

Cabinet Member Delegated Decision Report

Decision Due: 5 September 2016

Fenwick Estate Transport for London Development Agreement

Wards: Larkhall Ward

Report Authorised by: Sue Foster, Strategic Director, Neighbourhoods and Growth

Portfolio: Cllr Matthew Bennett, Cabinet Member for Housing and Cllr Paul McGlone, Deputy Leader (Investment and Partnerships)

Contact for enquiries:

Lesley Johnson, Capital Programme Manager, Housing Regeneration,
ljohnson3@lambeth.gov.uk

Report summary

This report seeks authority to enter into a conditional Development Agreement with Transport for London (TfL) to provide 55 new homes for Council rent and a replacement community hall on three sites on the Fenwick Estate, Clapham. The scheme was approved by Planning Applications Committee (PAC) and the planning permission is due to be issued in September 2016.

This scheme will be delivered by Transport for London (TfL) through an off-site s106 contribution generated by the Sainsbury's development at Vauxhall.

The Council is required to enter into a Development Agreement with TfL for the scheme. The Development Agreement will include the specification for the homes and community hall and the timescales for delivery.

The Development Agreement is conditional on the total cost of the scheme being within the Maximum Sum of £11.96m inflated by Building Cost Information Service all in Tender Price (BCIS), and the Council providing vacant possession of the sites. If a scheme cannot be agreed within the Maximum Sum, TfL can waive this condition and proceed with the scheme. If TfL does not waive the condition, the Council can choose to invest in the scheme to enable it to proceed. If neither party enables the scheme to proceed, TfL would have to go back to PAC with an alternative scheme. A further report with recommendations will be submitted if the cost condition cannot be met.

To facilitate the redevelopment of the Fenwick Hall site, it is proposed that either alternative premises are found in the local area or the loss of revenue generated by activities at Fenwick Hall is reimbursed to the Fenwick Tenants and Residents Association (TRA) by the Council for the construction period. The relocation period is not expected to last more than two years.

Finance summary

The proposed new Council homes, community hall and associated infrastructure, communal and public space are to be provided by TfL as part-fulfilment of its Section 106 obligations for the Sainsbury's development. The new housing and facilities will be built on existing freehold Housing Revenue Account (HRA) land.

The costs in relation to the design and build of the 55 new social rent homes together with the community centre will be funded through S106 contributions from the Developer, subject to the cost condition in the development agreement being met. The Maximum Sum of £11.96m currently stands at £13.8m, based on the BCIS all in Tender Price. The estimated works cost figure, last updated in June 2015 was £13.7m.

Once the Development Agreement is exchanged and the cost condition has been satisfied, the Council will be responsible for the cost of any changes it requires to the project as well as indemnifying any additional costs directly resulting from the council's action or default.

A total budget of £120k has been allocated to fund project costs for the community centre relocation and Employers Representative and Clerk of Works services.

The Development Agreement will enable the Council to transfer the contract to Homes for Lambeth, subject to appropriation to the General Fund.

Recommendations

- (1) To agree to enter into a conditional Development Agreement with Transport for London for 55 new homes, a new community centre and associated works.
- (2) To agree that the final terms of the Development Agreement be delegated to the Strategic Director of Neighbourhoods and Growth.
- (3) To agree that the Council to exercise its powers of appropriation for planning purposes
- (4) To agree the temporary relocation of the Fenwick Hall or other arrangement following consultation with the Fenwick TRA

1. Context

- 1.1 Lambeth's ambition is to ensure that every resident in the Borough has the opportunity to live in a good quality home that is affordable and suitable for their needs.
- 1.2 The Borough faces a major housing crisis, with 21,000 people on the waiting list; over 1,800 families in temporary accommodation, overwhelmingly families with children; and 1,300 families are severely overcrowded. To address this challenge the council administration was re-elected in 2014 on a pledge to build 1,000 additional council rent homes by 2018-19.
- 1.3 Lambeth is investing hundreds of millions of pounds in bringing existing council homes up to the Lambeth Housing Standard (LHS), but the budget shortfall in the LHS programme has grown from an estimated £56m when the programme was launched in 2012 to over £85m as last reported. The Council faces additional pressures on the Housing Revenue Account (HRA) due to government changes in the reduction of 1% per annum in council rents (over the next 4 years), as well as the Welfare Reform and Housing and Planning Bills that will put further pressure on the HRA in the next few years.
- 1.4 The Cabinet at its meeting on 11 July 2016 agreed to redevelop the Fenwick Estate to enable the Council to fulfil its obligations and duties to council tenants, despite the major shortfall in the LHS budget, to live in a warm, dry, decent home which meets the needs of their family at council rent levels. The Council is committed to enabling all residents who currently live on the estate to be able to continue to do so. The Council will also do its very best to keep the community together by trying to phase any rebuilding so that existing residents should only have to move once. The development of 55 new homes on the three sites at Fenwick will help enable this process.
- 1.5 Transport for London (TfL) will enter into a Development Agreement (DA) with the Council. The principles of the agreement are set out at 2.5 below.
- 1.6 The Planning Applications Committee approved the Fenwick TfL development on 9 February 2016. The planning approval is due to be issued in September 2016.

2. Proposal and Reasons

- 2.1 In November 2014 the Cabinet Member for Housing and Regeneration agreed the location for the off-site housing for the Sainsbury's redevelopment at Vauxhall to be three sites on the Fenwick estate. The report as well as agreeing the sites acknowledged the cap of £11.9m (to be inflated by BCIS) and the need to re-provide the community centre as part of the development.
- 2.2 The location of Fenwick Estate, where the Council is the landowner and has existing homes immediately adjacent, offers the opportunity for new Council homes which will be let at social rents.
- 2.3 TfL submitted a planning application for the project which was considered at Planning Applications Committee in February 2016. Approval to the plans was given and the Council will enter into a Unilateral Undertaking.
- 2.4 A Development Agreement is being negotiated between the Council and TfL for the new homes and community centre at Fenwick. The Agreement includes an outline

specification and the build and quality standards to be achieved for the new homes and community centre and the timescales for delivery.

2.5 Below is a summary of the proposed principles of the Development Agreement:

2.5.1 The Development Agreement will be entered into between the Council and Transport for London (TfL). The Development Agreement will be exchanged conditional on satisfaction of Conditions Precedent.

2.5.2 Conditions Precedent:

- Cost Condition requiring the project costs to be within the Maximum Sum (£11.9m inflated by BCIS)
- Entry into any necessary planning agreements
- Vacant possession of the Site

2.5.3 Development Obligations

- Once the Conditions Precedent are satisfied (or waived) TfL can deliver the 55 affordable homes and community centre in accordance with agreed Performance Requirements which will be annexed to the DA

2.5.4 Council Costs

- The Council will be responsible for payment of project costs of £120k (relocation and temporary accommodation costs for the community centre, project management and monitoring costs)
- The Council will also be responsible for payment of any additional costs incurred as a result of the Council requesting any variations to the agreed specifications for the new affordable homes and community centre after the Cost Condition has been agreed

2.5.5 Land

Council ownership

The Council is the Freehold owner of the land.

Fenwick Hall

The plans for the new Fenwick Hall have been developed through close working with the Fenwick Tenants and Residents Association and residents of the estate.

3 Finance

3.1 TfL will provide 55 homes together with associated infrastructure, communal and public space to meet the Council's requirements for homes for rent. TfL will also provide a new community centre to the Council's specification.

- 3.2 The council will need to meet costs associated with project management and monitoring costs as well as relocation and temporary accommodation costs for the community centre. These project costs are not expected to exceed £120k, which will be met from existing capital budgets.
- 3.3 It is proposed that the project costs outlined above will be met from the Housing Regeneration capital budget and no revenue budget will be allocated.
- 3.4 The costs in relation to the design and build of the 55 new social rent homes together with the community centre will be funded through S106 contributions from the Developer, subject to the cost condition in the development agreement being met. The Maximum Sum of £11.96m currently stands at £13.8m, based on the BCIS all in Tender Price. The estimated works cost figure, last updated in June 2015 was £13.7m. In order to meet the cost condition, the Council will work closely with TfL to value engineer the project.
- 3.5 Once the Development Agreement is exchanged and the cost condition satisfied, the Council will be responsible for the cost of any changes it requires to the project as well as indemnifying any additional costs directly resulting from the council's action or default.

4. Legal and Democracy

- 4.1 Section 1 of the Localism Act 2011 introduced a new “general power of competence” for local authorities, defined as “the power to do anything that individuals generally may do” and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area.
- 4.2 Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether or not involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
- 4.3 Section 105 of the Housing Act 1985 requires the maintain such arrangements as it considers appropriate to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to which this section applies—
- (a) to be informed of the authority's proposals in respect of the matter, and
 - (b) to make their views known to the authority within a specified period;
- and the council is required before making any decision on the matter, to consider any representations made to it in accordance with those arrangements. For the purposes of this section, a matter is one of housing management if, in the opinion of the Council, it relates to amongst other matters, the provision of services or amenities in connection with such dwelling-houses.
- 4.4 Section 122(1) of the Local Government Act 1972 enables the Council to appropriate for any purpose for which the council are authorised by that or any other act to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned.

- 4.5 Section 17 (1) of the Housing Act 1985 empowers the Council to acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings or acquire land proposed to provide facilities in connection with housing accommodation.
- 4.6 The power conferred by subsection 17 (1) of the Housing Act 1985 includes power to acquire land for the purpose of disposing of houses provided, or to be provided, on the land, or of disposing of the land to a person who intends to provide housing accommodation on it or facilities which serve a beneficial purpose in connection with the needs of people living in the housing accommodation.
- 4.7 Section 19(2) of the Housing Act 1985 states that where a local housing authority have acquired or appropriated land for the purposes Part 2 of that Act, it cannot, without the consent of the Secretary of State, appropriate any part of the land consisting of a house or part of a house for any other purpose.
- 4.8 The Council is authorised to acquire an interest in the land to be developed by agreement under Section 227 Town and Country Planning Act 1990. Such acquisition must be for a reason for which land can be compulsorily acquired under Section 226 Town and Country Planning Act 1990. The purposes for which land may be acquired are defined in Section 226(1) as follows:
- i. if the authority think that the acquisition will facilitate the carrying out of development/redevelopment or improvement on or in relation to the land; or
 - ii. if the land is required for a purpose which it is necessary to achieve in the interests of proper planning of an area in which the land is situated.
- 4.9 The Council can not exercise the power under paragraph (a) unless they think that the development, is likely to contribute to the achievement or the promotion or improvement of one or more of the following objects (namely) the economic, social or environmental well-being of their area.
- 4.10 Section 237 (a) of the Town and Country Planning Act 1990 provides that the erection, construction or carrying out or maintenance of any building or work on land which has been acquired or appropriated by the Council for planning purposes (whether done by the local authority or by a person deriving title under it) is authorised by virtue of this section if it is done in accordance with planning permission, notwithstanding that it involves—
- (a) interference with an interest or right to which this section applies, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- 4.11 However, nothing in this section s237 authorises the interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.
- 4.12 In the case of *R v Leeds City Council ex p. Leeds Industrial Co-operative Society Limited* [1996] it was held that in a case where third parties are known to have rights, a

local authority should not consider using its appropriation powers unless it has good reason to believe that interference with such rights is necessary.

- 4.13 In making a decision as to whether to appropriate the land for the planning purpose of the Development, the following matters are relevant considerations that should be taken into account by the Council:-
- i. The existing Rights of Light affected and the likely extent of interference with Rights of Light
 - ii. Whether interference with the Rights of Light is necessary in order to allow the Development to be carried out and, whether agreement can be reached for release of those rights on what terms and in what timescale;
 - iii. Whether acquisition will facilitate the carrying out of the Development;
 - iv. Whether the Development will contribute to one or more of the following objectives and thus be in the public interest:
 - a) The promotion or improvement of the economic well-being of the area
 - b) The promotion or improvement of the social well-being of that area;
 - c) The promotion or improvement of the environmental well-being of the area
 - v. Whether the benefits of the Development could be achieved without giving rise to all or some of the infringements.
 - vi. Whether the public benefits arising from the recommendations are proportionate to the infringements, and in particular to any interference with rights guaranteed by the European Convention on Human Rights (“Convention Rights”).
- 4.14 Section 237(4) provides that in respect of any breach or interference listed in 4.9 above that arises from the execution of works on, or use of, land the Council is liable to pay compensation.
- 4.15 Section 75 and Schedule 4 of the Local Government and Housing Act 1989 requires that where land is appropriated by a local housing authority for the purposes of Part II of the Housing Act 1985 (provision of housing), or on the discontinuance of use for those purposes, such adjustment shall be made in the HRA, the Housing Repairs Account and other revenue accounts of the authority as the Secretary of State may direct.
- 4.16 The Council’s constitution provides that appropriations of land and property between general fund services and the Housing Revenue Account are only delegated to Strategic Directors where the value is nil, as advised by the Head of Asset Strategy. Where the value of the appropriation is not nil the agreement of the Strategic Director of Enabling must be obtained and the financial effects on the general fund and Housing Revenue Account must be met by compensating budget virements.
- 4.17 This proposed key decision was entered in the Forward Plan on 15 July 2016 and the necessary 28 clear days’ notice has been given. In addition, the Council’s Constitution

requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. Engagement

- 5.1 TfL and its design team held a number of public events to consider the design of the new homes and community centre as set out below. A number of meetings have also been held with the Fenwick TRA and TRA Committee.

11th November, TRA meeting

This was an opportunity for residents to meet the design team and for the design team to introduce themselves and present their track record to the residents.

9th December, Consultation Event

Exhibition for the residents of Fenwick Estate, outlining the opportunity sites. This drop in session presented the initial work on the three opportunity sites to the residents of the estate and neighbouring stakeholders, described in the context of the existing estate. The goal was to encourage residents to raise any concerns and suggestions that they had with the proposals.

A questionnaire was given to everyone that came. This was done to give the Design Team working on the project residents' input into the design of the new homes and community centre.

Number of residents attending the event: 26 Number of filled in questionnaires: 17

26th January, TRA Meeting

27th January, Consultation Event

Exhibition for the residents Fenwick Estate, showing how the designs for the opportunity sites had developed. Karakusevic Carson Architects asked for feedback about the proposed buildings, landscape and the relocation of Fenwick Hall into the Ground Floor of Building B (the site of the existing garages).

Number of residents attending the event: 19 Number of filled in questionnaires: 11

4th February, TRA Meeting

18th February, TRA Meeting

30th March, Consultation Event

The final drop-in event was held at the Fenwick Hall from 5pm to 8pm. Karakusevic Carson Architects presented detailed designs for the three selected sites and asked residents for their thoughts about the current proposals, including the design development of the Community Centre.

Number of residents attending the event: 20
Number of filled in questionnaires: 11

- 5.2 Council officers attended the monthly TRA meetings as well as the events above. Further engagement will take place as required, particularly on temporary provision of the community centre or its services.

6 Risk management

Development Risk

- 6.1 In essence, the Development Agreement places development risk with the Developer as if the project were taking place on the Developer's land once the conditions precedent have been satisfied.
- 6.2 Due to the cost cap that is part of the original Sainsbury's Section 106 agreement, there is a condition precedent in the Development Agreement relating to the total costs of the scheme. On exchange of the development agreement, the Council and TfL will work together to arrive at an acceptable specification and cost plan that is within the Maximum Sum of £11.96m inflated by BCIS. This sum with inflation currently stands at £13.8m. There is a fixed timescale for this exercise to complete by March 2017.
- 6.3 If TfL cannot deliver the project within the Maximum Sum, it can waive the cost condition and proceed with the works, or ask the Council to contribute to the shortfall. If neither party agrees to make the necessary contribution, TfL will have to make a further planning application to the Council as there is no cascade mechanism in the original Section 106 agreement.
- 6.4 Once the cost condition has been satisfied and the Council has provided vacant possession of the site, the Council will only be liable for costs arising from changes it requests to the project.
- 6.5 The Council will need to secure vacant possession of the three sites in order for the development works to commence.
- 6.6 The Development Agreement is being dealt with by Sharpe Pritchard on behalf of the Council. The Council's legal team is dealing with the Sainsbury's Section 106 Deed of Variation and the Fenwick Unilateral Undertaking as well as vacant possession and other property matters.

7 Equalities impact assessment

- 7.1 An EIA for the regeneration of Fenwick estate has been developed and approved by Cabinet on 10 July 2016. The EIA concludes that the impact of the estate regeneration project at Fenwick Estate will be positive overall in the long term with no disproportionate negative impacts on particular protected groups, although officers recognise that there are risks around socio-economic equality for existing homeowners if due regard is not paid as the project is delivered. There is negative impact for many vulnerable groups during the construction process due mainly to the decant process. We have a number of actions in place to mitigate this impact. The project reaffirms Council policies and is interlinked with the delivery of all Council services.

- 7.2 The 55 new homes and community facility that this project provides will cause disruption during construction, for which mitigations will be put in place, but is effectively the first phase of the redevelopment, enabling a significant number of tenants to move directly to a new home.

8 Community safety

- 8.1 The design proposals have been reviewed for Secure by Design and the development removes areas which have attracted anti-social behaviour.

9 Organisational implications

- 9.1 Environmental

The homes will be developed in accordance with planning and building regulations and the Council's Housing Design Principles and Standards.

- 9.2 Staffing and accommodation

None

- 9.3 Health

The homes will meet the Lifetime Homes standard.

10 Timetable for implementation

- 10.1 The timetable below sets out the stages and timescales for delivering the scheme:

Stage	Timescale
Development Agreement signed	September 2016
Cost condition satisfied	March 2017
Vacant Possession	July 2017
Start on site	October 2017
Completion of development	December 2019

Audit trail				
Consultation				
Name/Position	Department or Organisation	Date Sent	Date Received	Comments in para:
Sue Foster Strategic Director	Neighbourhoods and Growth	22 July 16	26 July 16	
Rachel Sharpe, Director	Strategic Housing	22 July 16	26 July 16	
Neil Vokes, Asst Director	Strategic Housing	20 July 16	26 July 16	
Greg Carson	Legal Services	20 July 16	21 July 16	Section 4.1 to 4.16
Maria Burton	Democratic Services	10 August 16	11 August 16	4.17
Christian Fleming	Finance	20 July 16	20 July 16	Finance
Hamant Bharadia	Finance	20 July 16		
Krish Angamuthu	Finance	20 July 16	9 August 16	Section 3
Richard Saunders	Planning, Transport and Development	20 July 16	21 July 16	Throughout
Mark Howarth Governance & Resident Engagement Manager	Housing Services	22 July 16		
Councillor Matthew Bennett	Cabinet Member: Housing	16 August 16	17 August 16	
Sophie Linton	Head of Valuation & Strategic Property Services	20 July 16	21 July 16	
Jo Pickering (External)	Sharpe Pritchard	22 July 16		

Report history	
Original discussion with Cabinet Member	11 July 2016
Report deadline	n/a
Date final report sent	n/a
Report no.	n/a
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	13.07.16
Key decision reasons	Expenditure, income or savings in excess of £500,000
Background information	Fenwick Estate – Cabinet Member Delegated Decision – November 2014 Planning Applications Committee agenda 9 February 2016
Appendices	None.

APPROVAL BY CABINET MEMBER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal and Democratic Services taken account of their advice and comments in completing the report for approval:

Signature _____ **Date** _____

Lesley Johnson, Capital Programme Manager, Housing Regeneration,

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:

Signature _____ **Date** _____

Councillor Matthew Bennett, Cabinet Member: Housing

Any declarations of interest (or exemptions granted):

Any conflicts of interest:

Any dispensations:

Any declarations of interest (or exemptions granted):

Issue

Interest declared