



City of Westminster Cabinet Report

Decision Maker:	Cabinet
Date:	15 th July 2019
Classification:	General Release. Appendix 4 is exempt from general release as it relates to the financial affairs of an external body that are commercially sensitive.
Title:	Luton Street Regeneration Delivery Structure
Wards Affected:	Church Street
Key Decision:	Yes
Financial Summary:	Approval for the Council's housing company to enter into an LLP will enable the Council to save an estimated £0.8m - £2.3m in tax through a more efficient structure.
Report of:	Barbara Brownlee, Executive Director (Growth, Planning and Housing) and Gerald Almeroth, Executive Director (Finance & Resources)

1. Executive Summary

- 1.1 The Luton Street development is the first major housing development scheme forming part of the Church Street Regeneration Programme. To safeguard progression of the scheme without delay, Council Officers are seeking Cabinet approval for the Council's Wholly Owned Housing Company (WOC) to enter into a Limited Liability Partnership (LLP) with the appointed developer at a future date.
- 1.2 Further to third party professional advice, the LLP is deemed to be the most effective and transparent corporate entity to ensure the delivery of the scheme, whilst offering the Council a robust and efficient governance and commercial structure in which to operate with potential for generating tax efficiencies of up to £2.3m.

2. Recommendations

- 2.1 That the financial details of the transaction contained in Appendix 4 to this report be exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12a of the Local Government Act 1972, as amended, in that they contain information relating to information relating to the financial or business affairs of any particular person (including the authority).

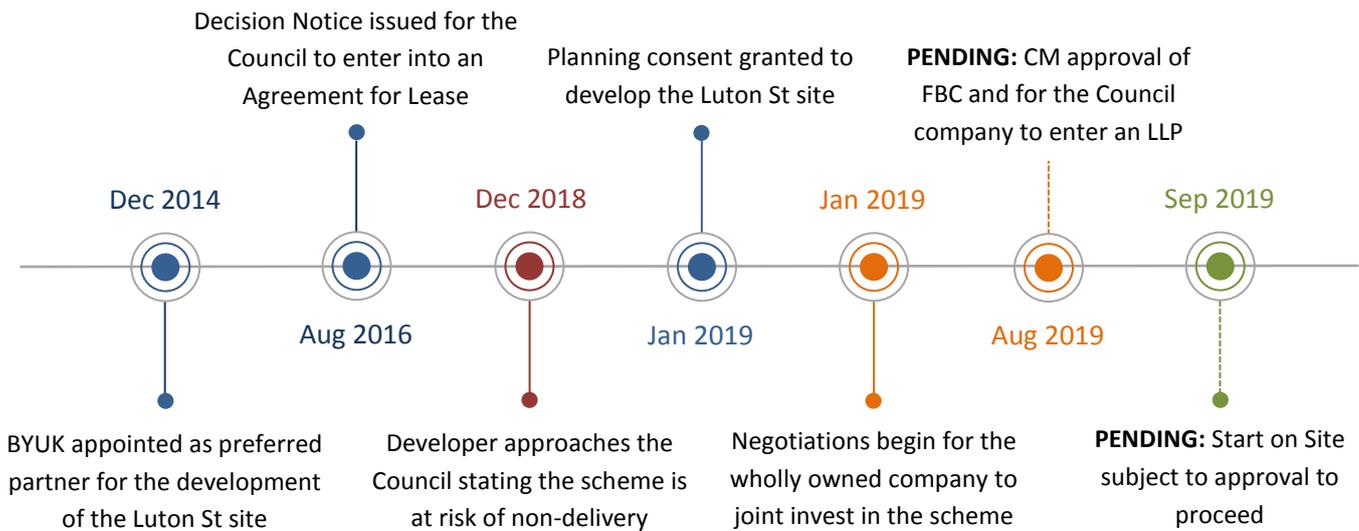
- 2.2. That Cabinet approve the principle of the Council's wholly owned housing company, Westminster Housing Investments Limited ("WOC") entering into a Limited Liability Partnership (LLP) for the delivery of the Luton Street scheme only.
- 2.3 That Cabinet delegate approval of all final commercial terms and legal agreements to the Cabinet Member of for Finance, Property and Regeneration.

3. Reasons for Decision

- 3.1 Create a tax efficient vehicle for the successful delivery of the Luton Street Scheme.
- 3.2 To achieve Financial Close within the contract Longstop Date of 26th September, this is an urgent key decision. If this report was deferred to the next scheduled Cabinet Meeting, the project start on site date would be significantly delayed.
- 3.3 Approval of the entity is required under the Council's Financial Regulations.

4. Scheme Background and Proposed Structure

- 4.1 In December 2014 the Council awarded the Developer Bouygues Development UK (BYUK) preferred bidder status as developer for the development of the Luton Street site. After a protracted period of design development, legal and material work to enable the site to be developed and commercial negotiations an Agreement for Lease (AfL) was exchanged with the developer in August 2016.
- 4.2 The AfL states that the Council will grant a long lease to a residential investor who will contract with the developer to deliver the development. The residential investor will sell the private homes for profit and in exchange the Council will receive a capital land receipt and other benefits, for example, developer cash contributions to support enhanced landscaping in the surrounding areas and improvement of Council properties surrounding the site. In addition, the Council will purchase the affordable homes on completion at a discounted rate.
- 4.3 In December 2018 the developer approached the Council stating that they had been unsuccessful in agreeing terms with a residential investor to provide funding for the development of the private sale homes. To safeguard the delivery of the project and ensure a start on site in 2019, a number of delivery scenarios between the Council and developer were considered in which they would jointly participate as residential investor.
- 4.4 The key milestones charting the history of the Luton Street project from the initial appointment of BYUK to progress the site under the AfL, through governance and planning to the Council/ WOC stepping into the scheme as a joint investor are outlined overleaf.



4.5 One of the scenarios considered, the WOC and BYUK acting jointly act as funder and owner of the Luton Street scheme in a contractual arrangement. BYUK would establish a new company (SPV) and WOC would enter into a Partnership Agreement under which it would agree to:

- meet 50% of the cost of the SPV;
- control decisions of the SPV with all material decisions requiring the approval of WOC and BYUK; and
- receive 60% of any profit generated in the SPV.

4.6 It has since been revealed through financial modelling and professional advisors input that this proposal is an inefficient arrangement for managing WOC's investment in the scheme, and that entering into a corporate arrangement in the form of a Limited Liability Partnership (LLP) is the most appropriate delivery method that provides the Council and its subsidiary with robust administrative and control arrangements, whilst limiting liability.

4.7 The WOC and the developer will become members of the LLP and the LLP will become the residential investor under the terms of the existing AfL. In this structure BYUK and WOC would agree to:

- meet 50% of the cost of the LLP;
- control decisions of the LLP as a member of the LLP; and
- WOC will receive 60% of any profit generated in the LLP.

4.8 The LLP would only act as residential investor in relation to the private housing element of the Luton Street Scheme and would enter into a lease with the Council as set out in the AfL when all lease pre-conditions have been satisfied. The affordable housing element of the scheme will continue to be acquired by the Council under the existing terms of the AfL.

4.9 A WOC Board meeting was held on Tuesday 9th July 2019, at which the Directors approved the proposal to enter into an LLP, subject to approval of the Business Case that supports this delivery structure.

4.10 Appendix 1 outlines the proposed corporate structure of the LLP.

5. Financial Implications

- 5.1. The Council and WOC have received general tax advice from RSM, who have evaluated the tax implications of the two models as follows.
- i. **Original Structure (SPV/PA):** RSM have advised that under the PA arrangement the SPV would lead to double taxation as corporation tax would be charged firstly on the profits of the SPV and secondly on the post-tax profits when received by the WOC. In addition, they have advised that the SPV and the WOC would incur avoidable stamp duty land tax (SDLT) on the transfer of land and property, in particular the WOC acquiring a number of the private for sale homes at the end of the scheme.
 - ii. **Proposed Structure (LLP):** Under a limited liability partnership, the structure is a tax transparent arrangement, whereby members pay corporation tax on their share of profits as part of their own tax computation. Thus corporation tax would only be assessed once for the WOC and the overhead running costs of the WOC would be deductible against the pre-tax profits of the Luton Street scheme. The LLP will enable the Council to benefit from SDLT relief as it maintains 60% interest in the land.
- 5.2 The table in Appendix 4 demonstrates the potential tax efficiency of the LLP structure compared to the SPV/PA.

6. Legal Implications

- 6.1 The decisions in these reports are being undertaken under Section (1) of the Localism Act 2011, the power to do anything that individuals may generally do (the general power of competence). The Council also has the power under Section 111 of the Local Government Act 1972 to do anything, which is calculated to facilitate or is conducive or incidental to the discharge of any of its functions.
- 6.2 The parties have agreed to move forward on the basis of the WOC and developer entering into an LLP. The final legal terms of this structure are yet to be agreed between the parties and subject to approval of the recommendations as set out in this report, will form part of future Cabinet Member decision report as set out below.
- 6.3 Appendix 2 sets out the relative attributes of the LLP structure, and its advantages, as opposed to the SPV structure. The main advantages of the LLP are set out below.
- **Control:** The WOC would control the Vehicle through its rights as a member, whereas the control in the PA would be contractual.
 - **Transparency:** In an LLP transparency and access to all information is a statutory right of each member, whereas the partnership agreement would define the format and amount of information the WOC would have access to.
 - **Limited Liability:** The WOC's liability is limited to the nominal value of the membership, whereas under the PA the WOC would have unlimited liability for the business of the SPV.
 - **Profit Distribution:** Under the LLP the WOC would be legally entitled to its agreed split of any profits, whereas under the PA it would have no legal entitlement and would require a contractual arrangement to receive its distribution.

7. Staffing Implications

7.1 Not applicable

8. Next steps

- 8.1 Appendix 3 sets out the key programme milestone dates for the Luton Street project, which detail the governance requirements, to achieve Financial Close and start on site in September 2019.
- 8.2 This report seeks authorisation for the Council, via the WOC, to enter into an LLP at a future date. A full business case for the Luton Street redevelopment will be presented to the WOC Board and the Capital Review Group (CRG) and further Cabinet Member approval obtained to proceed with the final project arrangements before exchanging contracts.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

James Green, Director of GPH Development; and

Stephen Muldoon, Assistant City Treasurer

Appendices:

Appendix 1 – Structure Charts

Appendix 2 – Comparison of LLP and PA structures

Appendix 3 – Milestone Programme

Appendix 4 – Financial Implications (exempt from public disclosure)