



Cabinet Member Report

Decision Maker:	Cabinet Member for Finance, Property and Regeneration
Date:	21 August 2020
Classification:	General Release but that Appendices A and B be declared as exempt from publication as they involve the disclosure of information as prescribed by paragraph 3 of Part 1 of Schedule 12a to the Local Government Act 1972, (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority).
Title:	Church Street Site A delivery route and consultant appointment
Wards Affected:	Church Street
City for All/Policy Context:	<p>Redevelopment on Site A will enable Westminster City Council (WCC) to meet the City for All commitments, specifically:</p> <ul style="list-style-type: none">➤ Greener and Cleaner This scheme will improve the quantity and quality of public realm in the area and will have an emphasis on green technology such as electric vehicle parking spaces and an ambitious sustainability strategy.➤ Vibrant Communities The scheme has been designed with the unique Church Street community in mind, it will deliver homes in a range of tenures beneficial to the local residents and improvements for the Church Street Market which is a centre point of the community.➤ Smart City The most up to date technology has been considered during the development of the scheme. This will be incorporated into the new library space, the updates for the Street Market and the sustainability strategy for the homes and buildings.
Key Decision:	Key Decision
Financial Summary:	The current scheme has an HRA affordability gap, however there are proposed mitigations to be investigated to reduce the affordability gap.
Report of:	Executive Director of Growth Planning and Housing – Barbara Brownlee

1. Executive Summary

- 1.1 The Outline Business Case was presented to Capital Review Group on 27th May 2020 and was financially agreed.
- 1.2 The “current scheme” proposal for Site A delivers c.394 new homes, significantly improved public realm with the introduction of a new traffic free street with extensive amenity and landscaping provision, improved sustainable housing and market facilities and community infrastructure facilities including a library and a community garden. There will be full reprovision of all the affordable housing existing on site, additional new affordable and private homes and retail space. Church Street Site A is a flagship placemaking and regeneration scheme for Westminster City Council and will bring wide ranging social and economic benefits to the local area.
- 1.3 The primary purpose of this report is to receive Cabinet Member approval for the recommended delivery route for the regeneration of Church Street Site A.
- 1.4 The OBC is a second stage OBC following on from an initial OBC presented to CRG in January 2020. Since the first stage OBC the scheme has undergone a design review and viability work has become more detailed which has resulted in the emergence of the HRA affordability gap. This now needs to be mitigated to produce a viable scheme.
- 1.5 This Cabinet Member Report has been produced to ask the Cabinet Member to consider and take decisions on the recommendations listed below in section 2.

2. Recommendations

- 2.1 The Cabinet Member for Housing Regeneration and Finance is asked to:
 - 2.1.1 Approve a “partnership - style” delivery route;
 - 2.1.2 Approve the investigation of the proposed mitigation methods for reducing the HRA affordability gap of the current scheme; to delegate authority to the Executive Director of Growth Planning and Housing and Finance to approve the implementation of the mitigations once they result in a viable scheme; the proposed mitigations are:
 - Reviewing the housing tenure ratio;
 - Reviewing the design detail to achieve best value for money;
 - Investigating the potential for additional Community Infrastructure Levy funding;
 - 2.1.3 Approve the contract between the Council and Arcadis LLP to be varied to allow for the release of £3,581,732 to cover the cost of delivering the remaining contracted multi-disciplinary services and
 - 2.1.4 Approve Appendices A and B of this report be exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A, Part 1, paragraph 3 (as amended) in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).
 - 2.1.5 Approve the release of £700,000 budget as specified within Appendix A to spend on void secure costs.

3. Reasons for Decision

- 3.1 The recommendations set out at paragraph 2.1.1 has been reached following a detailed delivery options appraisal process. Three main delivery strategy options were shortlisted:

Developer Led - A developer led delivery model with an option for the Council to provide senior loan finance

Partnership - style model – A form of partnership between the Council and a developer sharing the project risks and rewards and providing equity and/or debt finance

Direct delivery - The Council directly delivering and funding the development

3.1.1 During the soft market testing exercise in 2020 it was clear there is a lot of appetite for this flagship scheme from large, well-respected London regen developers. The developers have presented their views on proposed design, construction and delivery route, and one developer presented a very strong case to be involved at the outset to add value by influencing planning, designing the final product, managing risk and provision of substantial financial resources.

3.1.2 The economic environment has changed since the design development started in 2017 and very recently during soft market testing exercise and could still evolve further. The position will be continually reviewed to ensure the best deal possible will be made for the Council and the residents to minimise the adverse impact of the changing economic environment.

3.1.3 The difference in the financial viability performance of the self-delivery and Partnership style route is relatively minimal. Given Church Street is first and foremost a placemaking regeneration scheme where a lot is being asked of the site in terms of investment in infrastructure, , high affordable provision, public realm, investment in the Church Street market, community infrastructure i.e. library and community garden - a lot of expertise, knowledge and resource is required to help deliver the scheme and manage the risks including market sale risk.

3.1.4 Based on all the above considerations the recommendation is for a Partnership - style delivery route for Church Street Site A.

3.1.5 The exact structure of a partnership is still to be established. Contractual/corporate, LLP/Ltd co. structures were all explored, with the larger developers using the full range of options available. The most common vehicle being used was the 50/50 LLP. This along with who we would partner with will be established over the coming months following the soft market testing and the subsequent procurement exercise. The outcome of the procurement exercise and any required decisions will come back to the Cabinet Member for approval at the required time.

3.1.6 Currently the proposed scheme and delivery option results in an affordability gap which sits in the HRA. A range of mitigation measures will be adopted to reduce this gap.

- 3.2 Recommendation 2.1.3, approval of the revised consultancy fee for Arcadis LLP for multi-disciplinary services is set out in more detail in the financial implications section 5.

4. Background, including Policy Context

- 4.1 The proposed redevelopment of sites A, B and C form a part of the wider Church Street Masterplan.
- 4.2 The plans for regeneration within the area have evolved following the development of Westminster's housing renewal strategy and form part of the Church Street Masterplan which was approved by Cabinet in December 2017 as the Council's framework for informing the future regeneration of the Church Street area. Following an extensive public consultation, an equality impact assessment, soft market testing and stakeholder engagement exercise an option for partial redevelopment was identified and approved as the preferred way forward in a Cabinet Member report in June 2019. Site A was identified as the first phase and plans have been progressed leading up to the preparation of the Outline Business Case.
- 4.3 More detail surrounding the policy context can be found within the Strategic Case of the OBC at Appendix B.

5. Consultation

- 5.1 To ensure 'best value' as defined under section 3 of the Local Government Act 1999, the Council sought the views of residents in the Church Street area.
- 5.2 The consultation launched on 20th January 2020 for residents to give their views on how to deliver homes in Site A. This consultation period concluded on 17th February 2020. The possible strategies detailed were:
- a developer led strategy (option 1)
 - a partnership strategy (option 2)
 - a direct delivery strategy (option 3)
- 5.3 Whilst the community have not expressed a preference for a particular delivery route, the ability to keep any developer accountable and that the redevelopment occurs in a timely manner is paramount. The desire to put the resident's needs first was also highlighted.
- 5.4 A briefing was held with the Church Street Ward Councillors on 5th August 2020. Where the information within this report was shared and discussed. There was not any negative feedback received at this meeting nor in the seven days that followed.

6. Financial Implications

- 6.1 Church Street Project Viability & Delivery Option
- 6.1.1 The Outline Business Case (OBC) appended to this report (Appendix B) sets out the financial case for Site A, explores the delivery routes and the Council's strategic objectives.

- 6.1.2 The OBC recommends the Partnership option as the preferred delivery route. This reduces the estimated peak debt requirement for the Council from £250m under self-delivery, to £170m through partnership.
- 6.1.3 Overall the Site A scheme results in an HRA borrowing requirement. For income to fully cover debt costs, HRA borrowing needs to reduce and there are several mitigation options that are being explored to close the affordability gap, which are set out in Appendix A.
- 6.2 Request for additional spend on the fee to Arcadis LLP for multi-disciplinary services
- 6.2.1 The Procurement Assurance Board on 17th July 2018 approved a maximum contracted sum of £5,641,315 for Multi-disciplinary Services for the Church Street Site A project.
- Of the approved sum, £2,059,583 has already been released for delivery of RIBA stages 1- 2. Approval is now sought to release the balance of £3,581,732 to deliver the following:
- Review of RIBA Stage 2
 - Provide Advice on delivery mechanism and procurement of delivery mechanism
 - Preferred option through to RIBA 3/4 (Town Planning Determination and Consent, Employer's Requirements)
- 6.2.2 The HRA business plan has an approved capital budget for this project which covers the award of this contract. More detail surrounding this can be found within section 6.0 Consultant Contract Extension of the OBC at Appendix B.
- 6.2.3 This report is requesting the release of the £700k budget to proceed with void security works as and when needed by the Vacant Possession team. Further details can be found within Appendix A.

7. Legal Implications

In agreeing to and noting the recommendations in this report these legal implications apply:

- 7.1 The Council 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 its functions.
- 7.2 The Council has the power under the Local Government (Contracts) Act 1997 to enter into a contract.
- 7.3 The Council has a general power of competence under section 1 of the Localism Act 2011. This is the power to do anything an individual can do provided it is not prohibited by other legislation. If the Council is acting for a commercial purpose it must use a company. If the Council intends to exercise its power of general competence for a non-commercial purpose, then a wider variety of corporate vehicles can be used (for example, a limited liability partnership ("LLP")). It may also be possible for the Council to have a corporate group structure which could involve one or more of its wholly owned companies owning shares/being a member of a subsidiary company or LLP with perhaps a specific subsidiary to hold community assets such as a community interest company or registered society.

- 7.4 In respect of the delivery of Site A, the precise legal structure needs to be further considered as more detailed financial modelling work is undertaken. If the Council opts to use some form of incorporated vehicle to facilitate or undertake the regeneration, it will be necessary for this to be supplemented by a development agreement and/or development services management agreement and a lease/licence in respect of the relevant land interest(s).
- 7.5 Whether the Council opts for a development agreement, development partnership/vehicle or direct delivery route, this is likely to require a public procurement under the Public Contracts Regulations unless a specific exemption were to apply. This will mean that the opportunity will need to be procured through an appropriate framework or publicly advertised and competitively tendered according to the public procurement rules applicable at the relevant time. Current public procurement rules implement the EU Public Procurement Directive and are currently anticipated to be similar following Brexit.
- 7.6 If the Council is considering taking on the role of a senior lender, then this will need to be compatible with the Council's Investment Strategy and compliant with State Aid Rules (which are also anticipated to apply albeit in a modified form after Brexit).
- 7.7 The Council has undertaken a best value consultation under section 3 of the Local Government Act 1999, see section 5 for further details. The Council should pay due regard to the feedback received during the consultation.
- 7.8 Furthermore, in respect of the variation to the Arcadis LLP appointment:
- 7.8.1 there is provision in the contract to manage certain contractual changes. If the changes set out in this report do not come within the ambit of those changes, a deed of variation may be required;
- 7.8.2 changes to the contract are regulated by the Public Contracts Regulations 2015 ("PCRs"). In order to satisfy the requirements of the PCRs, the additional spend must be in accordance with one of the 'cases' in regulation 72. Regulation 72 permits a modification which is below both of the following values (a) the relevant threshold for services (£189,330) and (b) 10% of the initial contract value, provided the modification does not alter the overall nature of the contract. If the value of the extension (including the 3 extensions already approved in 2019) is less than 10% of the initial contract value and the threshold of £189,330, the Council can rely on regulation 72, provided also the modifications do not alter the overall nature of the contract; and
- 7.8.3 the Council's own Contract Procurement Rules require that '*Officers must consult Procurement Services ...on all contract... variations...*' (3.20.1). A '*Minor*' variation of contract, such as a proposed change with this Arcadis appointment, may be approved by the appropriate Corporate Leadership Team member. An approval by the Cabinet Member, if provided following consideration of this report, would also satisfy the Council's Rules.

8. Equality Act 2010

- 8.1 The Equality Act 2010 requires public authorities to have due regard to the need to eliminate discrimination and advance equality of opportunity. The Council must take into account its wider public sector equality duty under section 149 of the Equality Act 2010 when making decisions. The Council should have due regard to this duty in terms of the processes used, if a decision is taken to deliver the development scheme by way of a developer or delivery partner.
- 8.2 The Council has conducted an Equality Impact Assessment (a copy of which is at Appendix C) and needs to pay due regard to its findings when making subsequent decisions.

9. Next steps

- 9.1 Develop a robust procurement strategy and continue the scheme development to ensure the result is a market facing solution that will enable the successful delivery of the scheme. This strategy will also include establishing the optimal timeframe for bringing a partner on board. This is being evaluated and discussed with the market. Officers are reviewing the benefits of identifying a partner early in the planning process and exploring innovative solutions to making the procurement process and timetable more efficient.
- 9.2 Officers will work to eliminate the viability gap through the application of recommended mitigation measures.
- 9.3 Through a comprehensive procurement exercise a partner will be identified who would be expected to:
- Provide knowledge of exemplar sustainable development
 - Identify options for additional value across private units
 - Focus on unit efficiency to drive value
 - Construction buildability
 - Cost reduction and design efficiency
 - Recognise scale and massing principles tested through planning
 - Embracing the design principles and aspirations for creating place
 - Sharing funding commitment to protect finite development and finance capacity

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

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APPENDICES

Appendix A – Financial Implications continued *NB: Exempt, not publication*

Appendix B – Outline Business Case

Appendix C – Equality Impact Assessment

For completion by the **Cabinet Member for Finance, Property and Regeneration**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled Church Street Site A delivery route and consultant appointment and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Finance, Property and Regeneration

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.