

WANDSWORTH BOROUGH COUNCIL

HOUSING AND REGENERATION OVERVIEW AND SCRUTINY COMMITTEE – 17TH
NOVEMBER 2015

EXECUTIVE – 30TH NOVEMBER 2015

Report by the Director of Housing and Community Services on the regeneration and improvement scheme for the Winstanley/York Road SW11 (Latchmere) Estates and in part for the Alton West regeneration and improvement scheme (Roehampton and Putney Heath).

SUMMARY

The Council is to commence an EU compliant competitive dialogue public procurement process to select a private sector partner to form a Joint Venture arrangement to work up and implement the scheme and deliver the Council's previously agreed objectives. The procurement is targeted to be launched on 11th January 2016. Previous reports have reported on the development of this regeneration scheme, the Council's objectives and targets and explained and agreed the Council's implementation strategy and levels of delegation required in order to effectively deliver the procurement phase.

This report details a number of the key documents, processes and financial assumptions that will be used through the procurement process. As previously agreed, and re-affirmed here, senior officers will be delegated authority to approve the final procurement arrangements and the related terms, decisions and documentation required to select the private sector partner. Due to the proximity of the commencement of the process and the need to ensure a fair competition between all potential bidders in line with the procurement regulations, it is not permissible for all of this information to be made public at this time with some matters covered in a separate report (Paper No. 15-427A) (which contains exempt information) also on this agenda.

At completion, a final report recommending approval of the preferred partner and of the final Joint Venture structure will be prepared for Members' consideration, targeted for November 2016.

The report also contains proposals for updating the Owners Offer for properties that could be affected by the delivery of the regeneration scheme.

GLOSSARY

| | |
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| CPO | Compulsory Purchase Order |
| EU | European Union |
| ISOS | Invitation to Submit Outline Solution |
| JV | Joint Venture |
| OJEU | Official Journal of European Union |

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| PQQ | Pre Qualification Questionnaire |
| PRS | Private Rented Sector |
| PSP | Private Sector Partner |

RECOMMENDATIONS

1. The Housing and Regeneration Overview and Scrutiny Committee are recommended to support the recommendations in paragraph 3.
2. If the Housing and Regeneration Overview and Scrutiny Committee approve any views, comments or additional recommendations on this report these will be submitted to the Executive for consideration.
3. The Executive are recommended to:
 - (a) note the previous approvals in Paper Nos. 15-8, 15-197, 15-314 to approve the commencement of a public procurement process, advertised by a contract notice published in the Official Journal of the European Union (OJEU) following the competitive dialogue route, to select a development partner to work with the Council through a Joint Venture (JV) arrangement to deliver the Winstanley and York Road regeneration scheme;
 - (b) Delegate the approval and management of the public procurement process including shortlisting of bidders and negotiation and adaptation of all the procurement and contractual documentation needed in order to agree a finalised Joint Venture arrangement to the Director of Housing and Community Services in consultation with the Director of Finance. The final Joint Venture arrangements and preferred bidder will be reported to Members for approval prior to any contracts being agreed as explained in paragraphs 16-22; and
 - (c) agree that officers update the current offer to estate owners as outlined in the 'Leaseholders and Freeholders rehousing information booklet' (October 2014) for Winstanley and York Road and in the 'Leaseholder and Freeholder rehousing information booklet' (November 2014) for Alton West in line with the recommendations in paragraphs 27-46.

BACKGROUND – WINSTANLEY AND YORK ROAD

4. In March 2012, the Executive agreed (Paper No. 12-218) an ambitious programme of work to improve the physical environment and to raise the aspirations and improve the life chances of those living in the most deprived areas of Latchmere, Roehampton and Putney Heath Wards. In October 2012 (Paper No. 12-645), the Executive agreed the shadow governance arrangements, terms of reference and an outcomes framework for the programme.
5. Reports to the Housing and Finance and Corporate Resources Overview and Scrutiny Committees and the Executive in November 2012 (Paper Nos. 12-679 and 12-680) presented findings from initial resident consultation that identified low satisfaction ratings for the general environment of the Winstanley and York Road Estates and with some residential blocks particularly on the York Road Estate. On this basis, the Executive agreed to select masterplanning teams to bring forward

masterplans for both Winstanley and York Road and for the Alton Estates.

6. GVA and Levitt Bernstein were selected to produce a masterplan for the Winstanley and York Road Estates and commenced work in June 2013. Further progress reports were provided to the Housing and Finance and Corporate Resources Overview and Scrutiny Committees and the Executive in June (Paper No. 13-376) and to the Housing Overview and Scrutiny Committee and the Executive in November 2013 (Paper No. 13-703) as the plans developed and the scope and objectives of the regeneration was defined. Through this period the Council consulted widely on the plans with local residents and stakeholders to ensure that the plans were informed by such consultation and so that there was knowledge and understanding of the proposals.
7. Following an options assessment and consultation process with local stakeholders and residents, a report was presented to the Housing and Finance Corporate Resources Overview and Scrutiny Committees and Executive in March 2014 (Paper No. 14-158). The report endorsed the Preferred Option for regeneration and improvement which had developed from the masterplan options process and set targets for the next stage of scheme development.
8. Subsequent reports in January 2015 (Paper No. 15-8) and June 2015 (Paper No. 15-197), endorsed a Planning Parameters Document for the scheme and approved the commencement of a competitive dialogue public procurement process to be advertised by a contract notice published in the OJEU to select a development partner to work with the Council through a JV arrangement to deliver the Winstanley and York Road regeneration scheme.
9. In September 2015, Paper No. 15-314 set out further detail of the procurement arrangements and confirmed that the further development, approval and management of the public procurement process and of all the procurement and contractual documentation to be put in place for the JV arrangement should be delegated to the Director of Housing and Community Services in consultation with the Director of Finance. The report also confirmed that the key objectives of the project to regenerate the area to the benefit of existing and future residents of the Borough.

PROCUREMENT PAPERS

10. Paper No. 15-314 explained that the Council would be preparing a detailed suite of documents for the procurement that will outline the Council's approach, requirements, aspirations and ambition for the scheme and for the JV. These will provide clarity for the bidders in terms of structure, aims and objectives and assist with and be the basis for the competitive dialogue process. This report provides further information on the details of that procurement documentation which has now been developed. Due to the proximity of the commencement of the procurement process and the need to ensure a fair competition between all potential bidders in line with the procurement regulations, it is not permissible for all of this information to be made public at this time; additional information is presented in a separate report (Paper No. 15-427A) (which contains exempt information) elsewhere on this agenda. The documents provided in Paper No. 15-427A and other elements of the procurement pack described below do not constitute the whole suite of procurement information that will be provided to bidders but do set out the position in some key

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areas required to start the procurement process.

11. As explained in Paper No. 15-314, the intention in setting out the Council's requirements is not to restrict interest but to promote a productive dialogue and to attract as wide a variety of potential partners as possible. Alternative approaches may be put forward that would better meet the Council's regeneration objectives or a bidder may identify particular challenges to meeting the Council's requirements which by necessity would require revision to plans, provided they continue to meet the Council's overall objectives.
12. As previously agreed, the preparation and approval of the final form of the suite of procurement documents and management of the procurement process and decisions required to undertake the process is delegated to the Director of Finance and Director of Housing and Community Services.
13. Paper No. 15-427A also sets out the current position in terms of the Council's willingness to invest in order to pump prime the scheme, sets out the current target assumptions in terms of affordable housing and provides an update on the financial viability of the proposal.
14. Together these documents and this financial information will form a crucial part of a competitive procurement process as regulated by the European Commission. The Council must ensure that all potential bidders are given an equal opportunity to compete in the process; thus, although this information is provided here for Members to consider, it is not possible for these documents and information to be made public at this stage.
15. The current proposed procurement timetable is attached at Appendix 1 of this report for information, as this sets out the different stages of the procurement process.

KEY PROCUREMENT DOCUMENTATION

Heads of Terms

16. The summary Heads of Terms set out the Council's initial proposal as to how the JV arrangement will operate. These will be developed further into a full set of Heads of Terms by officers prior to the second stage of the procurement process (Invitation to Submit Outline Solution (ISOS)). Bidders will be expected to respond to these proposals through the procurement process and they will develop through negotiation and dialogue into the final Heads of Terms for the JV arrangement. The details of this will be reported back to the Executive for consideration at the end of the procurement process as part of a report asking for approval of the preferred bidder.
17. In simple and not comprehensive terms, the key elements of the proposed structure are that: -
 - (a) the Council will transfer land into the JV in phases once certain conditions are satisfied, including the provision of sufficient new housing to rehouse existing residents;
 - (b) the Council will be issued with a loan note for the value of its land;

- (c) the private sector partner (PSP) will be required to invest money into the scheme to the value of the land the Council has put in, also secured with a loan;
- (d) the PSP will be contracted by the JV to provide development management services;
- (e) the JV will contract the PSP to develop land for a number of purposes, including housing for sale, other commercial uses and community uses;
- (f) the JV will separately be contracted to the Council to deliver affordable housing and community facilities on land which the Council owns;
- (g) the loan notes will be paid back to the Council and the PSP at the same rate as money is secured through the development; and
- (h) profit will be shared between the PSP and the Council.

Evaluation criteria

- 18. The scope of the evaluation criteria for the Pre Qualification Questionnaire (PQQ) and ISOS stages were outlined previously in Paper No.15-314. These will be detailed further in line with the documents in Paper No. 15-427A and be issued to bidders at the first stage of the procurement process.
- 19. The PQQ stage will be used to assess bidders' suitability as a JV partner for the Council.

Preferred Option

- 20. The procurement process will include the preferred option endorsed previously by the Council (Paper No. 15-197), the Planning Parameters Document (Paper No. 15-8) and technical guidance on the standards of development and details of requirements for key elements of the scheme such as the provision of community and leisure facilities.
- 21. As previously reported as a part of the key vision for the regeneration of the area, the Council expects the scheme to provide the following social and community facilities: -
 - (a) New leisure centre;
 - (b) New library and community centre facility;
 - (c) New children's centre and play facilities; and
 - (d) Re-modelled and improved York Gardens and pocket park.
- 22. The Council also expects the reprovision of the Thames Christian College and Battersea Baptist Church. Local community and social facilities such as schools and health facilities will also be upgraded to account for any increase in the population.

CONSULTATION AND ENGAGEMENT DURING PROCUREMENT

- 23. In order to ensure fairness between different bidders, the Council will be restricted in the amount of information it can release publicly during the procurement process. The Council does, however, wish to keep residents and local stakeholders as involved in the process as possible. The Council will require that shortlisted bidders

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take part in a public exhibition in Spring 2016, so that residents can view their proposals and provide feedback to Council officers. Along with setting out their plans to work with the Council to meet regeneration objectives, bidders will be expected to clearly explain their experience of working with and involving local residents in other estate renewal schemes, give examples of practice that has worked and to give clear measurable commitments to the involvement of local people throughout the regeneration process.

24. The Council recognises that the restrictions of the procurement process can create a vacuum of information for local people, which can cause concern. It is hoped that the newly opened Regeneration Team local office in Pennethorne Square will help to address this issue by having a local presence which is more immediately on hand to deal with local resident issues, concerns and queries. There will be regular drop-in sessions at the site office, or residents can make appointments to meet with specific members of the team. A range of other consultation events will be held on varying topics throughout the procurement process to address the differing needs of groups of residents and to seek their views on how they would like different aspects of scheme to be delivered.
25. Once the procurement process is complete, a first and key objective will be to put in place the liaison and consultation arrangements that will make sure that residents and local stakeholders are fully involved in the regeneration process. It is envisaged that these arrangements will be both informal and more formal and will also set out the role that the Council will continue to play particularly in meeting its rehousing and compensation commitments.
26. Another immediate task of the new JV partnership will be to draw up a planning application for the development. The Council wants residents to play a full role in that process. In order to make that process as productive as possible, and to assist in understanding the development and design process, the Council will arrange training and site visits for residents. The training is expected to take place in early summer 2016.

DEVELOPING THE OFFER TO RESIDENTS – OWNER REHOUSING ISSUES

27. As regeneration plans on the Alton West and Winstanley and York Road estates progress, the Council is continuing to develop the details of its offer to local residents and owners on the estates to ensure that they are treated fairly throughout the regeneration process and to assist those who live on the estates to benefit from the long term improvement proposals.
28. The Council has previously set out the offer to owners in the 'Leaseholders and Freeholders rehousing information booklet' (October 2014), for Winstanley and York Road residents and 'Leaseholder and Freeholder rehousing information booklet' (November 2014) for Alton West. These were acknowledged by the Council as a set of commitments to provide re-assurance, but there has always been a recognition that more detailed questions would arise as plans progressed and as residents considered how these commitments applied to their particular circumstances.
29. A number of issues have been raised through drop-ins and other resident engagements and this part of the report addresses some of the more common of

these issues with a view to agreeing an equitable resolution. A number, but not all of these issues, relate to the shared equity product and how it will work in practice and detail. The operation of the shared equity offer has been set out previously in Paper No. 14-446 and is explained within the 'Leaseholders and Freeholders rehousing information booklet' (October 2014). The issues considered in this section of the report will apply to owners in both the Winstanley and York Road scheme and the Alton West scheme.

Further detail on the location of new properties for leaseholders

30. The Council has committed to provide new build homes for owners to purchase within the scheme and the offer of shared equity to assist in making this an affordable and possible option for those not in a position to buy outright.
31. Concerns have been raised over the potential value of these new properties being unaffordable despite the shared equity offer and the potential impact of excessively high service charges for private properties in the new scheme which provide a level of service that existing residents do not want and can not afford.
32. If, as is the intention, the leaseholder re-provision properties are owned by the Council, then leaseholders will continue to have their service charge set by the Council (as it has always been previously) and at a level of service/cost which they will understand and may, as a result, be more comfortable with. There is also the added benefit that service charges will continue to be exempt from VAT added in contrast to private arrangements.
33. This policy would be consistent with the Council's aim to ensure that resident owners remained, as far as possible, in a similar financial and ownership position as they were before the regeneration. The Council's property advisors have commented that this arrangement reflects the way that shared equity offers attached to rehousing have been most commonly structured in other such schemes in London. It is recommended that the Council pursues this option in its continuing preparation of the scheme.
34. The Council, and the JV in turn, also recognises that it will need to consider arrangements that deal with individual circumstances arising. For instance, existing mortgage arrangements may complicate moving to a new property. Clearly, arrangements will need to be developed that allow for households to move that account for such financial particulars.

Sub-letting of properties

35. The shared equity offer has been prepared in order to assist resident owners to afford to continue to own a property and live in the area and, in so doing, contribute to retaining continuity and stability of the existing community. Given this reasoning, it is considered reasonable to not allow sub-letting of properties where there is a shared equity arrangement in place, as this would run counter to the Council's aim in offering it to residents who want to stay and live locally. Not allowing sub-letting would also reduce the risk to the Council, who would have a stake in the property and would not wish to see arrangements that might compromise that risk, such as properties being let on the wrong terms and management issues that might arise such as properties being let in an unsafe condition.

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36. However, the restriction on sub-letting should be tempered in order to ensure that residents are not disadvantaged as a result of the regeneration scheme. So it is recommended that the restriction only applies to properties where shared equity is in place and not where the resident owner acquires a 100 per cent stake of the new property. Furthermore, the restriction should no longer apply should the property be sold on and the shared equity paid off.
37. It is likely that exceptions will also be allowed to the no sub-letting policy where, for instance, the owner needs to move away for a certain period due to a change in their circumstances (for example, a work contract, caring for a relative etc.). A more detailed policy will be put in place which allows for such circumstances to be set out clearly. There is precedent for this; typically, an exceptions clause allowing sub-letting in a range of circumstances is normally included within Housing Association shared ownership properties. The exceptions policy would be drawn up in line with these.

Inheritance

38. The general assumption for the shared equity product is that, on sale of the property by the original resident owner, the shared equity element should be re-paid to the Council (along with a proportionate share of any capital growth). However, some concerns have been raised with officers as to what would happen if a close relative who is not the owner but lives in the property inherits the home. This could, for example, be a spouse or another dependent. In this case, requiring the re-payment of the equity element could require the remaining occupier to sell up and move or potentially be made homeless, which the Council would want to avoid. From feedback received, this issue is likely to be of concern to only a limited number of people; however, for those people this will be a substantial concern.
39. Given the likely limited impact, it is recommended that dependent close family relatives living in the property are allowed to inherit the shared equity position. A more detailed policy will be developed setting out the circumstances where this is applicable and owners who have a shared equity arrangement will be expected to apply to have a potential person named in advance.

Defining resident owners

40. The offer to owners distinguishes between resident and non-resident owners. This has implications, as resident owners receive a different level of compensation, the offer of a new property in the scheme and the offer of shared equity if it is required. Whereas, for non-resident owners, the aim is to ensure that they receive fair compensation, including related costs for their investment in the area. This distinction is reflected in the Government's Compulsory Purchase Order (CPO) Code which offers different rates and types of compensation between owner occupiers and those who rent out their property.
41. However, since the distinction has implications, it is appropriate at this point to clarify how the distinction will be identified.
42. The recommendation is that a reasonable approach would be as follows: -
 - (a) the Council fixes a date when the JV is established for Winstanley and York Road and the date of signing of the Development Agreement for Alton West, at

which point, and henceforward from that point, the Council leaseholder or identified freeholder needs to be resident in their home in order to qualify for shared equity and the offer of a new home; and

- (b) an exceptions policy is drawn up for those people who may temporarily not be occupying their home. The exceptions policy would allow the Council to counter arguments that it is in effect putting people's lives on hold while it progresses the scheme. This would be along the same lines as the policy for sub-letting the new property mentioned in paragraph 37 above and would cover:
 - (i) having to be abroad as a result of employment by armed forces;
 - (ii) a fixed term work contract in a location where it is not reasonable to expect them to reside on the estate;
 - (iii) an education or training course in a location where it is not reasonable to expect them to reside on the estate; and
 - (iv) this should be their only owned residence.

- 43. Advertising in advance a timeframe for this policy to apply will give owners time to register for any exceptions.
- 44. From that time forward they would be expected to continue to reside in the premises and they would be expected to apply under the exceptions policy should they require to sub-let in this period and wish to retain the offer of shared equity and the offer of a new home. During this time, resident owners would still retain the option of selling their home to the Council with the compensation package.
- 45. Whilst Council tenants would continue to retain their ability to apply for the Right to Buy from this period until such time as it is considered proper to suspend that right, this policy would apply, taking account of their previous residency as a Council tenant.
- 46. Should the issues listed above be agreed, it is recommended that the offer to owners is updated to reflect these changes and that the changes are communicated to owners.

COMMENTS OF THE BOROUGH SOLICITOR

- 47. The Borough Solicitor comments that procurement and tendering should be conducted in an open, fair and transparent manner. Accordingly we consider that detailed information relating to the procurement process should not be included in any public documents as this may give a competitive advantage to one bidder over another and that the same information relating to the procurement process should be provided to all bidders at the same time. Furthermore, it is considered that the Council should not include any details of the evaluation criteria in any public documents as the evaluation criteria is currently being developed and may, therefore, be subject to change.

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Legal Powers

48. The last report (Paper No. 15-314) commented upon the ability of the Council to enter into a limited liability partnership in reliance upon the General Power of Competence ("**General Power**") contained in Section 1 of the Localism Act 2011. This power will also be relied upon to enter into the transaction relating to the joint venture vehicle in addition to the powers particularised below.
49. Sections 8 and 9 of the Housing Act 1985 provides a duty for local authorities to review the housing needs in their district and gives them powers to provide housing accommodation, by building houses, converting buildings into houses or by acquiring houses (including provision through third parties).
50. Section 32 of the Housing Act 1985 allows Local Housing Authorities to dispose of housing land but only with the consent of the Secretary of State. The Secretary of State has published a series of general consents since 1985, the latest being The General Housing Consent 2013 published in March 2013. Consent "A" draws a distinction between vacant land and dwellings. A Local Housing Authority may dispose of a dwelling provided it is at market value subject to certain exceptions including where the dwelling is occupied by a tenant(s) where consent of the Secretary of State is required. The General Consent allows a local authority to dispose of vacant land. This can be at any price (market value or less (subject to compliance with State aid rules)). Vacant land is defined as land on which no dwelling houses have been built or where dwelling houses have been built such dwelling houses have been demolished or are no longer capable of human habitation and are due to be demolished. Any land transferred by the Council will need to fall within the latter definition or will otherwise require a specific consent.
51. Section 24 Local Government Act 1988 ("**1988 Act**") enables a local authority to provide financial assistance in relation to private let accommodation. Local authorities will need to obtain the Secretary of State's consent under Section 25 of the 1988 Act to exercise the power under section 24 (Financial Assistance). A local authority will also need section 25 consent if it wishes to use any other powers (including the General Power) for the purposes set out in section 24. If it does not, the transaction will be void. There are General Consents which were issued in December 2010 in relation to section 25. General Consent C specifies that a local authority may provide any person with financial assistance (other than the disposal of an interest in land or property) for the purpose of or in connection with the matters mentioned in section 24(1) of the of the 1988 Act as follows: the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation.
52. Section 233 Town and Country Planning Act 1990 gives local authorities power to dispose of land held for planning purposes in such manner and on such terms as seem expedient in order to secure the best use of the land or the proper planning purposes. Secretary of State consent is needed if the disposal is for a consideration less than the best that can reasonably be obtained. Section 123 Local Government Act 1972 gives local authorities the power to dispose of Non-Housing Land for best consideration.

Best Consideration Generally

53. When transferring land into the joint venture vehicle other than housing land (i.e. land accounted for within the HRA), the Council must demonstrate compliance with its best consideration requirements under Section 123 of the Local Government Act 2011 or under s233 Town and Country Planning Act 1990 in relation to land held for planning purposes.

State Aid Compliance

54. Any transfer of land by the Council to a joint venture vehicle must be transacted in accordance with the Commission Communication on State aid elements in the sale of land and building by public authorities (OJ C209 10.7.1999, p3-5) (the "Sale of Land Guidelines") in order to avoid the transaction being deemed to include the grant of State aid to the acquiring entity. This will be satisfied where the land is transferred at an open market value as determined by an independent valuation (in compliance with the requirements of section 2 of the Sale of Land Guidelines).
55. Any investment by the Council (of land or finance) will be in compliance with State aid. It is intended to rely upon the Market Economy Investor Principle as the Council will be investing on same terms as the private sector partner (i.e. on terms that would be acceptable to a prudent private sector investor in the same circumstances). The structure will be kept under review as it develops to ensure that it continues to be State aid compliant.

CONCLUSION

56. Following the details provided in this and previous reports, the Council should now commence the procurement process to select a private sector partner to work with the Council and deliver the Council's stated objectives. Officers will now use the delegated authority granted to them to complete the final procurement documentation, run the procurement process to select a preferred partner and negotiate the form of the JV arrangement. The outcome of the process, the recommended preferred partner and the recommended detailed structure of the JV arrangement will be reported back to the Committee for consideration and approval.
57. The further detailing of the offer to owners of affected properties for both schemes will be included within revised booklets to be issued to owners. Officers will continue to engage with residents of both estates throughout the procurement period and any further detailing of the offer to owners or Council tenants will be reported as appropriate to future Committee meetings.

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BRIAN REILLY
Director of Housing and Community Services

9th November 2015

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Background Papers

There are no background papers to this report.

All reports to Overview and Scrutiny Committees, regulatory and other committees, the Executive and the full Council can be viewed on the Council's website (www.wandsworth.gov.uk/moderngov) unless the report was published before May 2001, in which case the committee secretary (Thayyiba Shaah – 020 8871 6039; email tshaah@wandsworth.gov.uk) can supply if required.