

London Borough of Hammersmith & Fulham

Report to: Finance, Commercial Revenue and Contracts Policy & Accountability Committee

Date: 5 October 2020

Subject: Review of termination of the Conditional Land Sale Agreement (CLSA)

Report of: Matt Rumble, Head of Area Regeneration

Responsible Director: Tony Clements, Interim Strategic Director for the Economy

Summary

This report reviews the Leader's decision of the 15th November 2019 approving the termination of the Conditional Land Sale Agreement (CLSA) which the council entered into with Capital & Counties Properties PLC ("CapCo") in January 2013. The report explains the terms of the CLSA and the potential implications for the council and the residents of the two estates affected had the CLSA not been terminated.

The CLSA incorporated two council estates; West Kensington and Gibbs Green Estates, as option land for the developer as part of a wider regeneration scheme centred around Earl's Court exhibition centres.

Recommendations

1. For the Committee to note the report and make recommendations for future learning, as it sees fit.
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Wards Affected: North End Ward and Fulham Broadway

H&F Values	Summary of how this report aligns to the H&F Priorities
Building shared prosperity	The termination of the CLSA was a long fought for goal of many residents in the estates and it demonstrated the Council's commitment to listening to the wishes of its residents.
Creating a compassionate council	Maintaining existing established communities in the estates was a key priority.

Doing things with local residents, not to them	Responding to residents' concerns was the primary drive for agreeing the termination rather than limited improvement of CLSA terms.
Being ruthlessly financially efficient	Termination, without paying more than what was received, demonstrated the council's ability to operate in a ruthlessly financially efficient manner.
Taking pride in H&F	The achievement was only possible through close working with residents who demonstrated their pride and commitment to their communities and estates.

Contact Officer:

Name: Matt Rumble
Position: Area Regeneration
Telephone: 07786747488
Email: matt.rumble@lbhf.gov.uk

Background Papers Used in Preparing This Report

Leader's Urgent Decision dated 15 November 2019 - *'Termination of Conditional Land Sale Agreement – Earl's Court'*

Cabinet Report dated 3rd September 2012 - *'Earls Court Statutory and Wider Consultation'*

Cabinet Report dated 18 July 2011 – *'EARLS COURT REDEVELOPMENT'*

1. Termination of the CLSA

- 1.1 On the 15th of November 2019 the council exchanged contracts with Earls Court Investment Holdings Ltd on a conditional agreement for termination of the Conditional Land Sale Agreement (CLSA). This termination deed would result in the termination of the CLSA. The conditional agreement was signed following an urgent leader's decision on 15 November 2019.
- 1.2 The conditional agreement became unconditional and the termination deed was entered into on the 9th December 2019. The conditions included Delancey, on behalf of Dutch pension fund APG, acquiring the share capital of EC Group Holdings Limited, being the owner of EC Properties LP and EC Properties LP Limited. These companies had entered into the CLSA with the council on 23 January 2013 and owned the majority of the Earls Court development site. Alongside the termination of the CLSA, the council re-acquired the former Gibbs Green School site and 11 Farm Lane, which were sold to CapCo in 2013 as part of the CLSA deal.

Background to the termination of the CLSA

- 1.3 In 2019, CapCo reported to the press that they had received bids for their interests in Earl's Court which included the CLSA and their shares in Earls Court Partnerships Limited. The latter was a joint venture company with Transport for London (TFL) which covered the land of the former exhibition centres. Press articles reported that CapCo agreed a period of exclusivity with Delancey and that Delancey were the preferred bidder.
- 1.4 Officers met with representatives of Delancey during the period of exclusivity to discuss the Council's priorities for Earl's Court. Delancey confirmed its intention to bring the CLSA to an end and return land parcels to the Council.
- 1.5 Both parties recognised the importance of the West Kensington and Gibbs Green communities and the need to protect the homes from any future development of the Earl's Court site and agreed to work on the necessary actions to facilitate this.
- 1.6 The Council's legal advisers, Lewis Silkin, prepared the Termination Deed and associated transfer documents required to bring the CLSA to an end, including the return of the former Gibbs Green School and 11 Farm Lane sites to the council. These were to be entered into shortly after Delancey/APG completed its share purchase of EC Group Holdings Limited (owned by CapCo).
- 1.7 The Council also commissioned external valuation advice from Avison Young (AY) on the acquisition of the former Gibbs Green School and 11 Farm Lane sites, at the price paid for them pursuant to the 2013 CLSA. AY concluded that the acquisition represented value for money to the Council. The Council's Head of Asset Strategy reviewed the valuations undertaken by AY and formally confirmed this position.

- 1.8 The form of Termination Deed was agreed before, and in anticipation of, completion of the purchase of the entire share capital of EC Group Holdings Limited by Delancey/APG and annexed to the conditional agreement. Under the Termination Deed, the Transaction Documents were terminated and the Council:
- 1.8.1 returned the money paid under the CLSA, which stood at £74.6m excluding VAT;
 - 1.8.2 paid £15m to re-acquire both the Gibbs Green School site and 11 Farm Lane site. This was the price paid for both parcels of land under the CLSA in 2013; and
 - 1.8.3 was released from its obligation to transfer the West Kensington and Gibbs Green estates.
- 1.9 Termination required the council to write off £5.9m of historic projects costs against the Housing Revenue Account; no additional budget pressure was created as this was covered by previously ringfenced HRA reserves. £200,000 of historic General Fund costs were also written off.
- 1.10 The principal reason for the termination of the CLSA was to stop the demolition and redevelopment of the West Kensington and Gibbs Green estates as part of the Earls Court master plan and, in doing so, end a decade of uncertainty for residents of both estates.
- 1.11 The two land parcels of 11 Farm Lane and the former Gibbs Green School site were returned to Council ownership and these, alongside the former nursery site on Lillie Road, are now being considered for redevelopment, prioritised for new genuinely affordable housing.
- 1.12 There were in excess of 140 homes on the West Kensington and Gibbs Green Estates which, under the CLSA, were restricted for temporary use only. Termination of the CLSA made it possible for residents living in these homes to be made offers of secure tenancies or for the homes to be used to rehouse residents on the housing register waiting for a permanent home. This work to convert tenancies is ongoing with 80 new permanent social housing tenancies across both estates, where the homes met residents' housing need.

2. Background to the CLSA

- 2.1 In 2007, the council held a summit for property developers with the aim of establishing partnerships with private developers and bringing forward major regeneration in opportunity areas.
- 2.2 In October 2009 the council, CapCo and TFL entered into a Collaboration Agreement for the Earls Court site. This was followed in 2011 with an exclusivity agreement under which CapCo paid the council £15m for exclusive rights to bring forward plans for the two estates.
- 2.3 On 3rd September 2012, Cabinet agreed to enter into the Conditional Land Sale Agreement (CLSA) to sell approximately 22 acres of land, including 760

homes forming West Kensington and Gibbs Green Estate, to EC Properties LP; part of the CapCo) Group. Negotiations on substantive terms of the CLSA continued after the Cabinet decision.

- 2.4 At the time, the aim of the CLSA was to incorporate the two council estates in to a wider regeneration area, creating a scheme of 70 acres (28.3 hectare) comprising three principle land owners - Transport for London (freeholder of the depot and Earls Court) and Earls Court & Olympia Ltd (EC&O, controlled by Capital and Counties Ltd) who had leases on Earls Court exhibition centres 1 and 2 and the Council's two housing estates.
- 2.5 This area contained commercial exhibition facilities, railway and operational transport depots and 760 private and social rented housing in the West Kensington and Gibbs Green estates which included 58 housing association properties.
- 2.6 As the scheme stretched over Kensington and Chelsea and Hammersmith and Fulham a joint outline planning permission was granted in November 2013 which, following the Secretary of State's consent to the scheme, removed the conditionality of the CLSA.
- 2.7 In support of the regeneration, West Kensington and North Fulham were identified as one of five preferred priority areas in the Local Development Framework Core Strategy Options.
- 2.8 The scheme was initially intended to take 15 years with the first phase of development completing in 2016. The two estates were divided into six phases with a proposed moving date for residents in the last phase being 2024.
- 2.9 At the time the CLSA was terminated, regeneration had completely stalled. Only demolition of the exhibition centres had taken place and no homes had been constructed on any part of the masterplan site.
- 2.10 More information on the timeline relating to the scheme is summarised in Appendix 1

3. Overview of the CLSA

- 3.1 The CLSA had within it several clauses or mechanism that were unusual for council development or regeneration schemes, which are summarised below.
 - Indexation on a land receipt – The £90m cash paid to the council was not subject to any inflation irrespective of the time taken to develop the land. This meant that the longer the scheme took the lower the value of the cash receipt to the council.
 - Financial risk for vacant possession – under the CLSA, costs and risks of vacant possession of the estate land were borne by the council. The financial exposure to the council would have increased over time due

to house price inflation, in contrast with the lack of indexation on the land receipt.

- No control over speed of development – The developer enjoyed freedom to call on council land in phases, but with no obligation to do so. The agreement granted the developer control of boundaries, order and timing of phases.
- Limited and long-term termination clauses for non-delivery – Termination of the CLSA for non-delivery was only possible at the halfway point, effectively late 2025, some 12 years after the CLSA was signed, and only in circumstances where the developer had failed to deliver a number of replacement homes.
- Lack of meaningful resident consultation – The CLSA did not require the developer to fully consult residents on the quality or location of replacement homes or respond to and address their views, only to ‘engage’ with residents
- Cost of adaptation – In typical planning scenarios, developers are required to make 10% of new homes wheelchair adaptable and adapt them if there’s a need. The CLSA required the council to cover adaptation costs of replacement homes with the developer’s liability for adaptation on the whole scheme limited to £100,000. In doing so, the council offered the developer a further financial protection and at the same time accepting cost risk.

The deal

3.2 The cash receipt from the deal was:

- £15m paid under an exclusivity deal
- £15m for Gibbs Green School and 11 Farm Lane
- £75m payable in 5 annual instalments of £15m

3.3 The council was to receive up to 760 replacement homes and a fixed maximum cash payment of £90m (plus £15m for Gibbs Green School and Farm Lane). This reduced to £89,500,000 if the Seagrave Road Houses were not included in the Option Land at the relevant time. This was not linked to changes in property values or inflation.

3.4 The land to be transferred under the CLSA was as follows:

- The West Kensington and Gibbs Green Estates (531 social housing properties and 171 replacement leaseholder/freeholder properties);
- The former Gibbs Green School;
- 11 Farm Lane; and
- Seagrave Road and Ricketts Street houses (4 houses).

- 3.5 The deal also included replacement of 58 housing association properties.
- 3.6 Both estates included amenities such as sports and playgrounds as well as community halls, communal open space, gardens and garages.
- 3.7 The council was obliged to provide any parcel of land, selected by the developer, with vacant possession. The fixed payment of £90m could only be accessed by the council once land had been transferred to the developer. Therefore, the lack of indexation would have meant that the longer the development took, the lower the value of the payment to the council.
- 3.8 The present value of the £105m cash payment was estimated in 2012 as only £84.9m (based on five, yearly instalments).

Consideration

- 3.9 In 2017 the council appointed GVA to review the terms of the deal including the total consideration payable to the council. GVA's review was based on the same figures used for the CLSA appraisal model in 2012.
- 3.10 GVA's review estimated the total consideration (homes and cash) under the agreement was £184m. This was less than the land value generated by the developer's model in 2012 and suggests that the council would have been paid less than the value of the land.
- 3.11 The September 2012 Cabinet report estimated the council's costs under the CLSA at £104m. This cost included £14m for legal challenge and damages plus 5% contingency. If excluded, the council's liability, as set out in the Cabinet report, would have been £90m.
- 3.12 This estimated cost assumed a best-case scenario for delivering vacant possession - the council's major scheme cost. The report assumed only non-resident owners were acquired by the council and all resident owners bought replacement homes in the new development.
- 3.13 There were further unusual cost assumptions:
- That all resident owners would be able to re-mortgage on replacement homes.
 - No account was made for some associated costs such as consultant fees, CPO process costs or internal staffing.
 - Vacant possession costs would not change over the duration of the development, ignoring expected house price inflation.
- 3.14 In the September 2012 Cabinet report, the acquisition of private properties within the estates was estimated to be £60m, (ignoring the 58 housing association properties). This assumed an average property value of £350k. In reality, the council acquired 38 leasehold and freehold properties across the

two estates between the signing of the CLSA and its termination and at an average value of £571k.

- 3.15 GVA estimated acquisition cost, based on actual valuations of buy backs and CPO compensation, to be between £150m and £174m. This is an increase of over 50% over the period 2012-2017. While this estimation accounted for acquisition of 58 Housing Association properties, it could not explain the undervaluation in the original financial appraisal noting that house price inflation was only 25% over the same period.
- 3.16 The true cost of vacant possession estimated between £150m and £174m would mean the council having to use the full £105m paid under the CLSA, borrowing money during the regeneration project to fulfil its contractual obligations and ultimately disposing of up to 88 replacement homes.
- 3.17 The impact of the council's obligations to pay for vacant possession of the site would have meant it could not commit to rehousing all residents of West Kensington and Gibbs Green Estates within the regeneration's masterplan area.
- 3.18 Additionally, the council would have had a long-term cost liability for ground rent payable to CapCo, which would have stood at just under £200k a year, assuming the maximum number of replacement homes were provided.
- 3.19 The CLSA was based on a financial appraisal model with specific assumptions provided and created by the developer. In normal circumstances, a landowner would rely on their own appraisal model as a way of determining the market value and viability.
- 3.20 In finalising and agreeing the terms of the CLSA, the council used external parties such as SNR Denton (Dentons) to provide legal advice; Jones Lang LaSalle (JLL) for commercial advice; and PriceWaterHouseCoopers for financial advice, best consideration and due diligence.

Impact of CLSA on residents and the community

- 3.21 Had the CLSA not been terminated, it had the potential to impact residents and the community in the following ways:
- 3.22 The cap on the overall Gross Internal Areas (GIA) of replacement homes meant that:
 - some qualifying tenants in the later stages may not have been rehoused within the regeneration scheme;
 - the residents' rehousing offer would have been assessed against their bedroom need meaning many would not have been offered like for like in terms of the number of bedrooms; and
 - Replacement homes' GIA cap coupled with London Plan policy on space standards meant like for like replacement homes in terms of size

was also not possible. Homes on the estates were built in the 1960s and 70s meeting more generous space standards

- 3.23 In addition, large families would not have qualified for replacement homes requiring some families to be relocated outside the regeneration area or to be split where adult children would have had to be relocated to other parts of the borough.
- 3.24 A significant proportion of those living in houses would have been relocated to flats as the CLSA only required replacement of 60% of houses with either a house or a maisonette termed 'house equivalent' at the developer's discretion.
- 3.25 The offer to tenants did not represent any significant enhancement to what tenants may have otherwise received under standard statutory entitlements and compensations.
- 3.26 The one-move offer to residents was dependent on the first phase of residents being moved to another ward within Fulham. The first phase of replacement homes was intended to be up to 200 flats on Seagrave Road in the former carpark of the exhibition centres.

Private owners

- 3.27 Private owners were offered their basic statutory entitlements.
- 3.28 Resident owners (i.e. those who lived in their home on the estates) had the added option of buying a replacement home on a shared equity basis. This required them to invest both the value of their home and their full Homeless compensation to buy a replacement home, as the value of the replacement home was expected to have been higher than the existing home. This meant that any compensation for the loss of their existing home had to be reinvested in the regeneration scheme.
- 3.29 Resident owners were expected to replicate any mortgage loan on the existing property on the replacement home. Private resident owners who were either out of work or above a certain age may not have been able to procure the same mortgage amount; meaning some owners would have had no option but to move out of the area.
- 3.30 Shared equity leases contained specific restrictions on, for example, re-mortgaging, re-letting and reassignment of the lease (sale or disposal). This meant that homeowners would have significantly restricted rights compared with council leasehold or freehold arrangements.
- 3.31 Given the lack of progress with the redevelopment of the estates, residents were faced with many years of inability to re-mortgage their properties and so unnecessary additional costs.

Appendix 1- Key events leading to the entering into the signing and termination of the CLSA

Date	Title/Subject
2007	Developer summit held to attract interest in major development sites in the borough
May 2009	Invitation to participate in a mini competition to develop options for delivery of an international conference centre on the Earls Court/West Kensington site
13 Jul 2009	Investigation of the possibility of a special purpose vehicle and the provision of funding of £300,000 for a transport study and professional adviser
Aug 2009	Approval to enter into a Collaboration Agreement with TfL and CapCo. The Collaboration Agreement was signed in October 2009 between H&F Council, CapCo and Transport for London to provide a framework for working together in exploring how the planned redevelopment of Earls Court 1 and 2 exhibition centres could benefit the wider area. The Collaboration Agreement will also allow negotiation of the commercial structure of a deal under which the landowning partners would participate in the scheme.
October 2009	Collaboration Agreement between H&F, TfL and CapCo.
18 Jul 2011	Cabinet Decision to enter into an Exclusivity Agreement with CapCo and also a further funding for professional fees and staff resources
July 2011	Exclusivity Agreement entered between H&F and CapCo.
9 Aug 2011	Waiver of Contract Standing Orders to appoint Drivers Jonas Deloitte as consultants to lead Earls Court S106 negotiations with CapCo on behalf of the Council
5th Sep 2011	Waiver for the appointment of PwC
5th Sep 2011	Earls Court Regeneration Project – West Kensington And Gibbs Green Steering Group
7 Nov 2011	Cabinet decision to provisionally endorse the conclusions contained within the Estates Regeneration Economic Options Appraisal subject to further consultation
24 Nov 2011	Waiver for appointment of Davies Johnson LTD to supply Nick Johnson
19 Dec 2011	Decision to consult with secure tenants under section 105, Housing Act 1985 and also to consult with residents of the wider area concerning the proposed Agreement with CapCo
16 Feb 2012	Resolution to grant planning permission for the Seagrave Road car park for 808 residential units subject to there being no contrary direction from the Mayor of London and the terms of a section 106 Agreement being agreed. This had the potential to allow for up to 200 replacement homes from the West Ken and Gibbs Green estates
9 Mar 2012	The terms of the indemnity were only just being agreed and the Council needed to be in a position to enter into the indemnity before the Full Council meeting on 19 March.
12 Mar 2012	Review of consultation and information relied on by Hammersmith and Fulham Council to decide whether to include the West Kensington and Gibbs Green Estates in the Earl's Court Redevelopment Scheme
19 Mar 2012	Adoption of the Earl's Court and West Kensington Opportunity Area Joint Supplementary Planning Document
23 Apr 2012	Following a report, Cabinet minded to authorise entering into the CLSA subject to finalisation of consultation results and negotiations with CapCo

Date	Title/Subject
Jul 2012	Leader's Urgent Decision to extend period for negotiations for the potential CLSA with CapCo to 29 January 2013
3 Sep 2012	Cabinet Resolution to enter into the Conditional Land Sale Agreement with CapCo and also the disposal of the former Gibbs Green school and Farm Lane site for a combined £15 million; approval also provided for the acquisition of freehold and leasehold interests within the Estates up to £15 million
12 Sep 2012	Resolution to grant planning permission subject to there being no contrary indication from the Mayor of London and the terms of a section 106 Agreement being finalised
24 Oct 2012	Cabinet Decision to make an application to the Secretary of State for the Department for Communities and Local Government for consent to the disposal of housing land as required by section 32, Housing Act 1985
23 Jan 2013	CLSA and Collateral Agreement entered
2019	CapCo announce they have received offers for their Earls Court interest from various parties and have entered an exclusivity arrangement with Delancey.
2019	Delancey approaches the council to discuss its plans for Earls Court.
15 Nov 2019	Leader's Urgency Decision to enter the conditional agreement for termination of the CLSA.
9 Dec 2019	Completion of the termination deed, completion of transfer of Gibbs Green School and 11 Farm Lane and return of the West Ken and Gibbs Green estates to council control.