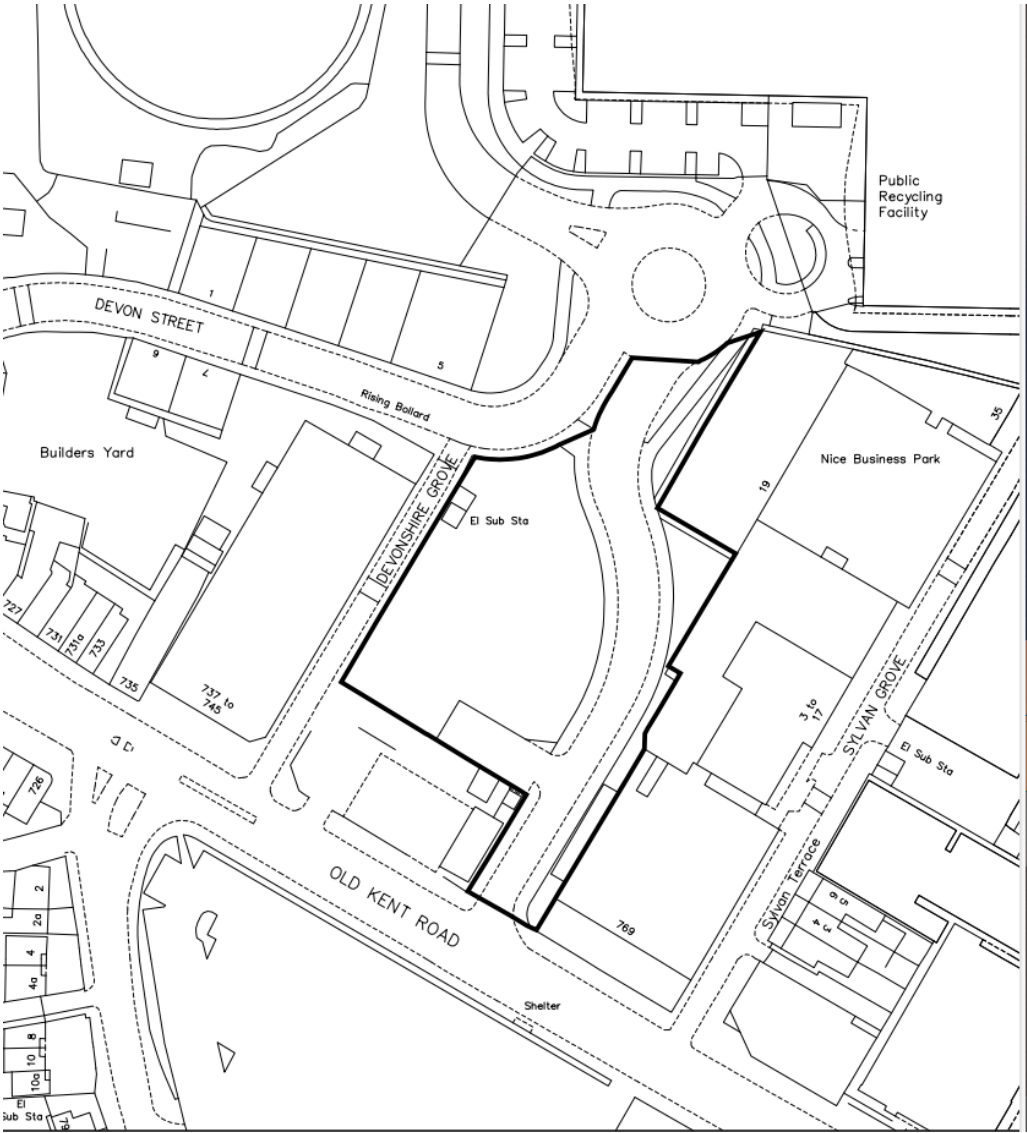
*This section must be included in all reports.*

<b>Lead Officer</b>	Marcus Mayne, Principal Development Surveyor	
<b>Report Author</b>	Simon Chambers, Senior Surveyor	
<b>Version</b>	FINAL	
<b>Dated</b>	08 August 2024	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Assistant Chief Executive, Governance and Assurance	Yes	Yes
Strategic Director, Finance	Yes	Yes
List other officers here		
<b>Cabinet Member</b>	Yes	No
<b>Date final report sent to Constitutional Team</b>	12 August 2024	

**Appendix 1 – Land shown edged red to be sold by the Council under the Option Agreement**



**Appendix 2 - Freehold interest in land at Devonshire Grove to rear of 745-775 Old Kent road SE15 to be disposed of under 2018 Cabinet approval**



### Appendix 3 – Council land to be offered up as highway



**Appendix 4 – Council’s retained land following draw down of the Option Agreement, stopping up of highway and release of land to highway**

