**London Borough of Hammersmith & Fulham**

**Report to:** Cabinet

**Date:** 11 May 2020

**Subject:** Watermeadow Court Termination of Land Sale Agreement and Edith Summerskill House Extension of Conditional Period

**Report of:** Cabinet Member for the Economy, Councillor Andrew Jones

**Report author:** Head of Area Regeneration, Matt Rumble.

**Responsible Director:** Jo Rowlands, Strategic Director for the Economy.

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**Summary**

Watermeadow Court ("WMC") is one of two development sites under a joint venture agreement (the "Joint Venture Agreement") between London Borough of Hammersmith and Fulham ("the Council") and Stanhope Plc ("Stanhope"). The site was granted planning permission, issued on 3rd October 2019 for 36 affordable homes and 182 market homes.

Following the grant of the planning permission in October 2019 Stanhope advised the Council that they were unable to meet the contractual funding condition in the land sale agreement required to deliver the WMC development scheme ("the WMC Land Sale Agreement"). It is therefore proposed to terminate the WMC Land Sale Agreement and this will enable the Council to pursue alternative development arrangements. The contractual cost of termination to the council has been negotiated down from £5.05m to £3.49m.

The other development site included within the Joint Venture Agreement, the Edith Summerskill House site ("ESH") was also granted planning at the same time, but there has been a delay progressing this project following an application for judicial review. This required the planning permission to be quashed and a new application submitted. A new planning application is expected to be submitted in April 2020, however the Conditional Period of this project included in the land sale agreement for ESH ("the ESH Land Sale Agreement") must be extended to allow for a new planning permission. In the event that a new planning permission is granted the site will be transferred to Peabody Housing Trust and is expected to will deliver 133 affordable homes.

This report sets out and seeks approval for:

(a) termination of the WMC Land Sale Agreement, so the Council can develop WMC independently and not pursuant to the Joint Venture Agreement;
(b) budget for the expenditure to be incurred by the Council in terminating the WMC Land Sale Agreement; and
(c) a variation of the ESH Land Sale Agreement to extend the conditional period permitted by the ESH Land Sale Agreement and allow design and planning works to continue under the Joint Venture Agreement.

## Recommendations

That Cabinet:

1. Notes that Appendix A and B are not for publication on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).

2. Approves the termination of the WMC Land Sale Agreement and delegates authority to the Strategic Director for the Economy, in consultation with the Borough Solicitor, to agree the final form of the legal document(s) of a “Deed of Variation” required for the termination and to enter into it;

3. Approves the payment of £3,491,066 (to be funded from a new general fund capital budget financed by an increase in the Council’s Capital Financing Requirement) to the HFS Developments 2 Ltd (being the joint venture company established pursuant to the Joint Venture Agreement) to terminate the WMC Land Sale Agreement in line with the payment structure as set out in the detailed analysis section 15 below; and

4. Approves to vary the ESH Land Sale Agreement to extend the conditional period to 14 June 2021 by way of a deed of variation and enter into it;

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**Wards Affected:** Sands End

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## H&F Priorities

Please state how the outcome will contribute to our priorities

| **Our Priorities** | **Summary of how this report aligns to the H&F Priorities** |
|---|---|
| Doing things with local residents, not to them | *The redevelopment of WMC will provide economic stimulus within the Borough creating homes, training and employment opportunities and investment in local labour and supply chains.* |
| Being ruthlessly financially efficient | *The report authorises WMC to be excluded from the JV at a reduced cost to the existing liability within the WMC Land Sale Agreement saving the Council c.£1.5 million* |

## Financial Impact

- The £3,491,066 payment will be added to the 2020/21 General Fund capital programme as WMC was appropriated from the HRA following Cabinet approval on 8th October 2018.

- This expenditure qualifies as capital as it was spent on achieving planning permission for a new development. This is on the basis that the council proceeds with the development or it sells WMC with planning permission to another developer, as the planning permission increases the value of the land. If a disposal or development does not proceed then these costs will need to be written off and borne by revenue budgets.

- As there are currently no unallocated capital receipts or s106/CIL this expenditure will need to be funded by an increase in borrowing. This borrowing is expected to be recovered when the event the council sells the site or from the sale of homes if the council develops the site. Financing costs for this increased borrowing will be minimal as in the short term the council can borrow against cash balances rather take on new debt. Using cash balances is preferable to borrowing as the resulting loss of interest receivable is less than the interest the council would incur on new borrowing. Based on a maximum expected interest receivable rate of 1% this would cost the council up to £34,911 per annum of lost interest income. If there are any sale proceeds from a development or sale of the site any capital receipt to the value of this payment will first be applied against the CFR to offset the effect of the transaction on the CFR and to ensure no ongoing revenue cost to the Council.

- Should no capital receipts be available from this site, or elsewhere, the expected general fund cost will increase to £148,021 per annum based on the required minimum revenue provision of 3.24% and the loss of investment income estimated at 1% until such capital receipts are received and applied to the CFR.

## Legal Implications

## Background

The two land sale agreements were entered into by the Council on 14 December 2016 (“the Land Sale Agreements”) with the Joint Venture Company.

Under the Land Sale Agreements, the Joint Venture Company agreed to purchase WMC and ESH opportunity sites, subject to the satisfaction of specified conditions (including the obtaining of planning permission, exercise of planning appropriation powers by the Council and securing of funding for the delivery of the development by the Joint Venture Company).

The Land Sale Agreements replaced previous Land Sale Agreements entered into in 2014. The parties had agreed changes to the arrangements between 2014 and 2016, which included incorporating the Joint Venture Company as a limited company rather than an LLP, and agreed a revised tenure mix for both sites with substantially increased affordable housing provision, as required by the Council.

There was a three-year conditional period included in the Land Sale Agreement to enable satisfaction of the conditions (extendable in some circumstances). As part of the negotiation of the Land Sale Agreements a cost sharing reimbursement provision was agreed. where, on termination, depending on the circumstances, either wasted costs incurred by the parties were to be shared equally or fully reimbursed by the Council. The full reimbursement of their costs was a requirement of Stanhope. This requirement was due to increased delivery risk due to the changes required by the Council.

**Current situation**

Of the conditions in the WMC Land Sale Agreement, the planning condition (i.e. obtaining planning permission), and the funding condition remain unsatisfied. The parties have accepted there is no prospect of the funding condition being satisfied in the short term. The Joint Venture Company has agreed that they are not to proceed with the sale of WMC. It is agreed by the parties that the WMC Land Sale Agreement will therefore be terminated. Instead the Council will bring forward alternative arrangements for residential delivery at WMC.

In accordance with the terms of the WMC Land Sale Agreement, in these circumstances the “enhanced” reimbursement provisions should to apply. This would require 100% of the “Buyer’s Costs” plus additional sums including repayment of establishment costs/working capital used to fund the Joint Venture Company, a specified development management fee and interest, to be paid in full by the Council. However, and notwithstanding this, the Council has agreed with Stanhope a significantly reduced reimbursement sum of £3,491,066 is to be paid, payable as follows:

a) £1,633,816.50 (50% of the defined Buyer’s Costs) to be payable on completion of the WMC deed of variation;

b) the following sums payable on 20 Working Days after the ESH transaction becomes unconditional, in accordance with the agreed timings for reimbursement contained in the Land Sale Agreements:

   i) £1,633,816.50 (being the remaining 50% of the Buyer’s Costs);

   ii) £167,500 being part of the Establishment Costs (the costs of setting up the JV vehicle);

   iii) £55,933 being part of the working capital committed by the JV partners for the Joint Venture Company ‘HFS Developments 2 Limited’.

We note as follows:

a) the Council has instructed a cost consultant to audit the costs incurred by the Joint Venture Company to ensure you are satisfied these have been validly incurred;

b) In consideration for repayment of the WMC costs noted above, it is agreed that the Joint Venture Company are to assign the professional appointments and intellectual property of HFS Development 2 Limited (i.e. in relation to planning drawings etc) to the Council to enable it to utilise the work done to date;

c) information on legal analysis of risk considerations in relation to the termination of the WMC transaction are contained within confidential Appendix A.

With regard to the arrangements at ESH, as stated above there is a three-year conditional period for the satisfaction of the conditions in the ESH Land Sale Agreement. The only outstanding conditions are the funding condition (which will be satisfied when the JV Company enter into a sub-sale agreement with the Peabody Trust who are being grant funded to deliver the 133 home 100% affordable housing scheme) and the planning condition.

The planning condition would have been satisfied save that the planning permission obtained was quashed following an objection from a local resident. It is therefore, proposed that the conditional period within the ESH Land Sale Agreement be extended to enable a revised planning permission to be obtained. The submission of the new application is planned for April 2020. It is proposed that the conditional period now expires on 14 June 2021.

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**Background Papers Used in Preparing This Report**
**None**

## DETAILED ANALYSIS

### Proposals and Analysis of Options

### Background

1. On 28 March 2014 agreements were entered into between the Council, Stanhope Plc (“Stanhope”), HFH Ventures UK Limited and HFS Developments LLP (“the 2014 Agreements”). The purpose of these arrangements was to redevelop Council owned sites for the provision of new housing over a 15-year period. The first sites to be developed were WMC and ESH. The 2014 Agreements were conditional on a number of matters, including the JV Company securing funding.

2. On 8th February 2016 (Cabinet) and 12th August 2016 (Leaders Urgency Report) approval was given for the restructuring of the JV with Stanhope. This involved the move from a limited liability partnership (LLP) to a limited company structure and a revised approach to the provision of housing on ESH and WMC.

3. Planning applications for both sites were considered in October 2017. The ESH scheme was proposed to be for 133 affordable homes - 80% social rent and 20% intermediate rent. The WMC scheme was proposed to be for 218 market homes.

4. Committee resolved to grant subject to no objections on the schemes from the Greater London Authority (GLA). Pre- application meetings had taken place with the GLA and they were comfortable with the strategy for the two sites linked via the S106 agreements.

5. The GLA then opposed the schemes at planning stage and, in the context of the emerging revised London Plan, considered the WMC scheme a regeneration scheme and required the delivery of onsite affordable housing.

6. Following extensive negotiation with the GLA on both the delivery of affordable housing and terms of the S106 agreement, the Council issued planning permission for both schemes on 3rd October 2019. 36 of the 218 homes at WMC were changed to affordable housing.

7. As part of the obligations in the WMC Land Sale Agreement (following planning permission), the Council commissioned the demolition of the WMC site. Demolition was completed on 25th November 2019.

8. Subsequent to the schemes being granted planning permission, a local resident objected to the ESH planning permission. On taken advice from Counsel, the Council (as local planning authority) secured a court decision to quash the permission and a replacement application is to be submitted in April 2020.

9. In October 2019 and following planning permission, Stanhope confirmed that they are unable to meet their contractual obligation to secure funding for the

project. They confirmed that this is due to a range of factors including market conditions, build cost inflation, supressed sales values and increased CIL due to the delay in issuing planning permission.

10. Under the revised Land Sale Agreements approved by Cabinet in 2016 (and set out in the legal comments section above) the Council accepted significantly greater risk around scheme costs, if one or both schemes weren't delivered under the JV.

11. Under the terms of the Land Sale Agreement the Council is liable for 100% of Stanhope's pre-development costs as well as a development management fee and compound interest. This currently equates to £5.05m and is set out in the summary table below.

12. The scheme is a general fund site, transferred from the HRA for appropriation purposes. Therefore, the cost of exiting the WMC Land Sale Agreement cannot be met from the HRA.

**Summary (Costs as at Nov 2019)**

| Cost | | Comments |
|---|---|---|
| Buyer's costs (design & planning) | 3,267,633 | |
| Other JV Costs | 348,433 | Establishment, legal and admin costs |
| Interest | 805,285 | |
| Profit | 360,659 | |
| Development Management costs | 146,000 | |
| **Costs and interest** | **4,928,011** | |
| JV costs | 125,000 | |
| **Total** | **5,053,011** | |

13. Negotiations have taken place between Council officers and Stanhope on the submitted costs. Following negotiations, Stanhope and the Joint Venture Company have agreed to terminate the WMC Land Sale Agreement with a reduction in the Council's cost liability.

14. The terms proposed are that the Joint Venture Company would be paid a total of **£3,491,066** to terminate the WMC Land Sale Agreement this is a reduction of £1,561,945 against the Council's total contractual liability under the Land Sale Agreement. In line with the Land Sale Agreements, payment of the £3,491,066 will be split - 50% of Buyer's costs (£1,633,816.5) on termination of WMC (estimated June 2020) and 50% of Buyers costs (£1,633,816.5) plus Other JV costs (£223,433) when ESH agreement becomes unconditional. The £3,491,066 would be paid by the Joint Venture Company to Stanhope and reflects the actual costs of achieving planning consent for the site.

| Cost type | |
|---|---|
| Buyer's costs (design and planning) | 3,267,633 |
| Other JV Costs | 223,433 |
| **Total** | **3,491,066** |

15. Unconditional in the context of the ESH scheme means where the outstanding planning condition (planning permission for the proposed development being

granted and any challenge period expiring) and the funding condition (the funding of the development of ESH being secured) are satisfied in accordance with the terms of the ESH Land Sale Agreement (targeted to be December 2020).

16. For ESH the Joint Venture Agreement would remain in place and Stanhope would fund 100% of any future running costs as per the Joint Venture Agreement. The Joint Venture company (HFS Developments 2 Limited will continue to work with the Council (and Peabody) to secure a revised planning permission for ESH as the planning permission for ESH was quashed following Judicial review proceedings brought against the planning process in October 2019.

17. Termination of the WMC Land Sale Agreement will be undertaken by way of a deed of variation. The Council has retained the services of Eversheds Sutherland (International) LLP to provide legal advice and represent the Council on the negotiation and completion of the deed. The final form of the deed of variation will be agreed by the Strategic Director of Economy.

18. In order to validate the costs incurred by the JV Company the Council commissioned Avison and Young (AY) to review all invoices and confirm that costs are in line with the cost of obtaining planning permission for a scheme of this size. AY have concluded that “Generally having reviewed the cost schedule we consider the costs reasonable and reflective of the scale and nature of the Watermeadow Court scheme.”

19. WMC is 2.42 acres (105,500 sq ft) in size. Following completion of the Deed of Variation to Terminate the land sale agreement, LBHF will have control of a cleared site with planning permission for 218 homes (with 36 being affordable rent).

20. Next steps – Delivery strategy set out in Confidential Appendix B

**Reasons for Decision**

21. The decisions are required to terminate the WMC Land Sale Agreement under the revised termination clauses in the WMC Land Sale Agreement allowing the contractual relationship with the Joint Venture Company to be terminated in relation to WMC and the land to be returned to the Council’s ownership.

22. Upon termination of the WMC Land Sale Agreement and with the benefit of the existing planning permission. the Council will be in the position to seek a different approach to developing the site and will target maximising the delivery of affordable housing on site. more information is set out in the confidential appendix.

23. The decision to extend the conditionality period in the ESH Land Sale Agreement is required, as this will enable the new planning application to be progressed, which will enable the development of ESH to proceed.

**Equality Implications**

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

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

**Risk Management Implications**

25. Officers should ensure that legal advice received in respect of terminating the Land Sale Agreement for WMC and varying the conditionality period for ESH is followed to mitigate the risk of challenge on the former and to enable the latter to proceed to development.

26. Officers should set out the further actions required to ensure that the funding condition is satisfied for ESH should planning permission be secured.

27. As both schemes have already been delayed, and in one case is unable to proceed, officers should ensure that the financial risks relating to the projects not being able to be delivered or being further delayed are captured. Officers responsible for the project should continue to liaise closely with finance colleagues to monitor these risks so that appropriate mitigating action is taken in the event of risks materialising.

28. In the event that the Council does not secure planning permission, or is subject to a successful challenge if permission is granted, there is a risk that this could lead to a breach of the Council's obligations under the remaining land sale agreement, then it unlikely that the redevelopment of ESH would proceed, therefore prejudicing the Council's ability to meet its planning and housing objectives.

Implications verified/completed by: (David Hughes, Director of Audit, Fraud, Risk and Insurance, 07817 507 695)

**Procurement Implications**

29. In accordance with the Council's Contract Standing Orders (CSOs) 2.3.2, the CSO's do not apply to contracts relating to the acquisition, disposal, or transfer of land (to which financial regulations will still apply).

*Implications verified/completed by: (Joanna Angelides, Procurement Consultant*, tel 07776 672 891)

**List of Appendices:**

**CONFIDENTIAL**
**Appendix A: Legal Implications**
**Appendix B: Next Steps**