



Cabinet

23 APRIL 2012

LEADER

Councillor Stephen Greenhalgh

EARLS COURT STATUTORY AND WIDER CONSULTATION

**Wards:
North End
Fulham
Broadway**

The purpose of this report is to provide the Cabinet with an update on the analysis so far of the results of the statutory and wider consultation on the Cabinet's previous proposal that land comprising the Gibbs Green and West Kensington estates might be transferred to allow comprehensive re-development.

Those who have commented will want to be assured that the Cabinet has received their representations and that they will be given full and conscientious consideration.

The Cabinet will also want to note the current position on negotiations in relation to the terms of a proposed Conditional Land Sale Agreement, which could form the basis of an option to the Capital and Counties Properties plc group of companies (CapCo) to include Council owned land including the West Kensington and Gibbs Green estates in a regeneration scheme of the wider area.

This report also sets out the purpose and terms of the recommended Tenant and Leaseholder/Freeholder contracts which have been negotiated with the West Kensington and Gibbs Green Steering Group and which the Conditional Land Sale Agreement could deliver.

CONTRIBUTORS

Executive Director of
Housing and
Regeneration
ADLDS
EDFCG

**HAS A EIA BEEN
COMPLETED?**

NO

**HAS THE REPORT
CONTENT BEEN
RISK ASSESSED?**

YES

Recommendations:

1. To note :

a. the current progress in analysing the results of the consultation, and to ask officers to continue to complete this process so as to present a final analysis of the consultation outcomes when Cabinet next discusses the overall proposals.

b. the proposed terms of the Tenant and Freeholder guarantees.

c) That discussions with Capital and Counties Properties plc will continue to clarify remaining matters so that Cabinet is in a position to consider a final decision on the transfer of land as soon as possible..

2. That approval is given to agree expenditure of up to £116,710 per annum to provide additional staff resources to manage the ongoing process.

3. That approval is given for £1,070,000 of fees to provide professional advice as set out in section 8 of this report.

1. SUMMARY

- 1.1 The proposed development of the Earls Court Exhibition Centre and Lillie Bridge Depot presents an opportunity for the Council to include the West Kensington and Gibbs Green Estates within a larger comprehensive regeneration scheme.
- 1.2 The Estates could be included through a Conditional Land Sale Agreement between the Council and CapCo. The land would not be included unless the scheme enabled the re-provision of the existing housing within the new development.
- 1.3 This report:
- Explains the background to the possible comprehensive redevelopment of the Earls Court area.
 - Reviews the timetabling of scheme masterplanning and the planning process
 - Explains the history of discussions with estate residents
 - Sets out progress in analysing the results of consultation with Secure Tenants and other local residents
 - Outlines the terms of the possible Conditional Land Sale Agreement.
 - Explains the steps that still have to be taken before a decision whether to proceed can be taken; in particular, in relation to the Council's equalities duties.

2. BACKGROUND AND HISTORY

- 2.1 The Earls Court and West Kensington Regeneration Opportunity offers the potential to secure significant benefits through the inclusion of the West Kensington and Gibbs Green Estates within a wider redevelopment scheme.
- 2.2 The proposed scheme covers an area of 77 acres¹ within only three principal land-holdings. These are shown at Appendix 1.
- Capco, leaseholders of Earls Court 1 and 2 and freehold owners of Seagrave Road car park.
 - Transport for London (TfL), freeholder of the Lillie Bridge Depot and Earls Court 1 and 2.
 - LBHF, freehold owners of the West Kensington and Gibbs Green Housing Estates, including the site of the former Gibbs Green School.
- 2.3 The site sits across the boundary of the Borough's of Hammersmith and Fulham and Kensington and Chelsea (RBKC).

¹ Includes Seagrave Road Car Park Site

2.4 Capco and TfL have for some considerable time been discussing the possibility of a redevelopment of their land holdings and the Council has the opportunity to sell land into the development creating a larger, more comprehensive development site.

2.5 The West Kensington and Gibbs Green Estates

2.5.1 The estates occupy an area of 22 acres along the western length of the Earls Court buildings and the Lillie Bridge Depot. The estates comprise 760 homes, the West Kensington and Gibbs Green Tenant Halls, an empty nursery building and the former Gibbs Green School.

2.5.2 531 of the homes on the estate are owned and rented by the Council. There are 584 secure tenancies in respect of these 531 properties and 171 properties are Freeholder/Leaseholder properties originally purchased from the Council under Right to Buy. There are also 58 social rented Housing Association (HA), properties on the estate, which have been developed piecemeal over the past 30 years, with the sites sold by the Council to the HA's on long leases. There are three different Housing Associations with these developments – Family Mosaic, London and Quadrant and Shepherds Bush.

2.5.3 A breakdown of the tenure and property type of the residential properties on the estates can be found below:

	1 Bed Flat	1 Bed House	2 Bed Flat	2 Bed House	3 Bed Flat	3 Bed House	4 Bed Flat	4 Bed House	TOTAL
Council	163	0	212	0	46	75	8	27	531
Leasehold/Freehold	21	0	85	0	24	28	2	11	171
Housing Association	4	3	6	13	0	25	0	7	58
Total	188	3	303	13	70	128	10	45	760

2.5.4 The West Kensington and Gibbs Green Estates are now between 30 and 40 years old and lie within the North Fulham area. In 2010, the area fell within the 20 per cent most deprived areas in England, as defined by the Index of Multiple Deprivation.

Deprivation indicator	WK&GG	LBHF Average
% of working age population on Jobs Seekers Allowance, Income Support, Incapacity Benefit OR Employment and Support Allowance	24.9	13.3
% of all tenants (Council and private) on Housing Benefit	63.2	27.5
Average household income of a household with a dependent child	£16,905	£22,105
Rate of ASB per 100 residents	6.6	3.5

Deprivation indicator	WK&GG	LBHF Average
% of tenants classified as overcrowded (based on Housing Benefit/Council Tax Benefit claimants only)	14.9	12.8

2.6 Transport for London and Network Rail land ownerships

2.6.1 In order to deliver the comprehensive scheme officers understand that Capco have to reach agreement with TfL for the treatment of their land ownerships.

- Capco needs to agree a renegotiation of the term of their existing leases from TfL on Earls Court 1 and 2 in order to make the leases suitable for redevelopment.
- The Lillie Bridge depot currently contains an engineering depot and a train stabling facility. The engineering depot will need to be re-located to enable the development to proceed. The train stabling facility will stay but will need to be covered and developed over.
- Officers understand that negotiations are ongoing but have currently not concluded on either of these ownerships.

2.6.2 It would also be desirable for Capco to reach agreement with Network Rail for developing over the West London Line. Officers understand that negotiations are ongoing but have not currently concluded.

2.7 The Planning and Masterplanning processes

2.7.1 London Plan and Core Strategy

2.7.1.1 The potential comprehensive development site including the Earls Court buildings, Lillie Bridge Depot, the estates and Seagrave Road car park, was identified as an Opportunity Area in the London Mayor's Replacement London Plan in 2009. The London Plan, including the Opportunity Area was adopted by the Mayor earlier this year.

2.7.1.2 The Council's Core Strategy also recognises the development site and includes policies encouraging comprehensive development of the site. The Core Strategy was adopted in October 2011.

2.7.2 Supplementary Planning Document

2.7.2.1 The Council, RBKC and the Greater London Authority commenced work on a Supplementary Planning Document (SPD) in September 2010 for the Opportunity Area. The purpose of the SPD is to explore development options for the site and produce a framework for acceptable development interpreting existing planning policy. Consultation on the SPD is complete and the SPD was adopted by the Council on 19th March 2012, by Kensington and Chelsea Council on 22nd March 2012 and is with the GLA currently for consideration.

2.7.2.2 Capco have provided the Council with an indemnity against any claims for statutory blight which might arise from the adoption of the SPD.

2.7.3 Masterplan and Planning Applications

2.7.3.1 Capco employed Terry Farrell & Partners to prepare a masterplan for the comprehensive development site, including the estates, in June 2010. The masterplan proposal is for a residential mixed-use scheme of 10.1 million square feet above ground. The masterplan is centred on the concept of building four new villages and a new high street linking North End Road and Earls Court tube station.

2.7.3.2 The masterplan proposes over 7,000 new homes including 760 replacement homes and a further 740 additional affordable homes, new offices and commercial activities, new education and health facilities including a new primary school, new play and recreational facilities, including a new linear park and a new high street with shops, cultural and community activities.

2.7.3.3 Capco submitted three planning applications in June 2011, based on the Farrell masterplan.

- Two outline applications were submitted: one to LBHF and one to RBKC for the main development site not including Seagrave Road car park.
- A detailed planning application was submitted to LBHF for the Seagrave Road car park site. The Seagrave Road planning application was recommended for approval by PAC on 16th February 2012, subject to finalising of Section 106 provisions. This agreement was completed on 30th March 2012 and planning permission issued on the same day.
- Revised proposals for the LBHF outline application have recently undergone a further consultation with local residents and this completed on 6th April 2012.

3. CONSIDERATION OF OPTIONS

3.1 Since early 2009 the Council, Capco and local residents have been considering the possible option for inclusion of the estates within the wider comprehensive development. This has included assessment of the benefits that could flow from inclusion, the safeguards for residents that would need to be secured and the terms under which Council land and homes could be included.

3.2 Collaboration Agreement

3.2.1 In October 2009, the Council signed a Collaboration Agreement with Capco and TfL to provide a framework within which the three parties could explore the full potential of the scheme and negotiate terms under which land agreements might be entered into.

3.3 Exclusivity Agreement

3.3.1 In July 2011, the Council signed an Exclusivity Agreement with Capco. In return for the right to negotiate exclusively with the Council to ascertain whether the final terms of a CLSA could be concluded, Capco paid £15m. £5m of this is non-refundable and £10m is refundable if the Council does not conclude a land agreement.

3.4 Estate Regeneration Options Analysis

3.4.1 In consultation with residents, the Council has been exploring the potential benefits that could arise from the inclusion of the West Kensington and Gibbs Green Estates in the wider scheme. As a part of this process the Council wanted to fully explore the rationale for the redevelopment of the estates and understand whether inclusion of the estates offers the optimum way forward.

3.4.2 For this reason, the Council instructed Jones Lang LaSalle to prepare an options appraisal to consider differing options for the future of the estates in terms of delivering benefits to residents of the estates and to the area as a whole.

3.4.3 The economic appraisal, attached at appendix 2, concludes that the inclusion of the estates within the wider comprehensive development proposal presents the most compelling case in terms of benefits for residents of the estates and for the wider area, and that it offers the prospect of bringing the following benefits to the area:

- 7,583 new homes
- 36,033 construction jobs
- 9,528 permanent jobs
- £99.5m per annum of additional local expenditure

3.4.4 On the 7th November 2011 the Leader and the Cabinet Member for Housing made the decision to provisionally accept and endorse the conclusions contained within the Estates Regeneration Economic Options Appraisal relating to the West Kensington and Gibbs Green estates subject to the outcome of further consultation.

3.5 Past Consultation with Residents

3.5.1 The Council has undertaken previous consultation with residents of the West Kensington and Gibbs Green Estates about the potential inclusion of the estates over the past three years. This has been through numerous newsletters, drop-in sessions, surgeries and exhibitions.

3.5.2 Consultation and discussion have centred around the key points of concern raised by residents and in particular clarifying how the proposed development would impact on them. These points have been addressed through the development over time of Tenant and Leaseholder guarantees. The Tenant and Leaseholder guarantees are included within the proposed CLSA and are intended to provide clarification and assurances for local residents.

3.5.3 The West Kensington and Gibbs Green Steering Group was set up in order to negotiate with the Council and Capco and to secure effective safeguards and benefits for residents. The Council has funded independent legal advice for this group over the past two years to ensure that residents have proper representation and advice during the consultation process and were able to discuss issues effectively.

3.5.4 A chronology of the consultation process is attached at Appendix 3.

3.5.5 During this time there have been separate consultations by the Local Planning Authority with residents around the proposed development.

4. **SECTION 105 AND WIDER CONSULTATION**

4.1 From 6th January 2012 to 12th March 2012, the Council undertook a formal consultation with residents on the details of the proposal to include the estates within the comprehensive redevelopment scheme. This included consultation under Section 105 of the Housing Act 1985 with Secure Tenants of the estates.

4.2 The consultation pack and supporting information are included at Appendix 4.

4.3 An initial report on the consultation and on the responses received is attached at Appendix 5 and summarised below. This analysis is still work in progress and it is expected that an updated and completed analysis will be considered at the point where the Council makes its

final decision. In particular, equalities issues raised in the responses to the consultation exercise will need to be considered in the context of the Council's Equalities Impact Assessment, which is being developed and will need to be considered by Cabinet members and taken into account when Cabinet makes its final decision whether to proceed with the CapCo proposals.

4.4 Overview of the consultation responses

4.4.1 The following is an account of progress to date with analysing the responses in the consultation exercise. The consultation formally closed on 12th March and overall 1,616 responses were received by post and via the council's website. 189 responses have been treated as being incapable of being counted for the following reasons:

- Where a resident submitted more than one identical response they have been counted once i.e. further responses from the same person have not been counted.
- A number of responses were received in which the same person submitted more than one response and gave conflicting opinions. These have been counted where their view is clear by date received (where a dated response clearly follows a previous response) or comments it contains (e.g. some forms explicitly stated "I have changed my mind"). A very small number (under 10) of responses were received where it was not possible to gain a clear understanding of the respondents views and these have not been counted.
- Responses that did not give a name or address have not been counted.
- Children under 12

4.4.2 Officers have considered how best to treat these particular responses and have decided, on balance that they should be treated as incapable of being counted. These have been excluded from the totals The total number of responses accounted for below is 1,424, after excluding those just mentioned.

- Entire consultation area;
 - 30,000 properties received an info pack and feedback form
 - 1,424 responses were considered which is a response rate of 4.65%
- West Kensington & Gibbs Green Estates
 - 760 properties received an info pack and feedback form
 - 794 responses were received from 515 properties, a household response rate of 67.7%
- Wider consultation area (excluding estates);
 - 29,240 properties received an info pack and feedback form
 - 597 responded which is a response rate of 2.04%

- 4.4.3 The response rate of around 4% is average for this type of mass mail-out. However as the figures above demonstrate, there was a much higher response rate from the estates.
- 4.4.4 Consultation on the Supplementary Planning Document ran at the same time as this consultation and a number of the same concerns were raised in both consultations.
- 4.5 Main views
- 4.5.1 Officers consider that the responses received are best regarded as falling mainly into one of the following two categories;
- Those who support the inclusion of the estates within the Earls Court regeneration scheme
 - Those who object to the inclusion of the estates within the Earls Court regeneration scheme
- 4.5.2 A majority of those who are regarded as indicating support come from the wider area covered by the consultation.
- 4.5.3 A majority of those who are regarded as indicating objection, are from the two estates.

5. CONDITIONAL LAND SALE AGREEMENT

- 5.1 Should the Council and Capco decide to proceed with inclusion of Council's land within the wider development scheme then this will be regulated by the Conditional Land Sale Agreement. The agreement will set out in detail the steps that need to be undertaken in order for the land to be transferred to Capco.
- 5.2 The core terms and drafting of the potential CLSA have now been agreed in principle between Officers and Capco on a subject to contract basis, and the draft document is nearing completion. Once the proposed CLSA has reached a state where officers conclude that it is capable of agreement it could be brought back for Cabinet approval. The CLSA would also be subject to Capco's board approval as well as any other necessary approvals and other requirements of Capco as a public company.
- 5.3 The Offer to Tenants and Leaseholders – Estate Residents
- 5.3.1 Re-provision of existing homes
- 5.3.1.1 The impact and implications of the process on local residents will be regulated by the Tenant and Leaseholder Guarantees, which are within the possible CLSA and the structure of the agreement itself.

It is a condition within the CLSA that all homes currently within the estates will be re-provided to the Council as part of any redevelopment scheme. This enables the Council to promise that existing residents of the estates will be offered new accommodation within the new development.

5.3.1.2 Furthermore, the Council is insistent that existing residents should not be moved away temporarily while new replacement homes are built and that they will have one move only. This will also be a condition of any CLSA. Although the process will be disruptive for local residents this condition will help to safeguard existing communities and minimise community breakup. Consequently land phases can only be vacated and passed over to Capco once new homes for residents in the affected phase have been re-provided elsewhere in the development area.

5.3.1.3 The Seagrave Road Car Park site is crucial to the achievement of the one move promise. It provides a site for the re-provision of approximately 200 existing estate properties without the need for any demolition of existing homes. By freeing up a first site on the estates this allows the remainder of the re-provision to take place – in phases - without residents having to move away to temporary accommodation.

5.3.1.4 Re-provision in this manner is time-consuming and given the scale of the project, the full re-provision of council properties is likely to take at least 10 years.

5.3.2 Benefits for Tenants

5.3.2.1 The Guarantees within the possible CLSA for Tenants are as follows:

- All secure tenants will remain secure council tenants and have the offer of a new home within the development matched to their housing need.
- Under-occupying tenants will be offered a new home with one additional bedroom above their need.
- Rents will continue to be set in line with other existing council rents.
- A homeloss payment of £4,700 per household will be made by the Council to all secure tenants who have been in their home for more than one year.
- There will be no need for temporary accommodation – tenants will have one move only to their new home.
- New white goods, carpets and curtains will be provided in their new homes
- The Council will fund all reasonable costs of moving

- Tenants will have a dedicated re-housing Officer to help them through the process.
- An occupational therapist will be provided if requested and necessary identified adaptations will be undertaken to the new home
- Compensation will be offered for loss of a garden or private parking space if the new home does not have these.
- The Guarantees will be extended to existing Housing Association Assured Tenants should they wish to move across to become council tenants.

5.3.2.2 Benefits for Leaseholders and Freeholders

5.3.2.2.1 The Guarantees within the possible CLSA for Leaseholders and Freeholders are as follows:

- Resident homeowners will be offered a new property in the development at a discount of 10%. Resident homeowners will be offered market value plus 10% for their existing home
- If after receiving a discount resident homeowners still cannot afford to purchase a home in the new development then the Council will meet the difference and hold this outstanding equity, but charging no rent up to the value of the new home. Resident homeowners will not be expected to increase borrowing on their mortgage to afford a home in the new development.
- Service charges for the new properties will be capped at their existing level for 5 years. Existing Freeholders will have their service charge capped at £1,000 pa for the first five years.
- Resident homeowners who wish to be bought out and leave the area will be offered the market value plus 10% (unless they move under the Early Purchase arrangement.)
- Homeowners will be able to choose the time when they wish to be bought out and move away up until the time when their property is required for development.
- Reasonable costs of moving, valuation and legal advice will be funded by the council.
- Compensation will be provided for Decent Homes work which had been paid for and for which the full benefit had not been enjoyed by the time the property is required for development.
- Owners who have a demonstrable need to move away early before the scheme is proceeding can be bought out for the market value under the Early Purchase arrangement.

5.4 The Structure of the Agreement

5.4.1 The Land

5.4.1.1 The land covered by the proposed CLSA is as follows (please see appendix 1):

- The West Kensington and Gibbs Green Estates
- The former Gibbs Green School
- 11 Farm Lane

5.4.1.2 CapCo have also indicated that they may wish to include 4 council owned properties on Seagrave Road within the comprehensive redevelopment scheme. At present, the Council has not received any plans to include these properties. However, should CapCo come forward with detailed proposals for their inclusion, the council will undertake a statutory consultation process with the 4 affected properties. Following consultation the Council will make a decision on whether to include these properties².

5.7.1.3 Should the properties be included, the council will receive 4 replacement properties within the development area and the tenants of these properties will be entitled to the tenant contract

5.4.2 Trigger Date

5.4.2.1 The agreement is a conditional agreement for the sale of this land. On signing of the agreement Capco has a five year option window in which to decide whether they want to go ahead. This is to give Capco the opportunity to put in place required permissions and funding to proceed with the development. Once Capco decides to proceed they serve a Trigger Notice on the council. Land transfers to CapCo in phases over time. Acceleration provisions have been negotiated to maintain project momentum.

5.4.2.2 It is intended that the current momentum in the project and the financial outlays that Capco will be required to make on signing will mean they would be in a position to go ahead swiftly and well before the final trigger date. However, the five year option window described above means there could be a delay in the commencement of the project

5.4.2.3 On signing of the agreement and irrespective as to whether the Trigger is eventually served, Capco will be required to purchase the Gibbs Green School site (subject to the council securing appropriate consents) and 11 Farm Lane for £15m.

² The occupiers of these properties have been informed about this possibility.

5.4.2.4 The Gibbs Green School Site is currently being used as a temporary site for Queensmill School secondary provision. Queensmill school moved to this site on a temporary basis whilst proposals for a purpose built school in White City were being pursued. CapCo purchasing the Gibbs Green school early, will provide the much needed funds to provide a secondary provision in White City. 11 Farm Lane is the site of a closed supported Hostel. The decision to close the hostel was taken in February 2011.

5.4.3 Acceleration provisions

5.4.3.1 Provisions have been negotiated in the possible Agreement to further secure project momentum.

- Capco must serve the Trigger Notice no later than 9 months after 150 (exact number to be agreed dependant on Councils requirements) new affordable units (out of the total of 200 required under the terms of the Seagrave Road section 106 Agreement) are completed on the Seagrave Road site. If this is not done, the Council can terminate the agreement
- If within 10 years of signing the agreement Capco have not provided the Council with 50% of the required replacement of social rent housing then the Council can terminate the agreement. This is conditional upon any delay not being caused by a lack of performance by the Council.

5.4.4 Payment for Council Land

5.4.4.1 There are two elements to the Council's consideration for the land. These are new replacement housing³ for the housing currently occupying the estates and a cash receipt of £105m. Taken together, the cash receipt and the replacement homes are considered to have a value of between £214 million and £288 million depending on the valuation approach used and officers, having taken specialist external advice, are currently of the view that the deal under the terms of the draft CLSA is likely to represent best consideration.

5.4.4.2 Replacement Housing

5.4.4.2.1 It is a condition precedent to the Council delivering vacant possession of the whole of the estates that the Council will receive 760 homes in replacement for the homes currently on the estates and tailored to existing residents' housing needs: 589 social rent properties and 171 private homes. This will mean that there will be no loss of social rent homes from the number which currently exists.

5.4.4.2.2 The 171 private homes will be offered in the first instance to existing lease and freehold owners on an equity share basis.

³ This is anticipated to form part of the planning obligations to be contained within the S106 agreement

5.4.4.2.3 The replacement housing should be provided either on the main development site, Seagrave Road car park site or on 11 Farm Lane. Any other sites can only be used with the agreement of both parties and with the agreement of any residents being offered property on them.

5.4.4.2.4 The new housing will be built to the following standards:

- Space standards within the London Mayor's Design Guidelines,
- Code for Sustainable Homes 4
- 100% Lifetime Homes
- Secured by Design certification
- HQI score of upper mid-quartile
- At least Silver Standard Building for Life

5.4.4.2.5 The re-provision must include a minimum of 75 houses, 66 house equivalent units (ground floor duplexes) and 161 parking spaces.

5.4.4.3 Cash Receipt

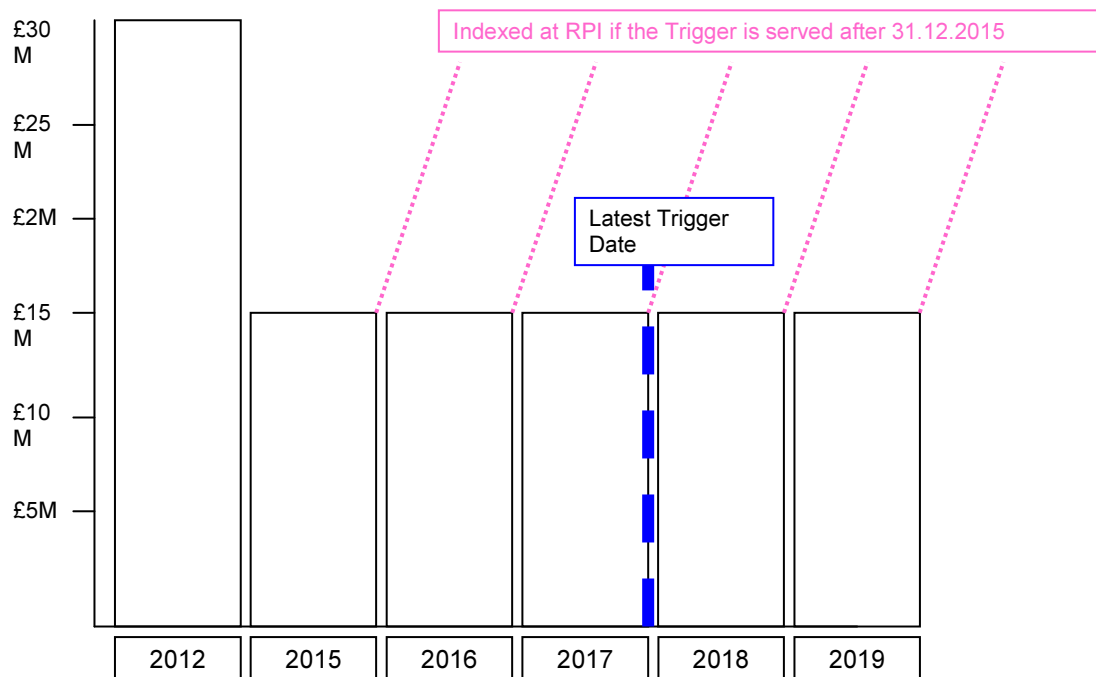
5.4.4.3.1 The cash payment will be received as follows:

5.4.4.3.2 Exclusivity - 15m for Exclusivity already received

5.4.4.3.3 Other Sites - £15m for Gibbs Green School and 11 Farm Lane on signing of the agreement. £12m of this will be used to construct a new educational facility at White City to which the current temporary use of the former school site will relocate.

5.4.4.3.4 Overage - Overage will be payable to the Council for any consented floorspace that is over 10.1m square feet.

5.4.4.3.5 Payment Schedule - The balance of the £75m is payable in 5 annual instalments of £15m from 31.12.2015. If the Trigger is exercised after 31.12.2015 then payments will be indexed by RPI from that date. See illustration below.



5.5 Capco funding assistance

5.5.1 The Council will be required to buy back or otherwise determine existing leases and freehold interests across its own land in order to secure vacant possession.

5.5.2 The Council has agreed to buy back owners who wish to leave in the following ways:

- From the date of the submission of Capco's main application (June 2011) to buy back owners who have a demonstrable need to leave, for open market value.
- From the later of an unchallengeable planning permission on the main scheme; a signed CLSA; and Consent from the Secretary of State, to buy back all resident-owners who wish to leave for open market value (in a no scheme world) plus 10% and all non-resident owners for open market value plus 7.5%.

5.5.3 Capco have agreed to make available funding for these buy backs on the following terms:

- A facility of £15 million from the date of signing the CLSA.
- A further £15 million facility will be made available by Capco from the later of: the signing of the CLSA; the issue of secure Secretary of State consent for the sale and a satisfactory main scheme planning permission.

- From serving of the trigger notice Capco will be responsible for funding all buybacks required if required by the Council.

5.5.4 If these facilities are used LBHF will have to refund CapCo at a later date from the annual payment instalments for these purchases as they are part of the cost of achieving vacant possession. The detailed risk analysis of these cash flows is being considered by the Executive Director of Finance and Corporate Governance and further commentary is included in the Director of Finance comments.

5.6 Long Stop Date

5.6.1 The final end date for the agreement is 2035. The Council will have received the cash consideration by 2020 at the latest. If the agreement is to be terminated, then the parties will retain the properties that have been purchased, although the Council will be given the opportunity to purchase the properties from Capco.

5.6.2 There is a detailed termination procedure included within the CLSA. Where there is termination as a result of the Council failing to secure vacant possession then the Council will be required to pay overage for any land which is sold to another party.

5.7 Key Obligation on the Council – Securing Vacant Possession

5.7.1 Once the Trigger is served Capco will serve notices on the Council requiring phases of land on the estates to be vacated. The Council will only be expected to vacate and handover any phase of land after the replacement housing has been built to meet the needs of secure social rented existing residents and to meet the entitlement of the resident leaseholders / freeholders in that phase.

5.7.2 Phasing Process

5.7.2.1 The draft CLSA explains in detail the phasing process to secure vacant possession. As explained previously Capco will use the Seagrave Road site to enable the phased re-provision. An indicative phasing plan has been agreed within the CLSA and is attached at Appendix 7. This plan is only indicative and the Council will be engaging with residents as the phasing plan develops. Capco may decide to alter the phasing plan going forward with justification. However, any proposal must always provide replacement housing in advance for the residents of a phase.

5.7.2.2 Capco will propose the future phases on the estates that they wish to acquire. However there are circumstances in which the council can influence or veto a phase if not satisfied that:

- The remainder of the estate can continue to function as a place to live while that phase is developed.
- Replacement housing to match the needs of residents of the identified phasing will be available in advance elsewhere in the development site.

5.7.3 Floor space Ceiling

5.7.3.1 The overall development needs to return 760 homes to the Council. The Council will agree with Capco a ceiling floor space that reasonably represents 760 properties with the existing number of bedrooms built to the size standards in the London Mayor's new Design Guidelines. In terms of agreeing a proposed phase the council may ask for additional replacement floor space within individual phases to meet the identified need but must stay within the overall allocation across the whole development.

5.7.4 Provision of Houses

5.7.4.1 The re-provided dwellings in each new proposed phase must contain at least 60% of the number of council for rent houses in the phase to be decanted. If Capco cannot achieve this and no other acceptable solution can be found then the council can veto the phase. Additionally each replacement phase must include 40% of the number of existing council rent houses as house equivalent units (ground floor duplexes) with front doors to the street and gardens. Both these provisions are subject to the ceiling amounts of 75 replacement houses and 66 ground floor duplexes.

5.7.5 Buy-back of existing Leasehold and Freehold Interests

5.7.5.1 To achieve vacant possession, the council would seek to enter into contracts with owners under which they can either require the council to buy their homes or to provide them with Replacement Homes. As explained previously, Capco (subject to certain triggers and qualifications) can provide LBHF with funding (at a cost) to meet these acquisition costs. This funding if utilised is then deducted from the annual payment instalments (as a cost of securing vacant possession).

5.7.6 Registered Provider (Housing Association) Ownerships

5.7.6.1 The Council will need to complete negotiations for relocation of the three Housing Associations (HAs) who have long leases and properties on the estates. Assured tenants of the HAs will be offered the right to become council tenants and stay within the new development, under the terms of the Secure Tenant Contract. The Council may agree to provide alternative sites within the Borough or to compensate the Registered Providers (RP's) for their land

interests. Potential sites being considered include Maclise Road and Fulham Cross.

5.7.7 Compulsory Purchase

5.7.7.1 Ultimately if agreement cannot be reached with existing tenants and owners the Council will need to utilise (subject to it being an appropriate use of such powers at the time) its compulsory purchase powers (CPO) to secure vacant possession.

5.7.8 Damages and Liabilities

5.7.8.1 The council will be subject to a performance regime for delivery of vacant possession to agreed dates. If the council can be shown to have failed to meet dates, due to matters within its control, then the council will be liable for damages to Capco. The amount of damages that the Council will be required to pay is capped at £10m. If the damages exceed £10m they are only payable out of the overage referred to in 5.6.2. Officers are satisfied that the performance dates are reasonable and achievable.

5.8 Best Consideration

5.8.1 Given the complexity of this regeneration scheme, Jones Lang LaSalle and PWC have been appointed to advise the council in respect of negotiations and for the offer to the council. A residual land value model has been used to arrive at a valuation for the land; this is based on the Council transferring each phase of the site with vacant possession therefore the Council will have to incur the costs of achieving this. This model has been adapted to reflect the potential transaction and the scheme as they have evolved. The model has been the subject of extensive review by the Council's advisors. This has included:

- Advising on the commercial aspects of the potential transaction
- Reviewing the financial model prepared by CapCo.
- Assessing the potential transaction for Best Consideration and value for money.

5.8.2 Preliminary letters from Jones Lang LaSalle and PWC are attached at Appendices 7 and 8. Based on these the Executive Director for Finance and Corporate Governance is of the view that the current position is likely to offer best consideration. This will be kept under review as negotiations are finalised.

5.9 Indemnity and Covenant

5.9.1 Capco have provided the Council with a separate indemnity against any blight claims up to £50m from the date of adoption of the SPD.

- 5.9.2 The Council considers it requires a covenant to the CLSA with assets of at least £50m in order to provide adequate protection from claims from the date of indemnity up to the Trigger Date. From Trigger Date this should rise to at least £75m (to guarantee the outstanding capital payments due to the council) but will decline thereafter as Capco make the annual payments due to the council and reduce their liability. Confirmation regarding the commercial acceptability of this level of guarantor is currently awaited from PWC.
- 5.9.3 Officers understand that Capco have set up a subsidiary, EC Properties Limited Partnership as a special purpose vehicle to hold the Earls Court Land interest and take forward the development. Officers also understand that Capco have proposed this subsidiary is the principal contracting party to the CLSA but that it's obligations are guaranteed by Earls Court Ltd which is an existing Capco group company. The Council has required investigation on the assets of these entities to ensure that they are adequate. This work is being undertaken by PWC.

6. SECRETARY OF STATE CONSENT

- 6.1 If and when, a decision were to be made to sign the potential agreement, the council would need to apply for Secretary of State's Consent to dispose of the housing land it intends to sell. The decision to apply for consent needs to be confirmed by a Full Council meeting. If consent cannot be obtained (either without conditions or to both parties satisfaction) or if deadlines are not adhered to by the Council then the agreement will be terminated. In this case the Council will need to re-pay £10m of the £15m received under the Exclusivity Agreement.
- 6.2 Assuming a satisfactory Consent is secured, then should the Trigger not be served in the five years then the agreement will be terminated. The council will retain £15m paid to it under the Exclusivity Agreement and the payments made for Gibbs Green School and 11 Farm Lane.
- 6.3 Gibbs Green School and 11 Farm Lane will be subject to an overage agreement to ensure that the council still receives best value for the sale if the development does not proceed.

7.0 RESOURCES

- 7.2.1 In order to maintain progress of the Project, further resources will be required as shown below, totalling £116,710 p.a for resources.
- 7.2.2 The resources required are shown in the table below:

Posts	Grades	Employment Status	Salary plus oncosts
Re-housing Officer	S02	Full Time	£39,449
Principal Legal Officer	P03-4	Part Time	£24,603
Communications Officer	P05	Full Time	£52,658
Total			£116,710

7.2.3 The council will undertake a regular review of the resources in order to reflect the needs of the project at the time.

8.0 PROFESSIONAL ADVICE

8.1 In order to ensure that the Council's interest are properly protected within any final agreement, additional professional advice is now required as the final details of the Conditional Land Sale Agreement are drawn up and negotiated with EC Properties. This will take expenditure on the project beyond the current level of approved funds.

8.2 The estimated costs of the professional advice needed to complete and exchange the potential CLSA are estimated as follows:

Legal	£750,000
Commercial Property	£150,000
Financial	£150,000
Resident legal advice	£20,000
Total	£1,070,000

8.3 Until completion of the Conditional Land Sale Agreement the costs outlined above will be held as the costs of the land disposal and will be off-set against the £5 million from the Exclusivity Agreement.

9.0 EQUALITY IMPLICATIONS

9.1 As part of the recent consultation process the council invited residents to comment on the draft EqIA. As noted above, the Council is updating the current draft of the EqIA to reflect comments received during the consultation exercise. The final assessment will accompany the detailed report to Cabinet when this is eventually made. As explained above, the EqIA is in the course of development and will need to be considered by Cabinet members and taken into account when Cabinet makes its final decision whether to proceed with proposals. The Council has already published on its website the EqIA produced for the purpose of the

Council's decision to undertake the consultation exercise starting in January 2012.

10.0 COMMENTS OF THE DIRECTOR OF FINANCE & CORPORATE SERVICES

10.1 Valuation of Earls Court Consideration and Valuation of site

10.1.1 The financial implications are based on the current position on negotiations in relation to the terms of the proposed Conditional Land Sale Agreement and are subject to possible change. Therefore all figures below should be considered draft.

10.1.2 Jones Lang LaSalle and PWC are involved, as the Council's advisors, in considering and negotiating the terms of this possible transaction. Signed preliminary letters from the Council's advisors to this effect are attached to this cabinet report in Appendixes 7 and 8. Based on the draft figures, the Executive Director for Finance and Corporate Governance is of the view that the current position is likely to offer best consideration. This will be kept under review as negotiations are finalised. Before the final signing of the agreement our advisors will be asked to confirm if they still stand by these letters or if they wish to add further commentary. The letters include a number of caveats / issues, the key ones are listed below together with the actions being taken:

Caveat / Issue	Action taken
<p>Duty of care letters over all input costs and revenues within the residual land value that have been provided by Capco's technical consultants including the valuation of the replacement properties for leaseholders (the intermediate units). A duty of care is needed from:</p> <ul style="list-style-type: none"> • CBRE: who produced the residual land value model, this gives us comfort that the values used in the model came from the consultants listed below. • EC Harris: who provided the cost plan used in the residual land value model • Savills: who provided the sales values including the value for social housing / intermediate properties used in the land value model and the value of the intermediate replacement homes (which is comparable with that in the model). Note only PWC have asked specifically for this duty of Care 	<p>Letter received from CBRE and EC Harris Savills currently outstanding</p>
<p>No change in the main commercial terms in the final CLSA</p>	<p>The CLSA is currently being finalised, the final CLSA will be shared with our advisors. As noted above before any final signing of the CLSA our advisors will be asked to confirm if they still stand by these letters or if they wish to add further commentary</p>
<p>Detailed model audit</p>	<p>Mazars have been appointed to do this work which is currently in progress.</p>
<p>Valuation of equity held in replacement leaseholder properties</p>	<p>This has been discounted in the indicative consideration figures below based on sales turnover on the Gibbs Green and West Kensington Estates over the last ten years.</p>

Caveat / Issue	Action taken
<p>Clarify if any legal restrictions which may be placed upon the re-sale of the intermediate homes, such as whether they can be sold as private homes on the open market.</p>	<p>There are no current restraints that would prevent this from happening. It should be noted that for properties held within the Housing Revenue Account the receipt has to be reinvested for Housing and Regeneration purposes. If this does not happen the monies have to be paid over to Central Government. This is likely to be the case for the majority of these properties.</p>
<p>CapCo should confirm that they will bear the risk on the completeness of the planning, site clearance costs and the costs associated with the continuity of occupation. The residual land value determined should not subsequently be revised to compensate.</p> <p>The parties accept that further design and cost plan development will continue until and beyond the submission of detailed planning applications for development phases and this will affect the programme, costs and values currently reflected in the financial model.</p> <p>Negotiations are still ongoing regarding the Section 106 obligations required by the scheme</p>	<p>There is no ability within the draft CLSA for CapCo to transfer these risks or subsequently revise the consideration as a result of changes to these costs.</p> <p>It should be noted however that the current draft CLSA does contain overage payable to the council should the final consented gross internal area exceed that agreed as part of the master plan proposal.</p>

10.1.3 It is important that the Council receives best consideration via the CLSA and there are a number of different approaches which can be taken to valuing the consideration we are receiving. Having given due consideration to the complexity of this regeneration scheme and following a workshop run by our advisors, Jones Lang LaSalle and PWC exploring the range of possible methods of valuing both the site and the consideration payable based on their advice we have arrived at the approach set out below.

10.1.4 It must be remembered throughout that the land valuation against which the consideration is being compared is based on CapCo being transferred the land with vacant possession. All figures set

out below should be considered draft as they are still subject to finalisation of the CLSA. It should be noted that the figures detailed below are the result of a forecasting exercise and therefore should not be taken as confirmation of the final value or timing of the receipts.

10.2 Approach used to assess the Consideration

10.2.1 Cash consideration received under the CLSA of £105m (£104.5m excluding the 4 Seagrave properties)

10.2.1.1 £15m has already been received on the signing of the exclusivity agreement. A further £15m for Gibbs Green School and 11 Farm Lane will be received on signing of the Conditional Land Sale Agreement. The balance of the cash consideration is received in 5 equal annual instalments, the first being received on 31st December 2015 if the trigger is served on or before this date.

10.2.1.2 If the trigger is served after the 31st December 2015 the first payment is due on service of the trigger notice with the four subsequent payments due on the anniversaries of the trigger date. If this happens the payments are indexed using RPI for the period between the month of December in the year in which the relevant advance payment would have been received as per paragraph 10.2.1.1 above and the index figure for the calendar month before the calendar month in which the payment is actually due as a result of the later service of the trigger notice.

10.2.1.3 The cash consideration received should therefore be discounted to allow for the time value of money between now and the projected date of receipts. A 6.6%⁴ discount rate yields a discounted value for the cash consideration of £82m. A 9% discount rate would yield a value of £77m, this more prudent assumption has been used in the core scenario illustrated below.

10.3 Valuation of replacement social housing provided under the CLSA including replacements for homes belonging to registered providers

10.3.1 In order to obtain vacant possession of the land the council has an obligation to re-provide the social housing.

10.3.2 The Council would, in order to be able to provide vacant possession, have to meet the cost of building replacement homes.

⁴ Treasury nominal discount rate (with an allowance for inflation at 3%) based on a risk free return.

- 10.3.3 Therefore the cost of the re-provision of the social housing has been used to value this element of the consideration as this is the bill the Council would have to pay.
- 10.3.4 It is important to note that this is different to the income assumed from the sale of social housing that has been added to the financial model when arriving at the residual land valuation of £235.6 million as detailed in paragraph 10.7.3 below. This income is based on an “Existing Use-Social House Valuation” as this is what the scheme would make from the social housing if it was sold to another buyer due to the council having re-provided the housing elsewhere, say by using the theoretical cash that would be paid to the Council instead of the replacement homes should they not be being provided on the scheme.
- 10.4 Valuation of the replacement leaseholder / ex freeholder properties in which the Council retains an equity share.
- 10.4.1 If the leaseholders / freeholders were not taking on a replacement property then the council would have to buy back their current properties in order to gain vacant possession of the land. As the leaseholder / ex-freeholder has taken a share in a replacement property the Council has not had to pay the leaseholder / ex-freeholder cash for this cost of vacant possession.
- 10.4.2 This cost would be equivalent to the share of market value the leaseholder receives in a new property. Therefore the market value of the leaseholder / ex-freeholder share has been used to value this element.
- 10.4.3 The equity share retained by the Council is ultimately tradable at market value when the leaseholder chooses to sell the property as properties would be sold out right on the open market. This element has therefore been valued at market value. However this element is not fully liquid, hence the value has been discounted as, although some properties change hands over time, some will be held by the same owner for a very long period of time. A discount of 35.9% has been applied to the Councils equity share based on the turnover of properties on the estate based on an average turnover excluding re-sales of 5 properties per annum over a period of 15 years⁵.

⁵ The Council's equity share in the Leasehold properties has been discounted by 35.9%. The annual sales volumes have been based on the volume of sales of leaseholder properties in 1999-2011 on the West Kensington and Gibbs Green Estate. Average sales as per the Land registry were 5.92 per annum, (making a prudent assumption of no more sales in 2011), after excluding properties that sold several times in the period the average turnover was 5 properties per annum. There are 117 resident leaseholders and freeholders currently on the estate. At the historic sales rate all these properties would be sold at some point in the 23 years. Over 15 years, based on historic data it is likely that 75 of the 117 resident leaseholder and freeholder properties would be sold, realising 64.1% of the equity. Given that the development period is anticipated to be at least 10 years and that transactions will occur throughout this period this is considered by officers to be a reasonable assumption.

10.5 Valuation of replacement “leaseholder” properties which are owned by the Council as the leaseholder / freeholder has opted to be bought out.

10.5.1 These will be 100% owned by the Council. Therefore they have been valued at market value.

10.5.2 It should be noted that the Council will provide replacement properties for all tenants as per the promises. There is a risk that should there be net overcrowding across the estates that the gross internal floor area specified in the agreement would be insufficient to provide all the replacement homes. Therefore for the Council to keep its promises, there is a risk that some of the replacement “leaseholder” properties currently allocated for sale would potentially need to be used to house tenants. However the financial impact of this could be mitigated by selling other properties as they become void whilst maintaining the same volume of social housing. Given this mitigation a significant financial impact is unlikely to crystallise, the value of the consideration would be protected and the promises to tenants that they would receive new homes within the development would be kept.

10.6 Summary of consideration received when valued using the above methodology:

10.6.1 The approach used above yields a range of valuations for the consideration from £274 million to £283 million, the exact number depends on the number of leaseholders / freeholders who opt to be bought out as follows:

	Illustrative Gross Consideration assuming all Leaseholders bought back (i.e. before costs)	Illustrative Gross Consideration assuming only non resident leaseholders are bought back (i.e. before costs)
Cash Consideration: £105m discounted at 9% to allow for the phasing of payments ⁶	£77m ⁷	£77m
Non Cash Consideration:		
589 Replacement Social Homes ⁸ : property received	£103m ⁹	£103m
Replacement leasehold / Freehold properties for 54 non residents ¹⁰ : property received	£31m	£31m
Replacement leasehold / freehold properties: all 117 resident: Leaseholders bought back. Note this also impacts on costs as shown in section 7.17 ¹¹ : property received	£72m ¹²	N/A
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties: resident: Leaseholder share ¹³ : see footnote	N/A	£48m
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties for residents: Council Equity Share in property	N/A	£24m

⁶ These figures assume the inclusion of the additional 4 properties on Seagrave Road, see PWC Letter in Appendix 8 for derivation of number

⁷ A 6.6% discount rate would yield a value of £82m, this would increase the range of consideration to between £288m and £279m.

⁸ Based on EC Harris costs used in residual land value model. The cost of replacing the social homes has been used as there is an obligation on the Council to provide replacement properties in order to be able to provide the site with vacant possession. CapCo by providing the properties are effectively relieving the council of this obligation and are therefore paying the cost of these properties on behalf of the Council.

⁹ Comprising £92.61m for the Council's 531 replacement social rented properties and £10.12m for the 58 replacement properties provided for the Housing Associations (Registered Providers) as per Jones Lang LaSalle letter in Appendix 7.

¹⁰ Currently valued at market value based on valuation provided by Savills to be covered by the duty of care and reviewed by Jones Lang LaSalle as part of their consideration advice.

¹¹ Currently valued at market value based on valuation provided by Savills to be covered by the duty of care and reviewed by Jones Lang LaSalle as part of their consideration advice.

¹² These leaseholders / freeholders would have to be bought out at a cost of circa £48m, this has been allowed for in the worst case cash flow scenario modelled later on in this note.

¹³ Provision of these properties means that the Council does not have to fund the buyback of these leaseholders properties from the consideration. Therefore this forms part of the consideration as the land value is based on delivering the land with vacant possession and this would otherwise form a cost of achieving vacant possession

	Illustrative Gross Consideration assuming all Leaseholders bought back (i.e. before costs)	Illustrative Gross Consideration assuming only non resident leaseholders are bought back (i.e. before costs)
Discount Councils Equity share of Leaseholder buy backs ¹⁴ .	N/A	(£9m)
Total (Excluding costs)	£283m	£274m

10.7 Valuing the land with vacant possession

10.7.1 A residual land value model has been used to arrive at a valuation for the land; this is based on the Council transferring each phase of the site with vacant possession therefore the Council will have to incur the costs of achieving this. This model has been adapted to reflect the deal and the scheme as they have evolved. The model has been subject of extensive review by the Council's advisors. This has included:

- Advising on the commercial aspects of the deal
- Reviewing the financial model prepared by CapCo.
- Assessing the deal for Best Consideration and value for money.

10.7.2 Additionally a detailed model audit is currently being carried out by Mazars.

10.7.3 The current residual land valuation model generates a valuation of £191 million. However Jones Lang LaSalle have identified a number of items which they consider require adjustment. These are detailed in their letter in Appendix 7. After adjusting for these items Jones Lang LaSalle have proposed a base valuation of £236.6 million. It is possible to make these adjustments in a number of different ways taking into account sensitivity analysis and variables, which again yield a range of values up to a maximum of circa £258 million based on a 20% developers profit on the private for sale units in the model.

10.7.4 Farm Lane is not included within the residual land value model. The inclusion of Farm Lane enables the value of the main site to be

¹⁴ The Council's equity share in the Leasehold properties has been discounted by 35.9%. The annual sales volumes have been based on the volume of sales of leaseholder properties in 1999-2011 on the West Kensington and Gibbs Green Estate. Average sales as per the Land registry were 5.92 per annum, (making a prudent assumption of no more sales in 2011), after excluding properties that sold several times in the period the average turnover was 5 properties per annum. There are 117 resident leaseholders and freeholders currently on the estate. At the historic sales rate all these properties would be sold at some point in the 23 years. Over 15 years, based on historic data it is likely that 75 of the 117 resident leaseholder and freeholder properties would be sold, realising 64.1% of the equity. Given that the development period is anticipated to be at least 10 years and that transactions will occur throughout this period this is considered by officers to be a reasonable assumption.

maintained at that shown in the residual land value model. Farm Lane enables the Council to meet its promises regarding replacement houses as well as enabling the main site to be decanted and built out over a shorter time frame. Our advisors have determined that without this site the residual land value of the main site would decrease by more than the difference between the highest possible open market value of Farm Lane and the £5 million being received for Farm Lane as part of the overall consideration. Should the trigger not be served then the overage clause contained within both the Farm Lane and Gibbs Green former school site sale agreements is designed to ensure best consideration is in any event achieved, this includes an option for the Council to repurchase the sites from CapCo at par. Commentary on the consideration paid for Farm Lane is contained within Appendix 1 of the Jones Lang LaSalle letter contained in Appendix 7 of this report.

10.7.5 Additionally, Capco is also seeking to purchase Transport for London's (TfL's) land holding in the development area. The council understands that the commercial terms and risk transfer inherent in the proposed deal are different to the council's proposed transaction. The Council's current understanding is that the terms of the TfL transaction are now not comparable to the Council's deal in that there is no guaranteed sum payable to TfL for the purchase of land. It should be noted that it is possible that the CLSA will conclude before the TfL deal is concluded.

10.8 Range of values generated by other methods of valuing consideration

10.8.1 Taking into account sensitivity analysis and variables the consideration can be valued in a number of different ways giving a range of available values. We believe we have used the most appropriate method but other possible methods are expanded on here to illustrate sensitivities.

10.8.2 In addition to the approach used above it is possible to:

- a. value all the properties at existing use.
- b. to value both the replacement social homes and the leaseholder equity in the leaseholder / freeholder replacement homes at cost.

10.8.3 These alternative approaches give a range of values as set out on the next page. All examples shown assume all current resident leaseholders choose to remain on the estate as this gives the lowest possible range for consideration.

	Alternative methods of valuing consideration		Base Illustrative Gross Consideration assuming only non resident leaseholders are bought back (i.e. before costs) as per paragraph 2.5 above
	Using valuation throughout (a. in paragraph 10.8.2)	Valuing replacement leaseholder equity at cost of provision. (b. in paragraph 10.8.2)	
Cash Consideration: £105m discounted at 9% to allow for the phasing of payments	£77m	£77m	£77m
Non Cash Consideration:			
589 Replacement Social Homes: property received	£43m ¹⁵	£103m	£103m
Replacement leasehold / Freehold properties for 54 non residents: property received	£31m	£31m	£31m
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties: resident: Leaseholder share:	£48m	£22m	£48m
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties for residents: Council Equity Share in property	£24m	£24m	£24m
Discount Councils Equity share of Leaseholder buy backs.	(£9m)	(£9m)	(£9m)
Total (Excluding costs)	£214m	£248m	£274m

10.8.4 This gives a maximum indicative range of values for consideration between £214 million and £288 million¹⁶, compared to land values ranging from £191 million to £258 million¹⁷.

10.9 Funding and Cash flows

10.9.1 As noted above the consideration under the possible CLSA is paid on the basis that the Council transfer the land with vacant possession. The amount and the timing of costs will vary depending

¹⁵ Uses the lowest valuation provided by JLL to take a prudent approach, valued in the current residual land value model at £52m

¹⁶ Assuming all leaseholders opt to be bought out and using the 9% treasury discount rate to value the cash element of the consideration

¹⁷ Plus Farm Lane

on the volume of resident leaseholders who opt to leave the estate, more details on this, the principal cost, are given in paragraph 10.10 below. They will also vary according to when the trigger is served and the speed of the development. Appendix 9 shows the likely indicative range of costs involved at current values (i.e. with no allowance for inflation).

10.10 Buying Back Owners on the Estates

10.10.1 The council will be required to buy back or otherwise determine existing leases and freehold interests across its own land in order to secure vacant possession.

10.10.2 The Council has agreed to buy back owners who wish to leave in the following ways:

- From the date on which Capco submitted the planning application for the main site, 23rd June 2011, buy back owners who have an identified need to leave, for open market value.
- From the later of an unchallengeable planning permission on the main scheme; a signed CLSA; and Consent from the Secretary of State, to buy back all owners who wish to leave for open market value (in a no scheme world) plus 10%.

10.10.3 There are two ways in which each of the individual buybacks could be funded:

- 1) The council can buy back the properties directly from the leaseholders and freeholders. It can fund this by either:
 - using capital receipts, the most likely source of which is those generated by the expensive voids sales programme
 - borrow funds within the HRA using the £37m of headroom that remains following the implementation of self financing subject to the comments in the 2012 budget statement. This uses the existing HRA asset base to increase gearing within the HRA.
 - borrow if there was the appetite via the general fund.

Income would be received from letting the properties purchased which would as a minimum partially, if not wholly, offset the borrowing costs.

- 2) By CapCo, subject to the payment of holding costs, as follows:
 - CapCo have made available a facility of £30 million which is available in two tranches of £15m
 - From serving of the trigger notice (exercise of the option) CapCo will be responsible for funding all buybacks if required.

- 10.10.4 It is important to note that, should LBHF opt for CapCo to buy back the Leaseholders / Freeholders, LBHF will have to pay CapCo at a later date for these purchases as they are part of the cost of achieving vacant possession unless the agreement is terminated. On termination CapCo simply retain the properties. This means that potentially on termination this could leave a developer with a high level of pepper-potted ownership on the estate.
- 10.10.5 LBHF will also have to pay for the net holding costs incurred on any properties purchased by CapCo until CapCo take transfer of the land containing the property or until the agreement is terminated. These costs can be deferred until the trigger is served. Current negotiations are working on ensuring that should the trigger never be served these costs will not be payable. These costs have to be paid to CapCo as follows:
- Revenue costs to Capco of holding the properties need to be re-paid annually from the trigger date. Capco have a duty to maximize rent from properties, which will need to be deducted from costs.
 - Capital costs will be deducted from the payment installments received following the trigger. This can only be up to a maximum of 50% of the payment tranche. Capco will charge a holding cost on any money advanced to contribute to its costs of providing this finance. This has been agreed at flat rate of 6.5% over 6 month Libor.
 - Capco can fund the buybacks as above but the council can pay off some or all of the capital debt at any point and gain a secure charge over the property. This option reduces or eliminates the capital holding cost. Revenue costs would still be payable to CapCo as set out above.
- 10.10.6 The Capco funds are a useful facility, however they are available at rates substantially greater than the Public Works Loan Board There is also a significant risk attached to them purchasing a large volume of properties on the estate in that should for some reason the agreement terminate or the trigger never be served the Council would have an estate where potentially a large proportion of leaseholds / freeholds were held by the same developer. This could potentially render future regeneration on the estate more difficult following any termination event.
- 10.10.7 The Council can borrow at a lower rate than can be provided by CapCo, has funds in the Decent Neighbourhoods Fund available and has a likely future stream of capital receipts within the HRA which could potentially be utilised to fund leaseholder buybacks. Prior to the Localism Act and HRA reform the Council could only easily let a buy back as an Assured Shorthold Tenancy at full market rent via the General Fund. It should however be possible to utilise the new Fixed Term tenancies created under the localism act

and let at 80% of market rents within the HRA provided the Council can easily regain vacant possession at the end of the fixed term tenancy. The Director of Housing Options and his team are currently working on proposals to this effect. Should this later approach be possible it is likely to be more financially advantageous for the Council to buyback properties directly from owners and the cash flow presented later in this note assumes this approach is possible. A separate report will be bought back to Cabinet on this issue but in the meantime it will be proposed that funds are earmarked in the decent neighbourhoods pot for this purpose.

10.10.8 A regular six monthly assessment of the viability of each method will be carried out by officers.

10.11 Cash flows and sensitivities

10.11.1 Summarised below is an indicative cash flow assuming the trigger is served. This assumes:

- the Council fund all the leaseholder buybacks as this results in the highest peak cash out flow. Sensitivities showing the impact of using different funding methods for buybacks on the peak cash outflow and the cash position at 2030 are shown below.
- all non resident leaseholders / freeholders are bought back and 25% of the resident leaseholders / freeholders are bought back. Sensitivities showing the impact of differing levels of buybacks on the peak cash outflow and the cash position at 2030 are shown below.
- buy backs occur in the first two years, in practice it is likely that buybacks will occur over the life of the scheme.
- the trigger is not served until the end of the 5 year period.
- it is based on indicative phasing received from Capco and an indicative fastest possible development time line has been used. Sensitivities showing the impact of a longer development period on the peak cash outflow and the cash position at 2030 are shown below.
- RPI of 2.5% and HRA loans pool borrowing at 5.6%. Sensitivities showing the impact of differing levels of RPI and the HRA loans pool rate on the peak cash outflow and the cash position at 2030 are shown below.
- that we are unable to protect the Council from Stamp Duty Land Tax on the replacement properties via the section 106. We will endeavour to use the Section 106 agreements to do this. This adds a significant cost of circa £23m which is included within this cash flow.
- Property inflation is the same as RPI, the receipts from CapCo are indexed as per the proposed agreement to allow for late payment. Sensitivities showing the impact of differing levels of property inflation on the peak cash outflow and the cash position at 2030 are shown below.

- A contingency on non buy back costs of 20%

10.11.2 The table shows the position if none of the replacement Leaseholder /Freeholder properties owned by the Council as a result of the buy backs are sold / generate a cash receipt, and the position if this mitigating action is taken. Note these cash flows have not been discounted to present values and this will be done in the final finance comments on any possible future Cabinet report.

10.11.3 The indicative cash flow forecast can be summarised as:

Base Case: Council Funds all buybacks, buybacks let at 80% market rent	Cash in / (out) £,000
Peak Cash requirement excluding receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	(37,546)
Peak Cash requirement including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	(32,195)
Cash Requirement at 2030 including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	63,668
	Year of peak cash out flow
Year of peak cash outflow including buyback sales	2018

10.11.4 It should be noted that this forecast will continue to be flexed as the final negotiations conclude. Due to the nature of the CLSA ongoing forecasting will be required as the exact timing of events becomes clear.

10.11.5 It is important that during the course of the development that sufficient funds are held to enable the buying back of properties and to manage other risks. It is therefore recommended that until the volume of buy back requests on the estates becomes apparent that sufficient funds are ring fenced to enable all leaseholders to be bought back if required.

Sensitivity modelled	Impact on Peak Cash requirement including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and income on letting them	Impact on 2030 Cumulative Cash requirement including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and income on letting them
Sensitivities which increase peak cash requirements	£'000	£'000
100% buybacks, Council funds	(37,895)	28,277
CapCo fund all buybacks, 100% Buybacks , use of CapCo Facility maximised	(25,049)	18,076
Plus 10% on all costs (includes 10% House Price Inflation)	(8,118)	(6,502)
House Price Inflation: 10% Increase in 2012, 20% decrease in 2020	(4,539)	(8,298)
Plus 10% on non buyback costs	(3,567)	(6,384)
1% Increase in Stamp Duty	(1,328)	(6,273)
RPI: 1% Increase	(1,083)	242
Extra £500 increase per property in maintenance costs	(58)	(404)
Sensitivities which decrease peak cash requirements	£'000	£'000
Slower development: all later phases delayed by 2 years	0	3,387
Libor: 1% Increase and 1% increase in loans pool rate	110	368
Council Terminates as only Seagrave developed	1,560	(64,614)
House Price Inflation 10% Decrease in 2012	4,037	(285)
Trigger not served	6,354	(61,412)
Maximum CapCo funding used for buybacks, all non resident and 25% of resident leaseholders bought back	9,971	(16,810)

10.12 Impact on 30 year Housing Revenue Account (HRA) business plan

- 10.12.1 The CLSA will have a significant impact on the 30 year HRA business plan. It should be appreciated that as this is a conditional agreement there is a level of uncertainty at this point in time in terms of the timing of cash flows and officers will continue to work on this on an ongoing basis.
- 10.12.2 The initial business plan and forecasting will develop as certainty increases concerning the serving of the trigger notice, the detailed phasing and the volume of leaseholder buy backs. The principal

impacts of the CLSA on the 30 year HRA business plan are likely to be:

- Significant stability on maintenance costs as a result of receiving high quality new build properties to replace properties which currently have a significant long term maintenance requirement.
- A short term contained increase in service costs.
- Costs arising from holding the properties bought back from leaseholders if these are not fully covered by rental income.
- Potential repayment of a significant amount of HRA debt in the longer term and / or additional funds available for investment in Housing and Regeneration.
- A possible short term funding requirement if there is a significant demand for leaseholder buybacks if as anticipated the Council opts to buy back properties direct from Leaseholders / Freeholders (this depends on the net holding cost, see section 10.10 above)
- A short term call on HRA reserves to fund costs which are not capitalisable under CIPFA guidance e.g security costs.
- A possible call on HRA reserves if damages arise if vacant possession is not achieved in line with the timescales proscribed within the HRA. This is capped at £10m. It should be noted that this is more than the amount currently held within reserves and this potential exposure should be taken into account when setting target reserves balances for planning purposes.
- Costs arising from legal challenges

10.13 Financial Risks

10.13.1 The principal financial risks and their mitigating factors can be summarized as:

- Interest rates:
 - If the Council buy back the properties directly this can be mitigated by using the receipts from the Decent Neighbourhoods Fund (i.e. by not using funds to repay existing debt or to invest in new initiatives) and by the Council's ability to borrow fixed rate funds at a competitive rate via the PWLB. There is however an opportunity cost that arises as these funds could have potentially been used for other purposes.
 - If the Council use the CapCo funding facility the Council is exposed to a level of interest rate risk as this facility is totally variable. This risk could be partially mitigated by paying off the capital debt with CapCo early using funds as above. As noted in paragraph 10.10.7 above it is likely that the Council would instead buy back the properties directly from leaseholders / freeholders.
 - The sensitivity of cash flows to interest rates is illustrated in paragraph 10.11.5 above.

- Inflation. This would increase costs which would be offset to some extent by additional income. The sensitivity to inflation is illustrated in paragraph 10.11.5 above.
- House Price Inflation (HPI): high levels of HPI would increase the cost of Leaseholder / Freeholder buy backs. However unless there was a later dip in the Housing Market this would result in the replacement properties received by the Council having a higher value. Should property prices decrease after the leaseholders / freeholders have been bought out but prior to the Council receiving the replacement properties the Council would have the ability to hold the properties in the longer term until the Housing Market cycle reversed subject to careful monitoring of the HRA 30 year business plan.
- Holding costs of properties in the event of a termination occurring
- Should the Council have opted to use CapCo to fund the buybacks this could result in a significant cost to the Council with no return.
- Should the Council opt to buy back properties directly from the leaseholders / freeholders it is anticipated that following the localism act the rental income stream from the properties would cover the bulk of the holding costs of the properties as well as providing additional affordable accommodation. Should the CLSA then terminate the Council would be able to sell the properties purchased from leaseholders / freeholders if desired, recover the capital costs and benefit from any capital gain.
- Running costs for replacement properties, a sensitivity has been modelled for this in paragraph 10.11.5 and we are in the final stage of negotiations designed to contain these costs.
- Stamp Duty Land Tax (SDLT): if the agreement is incorrectly structured or there is a change in legislation there is a risk that the transfer of the social rented properties would attract SDLT based on their full market value. The cash flows modelled above assume this SDLT is payable. However as SDLT would be payable on the open market value of the replacement homes these figures should be viewed as indicative as the amount will depend on the property market at the time the homes are given to the Council and on SDLT rates then in force. A sensitivity has been modelled for this in paragraph 10.11.5
- Replacement properties; The Council will as promised provide replacement properties for all tenants. There is a risk that should there be net overcrowding across the estate that the gross internal floor area specified in the agreement would be insufficient to provide all the replacement homes required. This would mean that some of the replacement properties currently allocated for sale would need to be used to house tenants. However other properties could be sold as they became void thereby mitigating the financial impact. Given this mitigation this risk is unlikely to crystallise.

- Risk of challenge costs : under the CLSA challenges must be defended if the chance of success is between 40% and 50% or higher depending on the type of challenge with the cost of defending the challenge being split 50:50 between the developer and the Council. If the chances of success are lower then under certain circumstances Capco can still require the challenge to be defended but will pay all the costs of doing so. Allowance has been made for these costs within the cash flow forecasts based on estimates provided by officers in our legal department however there is a risk that additional funds may be required. No material allowance has been made for possible challenges prior to any formal council decision to enter into the CLSA.
- Damages, especially for failure to give vacant possession. The agreement caps these at £10million however it should be noted that it also contains an overage clause applicable to the Council that allows for additional damages to be paid should the agreement be terminated and should the Council sell the land to another developer within 5 years of termination

10.14 Indemnity and Capco covenant package

- 10.14.1 CapCo have provided the Council with a separate indemnity against any blight claims up to £50m from the date of adoption of the SPD.
- 10.14.2 The Council are currently taking advice from PWC on the size and nature of the Capco covenant package contained within the CLSA and this will be reported on in full in the final report prior to signing the CLSA. It is important that this information is up to date at the point of signing.
- 10.14.3 The Council is in the process of undertaking final due diligence on the assets in EC Properties LP and Earls Court Ltd to ensure they are adequate. This work is being undertaken by PWC. This needs to occur just prior to the CLSA being signed and will need to be reviewed on an ongoing basis.

10.15 Accounting Treatment

- 10.15.1 The land proposed to be sold by the Council is held partly in the General Fund and partly in the Housing Revenue Account (HRA). The total consideration will need to be apportioned between the two funds based on the acreage of land. Any receipts apportioned to the HRA will potentially be caught by capital pooling regulations. These regulations have recently been consulted on and a final version of the new regulations is currently awaited. In order to avoid pooling the Council is likely to have to ensure that all the monies pertaining to the HRA, both those received directly from CapCo and those from the sale of properties are reinvested in Affordable Housing, Regeneration and subject to the new regulations the repayment of HRA debt. This is likely to include funding the cost of any buybacks

incurred and should it as expected be possible offset the repayment of debt for capital pooling purposes then it is anticipated that with planning it should be possible to retain the full receipt.

- 10.15.2 As the cash receipts do not follow the land transfers, the accounting treatment is fairly complex.
- 10.15.3 The accounting treatment for each phase will need to be agreed with the external auditors and it should be recognised that the precise treatment may deviate from that set out below as the rules governing it are likely to change over the life of this project. One key issue will be how we hold the replacement properties for leaseholders, both those in which we retain an equity share and those which we own out right where the leaseholder has opted to be bought out. The table of costs set out in Appendix 9 above gives an indication of the accounting treatment for costs based on current rules.
- 10.15.4 An initial £15m has already been paid to the Council on signing the Exclusivity Agreement. £10m of this is refundable if the CLSA is not entered into or Secretary of State's consent is not obtained for the overall disposal, £5m is not refundable. The £5m is currently treated as a capital receipt in advance The £10m is retained as a long term liability pending the granting of consent by the Secretary of State. It is likely based on current negotiations that following the granting of a satisfactory Secretary of State consent that the £10m can be retained by the Council in the event of termination because Capco have not served the trigger notice. Therefore following granting of Secretary of State consent this amount will become a capital receipt.
- 10.15.3 The £15m to be received for the sale of 11 Farm Lane and Gibbs Green School will form part of the total consideration. Title will transfer on receipt of consideration and this will be treated as a general fund capital receipt.
- 10.15.4 The £75m cash consideration would, unless attributable to a land transfer, be refundable if at the point of termination the Council had failed to comply with certain conditions or if the council served the termination notice as a result of the non completion of 50% of the social rented properties by the deadline given in the CLSA. Therefore the remaining £75m cash consideration is also retained on the balance sheet as a long term liability and is released over time as land is transferred. As each land transfer occurs a reconciliation will need to be carried out
- 10.15.5 Until completion of the Conditional Land Sale Agreement the costs outlined in sections 7 and 8 above will be held as the costs of the land disposal and will be off-set against the £5 million from the Exclusivity Agreement. Should the possible CLSA not proceed to

sign both the £5m and the costs held against the land disposal would be taken to revenue. Projected costs to the signing of the CLSA are currently less than £5m.

10.16 Service Charges

10.16.1 A detailed service charge agreement regime is in the process of being finalised. The principle is agreed that as far as possible the Council will be able to minimise service charge costs for its own tenants. The council will want to minimise the extent to which it contributes to facilities (open space, public realm) that do not benefit the buildings where the council tenants live.

10.17 Taxation

10.17.1 PWC have been appointed to advise on the taxation aspects of this scheme and are currently working with us to ensure our structure is tax efficient. The initial tax implications are summarised below.

10.18 Stamp Duty Land Tax (SDLT)

10.18.1 SDLT is the principal area of concern and it will be important to try to ensure that the replacement properties being transferred to the Council are seen as affordable housing for SDLT purposes to ensure no SDLT charge arises on the transfer. It is understood that the easiest way to achieve this is to ensure they are specified as such in the S106 and should the S106 not specify this then additional SDLT costs would be incurred. There is however a risk that even with the properties recognised as affordable within the Section 106 that HMRC will consider that the obligation to provide the properties is in the CLSA rather than within the Section 106 agreement and will consider that SDLT should be payable. The structure of the CLSA offers some protection against this but can not offer full protection unless reference to the replacement properties is removed from it, this is not commercially practical as it would create other significant risks. Therefore all the cash flows presented in this report assume the Council incurs full SDLT on the replacement properties as well as on the acquisition of the leaseholder buy backs.

10.19 VAT

10.19.1 The grant of any interest in land by LBHF will be, prima facie, exempt from VAT as no option to tax is being made. As a result, there is no VAT to charge on the consideration received from CapCo.

10.19.2 Generally speaking, a local authority can recover VAT in full on its costs, provided it remains within its partial exemption 5% de minimis limit. This is calculated as 5% of the total VAT it incurs

annually. A council is required to assess all of the VAT it incurs in respect of its exempt activity across the authority and where this is less than 5% of all of the VAT it incurs in total, the council can reclaim VAT in full. However, where the council exceeds the 5% limit, then all of the VAT the council has incurred which relates to exempt activity is irrecoverable.

10.19.3 Therefore the Council has estimated the level of VAT to be incurred in respect of this transaction, this will need to be reviewed on an ongoing basis. The Council is currently assessing whether this amount of exempt input tax can be accommodated in the partial exemption de minimis limit. If this is not possible then the Council will seek to opt to tax this transaction.

10.20 Corporation tax

10.20.1 LBHF will not incur any corporation tax as a local authority in the UK is not liable to corporation tax or income tax.

11.0 **COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)**

11.1 The Council is exercising a range of powers to participate in the scheme and secure the redevelopment and regeneration of the area. The principal powers to be exercised by Cabinet are set out below.

11.2 Section 123 of the Local Government Act 1972 allows the Council to dispose of non-housing land on such terms as it considers appropriate. Freehold disposals require the Council to obtain the best consideration reasonably obtainable (or the Secretary of State's consent to disposal at less than best consideration). The Council is entitled to rely on professional valuation advice as to whether best consideration (which is money or money's worth) has been achieved.

11.3 The Council holds the Estates under Part II of the Housing Act 1985 and has the power to dispose under section 32 of the Act with the consent of the Secretary of State at DCLG. An application for consent to dispose of more than 500 or more properties to a person under the Leasehold Reform Housing and Urban Development Act 1993 or the Housing Act must be approved by Full Council under Article 4 of the Constitution.

11.4 Tenants who do not have an interest to sell to the Council may be entitled to a fixed home loss payment of (currently) £4,700 per unit. Tenants may be entitled to exercise their Right to Buy although there is a procedure under schedule 5A, Housing Act 1985 where this can be avoided by the service of a demolition notice.

- 11.5 The report envisages that the tenants whose accommodation is required for the redevelopment will be offered secure tenancies in the replacement accommodation. It is anticipated that this will be acceptable to many. Any occupiers who are secure tenants cannot be decanted against their will without either a court order under the Housing Act 1985 or the Council exercising its powers to acquire the secure tenancies under section 226, Town and Country Planning Act 1990. It is noted that officers are to investigate the various issues relating to the proposed relocation of secure tenants and that a rehousing strategy which took into account the needs of the social housing tenants would be developed before the Council was asked to consider further which power would be more appropriate to enable the Council to achieve the objective of a comprehensive redevelopment of the area. At that stage, the Council would need to consider fully any Human Rights Act issues and a further Equalities Impact Assessment.
- 11.6 Existing leaseholders and any freeholders will need to have their interest acquired. As well as market value, resident owners occupying as their main residence and who have lived in the premises for at least one year may be entitled to a home loss payment of 10% of market value up to a current maximum of £47,000 plus compensation for disturbance and reimbursement of legal and other expenses (on both the sale and also on acquiring a replacement property).
- 11.7 Section 120 of the Local Government Act 1972 Act allows the Council, for the purposes of any enactment or for the benefit, improvement or development of their area, to acquire by agreement any land inside or outside its area. The redeveloped properties will be acquired by the Council for the purposes of its housing functions under the Housing Act 1985. Should the Council be required to exercise its compulsory purchase powers then this will be addressed in a further report to Cabinet.
- 11.8 Section 2 of the Local Government Act 2000 is to be replaced in England by the general power of competence enacted in the Localism Act 2011, that power being already in force. Section 2 currently operates alongside the general power by conferring wide powers on the Council to do anything that it considers likely to promote or improve the economic, environmental or social well being of the area. This power includes power to-
- (a) incur expenditure
 - (b) give financial assistance to any person
 - (c) enter into arrangements or agreements with any person
 - (d) co-operate with, or facilitate or co-ordinate the activities of any person

- 11.9 In determining whether or how to exercise the power the Council must have regard to its community strategy. The likely benefits of the scheme are set out in the body of the report and specifically at paragraph 3.
- 11.10 Finally, section 111 of the Local Government Act 1972 allows the Council to do anything (whether or not involving the expenditure, borrowing or lending money or the acquisition or disposal of any property rights) which is calculated to facilitate or which is conducive or incidental to the discharge of any of its functions. The Council therefore has the necessary powers to adopt the recommendations set out in the report..
- 11.11 It is noted that the Council may seek to acquire land compulsorily at a future stage. The Council has the ability to do this provided the tests set out within section 226 of the Town and Country Planning Act 1990 are satisfied.
- 11.12 *The Public Sector Equality Duty*
- 11.12.1 The public sector equality duty provisions of the Equality Act 2010 came into force on 5th April 2011 and widened the general equalities duties with which a local authority has to comply. Amongst other things age is now included as one of the protected characteristics to which the general equality duties will apply and amends slightly the factors to which authorities will need to have due regard if they are to comply with those duties.
- 11.12.5 A full Equality Impact Assessment is being prepared and will accompany the final report to Cabinet, so that it can be taken into account by members before a final decision is taken. Members will have to weigh the potential adverse impacts on the protected groups as identified in the final EqIA, together with proposed mitigation measures; and will have to consider these and any countervailing faors before reaching their final decision.
- 11.13 *Procurement*
- 11.13.1 The risk of challenge has been mitigated as far as possible in two ways. Advice from leading counsel has been received in this regard, the contents of which are protected by legal professional privilege. On the basis of leading counsel's advice it is considered that the CLSA is not a public works contract to which the Public Contract Regulations 2006 apply.
- 11.14 *Blight*
- 11.14.1 The adoption of the Supplementary Planning document might give rise to attempted blight claims. An indemnity is in place from Capco concerning this. Blight can also arise in the circumstances outlined

in schedule 13 to the Town and Country Planning Act 1990 and one of these is the making of a compulsory purchase order. Accordingly, it will be necessary to ensure that there is a valid indemnity in force from a company which has a sufficient net asset value to cover the potential liabilities.

12.0 COMMENTS OF CORPORATE RISK

12.1 This project currently forms part of the Corporate risk register. The risks associated with this project have also been illustrated in the body of the report. A detailed risk log will be attached to the Cabinet report when the Council makes its final decision on whether to enter into the Conditional Land Sale Agreement..

13.0 Schedule of Appendices

Appendix 1	Land Ownership Map
Appendix 2	Estate Regeneration Economic Appraisal
Appendix 3	Consultation History
Appendix 4	Consultation Information Pack
Appendix 5	Provisional Consultation analysis (work in progress)
Appendix 6	Initial Phasing Plan
Appendix 7	Preliminary JLL Best Consideration Letter
Appendix 8	Preliminary PWC Best Consideration Letter
Appendix 9	Financial Cost Range

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Cabinet Report - 18 th July 2011 (Open Report)	Sarah Lovell X5571	Housing and Regeneration
2.	Cabinet Members Decision – Estate Regeneration Economic Appraisal- 7 th November 2011	Sarah Lovell X5571	Housing and Regeneration
CONTACT OFFICER: Sarah Lovell		EXT: 5571	