

# Cabinet

12 NOVEMBER 2012

**CABINET MEMBER  
FOR HOUSING**

*Councillor Andrew  
Johnson*

**CONTRIBUTORS**

EDHR  
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**HAS AN EIA BEEN  
COMPLETED?  
YES**

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

**ESTABLISHMENT OF A HOUSING AND  
REGENERATION JOINT VENTURE VEHICLE**

**Wards: All**

This report outlines proposals for the Council to derive greater value from the disposal of surplus HRA land through the sharing in development profits, in addition to extracting land value, by establishing a housing and regeneration Joint Venture Vehicle (JVV). The JVJ will take forward delivery of selected Council owned development sites to increase housing supply, particularly low cost home ownership, in conjunction with a Private Sector Partner (PSP) who would bring finance and development expertise to the partnership. This initiative is a major component of the Council's (draft) Housing Strategy, "Building a Borough of Opportunity".

A separate report on the exempt Cabinet agenda provides exempt financial information regarding the JVJ approach.

**Recommendations**

- 1. That approval be given to undertake an OJEU compliant procurement exercise using the negotiated procedure to select a Private Sector Partner (PSP) to establish a housing and regeneration Joint Venture Vehicle (JVJ), and that a further report be submitted to Cabinet with a recommendation regarding the preferred partner including details of the JVJ structure, financial implications and governance arrangements.**
- 2. That authority be delegated to the Cabinet Member for Housing, in conjunction with the Executive Director of Housing and Regeneration and the Executive Director of Finance and**

**Corporate Governance to make decisions during the procurement process in order to identify a preferred PSP and to negotiate the terms for establishing a JVV.**

**3. That Cabinet notes that Watermeadow Court and Edith Summerskill House are proposed to be transferred to the JVV (once established) to be redeveloped for housing, following the satisfaction of certain pre-conditions, including:**

- obtaining satisfactory planning consents for those sites**
- securing best consideration; and**
- where relevant, disposal being subject to the Secretary of State's approval.**
- finalisation of the other financial and tax arrangements**

**4. That Cabinet notes:**

- its previous approval of the appointment of Lambert Smith Hampton (LSH) as the property and commercial advisors at the cost of £94,600 funded from S106 balances.**
- that the Director of Law has agreed the appointment of Eversheds LLP via delegated authority as the legal advisors in relation to this project.**

**5. That approval is given to incur expenditure of up to:**

- an additional £40,000 for property and commercial advice from LSH**
- £162,385 for property and procurement related legal work to be undertaken by Eversheds**
- £35,000 to appoint WYG Management Services Ltd to undertake technical surveys on the selected sites**
- £75,000 to appoint accountants to provide tax and financial advice on the structure of the JVV**

- £50,000 to undertake financial due diligence at the final stages of the partner selection
- together with a contingency of circa £43,015, providing an overall budget for the Professional Team of £500,000,

**And to note the use of staff resources as specified in section 3 of the report. All expenditure to be funded from the Decent Neighbourhoods Fund where it is possible to be capitalised or where possible held as a deferred cost of disposal; and from previously approved Section 106 balances in the case of revenue expenditure save for the potential net revenue risk of £128k which would be funded by the Housing Revenue Account as an additional charge to the 2013/14 budget.**

- 6. That approval be given to draw down £350k from the Westfield Section 106 pot and £57k from the BBC Key Worker Section 106 pot to fund the costs of external expertise including legal, finance and feasibility work to advance the Council's programme of regeneration**
- 7. That approval be given to appropriate Watermeadow Court, which is currently held as Housing Revenue Account land, as land held for planning purposes under Section 122 of the Local Government Act 1972, thereby transferring it to the General Fund at £7.5m; including necessary approval to seek consent from the Secretary of State for Communities and Local Government to appropriate the land as required by the Housing Act 1985.**
- 8. That, subject to planning permission, approval is given to demolish Watermeadow Court, on a block by block basis, as vacant possession is achieved.**
- 9. That approval be given for expenditure of up to £700,000 (to be funded from the Decent Neighbourhoods Fund) for**

**planning and demolition costs relating to Watermeadow Court; and that authority be delegated to the Cabinet Member for Housing, in conjunction with the Executive Director of Housing and Regeneration, to appoint, through appropriate procurement routes, a design team (to secure necessary planning consents) and a demolition contractor.**

## 1. BACKGROUND

1.1 In April 2011, Cabinet approved the establishment of a local housing development company structure to allow the Council to generate and retain development profits through the development of new housing on Council land. This has created a major opportunity for the Council to deliver housing and regeneration outcomes using its own land, under its own leadership. There are three main strands of work which are currently being considered through this structure:

- (A) Hidden homes programme for small sites – generally less than 5 units per site
- (B) Innovative housing built using modern methods of construction for intermediate sites – generally between 5 – 20 units per site
- (C) Joint Venture Vehicle (JVV) to deliver on selected larger Council owned development sites – between 50 – 200 units per site

1.2 Notwithstanding that this report focuses on the JVV workstream, a brief summary of the other two workstreams is shown below for information.

### (A) Hidden Homes Programme

1.3 A pilot programme of seven small housing development schemes was approved by Cabinet in January 2012, to create 25 new affordable units over two years.

1.4 Cabinet approved expenditure of £2.7 million, from the decent neighbourhoods fund, for this pilot programme. This will be drawn down on a site by site basis. Where appropriate and viable, it is expected that a small proportion of the surplus generated through the developments can be reinvested on associated minor improvement works to the blocks and amenity areas of the relevant estates.

1.5 The first development was recently completed at Becklow Gardens, where two new units were built and sale agreed to applicants on the Council's HomeBuy register. The next phase includes developments at Verulam House, Sulgrave Gardens and The Grange (Lytton Estate), with additional schemes in the pipeline being actively worked up. These offer the potential for 7 new properties with a range of bedroom sizes. Residents at each of the estates have been consulted regarding the proposals and have inputted into the design process. Expected start on site is winter 2012/spring 2013.

### (B) Innovative Housing Built Using Modern Methods of Construction

1.6 In 2007 the Council appointed CB Richard Ellis, property consultants, to complete a review of all HRA land to assess the potential for new housing development, which provided a long list of development sites. Officers have reviewed this list and identified a package of infill development sites that are

suitable for development for between 10 - 20 new homes. These are relatively constrained sites and therefore would benefit from innovative solutions in terms of design and construction. These schemes will be larger than the hidden homes sites but still of a scale where there is sufficient expertise within the Council to manage the full development risk and benefit from all of the development upside.

1.7 In June 2012 the Council initiated a procurement exercise to identify a provider of new housing using modern methods of construction. The Council is seeking innovative housing products which have been proven through design and implementation and are capable of providing:

- high density, low rise communities in a variety of tenure blind sustainable housing forms
- which have a close relationship with the existing streetscape
- provide adequate private amenity spaces
- are adaptable for other uses

1.8 It is expected that the chosen housing product will be able to be erected quickly and meet London Housing Design Guide, Code for Sustainable Homes Level 4 (or higher) and Lifetime Homes standards. It will be built using a modular and/or off site construction methods suitable for constrained urban environment.

1.9 Further details of this scheme will be presented to Cabinet in a separate report in December.

#### (C) Joint Venture Vehicle

1.10 In addition to the above two strands of direct delivery, in order for the Council to deliver at scale on selected larger Council owned development sites it is considered appropriate for the Council to partner with a credible Private Sector Partner (PSP), experienced in effectively managing large scale developments and delivering high quality residential accommodation fit for purpose for the intended end user market. Adopting a joint venture approach affords the following benefits:

- De-risks projects by partnering with experienced and credible PSP experienced in successfully delivering in the medium to high end residential market
- Enables the Council to access the skills, resources and capacity of the private sector in bringing the selected sites forward for development
- Provides the Council with a structure within which it can retain control and influence in the delivery of the selected sites
- Enables the Council to access funding from the private sector to bring the selected sites forward for development
- Maximises financial return to the Council for reinvestment in further housing and regeneration projects or repaying debt, as appropriate

- 1.11 Initial financial modelling has been undertaken on the proposed sites to demonstrate the financial benefits of the JVV approach which is set out in section 2 below and in the exempt Cabinet report.
- 1.12 In preparing to undertake soft market testing for a potential JVV, Lambert Smith Hampton (LSH) have confirmed that the context in Hammersmith and Fulham is positive, namely:
- Development in the borough remains viable, due to high land value and demand
  - Good quality development opportunities have been identified that are of an appropriate scale/quantum
  - H&F is seen as a borough with a clear development vision and an area of growth and opportunity that is open for business
  - Institutional investors are seeking exposure to high quality residential investment and private sector appetite to form public/private partnerships
- 1.13 LSH have undertaken soft market testing and have advised that a JVV opportunity offered by the Council would be of substantial interest to a range of organisations in the following categories:
- House builders
  - Institutional Investors
  - Construction Groups
  - Housing Associations
- 1.14 Whilst LSH have not formally marketed a package of sites, they have undertaken some high level conversations to understand market appetite with a number of high profile developments and finance organisations. All of these parties have confirmed that they would be keen to consider the opportunity in greater detail.
- 1.15 Appendix 1 provides details of a number of other similar public private joint ventures which have been established on similar principles and that have been researched to identify best practises and learn lessons from.
- 1.16 The Council has obtained legal advice from lawyers Eversheds in relation to how a JVV may be structured. Further details of the proposal are set out in section 4 of the report and in Appendix 2.

## **2 DEVELOPMENT SITES**

- 2.1 A number of key criteria have been identified which need to be satisfied in order to attract the interest of the best potential PSP:
- The development programme must be of a sufficient scale in terms of value to attract companies who have the financial wherewithal to take schemes forward and have a reputation for delivery.

- The development programme should offer certainty of delivering a first phase of housing units within 2-3 years and therefore an early programme with minimal planning and vacant possession risks.
- PSP may want a development pipeline into future years to justify their relatively high initial procurement costs in forming the JVV.

### Site Descriptions

2.2 LSH have appraised several Council owned development sites to identify a programme of opportunity that can be offered which provides the required development volume and value. Two sites have been identified which are detailed below:

#### Watermeadow Court, SW6

2.3 A prime site located in South Fulham in close proximity to the river Thames. The site measures 0.48 hectares (1.20 Acres) and currently comprises 80 not-fit-for-purpose residential units in a 1980s complex of predominantly 3/4 storey blocks (see Appendix 3 for site detail). The site has potential for redevelopment into residential units with a mix of tenures. This is supported by a Planning Brief that encourages new development with an increased residential density of 100 -120 units rising from 3 storeys to 5.

2.4 The site is currently being decanted and was declared surplus to requirements through a decision of the Cabinet on 3 November 2008. One leaseholder and a tenant remain to be decanted. Discussions are ongoing with the leaseholder to agree terms to relocate and acquire the remaining interest. It is anticipated that vacant possession of Watermeadow Court may be achieved by March 2013. The Council may need to consider CPO procedures in order to secure vacant possession if agreement is not possible.

2.5 The estate was built on contaminated land at nil cost to the Council by Bovis Homes under a planning gain agreement. A full study was carried out in 2002 which explored the benefits of conversion compared with demolition and new build. The study found that the poor space standards included inadequate food preparation areas, very inadequate circulation space and lack of storage. Room sizes compared significantly poorly to the UDP and housing association accommodation (the table below shows this in more detail).

Unit size	WATERMEADOW COURT (sq.m.)	UDP (sq.m.)	Peabody Trust (sq.m.)	NHHT (sq.m.)
4b -5/6p	82.68	92.50	92-97	92-97
3b/5p	56.74	70.00	85	105
3b/4p	56.84	-	73	-
2b/3p	41.34	57.00	62	72
1b/2p	41.34	44.00	48	66

2.6 There is a restrictive covenant registered on the title to Watermeadow Court that, for the period of 40 years after 14 November 1989, the land will not be



used for any purpose other than “local authority community housing”. However, the costs associated with demolishing existing buildings and remediating the land together with the lack of grant subsidy funding mean that a wholly affordable housing solution on this site is not viable. Establishment of a JVV creates the opportunity to redevelop the site for a range of housing tenures which will enable the Council to better meet the needs and aspirations of its residents. It is anticipated that the redevelopment will include a number of discount market sale homes which will enable local residents to access home ownership. Whilst it is expected that an element of any proposed development on the site will comprise affordable housing, the intention is that any eventual scheme will comprise predominantly private housing to ensure viability.

- 2.7 The Council has therefore obtained advice in relation to potential options to enable the land to be released from the burden of the restrictive covenant. Cabinet approval is being sought to appropriate Watermeadow Court, which is currently held as housing land, as land held for planning purposes under Section 122 of the Local Government Act 1972.
- 2.8 Cabinet previously resolved in 2008 to appropriate Watermeadow Court for planning purposes in order to override the restrictive covenant. An attempt was also made to negotiate away the restrictive covenant with the beneficiaries of the covenant but this was to no avail. Therefore, officers consider that without an appropriation the site is not viable to bring forward for development. This view is underlined by a number of unsolicited offers for the site which have been conditional on the restrictive covenant being removed or cleansed by appropriation.
- 2.9 A valuation of the land has been completed by LSH for appropriation purposes of £7.5m. Therefore in due course, the land is to be appropriated at £7.5m value from HRA to General Fund. It means that the General Fund effectively has to “reimburse” the HRA the certified market value for the property via an increase in the General Fund’s Capital Financing Requirement which the Council uses as its preferred measure of debt. There will be a corresponding decrease in the Capital Financing Requirement of the HRA.
- 2.10 Eversheds have prepared advice in relation to the likely beneficiaries of the covenant and LSH have provided an estimate of the likely compensation should development proceed. Their view is that development of Watermeadow Court as a mixed use scheme would in fact not trigger compensation as the effect on value to the surrounding land is likely to be positive.

*Edith Summerskill House, SW6*

- 2.11 The 0.066 hectares (0.16 Acres) site comprises an 18 storey tower block located within the Clem Attlee Estate with neighbouring properties of 2 to 5 storeys (see appendix 4 for site detail). The property has inherent defects which has caused damp ingress and is uninhabitable. Accordingly, all of the occupiers have been decanted and the property secured. There are five leaseholders with whom compensation has not yet been agreed but this

process is ongoing and terms are expected to be finalised by December 2012. The Council may need to consider Compulsory Purchase Order procedures in order to secure vacant possession. The Cabinet agreed on 5 September 2011 to dispose of the site.

- 2.12 It is expect that redevelopment of the site would involve either a redevelopment retaining the existing concrete frame or complete demolition and rebuild. There might be potential to include some surrounding amenity land which may allow for reorientation of the entrance and consequently a significant rise in land value. There is a potential to re-provide approximately 70 new units in an 18-storey tower. A draft Planning Brief has been prepared for this site.

#### Options Appraisal

- 2.13 In relation to Watermeadow Court and Edith Summerskill House sites three delivery options were identified and a financial and regenerative output assessment was undertaken by LSH as set out in the exempt Cabinet report:
- (A) Land sale disposal to open market
  - (B) Joint venture with a PSP
  - (C) Direct delivery by the Council's development company
- 2.14 The Table in the exempt report summarises the financial returns from each of the options above. It should be noted that in terms of the land sale disposal option neither of the sites is straightforward and disposal to the open market is likely to result in conditional bids - subject to planning, vacant possession, covenant and contamination assessment – which is reflected in the timing of receipts, resulting in the Council not realising capital receipts fully until 2015. In the case of Watermeadow Court the land sale disposal option would still require the appropriation of the land for planning purposes and therefore still require the associated transfer of the land to the General Fund at value with a corresponding impact of the General Fund Capital Financing Requirement which the Council uses as its preferred measure of debt.
- 2.15 In comparison with the straight disposal route, the direct Council delivery option would provide a greater financial return. However, this option is being discounted on the basis that this would require the Council to be exposed to excessive risks given the Council's lack of experience in undertaking large scale development of high quality private housing for market sale. The Council would be required to raise and service development finance (including build costs), the return on which would be at risk of the local property and financial markets.
- 2.16 LSH's option appraisal demonstrated that the JVV option provides the greatest financial return and regeneration outcomes for the Council.
- 2.17 The key advantage of the JVV route, in comparison with disposal or development agreement, is that the Council would be sharing the development profits on an equal basis with the PSP (in addition to the land receipts). The PSP would also bring experience which would significantly reduce the development risk when compared to the direct development

option. The Council would not have to raise additional finance and would simply put the land into the JVV. In comparison, under the disposal or development agreement routes the developer would take all the development profits, with the Council only having the option of a share of any potential overage (if the developer is able to achieve a higher than projected level of return) and the land receipts.

- 2.18 A detailed business plan has been developed by LSH for the purposes of financial modelling, which will be tested with the bidders through the JVV procurement process in order to agree the financial position. Once established further sites can be placed in the JVV.

### **3. DELIVERY - PROFESSIONAL TEAM**

- 3.1 The procurement process and establishing the JVV will require the following professional services:

- Property & commercial
- Legal
- Tax and financial advice
- Due diligence and technical surveys

#### Property & commercial

- 3.2 On 19 September 2011, the Cabinet Member for Housing approved the appointment of LSH as the property and commercial advisors in relation to following areas of work:

- Evaluation of potential development sites
- Establishment of an appropriate delivery vehicle
- Management of an OJEU procurement process to select a PSP
- Advise and support the Council during the negotiation around issues pertaining to property and valuation
- Business planning

- 3.3 The approved fee for this appointment was £94,600. Since appointment, officers have identified additional services that would be required from LSH which are anticipated to cost up to an additional £40,000. Therefore, Cabinet approval is being sought for additional £40,000 expenditure. All expenditure is to be funded from the Decent Neighbourhoods Fund where it is possible to be capitalised or offset as costs of disposal, and from previously approved Section 106 balances in the case of revenue expenditure.

#### Legal

- 3.4 The Council has sought to appoint a 'best in class' legal advisor in connection with the creation of the JVV. The Council administered a tender exercise in February 2012, inviting all twenty-one law firms from the Office of Government Commerce legal panel and London Borough's Legal Alliance panel to partake.

3.5 The legal advisory service is a Part B service and the appointment of the successful firm is delegated to the Director of Law. Following a detailed tender assessment process, Eversheds LLP was selected as the winning bidder. The total cost for this contract was £132,385; however officers have identified additional £30,000 of property/procurement related legal work (beyond the scope of the original tender) that would be required from Eversheds. Therefore, Cabinet approval is being sought for a total expenditure of £162,385. The legal fees are to be funded from the Decent Neighbourhoods Fund where it is possible to be capitalised or offset as costs of disposal, and from previously approved Section 106 balances in the case of revenue expenditure. Eversheds have successfully advised on a number of Local Asset Backed Vehicles, including London Borough of Croydon, Oxford City Council, Bournemouth and Slough.

3.6 Eversheds will undertake the following key programme of works to support the project team in the successful engagement of a PSP to establish a JVV:

- Advise on the preferred delivery vehicle structure
- Advise on the procurement route/ process
- Draft all required legal documentation
- Advising the Council on property related matters

#### Tax & financial advice

3.7 It will be necessary to appoint accountants to provide taxation and financial advice on the most efficient structure in relation to establishment of the JVV. The fee estimate for this work is £75,000, which will be funded from the Decent Neighbourhoods Fund where it is possible to be capitalised or offset as costs of disposal, and from previously approved Section 106 balances in the case of revenue expenditure.

#### Due diligence and technical surveys

3.8 The Council will need to undertake a number of technical surveys and assessments on the two selected sites identified in section 2 of the report. The following technical surveys and assessments are required for each of the sites:

- Flood risk assessments
- Utilities and services capacity surveys
- Visual survey report
- Topographical and levels surveys
- Rights of light envelope study
- Ecology assessments
- Transport impact assessments
- Daylight and sunlight study
- Arboriculture statements
- Ground conditions/ geo-environmental surveys

3.9 To appoint the specialist consultant the Council administered a mini-competition using the Homes and Communities Agency (HCA) Multi-

Disciplinary Services Panel in November 2011. All panel members were invited to bid and seven firms submitted a tender.

- 3.10 WYG Management Services Ltd's tender was assessed as the most economically advantageous to the Council. WYG Management Services Ltd provides a diverse range of services to clients across a number of sectors worldwide, offering creative and effective solutions to projects. They have recently completed a range of surveys and assessments, to facilitate a major regeneration scheme for the London Borough of Hounslow.
- 3.11 The total fee for this work for these two sites is £35,000, which is to be funded from the Decent Neighbourhoods Fund where it is possible to be capitalised or offset as costs of disposal, and from previously approved Section 106 balances in the case of revenue expenditure.
- 3.12 In addition to the initial technical surveys and assessments required for each of the sites, the Council will also be required to undertake more detailed intrusive survey work at Watermeadow Court. Fuel pollution is thought to have affected the underlying estate, which was investigated in 2001. The investigations found no significant risk related to contamination for residents or vegetation at Watermeadow Court. However, if the site were to be redeveloped then the risk would most likely significantly increase for site workers. Further investigation can only be undertaken once the buildings have been demolished and the site cleared.
- 3.13 The Council will also need to undertake financial due diligence at the final stages of the partner selection. This is estimated to cost £50,000, which is to be funded from the Decent Neighbourhoods Fund where it is possible to be capitalised or offset as costs of disposal, and from previously approved Section 106 balances in the case of revenue expenditure.
- 3.14 Summarised in Table A below is the total projected professional fees in relation to establishment of the JVV and site preparation, which will need to be met by the Council but could in due course be recovered from the appointed PSP.

**Table A: Summary of Professional Fees**

<b>Services</b>	<b>Provider</b>	<b>Fees</b>
Property and Commercial	Lambert Smith Hampton	£134,600
Legal	Eversheds	£162,385
Tax & financial structure	To be appointed	£75,000
Technical surveys	WYG Management Services Ltd	£35,000
Financial due diligence	To be appointed	£50,000
<b>Sub Total</b>		<b>£456,985</b>

Contingency		£43,015
<b>Professional Team Total</b>		<b>£500,000</b>

3.15 In addition to the external Professional Team, successful delivery of this project will require adequate dedicated project staff resourcing from HRD and considerable corporate / departmental involvement in terms of Finance, Legal, Procurement, and Planning in particular. It is expected that the JVV would be invoiced for planning purposes in the same way as any other large developer and where appropriate other resources would be charged to the JVV. Dedicated project staffing resource will include a Project Manager as well as 30-40% of the Head of Area Regeneration Programme's time being dedicated to this project. Staffing and corporate involvement will vary at different stages of procurement, which is likely to peak during the negotiation stages and formation of the JVV.

3.16 It is anticipated that the Council will play an active role in the management and operation of the JVV once established as well as an equal role in relation to development management activities to secure planning and develop out the initial two sites. Therefore, as part of the procurement process options for future operational arrangements and resourcing will be tested with bidders and agreed prior to the establishment of the JVV. It is expected that the PSP will provide the working capital for the JVV once established.

Watermeadow Court Demolition - Costs

3.17 Watermeadow Court was poorly built in the 1980s and experienced a high level of tenant dissatisfaction and is now largely vacant. The current physical appearance comprising door and window openings sealed up with breeze blocks in an attempt to deter squatting and frequent fly tipping does not reflect well on the Council. The Council has the option to demolish the building in phases as vacant possession is obtained and to secure the site with a hoarding. This would have the effect of reducing management and security costs and provide a sense of momentum. LSH advise that the financial implications to the Council should be broadly neutral as demolition costs would otherwise be factored into the development appraisal and if they are not undertaken they will be reflected in the land value. Officers recommend that Watermeadow Court is demolished, on a block by block basis, as vacant possession is achieved. This will:

- Stop repeated incidents of squatting
- Allow for more detailed intrusive site contamination surveys to be undertaken thereby further de-risking the project
- Accelerate development programme following establishment of the JVV

- 3.18 It has been established in discussion with the Local Planning Authority that in order to proceed with site demolition there is a requirement to submit the following consecutively:
- an application for conservation area consent to demolish the building
  - detailed application to landscape and hoard the site
- 3.19 Officers have been advised that these are required due to the conservation area status. Therefore, there will be a need to commission planning & design consultancy advice and appointment of demolition contractor, in advance of the JVV being established.
- 3.20 The estimated cost for planning and demolition are set out below:
- Planning & design consultancy services - £50,000
  - Demolition (including project management) - £600,000
  - Contingency - £50,000
- 3.21 It is proposed that approval be given for expenditure of up to £700,000 (to be funded from the Decent Neighbourhoods Fund) for planning and demolition costs relating to Watermeadow Court; and that authority be delegated to the Cabinet Member for Housing in conjunction with Executive Director for Housing and Regeneration to appoint, through appropriate procurement routes, a planning/design team and a demolition contractor.

#### **4. JVV STRUCTURE & GOVERNANCE**

- 4.1 It is proposed that the JVV would be a newly formed entity structured as a 50/50 joint venture between the Council and the procured PSP against a Business Plan based on the Council's objectives agreed between the parties. The exact financing structure, including payment of the Council's land receipt and share of profits, will be subject to detailed discussion with bidders during the procurement process.
- 4.2 Under the proposed model the Council would commit its identified sites at Watermeadow Court and Edith Summerskill House (either on a freehold or long-leasehold basis) to the JVV for development. It is anticipated that the Council would enter into a conditional sale agreement or option with the JVV under which it would agree to transfer these properties on the satisfaction of certain conditions. Such conditions may include:
- Obtaining a suitable planning permission;
  - Having a development appraisal (approved by the Council) in place;
- and
- Securing funding in order to take forward the scheme
  - Secretary of State's consent
- 4.3 Upon the transfer by the Council of its sites to the JVV, the vehicle will owe the Council its land consideration. This may be settled by consideration being paid on transfer or by deferred payment at a later date out of receipts into the JVV

and the structure will ensure that any deferred payment structure is compliant from a State Aid perspective. Furthermore, any land transfer by the Council into the JVV vehicle must satisfy the Council's best consideration requirements and will require Secretary of State's consent in relation to the disposal of HRA land. In the case of Watermeadow Court the land will be transferred to the JVV from the General Fund (following appropriation from HRA) and therefore land consideration would be accrued to the General Fund, currently anticipated to be in 2015. The timing of the capital receipt will be part of the stage 2 negotiation during the procurement exercise.

- 4.4 It is expected that the PSP would fund the working capital of the JVV – e.g. to get the JVV to a point where it has a development proposal on a site such that the site can be drawn down into the JVV. Bidders will be asked to present their funding proposals to the Council both in respect of the terms attaching to such working capital funding but also in terms of scheme finance and delivery post land draw down. Necessary due diligence will be undertaken to establish the PSPs ability to raise the required funding in the current market.
- 4.5 The advice from Eversheds is that the Council should not specify the exact legal structure when approaching the market but set out clearly the Council's non negotiable Heads of Terms and governance requirements (which can be accommodated in the final structure). The rationale is that certain investors may wish to participate in a certain structure and, therefore, the Council should leave it open to attract a broad range of investors. However, it is anticipated that the JVV will either be structured as a partnership (i.e. limited partnership or limited liability partnership) or a company. The final choice of structure will be driven by the Council's objectives, taxation and vires considerations.
- 4.6 The governance of the JVV will be designed to provide the Council control at four principal levels:
- Shareholder/partner level control (to include adoption of the JVV business plan(s), material changes to the business plan(s) and change in remit of the JVV)
  - Board level control (delegated authority for such matters as approval of development appraisals, planning, design quality, etc) – membership to be determined but could include combination of officers and members
  - Executive committee level control (being the interface between the board and the project teams and established with Council officer involvement)
  - Project team level controls (being dedicated project specific development management teams established with Council officer involvement)
- 4.7 See Appendix 2 for further details of the proposed JVV structure and governance.



## 5. PROCUREMENT OF PRIVATE SECTOR PARTNER

- 5.1 It is intended that the PSP will provide development management services and procure contractor/building services to the JVV once established. Therefore, the PSP procurement includes public works with a financial value above the EU threshold, thereby requiring an OJEU compliant competitive procurement process to be undertaken. Detailed comments on procurement are set out in Section 9 of this report.
- 5.2 In order to maximise bidder interest in the proposed JVV it is advisable to adopt the most robust and efficient procurement route. Based on advice of Eversheds and LSH it is considered that Negotiated procedure be adopted to procure a PSP.
- 5.3 A Prior Information Notice (PIN), inviting organisations that may have an interest in the establishment of the JVV, was published on 22 October 2012 in the Official Journal of the European Union (OJEU). The marketing opportunity was also published in the Estates Gazette. A market briefing event will be held on 15 November 2012 which will focus on raising market awareness of and interest in the opportunity.
- 5.4 A Contract Notice will be published in the OJEU after the Cabinet approval setting out the scope of the project. Similar information will be published on the Council's website in accordance with Contracts Standing Orders and on the London Tenders Portal that will be used for managing the procurement process.
- 5.5 Indicative programme for procurement of PSP and establishment of JVV is set out below:

Tasks	Timetable
Publish Prior Information Notice (PIN)	22 Oct 2012
Cabinet	12 Nov 2012
Market Briefing Event	15 Nov 2012
Publish OJEU notice	19 Nov 2012
Pre-Qualification Questionnaire (PQQ) return	11 Jan 2013
PQQ evaluation completed	1 Feb 2013
Invitation to Negotiate	15 Feb 2013
Stage 1 negotiation	15 Feb – 30 April 2013
Stage 2 negotiation	1 May – 12 July 2013

Tasks	Timetable
Final Submissions	1 Aug 2013
Evaluation	Aug 2013
Selection of Preferred Bidder	Sep 2013
Negotiate (contract)	Sep 2013 – Oct 2013
Cabinet process	Nov – Dec 2013
Contract award (establishment of JVV)	Jan 2014
Submission of planning application	June 2014
Planning determination	Sept 2014
Expected start on site	Dec 2014

## 6. RISK MANAGEMENT

- 6.1 It should be noted that the appropriation for planning purposes of Watermeadow Court means that the risks and rewards of the JVV will be shared by both the HRA and the General Fund. The summary of the key risks are as follows:

### Procurement risks

- 6.2 Effectively managing some of the potential downside exposures at the outset will ensure that there is a greater probability of success in achieving the overall objectives. The risks centre around the ability to meet the procurement timetable, the level of response from the market and changes in the financial position or strategic direction of the Council. These risks if they occurred would impact through delaying the procurement programme and loss of confidence in the Council. Although these risks are significant, they are mitigated by the creation of a well-resourced project team experienced in similar projects, the positive response from soft market testing that has been carried out and ongoing financial monitoring that will take place.

### JV set up risks

- 6.3 Naturally there are some initial set-up risks and these risks centre on the provision of the sites into the JVV and the ability of the Council to deliver these sites for redevelopment. These risks if they occurred would result in delays to sites coming forward for development and delays in achieving financial returns. Proactive risk management has resulted in the sites being already identified and being decanted, the risks can be mitigated through the

actions proposed in this report around land appropriation, due diligence and planning advice.

#### Information data quality and marketing risks

- 6.4 These risks centre around the objective to positively manage the risk around quality of the procurement information and process. These risks if they occurred would lead to disputes, delays and potential legal action. As set out in this report, the Council is drawing upon the experience of advisors who have been through similar procurement exercises. The lessons learnt from these exercises should mitigate these risks. Emerging risks will continue to be tracked and escalated in order to maximise the potential rewards the JVV may bring.

#### Partner selection risks

- 6.5 The risk management objective here is to select the most suitable partner to ensure the Council's objectives, and that of the JVV is delivered and is sustainable. These risks centre on the quality of the bidders identified in the procurement exercise. These risks if they occurred would lead to reputational damage to the Council. These would be mitigated through the marketing and evaluation processes set out in this report which are designed to attract high quality bidders.

#### Development risks

- 6.6 These risks centre on the ability of the JVV to deliver both the expected financial return to the Council and the housing outputs. By managing the potential negative exposures such as delays which could lead to either delays in achievement of benefits or a reduction in capital receipts to the Council, these will be minimised through due diligence at the bidder selection stage.

#### Market risks

- 6.7 These risks centre around price fluctuation in the local property market which could effect scheme viability and result in reduced capital receipts, reduce revenue and increased costs. Professional property advice has been sought which confirmed that values and demand remain strong in West London and that the JVV proposals is at the correct point in the property cycle.

## **7. EQUALITY IMPLICATIONS**

- 7.1 As per the Equality Act 2010, the Council must consider its obligations with regard to the Public Sector Equality Duty (PSED). It must carry out its functions (as defined by the Human Rights Act 1998) with due regard to the duty and its effect on the protected characteristics (below) in a relevant and proportionate way. The duty came into effect on 5th April 2011. The protected characteristics are:

- Age
- Disability

- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion/belief (including non-belief)
- Sex
- Sexual orientation

7.2 At a later date, the Council will need to have due regard for the potential implications that any proposals for individual developments sites would have. The duty to have "due regard" to the various identified "needs" in the relevant sections of the Equality Act 2010 does not impose a duty to achieve results. It is a duty to have "due regard" to the "need" to achieve the identified goals.

7.3 Should firm proposals come forward for any of the individual sites it will be necessary to assess these against the various protected characteristics and groups and to what extent they will be affected as a result of such proposals. The implications of any proposals would be demonstrated as part of the Cabinet Report and Equality Impact Assessment (EIA).

7.4 Notwithstanding the content of the EIA – which would be prepared for each individual site should any proposal come forward; the Council needs to be satisfied that the consultants (subject to appointment) have demonstrated that their research and findings take account of all protected characteristics in their recommendations back to the Council. The Council ultimately remains responsible for inquiring into any gaps, and using the findings to inform the EIA.

7.5 The procurement of the PSP for the JVV will be through a compliant procurement process. As part of the procurement exercise, a clear evaluation framework will be set out. In order to qualify for consideration, all bidders will be required to set out their Equal Opportunities policy statement. In addition, all bidders will be asked to confirm that they comply with race relation legislation and will be asked to set out their track record on addressing racial discrimination in the employment field.

7.6 The role and governance of the JVV will be subject to the general and specific equality duties introduced by the Equalities Act 2010. It will be embedded into the corporate strategy and policies of the JVV. The JVV will have to have regard to the need to eliminate discrimination, advance equalities of opportunity and foster good relations when undertaking any functions

## **8. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE AND CORPORATE GOVERNANCE**

8.1 It is noted that the initial advice received from the Council's advisors indicates that the JVV is likely to be the most favourable option financially. However, prior to the recommendation to Cabinet to appoint the preferred partner, expected in December 2013, officers will have considered in detail the financial implications associated with entering into a JVV to provide the

Council with the necessary assurances regarding risk, best consideration, timing of capital receipts from the JVV, company structure, tax and accounting<sup>1</sup> matters. This will include the consideration of an option to tax the land sale to the JVV for VAT purposes.

- 8.2 In the interim period, expenditure will be incurred on a mix of professional services. These costs, which total £500k, are likely to be a mix of deferred disposal costs, revenue and capital expenditure due to a number of factors, including the likelihood that expenditure will be incurred prior to approval to develop specific sites, and the nature of the activities being undertaken. Of the expenditure on professional services outlined above, all have been previously approved, with the exception of a further £40k for property consultancy, £162,385 for legal, £125k for tax and financial due diligence and £35k for technical surveys.
- 8.3 Provision for these costs will be made from both revenue and capital resources including where possible attributing costs to the disposal of the land and subject to negotiation passing costs onto the JVV.
- 8.4 The Council has considerable balances held under Section 106 agreements which are ringfenced for use for affordable housing and regeneration purposes. A previous report to Cabinet on 29 March 2010 approved the use of Section 106 funds of £1.665m and £0.245m of LABGI (Local Authority Business Growth Incentive) funds to advance the Council's strategic regeneration programme. It is recommended that this balance of £384k as at 1 April 2012 is now added to by approving the use of two further Section 106 agreements which have been allocated for regeneration purposes - £350k from the Westfield Section 106 and £57k from the BBC Key Worker Section 106 pots.
- 8.5 Following approval of the above, this leaves available a balance of Section 106 revenue funds of £791k in total earmarked for Strategic Regeneration purposes, and the costs associated with the joint venture vehicle will be identified as a potential call on these funds<sup>2</sup> This brings the total potential call on these funds to £919k. Should costs charged against this pot all crystallise and not prove to be rechargeable then there would be a net charge to the HRA of £128k in 2013/14 and a recommendation is included to this effect.
- 8.6 Additionally, a further £700,000 is requested to fund the costs of planning & demolition works at Watermeadow Court. These costs are capitalisable on the basis that they are being incurred as a necessary and integral step in preparing the site for a new building. These costs will be coded against CCSD00205 and funded from the decent neighbourhoods pot. Demolition and planning is expected to occur whilst the property is held within the General Fund.
- 8.7 The appropriation of Watermeadow Court for planning purposes transfers the property from the HRA into the General Fund. It means that the General Fund effectively has to 'reimburse' the HRA the certified market value for the

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<sup>1</sup> Including the inclusion/ disclosure/ consolidation required on the JVV in the Council's accounts

<sup>2</sup> To be coded against RHQ004

property. In accordance with guidance, this is achieved by making an adjustment between the outstanding debt of the General Fund (as measured by the Capital Finance Requirement (CFR)) and that of the HRA. This will result in a temporary increase in the level of debt in the General Fund until the land is disposed of and a capital receipt generated (which can be applied to reduce debt). Based on the timetable currently proposed this results in an additional revenue charge to the General Fund of approximately £720k spread across two financial years with an associated ongoing risk of circa £360k per annum if timescales slipped. Officers are currently taking advice on mitigating this impact.

8.8 Further comments are in the exempt Cabinet report.

## **9. COMMENTS OF THE DIRECTOR OF LAW**

### **Legal powers**

- 9.1 The Council needs to ensure that it has identified the right power pursuant to which it will enter into this transaction and that it has exercised that power correctly, having regard to all relevant considerations, at the date upon which the transaction is entered into. The powers identified will cover both the overall purpose of the scheme and the particular structure for the transaction. Regarding the first aspect the Council has powers to ensure housing development and provision of land for that purpose and to ensure the proper planning of its area under the Housing Act 1985 and the Town and Country Planning Act 1990. Additionally, or in the alternative, the Council may consider that the primary purpose for the creation of an investment partnership is investment for housing purposes pursuant to its investment functions under s.12 Local Government Act 2003. This power enables an authority to invest for any purpose relevant to its functions and/or for the prudent management of its financial affairs.
- 9.2 Regarding the structure proposed the powers available to local authorities for the formation of companies or other vehicles, such as Limited Partnerships or Limited Liability Partnerships are:
- the power of general competence contained in section 1 the Localism Act 2012; and/or
  - the power to do “anything which is calculated to facilitate or conducive or incidental” to the exercise of functions under Section 111 of the Local Government Act 1972.
- 9.3 The Council has the power to enter into the JVV by relying on the power of general competence and/or section 111 of the Local Government Act 1972. There are good and proper reasons for adopting this approach, as the creation of a JVV:
- De-risks projects by partnering with experienced and credible Private Sector Partner (PSP) and apply this knowledge to future opportunities

- Enables the Council to access the skills, resources and capacity of the private sector in bringing the selected sites forward for development
- Provides the Council with a structure within which it can retain control and influence in the delivery of the selected sites
- Enables the Council to take an active part in development; and access funding from the private sector to bring the selected sites forward for development
- Maximises financial return to the Council

## **Structure and governance**

9.4 See Appendix 2 for Eversheds report on the proposed legal structure, governance and commercial matters (including State Aid, best consideration, and vires).

## **Procurement**

9.5 The Regulations set out four different process routes by which contracts can be advertised and competitive processes run:

- Open
- Restricted
- Competitive Dialogue
- Negotiated

9.6 The open and restricted procedures are unsuitable for this procurement due to the complexity of the Council's requirements and because the Council is not in a position to specify the terms it requires for bidders to bid against. As a result the only alternative is to follow either the competitive dialogue or negotiated procedure.

9.7 In practice the two procedures in operation appear very similar. The real difference lies in the approach to the negotiation. In competitive dialogue at least 2 bidders should be kept in the process during full negotiation of contract terms to completion. In negotiated procedure this is not prescribed and therefore a single bidder could be selected earlier in the process, however the Council needs to balance this against the risk of challenge from a bidder removed earlier in the process that, had they been given the negotiation opportunity and having regard to where the final deal ends up, they could have won.

9.8 The competitive dialogue procedure is less favoured by the development market as it requires a greater level of financial commitment on the part of the bidders at an earlier stage in the procurement. In order to maximise bidder interest in the proposed JVV it is advisable for the Council to adopt the most robust and efficient procurement route.

9.9 There is anecdotal evidence to suggest that the use of competitive dialogue carries a greater risk of challenge at the end of the process than negotiation. This is because of the requirement to maintain a competitive process until the

call for final tenders, so at least one, if not two, bidders will be unsuccessful having spent large sums of money in tendering for and fully negotiating the contract. Under the negotiated procedure detailed negotiations of full contract would take place only with one bidder. Changes in 2009 to the Regulations make it easier for unsuccessful bidders to mount challenges through the courts.

### **Covenant affecting Watermeadow Court**

- 9.10 The restrictive covenant is contained in the Transfer of Part of the Site dated 14 November 1989 and the wording is as follows “The Council hereby covenants for itself and its successors in title ... not to use the land hereby transferred during the period of forty years commencing on the date hereof for any purpose other than local authority community housing the drawings and specification for the building of such Community Housing to be previously approved in writing by Partkestrel (such approval not to be unreasonably withheld)”.
- 9.11 The Council has therefore obtained advice in relation to potential options to enable the land to be released from the burden of the restrictive covenant and, in particular, in connection with the operation of Section 237 of the Town and Country Planning Act 1990, which is often used to override restrictive covenants in prescribed circumstances.
- 9.12 Appropriation has the effect of overriding any existing rights a party may have which could prevent development of that land in accordance with the planning permission. However, it does not remove their right to compensation for such rights or covenants, but it removes the potential for excessive claims and the potential for the development to be frustrated by the grant of an injunction to prevent the interference of such rights.

## **10. COMMENTS OF THE DIRECTOR FOR PROCUREMENT AND IT STRATEGY**

- 10.1 This report sets out in detail the proposed procurement route for the establishment of a JVV to manage and develop the Council’s land assets. Two sites, Watermeadow Court and Edith Summerskill House, have been initially identified, but once established the JVV will have the potential for developing further sites.
- 10.2 A member of the Corporate Procurement Team sits on the Tender Appraisal Panel where the issue of the use of the Negotiated Procedure has been recently discussed. Contract Standing Orders requires Member approval before either the Competitive Dialogue or Negotiated procedures are commenced. Given the advice from Eversheds referred to in the body of this Report and the Council’s own investigations into the use of the Negotiated Procedure the Director supports the recommendation to use of the Negotiated Procedure for the establishment of the JVV.



**LOCAL GOVERNMENT ACT 2000**  
**LIST OF BACKGROUND PAPERS**

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1.	Disposal of Watermeadow Court 3 <sup>rd</sup> November 2008 (published)	Matin Miah x 3480	HRD
2.	Housing Company setting up Cabinet report – April 2011 (published)	Matin Miah, x3480	HRD
3.	Disposal of Edith Summerskill House, Clem Atlee Estate 5 <sup>th</sup> September 2011 (published)	Matin Miah x3480	HRD
4.	Appointment of LSH CMD report – October 2011 (published)	Matin Miah, x3480	HRD
5.	Delivering Affordable Housing – Pilot Phase Sites Cabinet report – 30 January 2012 (published)	Matin Miah, x3480	HRD
<b>CONTACT OFFICER:</b>		<b>NAME: Matin Miah EXT. 3480</b>	