

London Borough of Hammersmith & Fulham CABINET 2 SEPTEMBER 2019		 h&f hammersmith & fulham
WEST KING STREET DEVELOPMENT: AUTHORITY TO SIGN UNILATERAL UNDERTAKING		
Report of the Cabinet Member for the Economy: Councillor Andrew Jones		
Open report		
Classification: For decision Key Decision: Yes		
Consultation:		
Wards Affected: Hammersmith Broadway		
Accountable Director: Jo Rowlands, Strategic Director for the Economy		
Report Author: David Burns, Assistant Director Growth	Contact Details: Tel: 020 753 6090 David.Burns@lbhf.gov.uk	

1. EXECUTIVE SUMMARY

- 1.1. This report sets out the rationale for the Council signing the unilateral undertaking planning obligation relating to the West King Street planning application programme. This will enable planning permission for the development to be issued.
- 1.2. The report seeks approval for the Council in its position as freeholder of the majority of the land which will form part of the West King Street development site to sign the Section 106 obligation. The Council in its role as landowner will undertake a number of obligations to the Council in its role as Local Planning Authority
- 1.3. A report to Cabinet on 3rd December 2018 approved the strategic outline business case for the Civic Campus programme. Full Council subsequently agreed that the Council should form a Joint Venture (JV) with A2 Dominion for the delivery of the new build programme, and that the Council should enter into a conditional land sale agreement with the proposed JV.

- 1.4. This decision will allow planning permission to be issued ahead of the JV having a formal interest in the land (a requirement to sign S106 agreements). This will allow the demolition and site preparation process to continue, and enable the overall programme to remain on target. It was the intention of the parties that the JV would be formed prior to the issue of the planning permission and would have an interest in the Site. If this were to happen, the JV would then enter into an agreement to secure the obligations.

2. RECOMMENDATIONS

That Cabinet agrees:

- 2.1. That the Council in its capacity as landowner of the majority of the development site is authorised to sign the Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 for the purposes of achieving planning permission.

3. REASONS FOR DECISIONS

- 3.1. The decision is required to give the Council the authority to enter into a unilateral undertaking for the planning obligations for West King Street development
- 3.2. This will allow the planning permission to be issued and thus maintain the delivery programme of the Civic Campus programme.
- 3.3. A decision is required as the value of the obligations is greater than the £100,000 threshold for budget authority within the Council's scheme of delegation.

4. PROPOSALS AND ISSUES

- 4.1. The Council's Planning Committee resolved to grant planning permission for the West King Street development at the 12th February 2019 Planning Committee. The resolution was subject to completion of a S106 planning obligation and no contrary direction from the Mayor of London. The Heads of Terms to be included within the planning obligation are included at Appendix 1.
- 4.2. It was originally envisaged that the joint venture between the Council and A2 Dominion would be a signatory to the agreement under Section 106 of the Act. Following completion of the S106 agreement, planning permission could then be issued.
- 4.3. The Joint Venture (JV) will now not be formed until later in the year. The Conditional Land Sale Agreement (CLSA) that has been negotiated between the Council and the proposed joint venture does not allow for the release of land until key conditions have been signed. In order for the JV to sign the S106 and undertake to comply with the planning obligations it would need to

be established and have an interest in the development site for the purposes of Section 106 of the Act Neither of these provisions are yet in place.

- 4.4. A delay to issuing planning permission at this stage would prevent the Council and A2 Dominion progressing with demolition and other planned enabling works, which can not start until the planning judicial review period expires and until key pre commencement planning conditions have been discharged. This would risk placing the overall delivery programme at risk.
- 4.5. In order to mitigate this risk, this report recommends that the Council issues what is called a Unilateral Undertaking. The Council cannot sign an agreement with itself (in the form of the Local Planning Authority) as it will not be enforceable. A Unilateral Undertaking is an alternative legal form that allows the Council to commit to the planning obligations within the S106. It will contain the same obligations as in the S106 agreement.
- 4.6. The unilateral obligations contains financial contributions and other obligations that are triggered at different points of the development programme such as commencement or occupation of the development. It is intended that by the time the first obligation under the agreement is triggered that the JV will then have an interest in the Site for the purposes of S106 and so will therefore enter into a supplemental agreement under Section 106 and will then be responsible for complying with the planning obligations. It is also intended that planning conditions will ensure that development can not progress to certain stages until the JV has entered into the supplementary Section 106 agreement.
- 4.7. Even if the JV does not have sufficient land interest to sign the s.106, the CLSA with the JV will include a requirement on the JV to fund all elements of the financial obligations.
- 4.8. The Unilateral Undertaking (UU) will also allow the Council to commit the JV to all of the obligations in the S106, once it transfers the leases to the land.
- 4.9. This will allow the grant of full planning permission shortly after signing which will maintain the programme.
- 4.10. The primary risk is that if the Council does not issue a unilateral undertaking, then the programme will be delayed. This could have the knock on consequences of:
 - Increasing construction costs
 - Increased time in decant buildings, increasing rental costs
 - Lost income generating opportunities in the refurbished town hall

The paragraphs above describe how the risk of financial obligations falling on the Council have been mitigated through the terms of the CLSA.

5. OPTIONS CONSIDERED

- 5.1. Do not sign Unilateral Undertaking until the JV is formed and has a leasehold interest in the land. Delay demolition of Town Hall Extension by a minimum of 6 months. This is not recommended.
- 5.2. Sign Unilateral Undertaking with all obligations to be transferred to the JV and no financial risk to the Council. Commence demolition in September as programmed. This is the preferred option.

6. CONSULTATION

- 6.1. Consultation for the planning application has been undertaken.

7. LEGAL IMPLICATIONS

- 7.1. The Planning Committee recommendation for approval of the planning application for the West King Street Development was subject to completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 and no contrary direction from the Mayor of London.
- 7.2. Planning obligations are normally secured by agreements between the developer and the Council in its role as local planning authority. If there are breaches of any of the planning obligations then the Council can enforce the terms of the agreements.
- 7.3. With the West King Street development, the Council is the majority landowner of the site and is also the local planning authority. The Council will therefore be unable to enter into an agreement with itself and enforce any potential breaches of obligations against itself.
- 7.4. The proposal in this report is for the Council to enter into the unilateral undertaking under S106 of the Town and Country Planning Act 1990. The Council in its capacity as landowner will enter into a unilateral undertaking planning obligation in connection with the planning permission for the West King Street development which will be secured on land (the majority of which is owned by the Council). The obligations in the unilateral undertaking will not come into effect until after the Joint Venture between the Council and A2 Dominion has been established and after the Joint Venture obtains an interest in the development site for the purposes of Section 106 of the Act.
- 7.5. In this proposal, the risk of the Council being in a position where it would need to enforce breaches of the planning obligations would be limited as the planning obligations will take effect after the Joint Venture obtains an interest in the land. The Unilateral Undertaking will need to be clear that any obligations will take effect after this date and will then be undertaken by successors in title and not the Council.

Implications completed by Adesuwa Omoregie, Chief Planning Solicitor tel. 0208 753-2297.

8. FINANCIAL IMPLICATIONS

- 8.1. The recommendation in this report is to sign a Unilateral Undertaking for the purposes of achieving planning permission for the West King Street Renewal Scheme. The unilateral undertaking will commit the Council the planning obligations within the s.106. These obligations materialise at agreed trigger points including commencement (post demolition). An estimate of these obligations are set out in the table below.

Obligation	£
Carbon offset	309,240
TfL bike relocation	42,000
Employment & skills contributions	329,250
Travel plan monitoring fees	40,500
Total	679,032

These s.106 obligations exclude any obligations in relation to the Community Infrastructure Levy which will not be covered by this unilateral undertaking.

- 8.2. The financial implications of the Civic Campus scheme were set out in the Full Council report of 23 January 2019, West King Street Renewal Programme. This assumed that the joint venture would sign the s.106 and therefore that planning obligations would be the responsibility of the joint venture.
- 8.3. It is expected that by commencement, the joint venture will have responsibility for the obligations and so there will be no financial implications for the Council. In the event that is not the case, the Council will include a requirement in the Conditional Land Sale Agreement for the joint venture to fund all planning obligations. Therefore this decision does not change the financial implications of the scheme as set out in the January Full Council report.
- 8.4. Even in the event that the scheme doesn't proceed as planned and the scheme is delivered through an alternative route the Council will be able to control the events which would trigger the financial obligations.
- 8.5. Not proceeding with the unilateral undertaking with the consequent delay to the delivery or the programme timetable would increase programme costs, including construction costs and lease costs for decant accommodation should Council officers not be able to return to the newly refurbished town hall and new extension as planned.

Implications completed by Emily Hill, Assistant Director Corporate Finance, telephone 0208 7853 3145

9. PROPERTY IMPLICATIONS

- 9.1. The Council will ensure that the CLSA contains appropriate provisions to enable any financial obligations in the unilateral undertaking be placed on the Joint Venture, and appropriate property advice will be taken to this effect.

Implications completed by David Burns, Assistant Director Growth.

10. EQUALITY IMPLICATIONS

- 10.1 There are no direct negative equality implications for groups with protected characteristics, under the Equality Act 2010, associated with these proposals.

Implications completed by Fawad Bhatti, Policy & Strategy, tel. 07500 103617.

11. IMPLICATIONS FOR BUSINESS

- 11.1 There are no implications for business contained within this report.

Implications verified by David Burns, Assistant Director of Growth & Place.

12. COMMERCIAL AND PROCUREMENT IMPLICATIONS

- 12.1 There are no direct procurement implications resulting from this report. Contracts Standing Orders and Public Contracts Regulations (PCR) 2015 will however apply when using S106 funds.

Implications verified by Andra Ulianov, Head of Contracts and Procurement, 07776672876.

13. IT IMPLICATIONS

- 13.1 There are no direct IT implications contained within this report.

Implications verified by Veronica Barella, Chief Information Officer, telephone 0208 7853 2927

14. RISK MANAGEMENT IMPLICATIONS

- 14.1. The primary risk is that if the Council does not issue a unilateral undertaking, then the programme will be delayed. This could have the knock on consequences of:

- Increasing construction costs
- Increased time in decant buildings, increasing rental costs
- Lost income generating opportunities in the refurbished town hall

- 14.2. The paragraphs above describe how the risk of financial obligations falling on the Council have been mitigated through the terms of the CLSA.

Implications verified by David Hughes, Director of Audit, Fraud, Risk and Insurance

BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None

LIST OF APPENDICES

Appendix 1.0: Heads of Terms of Section 106 Unilateral Undertaking