

London Borough of Hammersmith & Fulham CABINET 5 MARCH 2018		
WEST KING STREET RENEWAL		
Report of the Cabinet Member for Economic Development and Regeneration – Councillor Andrew Jones		
Open report A separate report on the exempt part of the Cabinet agenda provides financial information.		
Classification: For decision Key Decision: Yes		
Consultation: Housing, IT, Property, Legal, Finance, Local Residents		
Wards Affected: Hammersmith Broadway		
Accountable Director: Jo Rowlands, Lead Director Regeneration, Planning & Housing Services		
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1. EXECUTIVE SUMMARY

- 1.1. The Cabinet Report of the 17th April 2017 King Street Regeneration Project: Termination of Development Agreement and Agreement for Lease Dated 19 March 2008 with King Street Developments (Hammersmith) Ltd, authorised the Council to end the previous arrangements and instructed officers to develop alternative proposals for the sites involved.
- 1.2. This report seeks the authority necessary to enter into Heads of Terms for the disposal of land to A2 Dominion Housing Association, to enable the regeneration of the Town Hall site and West King Street.
- 1.3. The proposals will provide new fit for purpose office accommodation for the Council, around 210 new homes 50% of which will be affordable housing for local residents, new B1 office and start up space, a new four screen cinema, shops, cafes and restaurants, a new public square and improved public realm.

- 1.4. The report explains the details of the legal structure and the enabling actions the Council needs to take for the project to be progressed.
- 1.5. A2 Dominion will submit a planning application, carry out and fund all elements of new build works, under the terms of the conditional land sale agreement as set out in the Heads of Terms. The Council will be responsible for the refurbishment of the existing Grade 2 Listed Town Hall Building.
- 1.6. The final terms of the agreements and the authority to enter into a conditional agreement for lease and associated documents, the associated enabling actions, the best consideration assessment, and business case including funding and any risks, will be the subject of a future cabinet report.

2. RECOMMENDATIONS

- 2.1. To delegate authority to the Lead Director for Regeneration, Planning and Housing, in consultation with the Cabinet Member for Economic Development and Regeneration, to complete negotiations with A2 Dominion Housing Association and their subsidiary companies A2 Dominion Homes Ltd and A2 Dominion Developments Ltd. with regard to the King Street Regeneration in order to enter into Heads of Terms.
- 2.2. To enter into Heads of Terms, once negotiations are completed, for the transfer of land at
 - 181 King Street,
 - Nigel Playfair Avenue,
 - 207 King Street, and
 - the Town Hall Extension,
 - (all of which is shown edged red in appendix 1), to A2 Dominion Homes Ltd. and A2 Dominion Developments Ltd. under a land sale agreement on a 250 - year lease.
- 2.3. To note that the decision for any Land Transfer in the West King Street Regeneration will return to Cabinet for approval.
- 2.4. To delegate authority to the Lead Director for Regeneration, Planning and Housing, and the Director of Building and Property Management in consultation with Cabinet Member for Economic Development and Regeneration and the Cabinet Member for Finance to complete asset transactions in connection with:
 - the Friends Meeting House at Nigel Playfair Avenue and
 - land of the Former Children's Centre at Bradmore Park Road

and to confirm that disposal of the land will be covered by General Consents under s123 of Local Government Act 1972 and/or to seek the necessary consent from the Secretary of State should it be required.

- 2.5. To resolve that the area of land at 181 King Street; 207 King Street; Nigel Playfair Avenue; Town Hall Annex referred to in this report and shown edged red on the plan at Appendix 1 is no longer required for the purpose for which it is currently held.
- 2.6. To approve in principle the appropriation of the area of land in appendix 1 to the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 122 of the Local Government Act 1972 in order to override easements covenants and other third party rights in respect of the land pursuant to section 203 of the Housing and Planning Act 2016 subject to the requirements set out in the legal implications section having been satisfied and a further report for approval being made to Cabinet.
- 2.7. To approve a budget of £360,000 to deliver a successful negotiation of legal agreements, complete the necessary commercial, tax and accountancy assessments, and the associated project management.
- 2.8. To approve budget of £250,000 for the client-side Council Accommodation Delivery Team over the next 6 months. This includes dedicated technical specification management, IT project management and network consultancy.
- 2.9. To approve a budget of up to £1.510m to enable the delivery of projects associated with the town hall, and which will be necessary to enable future refurbishment proposals, and to delegate authority for the final budget allocation on a project by project basis to the Strategic Finance Director in consultation with the Cabinet Member for Finance and the Cabinet Member for Economic Development and Regeneration. This includes projects to permanently relocate or decant elements of ICT infrastructure and operational functions to more suitable places on the H&F estate.
- 2.10. To note that the funding source for the expenditure referred to in 2.7 – 2.9 above will come from either section 106, where appropriate, and/or reserves.
- 2.11. To delegate authority to the Director of Building & Property Management in consultation with Cabinet Member for Finance to appoint commercial agents to advise and assist the Council on all legal negotiations in relation to office accommodation should the Council need to re-locate part or all of its office accommodation under any future conditional land sale agreement.

3. REASONS FOR THE DECISION

End of Previous Contractual Arrangements

- 3.1. The Council entered into a Development Agreement and Agreement for Lease (the “DA”) on the 19 March 2008 with King Street Developments (Hammersmith) Ltd (“KSD”) in respect of the delivery of the King Street Regeneration Project. KSD is a joint venture between Helical Bar and Grainger, two development companies.

- 3.2. Following consideration of the options available, the Council decided on the 24th April 2017 to exercise its rights contained within the development agreement and to serve notice to terminate the development agreement, and serve the subsequent Council Notice for the assignment of the developer's land interests (the Cinema Site).
- 3.3. The Council is currently in the process of acquiring the site of the former Cinema, 207 King.
- 3.4. However, a comprehensive and co-ordinated approach to the whole Town Hall site is still required. The Council's Industrial Strategy sets out how the Council will drive growth, including through the development of King Street and the introduction of a range of economic activity.
- 3.5. The town hall, town hall extension, sites on Nigel Playfair Avenue and 207 King Street form a strategic regeneration site that must be treated as a comprehensive development in order to fully realise the benefits. The Council's planning policies in its current and soon to be adopted new local plan also demand that a holistic and comprehensive approach be taken to the site.
- 3.6. **Council Requirements for Accommodation**
- 3.7. Despite the end of the contractual arrangements, the Council still has a requirement for either refurbished offices or new offices, as well as accommodation for non-office-based corporate functions where new ways of using space will drive efficiency and service needs. The current council accommodation in both the Town Hall Annex and the Town Hall is at the end of its life and fit for purpose offices are needed to assist in delivery of services. There is also an opportunity to change the working environment and working practices so that the Council can deliver on its vision to be the best modern council.
- 3.8. The ending of the contractual arrangements does provide an opportunity to comprehensively realise the regeneration potential for the site, which the original scheme failed to achieve. Specifically, the annex building can be demolished to provide a better design and public space; affordable housing can be provided where the previous scheme provided none; a larger community cinema can be provided; additional office space can be delivered, to the benefit of the wider local economy, and the Town Hall can renew its role as a civic, public, and democratic space. The whole scheme will also provide a public space linking King Street to Furnival Gardens.

Enabling Actions to Deliver Revised Proposals

- 3.9. To realise the regeneration potential and for a new set of proposals to be delivered, the Council needs to take several enabling actions and these are set out in the recommendations and the main body of the report. This includes preparing the ground for any moves of facilities and staff that may be necessary to enable development.

Fast-tracking of Non-Office Moves and Enabling Projects

- 3.10. The Town Hall campus is home to several council functions other than office space. A full list is presented at paragraph 4.44 below. The IT communications hub on the ground floor of the Town Hall requires attention. The current location is acknowledged as unsuitable due to the presence of a flood risk to the room. Changes to the hub itself also mean that it is an opportune time to find a suitable alternative location.
- 3.11. These items detailed at 4.44 have the longest lead times and greatest risk of delaying vacant possession. Further, many of these projects will improve service delivery. Consequently, approval and funding is sought for these relocations in this report so that they can commence in Spring 2018. This will mitigate against the risk of delay to the overall programme.

4. PROPOSALS AND ISSUES

Options Considered for Developing Revised Proposals and Appointing a Partner

- 4.1. The Council considered three main options for delivering a new scheme with the primary objectives of delivering new civic offices and housing:
1. Directly manage a planning application and capital programme to deliver a new mixed-use scheme
 2. Commence a large scale, public contract regulations (EU) compliant procurement to procure a developer partner
 3. Dispose of the land to a developer (with the potential to form a joint venture) – this route does not require procurement where there is no enforceable obligation on the developer to undertake the works.
- 4.2. A summary assessment of these options is demonstrated below in table 1

Table 1

	OPTION 1 LBHF Direct Delivery	OPTION 2 New procurement process	OPTION 3 Disposal to a developer partner
Council Control	High - Full control over design and development	Medium - Ability to specify requirements through procurement.	Low- Dependent on form of contract and structure/commercial incentives and whether Council participates in a joint venture
Budget	High –	Medium – revenue	Low – legal and

Requirement	revenue budget of c. £2.5m to achieve planning, capital budget requirement of c.£140m for new construction.	budget of c. £250-500K to fund procurement, legal and commercial advisors. Likely route is competitive dialogue or negotiated procedure with competition which is time consuming and expensive. Whilst the Council has a clear set of objectives it is unlikely that these could be secured through a more efficient restricted procurement procedure	financial advice of c.£360K to come to a commercial agreement with a potential partner. All new build costs are passed to partner, or in a JV the Council would use its land as equity.
Cost Risk	High – all risks with the Council, mitigated only by fixed price contracts for construction.	Medium – potential the procurement fails or in dialogue takes longer than planned, however partner can bear cost and sales risks	Low to Medium – dependent on route (JV or land contract). A land disposal would see cost and sales risk passed to partner. A JV may see some risks borne by the Council (e.g. cost and value risks)
Commercial Return	High - All returns and assets would be with the Council.	Medium – dependent on offers developed in procurement, Council can share in upside benefits (i.e. overage)	Medium to High – Dependent on option chosen, Council would receive land value or invest land as equity for share of profit, or could receive income generating assets through a JV
Reputational Risk	High – all risk with the Council	Medium – Shared risk with the developer	Medium – shared risk with the developer
Timetable	High – longest	Medium – Competitive	Low –agreement of heads of terms could

	option, with 6 months minimum to procure a design team, 12 months to develop a planning application, further 6 months to procure a contractor	Dialogue/Negotiations can take 12-18 months dependent on clarity of Council's requirements.	be submitted for cabinet approval and additionally submit planning within 6-9 months of commencement
Deliverability	Low – the Council may not have the capability to directly manage a design and construction process	Medium – dependent on outcome of procurement and appetite of market	High – partners are ready, willing, and able to deliver to a tight timetable but should commercial incentives prove insufficient (for example in a failing market) risk remains of non-delivery and the need for the Council to buy back the land from the developer

- 4.3. In options one and two the Council would be required to engage in lengthy public contract regulation (PCR) compliant procurement processes. These are themselves not without risk and the Council would need to ensure it has robust governance, project management, and professional legal and commercial advice in place to advise the Council on managing the risks and securing the best commercial outcome.
- 4.4. However, it is possible to directly engage with a partner either through a property transaction (i.e. a conditional land sale agreement) or through investment in a corporate joint venture. This is on the basis that either route is not a public works contract, (which would otherwise be procurable under the PCR), because such arrangements are not accompanied by an enforceable obligation on the developer to undertake works/services. Gowling WLG have advised the Council on these options and their detailed advice is contained in the exempt appendix 2 of the report (in the exempt Cabinet agenda).
- 4.5. In summary, their advice is that where there is a property transaction where the land is sold to a developer partner and they undertake the construction work but without an obligation to do so it is not a public works contract. There are commercial incentives on the developer to complete the development and these are:

- a) Its ability to take a priority profit on development and disposal of the scheme in phases (although in this case, the Council will seek to minimise this and share in the profit as far as possible);
 - b) Its ability to participate in 50% of any overage beyond this priority profit;
 - c) The ability for the Council to terminate the lease and take back ownership of the property in the event of non-delivery – the price to be paid by the Council is yet to be agreed but it is anticipated that this will be at a discount to either the cost or value of the property;
 - d) An obligation on the developer to pay liquidated and ascertained damages for each week of delay in the delivery of the new Town Hall – the amount of the LAD's is yet to be agreed;
 - e) An obligation on the developer to pay an amount should it deliver the new Town Hall to a less than the required floor space;
 - f) An obligation on the developer to make a degree of progress on the Town Hall refurbishment before it is entitled to draw down further land parcels – the extent to which this provision can be achieved will be negotiated once the detailed phasing of the scheme has been developed
- 4.6. However, in a falling market there is a risk that these commercial incentives could prove to be insufficient. In those circumstances, the Council would have the option to re-acquire the property (as per 4.6 c) but note that it would of course need to identify the financial resources with which to do so.
- 4.7. Ultimately the developer would have the choice as to whether they undertake the work. Instead, there are commercial incentives for them to undertake the work – e.g. the ability of LBHF to buy back the land if there is delivery failure as described above.
- 4.8. LBHF could alternatively (or in addition) invest in a corporate joint venture. The investment would be a financial transaction and not a public works contract. However, to avoid creating an obligation that could be a public works contract a land transaction would need to be structured between the Council and the corporate joint venture as described above.
- 4.9. **Recommended Option**
- 4.10. Based on the paragraphs 4.1 to 4.8 above engaging directly with a partner either through a land disposal and associated contract and/or through forming a joint venture is the recommended option. This on the basis that it:
- Offers the faster timetable and most secure delivery
 - Minimises the cost risks to the Council
 - Has a limited short-term budget requirement
 - Offers the opportunity for the Council to share in benefits

- 4.11. It is recommended that the Council engage directly with A2 Dominion Housing Association for the delivery of this scheme.

Options Considered for Transaction Structure

- 4.12. Officers considered two main routes for how it would contract under option 3.

4.13. Land Disposal

- 4.14. If the Council deals directly with a single partner and does not create a public works contract then the Council will not be required to comply with the PCR but would instead simply enter into a conditional agreement for a lease with a developer partner.

- 4.15. The land sale would create a framework by which the developer provides:
- New offices
 - If demolition of Town Hall Extension is agreed, then to include its demolition and creation of a piazza
 - Land payment for the Nigel Playfair Car Park and any other Council owned land interests transferred

- 4.16. The land payment would be based on a residual land value calculation accounting for the build costs and the benefits required by the Council.

- 4.17. Where the development proposed is to be ultimately owned by the developer then the land would transfer to them on long lease. However, if the ownership is to remain with the Council then the development could be completed under a build licence.

- 4.18. An overage requirement will be included within the agreement, based on either planning or super profit overage.

- 4.19. The Council could retain the option of purchasing any rental units, either affordable or PRS, by entering into a pre-sale agreement and purchasing through a council owned company. This would have the benefits of recycling a capital expenditure back into a land value, while also enabling the Council to obtain a revenue generating asset. It would also have the benefit of de-risking the scheme – a guaranteed purchaser for the developer, making it more likely that they could proceed in a timely fashion and reducing the overall funding requirement. Any proposals in this regard are subject to future cabinet approvals.

4.20. Joint Venture Investment Structure

- 4.21. The Council could decide to invest in a joint venture to share more fully in the risks and benefits of the development.

- 4.22. In this option the Council and its partner would invest in a corporate structure or joint venture to deliver all or part of the project. If the joint venture was not a contracting authority then it would not be covered by the public contract regulations. However, this should be achievable by demonstrating the commercial character of the JV. The transfer of land to the JV or other contracting parties would need to maintain the same structure as above to avoid the creation of a public works contract.
- 4.23. A standard form of development JV involves both parties contributing equity and debt funding on an equal basis, with equal rewards. In the case of King Street, the Council would contribute its land as equity into the JV and the partner would contribute an equal proportion of equity. This would then be used to fund the development cashflow up to the point that the equity is exhausted. Funding would then be provided by both parties on a monthly cashflow basis from their own resources (either debt or free cashflow), or by securing project finance (less likely given the likely access to funds that both parties could have).
- 4.24. On completion, each party would share 50:50 in the benefits produced by the JV either in capital receipts or the assets produced. The JV would have to account for the cost of equity and funding within the financial model. The JV agreement would include an equalisation process so that each party contributes and benefits equally depending on the profit or assets returned on completion and the price paid.
- 4.25. The Council could use one of its Housing Companies as a forward purchaser of any units, the price of which would be determined by their cost, valuation, and the equalisation process.

4.26. **Recommended Transaction Structure**

4.27. A summary assessment of the advantages and disadvantages of each model is shown in the table below:

	Joint Venture Vehicle	Land Disposal
Advantages	<ul style="list-style-type: none"> •Council is able to share in full and equally (depending on level of equity invested) in the value generated by any scheme •Potential for greater element of control over specification and detailed design •Vehicle could be used for future developments 	<ul style="list-style-type: none"> •Development risk is fully transferred to a partner •Value that the Council is to receive fixed at beginning of contract •Simple legal structure, using standard forms of lease and legal agreement •Council is still able to participate in value share through overage arrangements •Expertise of a development manager is secured, who is responsible for the development progressing •Roles and responsibilities are

		clear within land sale agreements and leases, with clear council rights of step-in and penalties for non-compliance
Disadvantages	<ul style="list-style-type: none"> •Council shares in the risks of cost overruns •Council shares in the risks of value decreases •Limited ability to penalise non-delivery, given Council involvement in the project •Lower transparency over responsibilities, given joint nature of contractual obligations •Control must remain at arm's length in order to manage PCR requirements •Public perception around Council use of JVs for property related matters (e.g. HDV) •Creates complexity around the property transaction structure, including taxation •Requires greater complexity in constructing corporate vehicle to participate, and the Councils obligations and liabilities associated with the vehicle •Increases complexity around funding, guarantees and security 	<ul style="list-style-type: none"> •Council control is through negative obligations and limits ability of council to specify the detail of design and works •Council does not fully participate in benefits the scheme generates •Decisions to complete or stop development are not in the council's control and mitigated by penalties

4.28. Officers recommend that the development is delivered through a land sale agreement with A2 Dominion. This option has the simplest legal structure and does not require the creation of a separate corporate entity, is transparent as to roles and responsibilities, and transfers risk for delivery to the development partner.

Heads of Terms

- 4.29. Officers have progressed discussions with A2 Dominion and developed draft heads of terms. This sets out each party's respective obligations.
- 4.30. A2 Dominion are a West London based housing association with a strong record of accomplishment of affordable housing and mixed-use delivery. They own and manage around 37,000 homes in the South East, with an annual development plan of more than 1000 homes a year.
- 4.31. They are currently delivering new homes at Queen's Wharf, in partnership with Mount Anvil and are also working with the Council on the development of Lavender Court for affordable housing. A2 Dominion have committed to the Council that any surpluses realised on this scheme will be re-invested within the borough on new affordable housing. They have also committed to re-invest any further surpluses generated from new developments in the borough.
- 4.32. Given the scarcity and value of land in the borough, working with the Council on local authority owned land provides an opportunity for these surpluses to be used in delivering more affordable housing. On the King Street Regeneration A2 Dominion have committed to use some of their surplus to deliver the affordable housing element.

New Proposals developed by A2 Dominion

- 4.33. The new scheme has some key differences to the previously approved scheme, which are summarised below:
- Demolition of Town Hall Extension, 181 King Street, Friends Meeting House, and former Registry Office.
 - Construction of 210 residential units, of which 110 will be either Private rented or private sale units and 100 affordable units. Due to including larger family units in the affordable mix the overall tenure split by floorspace will be 53% affordable to 47% private. The previous KSD scheme was 100% private for sale.
 - An additional 4,679m² GIA of B1 office space constructed on top of the town hall, which is to replace the Council's current accommodation in the Town Hall Extension.
 - Refurbishment of the existing town hall, which provides c.3,500sqm of office and civic spaces. Combined with the extension this will be able to accommodate all existing staff and staff returning from WCC and RBKC as part of the moving on process. The refurbishment element of the project is not part of this report or the heads of terms but will be the subject of a future report
 - Additional 4,536 m² of B1 office space for a third-party occupier.
 - 584m² commercial uses in A1-A3 class.
 - A new four screen cinema, totalling 1,764m² and including a bar/café use

- A new public space in front of the town hall which can be used for programmed events

Delivering the Project – Council’s Obligations

- 4.34. The Heads of Terms set out the key obligations for each party, which form the basis of the land sale agreement.
- 4.35. A2 Dominion will have responsibility for submitting a planning application, procuring a contractor, start on site, construction delivery and completing the development within an agreed timescale.
- 4.36. The Council will have responsibility for acquiring all land and providing vacant possession of the site to A2 Dominion, either as a whole site or in phases.
- 4.37. The Council will be responsible for funding the refurbishment of the town hall (which will be the subject of future cabinet decisions).
- 4.38. There are provisions in the Heads of Terms that deal with what would happen should either party decide not to enter into the agreement for lease.
- 4.39. The Council is in the process of acquiring the cinema site at 207 King Street under separate authority to this report. Negotiations are also well advanced with the Quakers for the acquisition and land swap of the friends meeting house. Recommendation 2.3 gives officers the necessary authority to complete this process.
- 4.40. The Council is not obliged to complete a conditional land sale agreement and despite having agreed heads of terms, could choose to not complete the legal agreement at any time prior to signature.

Arrangements for Non-Office Functions

- 4.41. The Town Hall is only one third staff office accommodation; it is also home to several other functions that need to be decanted, re-located or otherwise altered. Similarly, the Town Hall Annex hosts a customer service centre as well as staff offices and 181 King Street hosts council operational functions.
- 4.42. In anticipation of an agreement for lease whereby the Council will be required to give vacant possession of buildings, it is proposed to move some elements forward ahead of a formal agreement. In any event, the future refurbishment of the Town Hall will require at least the temporary relocation of these functions. Several the functions would also benefit from the ability to improve services
- 4.43. These moves are expected to have longer lead times, and have a higher risk of unforeseen complications and delay. It is therefore proposed that these projects are fast-tracked and take place now.

4.44. Where it allows for better service delivery, to minimise expense and disruption some of these facilities will be re-located to a new, permanent home. The remaining facilities and services will be incorporated in the final Town Hall campus and return upon completion of works.

4.45. The following fast track projects are required:

Action	Proposal	Other Options Explored and Discounted
ICT network hub and connecting infrastructure	Permanently re-locate infrastructure to 145 King Street and upgrade associated links to/from building	Move to a third-party building (discounted – expensive and operationally vital installation; long lead times) Maintain active facility on construction site (discounted – impractical) Move to another council building (only 145 King St can be reliably delivered within timeframe)
Decant or re-location of (safer neighbourhoods) CCTV facility	Permanently re-locate within H&F estate	Temporary re-location (discounted – moves incur very high cost due to highly specialised set up; minimise costs by re-locating permanently)
Decant or re-location of Parking CCTV facility	Permanently re-locate within H&F estate	As above
Decant or re-location of Parking Wardens	Permanently re-locate to Shepherd's Bush area	Temporary decant (discounted – wardens have had a long-standing need for a base in Shepherd's Bush area for operational reasons, opportunity should be taken to re-locate them to that area)
Re-location and rationalisation of secure council parking spaces	Review and rationalise access to car parking facilities, in line with space available	The council has no other options available to it as parking space is at a premium
Decant or re-location of Careline	Re-locate Careline to 145 King Street, to have continued access to secure fleet parking	Bagley's Lane (discounted – increased response times)
Decant or re-location of the Extension's customer service centre	Consolidated customer service centre in 145 King Street	There are ambitious plans for redefining how we interact with residents (customers) in the long-term – these cannot be delivered within the required timescale, but can be supported by consolidating customer service centre as the first step towards integrated customer experience

4.46. The costs for these items, over and above the costs associated with decanting the office accommodation, are presented in 8.18. Each of these items will be subject to office and cabinet member approval.

5. CONSULTATION

5.1. As part of the pre-planning application process the Council is expected to consult stakeholders including residents. A number of stakeholders'

engagement meetings will be carried out during this pre-application period. This includes meetings with the design review group. Public consultation meetings which includes design exhibitions were held between November to December 2017. The consultation exercise will be carried out jointly by the Council and A2Dominion.

- 5.2. Officers have consulted and engaged with stakeholder groups around the proposals and designs, these groups include:
- LB Hammersmith & Fulham Staff
 - Local Interest Groups – Hammersmith Society
 - Local residents

6. EQUALITY IMPLICATIONS

- 6.1. Key equalities issues are considered below for different aspects of the project.

Design & Planning Stage

- 6.2. ***Understanding the needs of disabled people:*** The design team has actively engaged Disability Planning Forum and members of the Disabled People's Commission (a key stakeholder group) using the Council's policy of co-production. This requires the design team to work hand in hand with the forum to ensure that special needs considerations are given high priority as the scheme develops.
- 6.3. This active engagement is done through regular workshops. These disability workshops cover the new design for newly refurbished Town Hall, private office blocks, residential units consisting of over 200 flats, shops, the cinema/bar/restaurant facility, and the public spaces.
- 6.4. ***Public Consultation & Stakeholder Engagement:*** Staff, residents and over 20 stakeholder groups have been consulted as part of the consultation process. A 3-day public exhibition took place in early November 2017. Over 400 residents attended the exhibition. More than 70% of those who responded to a survey were in favour of the new scheme.
- 6.5. ***The Neighbourhood Area*** – Special discussions have taken place with the Riverside Gardens Estate TRA (A Council estate (180 flats) next to the Town Hall. Estate walkabouts with the TRA are planned this New Year. The aim is to promote good neighbourliness and to help ensure that the scheme does not impact negatively on the surrounding areas.

Construction Phase

- 6.6. ***Local Labour, Employment & Training Initiatives*** - During the construction phase, there will be local labour and employment opportunities through the main contractor's supply chain. There will also be training initiatives such as

the apprenticeship and graduate training schemes for young adults living in the area.

6.7. *Implications verified by: Peter Smith, Head of Policy and Strategy, Tel. 0208 753 2206.*

7. LEGAL IMPLICATIONS

7.1. It is noted that legal advice on this project including procurement options is being provided by Gowling WLG (UK) LLP ("Gowling"). Legal implications provided by Gowling, which are legally privileged and/or commercially sensitive, are contained in Appendix 2 to this report (in the exempt Cabinet agenda) in accordance with Schedule 12A of the Local Government Act 1972.

7.2. Most of the site is held in General Fund and the relevant power of sale of this would be S123 Local Government Act 1972. The Old Registrars Building was acquired under Housing Act powers and so the relevant disposal power for that would be S32 Housing Act 1985. Secretary of State consent is usually required for a disposal of housing land. Such consent can either be a specific consent or in certain cases by way of a General Consent. General Consent A3.1.1 provides that a local authority may dispose of land for a consideration equal to its market value so no such specific consent would be needed if that is the case with this disposal. If the land is appropriated to planning purposes the relevant power of sale would then be S.233 of the Town and Country Planning Act 1990

7.3. There is also a further general consent A3.2 permitting the disposal of "vacant land" being land on which no dwelling has been built. If the Old Registrars Building has never been used for housing it would fall within this definition and so no specific consent under S.32 of the Housing Act 1985 would be required as the Council could rely on the general consent.

7.4. Before exercising its statutory powers to appropriate the land to planning purposes the Council must be satisfied that the following considerations have been taken into account

- Consideration 1: The use of statutory powers is required in that:
 - (i) The infringements cannot reasonably be avoided;
 - (ii) The easements to be interfered with cannot reasonably be released by agreement with affected owners;
 - (iii) The development is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks.
- Consideration 2: The use of statutory powers will facilitate the carrying out of the Development;
- Consideration 3: The development will contribute to the promotion and improvement of the economic, social, or environmental well-being of the area and therefore be in the public interest;

- Consideration 4: The benefits of the development could not be achieved without giving rise to the infringements of the identified rights;
- Consideration 5: Is it in the public interest that the development is carried out?
- Consideration 6: Is the public interest to be achieved proportionate to the private rights being infringed by the action of Section 203

Implications completed by legal Officer: Dermot Rayner, Senior Property Lawyer, Tet. 020 8753 1945, Email: dermot.rayner@lbhf.gov.uk).

- 7.5. Gowling has advised that in the absence of an enforceable binding legally obligation on the developer to undertake works or provide services, the following activities would not give rise to the need to conduct a procurement in accordance with the PCR:
- a. A developer engaging with the Council in discussions as to the type of buildings the Council might want to be provided;
 - b. A developer pursuing planning applications in respect of the site (and the land sale or lease could include a provision that the site would not be developed other than in accordance with planning permission and planning policy);
 - c. Including a provision (which would need to be appropriately worded) that the Council could re-purchase a site in the event of a failure to commence or complete the works by a pre-agreed date.
 - d. Agreeing that if the developer constructed social housing then the Council would have nomination rights into those dwellings.
 - e. Including overage (profit-sharing payments) within the sale contract/lease;
- 7.6. Gowling have assisted the Council in the negotiation of the Heads of Terms (HOT). Although one can never rule out entirely the risk of challenge brought, Gowling is confident that the property transaction route based on the draft HOT (and the absence of any positive obligation to build) would give the Council a strong defence if a procurement challenge did arise.
- 7.7. Where the Council engages with one purchaser (A2 Dominion) without a wider tender exercise, it will seek confirmation from BNP Paribas that its duty under section 123 (and if appropriate its relevant duties under the Housing Act 1985 or Town and Country Planning Act 1990) have been satisfied. The Council must also ensure that it does not breach state aid law. Provided the Council can demonstrate that it has achieved best consideration there is no state aid. Commission Guidance¹ has established this principle in the context

¹ European Commission Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03)

of freehold disposals. Whilst the guidance is not binding law, it is useful evidence as to how the Commission will approach the issue. The land should not be sold at less than the level evidenced by an independent valuation.

- 7.8. The requirement under S.123 of the Local Government Act 1972 that assets disposed of at the best consideration reasonably obtainable applies, although there is a general consent (**The Local Government Act 1972: General Disposal Consent 2003**) which permits disposal at an undervalue provided the **undervalue is £2,000,000 or less.**
- 7.9. The disposal is to be by way of a 250-year lease rather than freehold so its use can be restricted to affordable or intermediate properties and so prevent private sales where this is appropriate. The lease will also provide for provision for its surrender in the event of the works approved under the Planning Permission not having been commenced or completed by agreed dates to ensure that the agreed scheme is built out.

*Implications Completed by Richard Beckingsale,
(richard.beckingsale@gowlingwlg.com), Partner, Gowling WLG, Tel. 0370 730 2816, 07968 984110.*

8. FINANCIAL IMPLICATIONS

- 8.1. The proposals in this report are subject to a full business case including a value for money assessment by external financial advisors. Cabinet is being asked to approve heads of terms and so comments are limited at this stage. Fuller comments will be provided when the final approval report returns to cabinet. The proposals will be subject to a full business case. Financial advisors for this project are being appointed (from an existing framework) to provide the Council with a value for money assessment and the results of their work will be included in the final approval report. Their brief covers:

- Financial advice on the proposed structure, financial model and financial implications for the Council.
- Advice on the taxation implications.
- Advice on the financial stability and financial strength of A2Dominion Developments Ltd and A2Dominion Homes Ltd for a deal of this scale, along with advice on the structure of guarantees etc.

8.2. Financial stability and financial strength of the contracting party

- 8.3. The Homes and Communities Agency in their most recent judgement dated 20 December 2017 rated A2Dominion Housing Group Limited V1 for viability and G1 for Governance. These are the highest viability and governance ratings that can be awarded under these assessments.
- 8.4. The judgement also covered A2Dominion Homes Limited (who under the proposed HOT will contract for the affordable housing elements). It does not cover the main contracting party A2Dominion Developments Limited (which is

a subsidiary of A2Dominion Housing Group). The draft HOT proposes to cover this risk by ensuring that A2Dominion Homes Ltd have step in rights over A2Dominion Developments Ltd if there is any failure on their part as well as by ensuring that continued financial stability and strength is one of the conditions in the land sale agreement.

- 8.5. A Creditsafe check have also been completed on A2Dominion Developments Ltd which currently has a rating of 77. A2 Dominion Homes Ltd has been rated A+ by Fitch ratings for local currency transactions with a stable outlook. The group of which these companies form a part had turnover for the year ended 31 March 2017 of £372m and net assets showing on their balance sheet of £836m.
- 8.6. These checks, especially the creditsafe score, rely on historic performance, which isn't necessarily a guide to the future.
- 8.7. As noted above prior to finalising the Conditional Land Sale agreement the recently procured financial advisors will carry out further work in this area and report on:
 - The suitability and financial stability and financial strength of the proposed contracting party including looking at other forward commitments.
 - The methodology and structure of any guarantee arrangement and the potential risks to the council.
 - Should the conditional land sale agreement be signed refresh this report on an annual basis and ad hoc as required.
- 8.8. **Financial advice on proposed structure, valuation of the site and consideration, including best consideration assessment under S123**
- 8.9. BNP Paribas have been engaged to confirm that the commercial terms set out in the heads of terms are acceptable, and to provide a s.123 best consideration valuation which will be completed ahead of a final cabinet approval. The best consideration valuation will need to be signed off by the borough valuer.
- 8.10. In addition financial advisors for this project are being appointed and have been asked to comment on:
 - The suitability and assumptions of the residual land value model and the valuation of the consideration received.
 - The proposed structure of Conditional Land Sale Agreement. This may include commentary on the key cost areas, economical advantageousness, and financial risks to the Council.
 - The opportunity for the Council as a side transaction to acquire a portfolio of private rented and / or commercial property

- The work of these advisers is expected to include an assessment of the robustness of the business case, including option appraisals, cash flow analysis, sensitivity analysis and short, medium, and long-term affordability as well as verification of the inputs and assumptions of any financial model including the treatment of land acquisition costs such as those for the cinema site

8.11. Taxation

8.12. While the lawyers have been giving thought to the tax implications when structuring the Heads of Terms the council will need to obtain detailed tax advice before finalising any conditional land sale agreement. Therefore, our financial advisors have been asked to provide advice on:

- The direct tax, VAT and stamp duty land tax (SDLT) implications and liabilities for the Council of the proposed Land Sale Agreement. This will include advice on any tax leakage in the structure as well as advice on the impact on the council's VAT partial exemption position.
- The SDLT and other taxation implications on the opportunity for the Council as a side transaction to acquire a portfolio of private rented and / or commercial property
- The reasonableness or otherwise of the tax assumptions and, if relevant, refer to potential alternative structuring ideas which may improve the tax efficiency.

8.13. Immediate budget requirements

8.14. The leader's urgency decision of 17 April 2017 authorised the use of £250,000 from the King Street Regeneration Reserve for use on the project. Costs associated with the purchase of 207 King Street will be capitalised as part of that transaction. To date £76,000 of this budget has been committed to date.

8.15. This report seeks approval for the budget below to enable the next stage of the project. Details of the Council's costs in completing the Conditional Land Sale agreement and refurbishment of the Town Hall will form part of the final approval report when it goes back to Cabinet.

8.16. Project resources are required to see the client team through the next six months of project management and secure the necessary consultant advice.

Project Team and Consultant Advisors	Function	Value
Project Officer	Surveys, Access, and RFI from the project team o Communications and Consultation o Resident liaison	£60,000

Project Management Office	<ul style="list-style-type: none"> o Meeting administration o Risk Register o Decision Logs o Project Plan o Record keeping 	£50,000
Legal Advisor	An external firm of consultants to negotiate heads of terms, agreement for leases, leases and other commercial arrangements	£100,000
Commercial and Valuation Advice	Best consideration and commercial advice	£70,000
Value for Money Assessment and Tax Advice	To assess the terms of the property transaction and to secure taxation advice	£50,000
Model audit	To audit the structure of the residual land value model used	£30,000
Total		£360,000

8.17. Operational budgets are required to deliver the fast track enabling projects, including management of enabler projects essential to achieving vacant possession, management of moves and communication and engagement with teams to achieve the required cultural change. The budget requirements for this are set out below. These are for the next financial year.

Council Accommodation Delivery Team	Function	Value
IT Projects Manager	Responsible for defining and commissioning delivery of essential ICT projects associated with the proposed decant and new offices <ul style="list-style-type: none"> o Supporting fast track enabler projects including ICT Hub relocation o Supporting property search to ensure decant offices meet ICT requirements o Commissioning ICT fit out of decant offices o Defining ICT fit out requirements for new Town Hall workspace 	132,000
IT Network Consultant	Responsible for client side technical network consultancy and advice relating to the decant (decant office and enabling projects) and Town Hall refurbishment and extension. Twelve months over the three years. (Figure in this table shows four months)	44,000
Specifications Manager (Decant and New Offices Specification)	Documentation of technical design and fit out requirements for decant offices and Town Hall refurbishment and extension.	79,000
Total		£250,000

8.18. The Town Hall is only one third office accommodation, and the Town Hall Extension is home to a customer service centre as well as staff offices. In addition to decanting the offices, vacant possession will require projects to re-locate these additional functions, itemised in the table below:

Decant of Town Hall and Extension Enabling	Item	Value
Relocation of ICT infrastructure Hub	A major ICT project requiring project manager and technical resources, as well as physical works and moves	700,000
CCTV Relocation	PM, ICT, FM refit and moves	240,000
Parking Wardens and CCTV relocation	PM, ICT, FM refit and moves	150,000
Customer Services Centre Consolidation	PM, ICT, FM refit and moves	350,000
Careline	PM, ICT, FM refit and moves, including specialist third party movers for bespoke equipment	20,000
Parking re-location and rationalisation	PM, alterations to car park security arrangements	50,000
Total		1,510,000

8.19. These specialised moves have longer lead times and are more complex than the office moves, requiring the full attention of internal moves teams. For this reason, it is proposed that these projects are 'fast-tracked' and undertaken ahead of the office moves to minimise the risk of delay in one of these projects delaying vacant possession (see recommendation paragraph 2.10).

8.20. The funding source for the total expenditure of up to £2.12m will come from either section 106, where appropriate, and/or reserves.

8.21. Accounting treatment, funding and impact on the Councils wider finances

8.22. The financial advisor will also advise the Council on the financial and accounting implications of the Conditional Land Sale Agreement before it is finalised. The accounting treatment, funding and impact on the Council's wider finances will need to be set out in detail when the final approval goes to Cabinet.

8.23. Factors that will need to be considered include but are not limited to the:

- detailed financial impact on the Council's current budget and medium term financial strategy,
- long term impact of the transaction on the council's finances including long term income and costs after the development completes and how the council could measure benefits
- financing of the deal and the opportunity for the council to participate as a funder, the accounting treatment for each item (General Fund / Housing Revenue Account, Capital / revenue).
- The impact on other Council contracts e.g. Amey for facilities management and MITIE where they occupy part of the Town Hall extension

- Opportunities for the Council to share in profit and generate capital receipts and long-term income streams.

Implications verified/completed by: Director of Finance & Resources, Kath Corbett, Tel. 020 8753 3031.

9. PROPERTY IMPLICATIONS

- 9.1. The Council's Property team are completing additional due diligence as part of the Heads of Terms negotiation process, and will continue ensure Best Consideration under LGA Act 1972 is being achieved.
- 9.2. H&F Property team have appointed a specialist property company BNP Paribas who have a track-record of working with developers/housing association on mixed tenure schemes within central London. This includes a detailed assessment of the developer's financial model, including all inputs as part of a Red Book valuation under RICS guidelines in respect of the draft scheme.
- 9.3. This initial valuation by external consultant is being prepared with all input information and the report will produce that provides a duty of care. The external agent will provide advice to Property and Finance colleagues on future variations to the scheme. In addition, a model audit will be undertaken and also sensitivity analysis will be assessed. In addition, the external agent will provide advice on the heads of terms and detailed drafting of the documents and how this impacts on future overage/funding sharing for the Council and A2 D. The external agent can also undertake extensive financial modelling using its development appraisal system as a check on the A2 D scheme.
- 9.4. A final Red Book valuation and Best Consideration valuation would need to be undertaken once the final scheme is known and once a planning permission is secured.
- 9.5. *Implications verified by Nigel Brown, Head of Asset Strategy and Property Portfolio, Commercial Team, Tel. 0208 753 2835.*

10. IMPLICATIONS FOR BUSINESS

- 10.1. This is a significant commercial opportunity for businesses in the borough, with c.£140m of commercial contracts expected to be available. The S.106 agreement should secure a commitment to partner with the economic development team and the local supply chain programme to ensure that local companies are able to bid for opportunities.
- 10.2. The current proposals also include affordable studios and workspace which will be targeted at SMEs, as well as an additional 50,000 sq.ft. of B1 office space which will support business generally in the Hammersmith Town Centre area.

- 10.3. In addition to opportunities for local businesses, there will be employment and skills opportunities created during the construction and operational phases of the development. The Economic Development Team will be consulted on the appropriate wording and commitments to be incorporated into the s106 economic development ask for this development.
- 10.4. *Implications verified by: Alben Karameros, Programme manager, Tel. 02079388583.*

11. COMMERCIAL IMPLICATIONS

- 11.1. There are no direct procurement related implications. The legal comments confirm that this land sale is exempt from the Public Contracts Regulations 2015 (as amended).
- 11.2. The development offers many commercial benefits to the Council and to the borough. The heads of terms set out the Council's ability to share in any profits from the development. It also enables the Council to share in the income from private rented housing that is developed; the opportunity to invest in commercial units as a source of future revenue; and the enhanced town hall includes spaces which could be rented out to the public or businesses to generate income.
- 11.3. Opportunities for savings may arise from a consolidated estate and changes to facilities management; a new more efficient office with lower responsive repairs costs and no short-term capital costs; and lower utilities costs arising from modern plant and improvements to thermal efficiency.
- 11.4. In addition, the extra c.5,000 sqm of B1 office space will generate c£800,000 in business rates growth. The extra people using the western part of King Street will also drive footfall to the shops and businesses in this area, supporting them to grow and tackling vacancy.
- 11.5. *Implications verified by: Michael Hainge, Commercial Director, Tel. 0208 753 6692.*

12. IT IMPLICATIONS

- 12.1. It will be necessary to move the council's network hub out of Hammersmith Town Hall to minimise disruption to services during any building work. The hub will be moved to 145 King Street as suitable permanent links already exist and the hub can be left there once staff have moved back to the refurbished HTH.
- 12.2. The increased dependency on 145 King Street from a network point of view as well as higher density of staff will require an update to existing IT infrastructure.

- 12.3. Other critical services will also need to be moved from HTH and nearby buildings. These services include CCTV; Parking Wardens and Parking CCTV; Cashiers; Registrars; HammerPrint.
- 12.4. Any future move from the HTH building and subsequent move back by staff will be facilitated by the implementation of the new desktop strategy which is due to complete late 2018. The new strategy will provide each member of staff with a mobile device, such as a tablet or a laptop, and a mobile phone.
- 12.5. Employees will be able to work in a mobile way outside of council buildings by connecting their mobile device to the Internet using their mobile phone.
- 12.6. Office 365 has already been implemented and provides collaborative tools for email, calendars, shared Notebooks, shared working areas such as Team areas; and a wide variety of MS Office applications including Word and Excel.
- 12.7. Skype for Business will support video conference calls, as well as the voice conference calls that are already available.
- 12.8. The mobile devices and collaborative tools will support the council's ambition to deliver services in a more agile way from different locations and reduce the need to go back to base.
- 12.9. The new ways of working will need a programme of change management to support staff and deliver the benefits of mobile working to the council.
- 12.10. Privacy Impact Assessments for each service areas decant and subsequent relocation will be carried out by the services to avoid loss or accidental disclosure of information.
- 12.11. *Implications completed by: Veronica Barella, interim Chief Information Officer, Tel 020 8753 2927.*

13. RISK MANAGEMENT

- 13.1. There are several risks associated with a scheme of this size and complexity. Some of the key risks highlighted below are:
 1. Programme Slippage leading to high cost
 2. Viability of the Scheme
 3. Securing planning permission
 4. Managing expectation of stakeholders
 5. Delays to the purchase of the Cinema Site
 6. Site Assembly including acquiring Friends site
 7. Site Assembly – Parking for staff
 8. Vacant Possession of site
 9. Failure of either party to enter into a land sale agreement following heads of terms.
- 13.2. **Measures to mitigate Risk:** Officers have also assessed the risks associated with the various stages of this programme and sought to put in place

appropriate mitigations. It is recommended that they continue to review, monitor and escalate as appropriate until the programme objectives have been delivered and ensure that new risks identified are assigned to risk owners.

- 13.3. Officers have obtained and followed appropriate external legal advice to assure those approving this report that the proposed approach would enable the Council to achieve its objectives for this programme and should not be subject to procurement challenge by following the recommended course of action.
- 13.4. *Implications completed by: David Hughes, Director of Audit, Fraud, Risk and Insurance, Tel 020 8753 2927.*

14. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name and contact details of responsible officer	Department/ Location
	None		

LIST OF APPENDIXES

- Appendix 1 – Red Line Plan of Land for Appropriation
Appendix 2 – Confidential Legal Advice (in the exempt Cabinet agenda)