



City of Westminster

# Cabinet Member Report

<b>Decision Makers:</b>	Cabinet Member for Climate Action, Regeneration & Renters, Cabinet Member for Finance and Council Reform
<b>Date:</b>	23 January 2023
<b>Classification:</b>	General Release
<b>Title:</b>	Church Street Procurement Strategy
<b>Wards Affected:</b>	Church Street
<b>Policy Context:</b>	<p>The Regeneration of Church Street is one of the Council's key development projects, which supports the Council's aspirations for;</p> <ul style="list-style-type: none"><li>• Better homes</li><li>• Better public and open spaces</li><li>• Cultural, economic and enterprise opportunities</li><li>• Improved retail</li><li>• Better Connections</li><li>• Community facilities</li></ul>
<b>Key Decision:</b>	Yes due significant expenditure
<b>Financial Summary:</b>	The total estimated capex of Site A Joint Venture (J/V) partnership about £264m with peak debt of about £96m
<b>Report of:</b>	Debbie Jackson, Executive Director of Growth Planning and Housing

## 1. Executive Summary

The Procurement Strategy for the procurement of a Development Partner (the Strategy) to participate and invest with Westminster City Council (the Council), in the redevelopment of Site A of the Church Street Regeneration Scheme (the Scheme), was endorsed by the Commercial Gateway Review Board (CGRB) in December 2022. This Strategy is an updated version of one that was endorsed by CGRB on 21<sup>st</sup> December 2021 and the Executive Director in April 2022. The Procurement Strategy can be found at Appendix B to this report.

Following instructions from the new Labour Administration the scheme was reviewed with some changes made to the design of Site A. This has resulted in a delay to the launch of procurement and an updated Strategy being produced.

An outline business case was presented to the Capital Review Group (CRG) on 27<sup>th</sup> May 2020 and was financially agreed, and on 21<sup>st</sup> August 2020 the Council's Cabinet Member for Finance, Property and Regeneration considered delivery options, and approved the adoption of a 'partnership style model' where the Council and a developer would share project risks, rewards, and funding. The CRG received the updated Strategy and associated papers in December 2022 and confirmed approval on the 20<sup>th</sup> of December.

### Procurement Route

Several procurement routes were explored including open, restricted, Competitive Dialogue (CD) and the Competitive Procedure with Negotiation (CPN).

The Competitive Procedure with Negotiation has been selected as the most appropriate route as it will enable the Council to adopt a flexible approach to the procurement whereby negotiation on some commercial parameters ensures interested parties can refine their bids based on negotiation feedback, whilst also ensuring delivery of the Council's key objectives that are set as non-negotiable.

Competitive Procedure with Negotiation will include two distinct phases, of which further details outlining the full procurement process have been included in the Procurement Strategy appended to this report. Which are:

1. Formal Expression of Interest & shortlisting
2. Negotiation & submission of initial and final tenders

Extensive premarket engagement has been undertaken, that included the issue of a Prior Information Notice (PIN) on 5<sup>th</sup> June 2021, which provided details on the upcoming procurement exercise, and received positive responses. This was followed up by a Market Engagement Event held 23 – 28 July 2021 where prospective contractors were engaged in meaningful discussions that focussed on the key procurement parameters.

Following the amendments made to the Scheme in Summer 2022 another informal soft market testing exercise was undertaken in September 2022, which confirmed that the market is still interested in the amended Scheme at this time.

Subject to Cabinet Approval following conclusion of the procurement process, the Joint Venture Partnership contract is scheduled to commence in early 2024 for a period of seven and half years (with no guarantee that the Scheme and contractual arrangement(s) will be extended to include Sites B and C for Church Street Regeneration) including the preconstruction period, post-handover, and sales periods.

## **2. Recommendations**

Recommendations for approval, that has been endorsed at the CGRB and CRG are:

- a) The Procurement Strategy and parameters outlined in the Procurement Strategy appended to this report,
- b) Proceed with the most suitable procurement route - Competitive Procedure with Negotiation
- c) The Commercial Structure, which is a Joint Venture Partnership. Also detailed in the Procurement Strategy.

## **3. Reasons for Decision**

Church Street is a vibrant, complex area but despite proximity to the West End, it has issues of social and economic exclusion, which results in poorer health outcomes and lower than average rates of economic activity, than neighbouring areas. As such the Council has ambitious plans and is committed to significant investment to regenerate the area into a model of social, economic, and environmental sustainability.

The masterplan embellishes the real character of Church Street and the importance of the local community in delivering transformational change, and four interconnected drivers have been established which are:

- Health and wellbeing
- Homes
- Market and enterprise
- Making connections

## **4. Background, including Policy Context**

Church Street is a unique, and diverse part of Westminster and London. Around half of the residents of Church Street were born outside the UK, a significant proportion of residents in the area are Arabic, Bengali and Kurdish speaking and this cultural and ethnic diversity is evident in the character of the area. There are quite a number of residents who are elderly and vulnerable who

require better services and improved accessibility, with deprivation reaching the highest levels within Westminster.

The key objectives of the development are to:

- Optimise site capacity to maximise the delivery of housing and in particular, the delivery of affordable housing.
- Provide good quality living, all of which are dual aspect, providing private amenity space, adaptable for changing needs and tenure.
- Good quality and attractive streets and open spaces with opportunities for play, leisure and recreation alongside improved pedestrian and cycle connections.
- A secure environment which feels safe with good natural surveillance.
- A place which promotes and supports enterprise and jobs, provides a comprehensive and affordable retail offer, in particular for existing Church Street residents.
- A revitalised Church Street market with modern and suitable infrastructure, which is economically sustainable, but remains relevant to existing Church Street residents.

## **5. Financial Implications**

The partnership will be a 50/50 Joint Venture structure. The Council is about to commence a procurement process to select a JV Development Partner.

The estimated capital expenditure to be incurred by the JV for Site A is £264m of which the Council's 50% input (at peak debt) would be £96m.

The Council's capital funding requirement into the JV has been included within current general fund budgets.

However, the HRA carries the overall cost of the Scheme through its negative land value or the difference between the cost to deliver the scheme and the income that it generates. In addition, the HRA incurs the cost of leaseholder buybacks, demolition and the cost of the social units delivered. The total direct costs to be incurred by the HRA are estimated at £142m including the negative land payment, which are funded by Affordable Housing Fund (AHF), GLA grant, Community Infrastructure Levy (CIL) and HRA borrowing.

The scheme estimated cost and income are based on today's values (i.e., they do not include projections for future inflation). As such bidders will be given a range for potential development costs (£250m to £280m) as part of the procurement documentation. Their submissions will then include their estimates for future inflation and potential market changes to sales values.

The values of the Joint Venture procurement contracts are as follows:

- For Site A - c. £250m to £280m

- There is the option for the Council to enter into a Future Sites Agreement which will be subject to further endorsement and approvals. The value of these are:
  - o Site B c. £209m
  - o Site C c. £102m
  - o Market/Public Realm works c. £4.5m

## **6. Legal Implications**

The recommendation in this report is seeking endorsement of the procurement strategy to procure the appointment of a development partner to form a joint venture partnership with the Council (with an option at the Council's discretion for the partnership arrangement to be with Westminster Homes Investments Limited.) The joint venture arrangement will be in respect of the redevelopment for Site A of the Church Street Regeneration Scheme (the Scheme).

The procurement procedure recommended to procure a development partner will be the Competitive Procedure with Negotiation (CPN) in accordance with regulation 29 of the Public Contracts Regulation 2015 (PCR) (the Strategy).

Regulation 29 of the PCR permit procurements of this complexity to be undertaken through this proposed procedure. The award criteria set out in the invitation to participate in negotiations must be strictly adhered to in the negotiation and award process. Failure to do so could expose the Council's award at risk of a legal challenge by third parties that chose not to submit a tender and or unsuccessful tenderers.

The CPN has been the subject of detailed analysis of advantages and disadvantages by officers which have considered carefully in consultation with external and internal legal advice. The Strategy recommended reflects the market position, complexity, with minimum requirements of the Council and expected outcome. Use of CPN is therefore lawful and justified.

Regulation 29 of the PCR does not allow for further negotiation after final tender submission. All matters must, therefore, be resolved during negotiation sessions of the procurement exercise.

On 27 May 2020, an Outline Business Case was presented and approved by the Capital Review Board with key component of the OBC being a partnership delivery model. Thereafter, on 27 August 2020 the Cabinet Member for Finance, Property and Regeneration approved the Church Street Site A – Outline Business Case Part Two. In addition to granting approval to procure the setup of a Partnership – style” delivery route.

Where the Council is exercising its general powers for primarily a commercial purpose it must do through a company in accordance with section 4(2) of the Localism Act 2011. The Council has received external tax and legal advice as to the criteria and thresholds of a commercial purpose activity which would enable direct investment in a joint venture and associated arrangements.

The purpose of the entering into a joint venture with a development partner is for the Council to use and develop its own land to its best advantage so that it can achieve its housing, growth or regeneration objectives for the Church Street Regeneration Scheme. The Council will be delivering market rent and market sales activities to maximise social and affordable housing and or achieve other good social objectives for this local area.

If Council cannot safely satisfy the dominant 'commercial purpose' tests as stated in the case *Peters v Harringay LBC 2018* to demonstrate that it is acting with a commercial purpose, the Council's investment in a joint venture should be held in an alternative trading company and not be a joint venture set up with the Council itself. If the dominant purpose of the Council is non-commercial such as the development and management of its land to achieve its housing and regeneration objectives, in this scenario it is not considered by the courts to be acting with a 'commercial purpose' albeit acting in a commercial manner.

The Council has instructed Trowers and Hamlin LLP for external legal support due to the number of bespoke and complex legal agreements required for the joint venture arrangement in respect of the Scheme, namely:

- Members' Agreement
- Development Agreement
- Lease
- Loan Agreements/Loan Notes
- Services Agreements
- Affordable Housing Agreement; and
- Church Street Future Sites Agreement (only at the Council's sole discretion)

During the negotiation phase of the procurement process key contract documents in respect of the joint venture arrangements will be developed and precise key terms agreed.

The report sets out the purpose and key elements for procuring the appointment of a development partner for delivery of Site A of the Church Street Regeneration Scheme. Whereas the initial scope is limited to Site A, the Contract Notice (CN) shall be drafted in such a way that allows the Council, at its own discretion, to consider further development opportunities in respect of Sites, B, C and the External Church Street Market Public Realm.

The draft Church Street Future Sites Agreement provides a mechanism and framework, albeit at a very high level, for the Council and the appointed development partner to negotiate and agree terms for expanding the scope of the joint venture arrangements. This agreement is not prescriptive but issued as part of the contractual procurement documents to seek to minimise and mitigate the risks of procurement challenge should the Council take a decision to expand the scope of development for the Church Street Scheme at a future date.

The value of Sites B, C and Church Street Market Public Realm shall be set as a guide in the CN which shall make clear that any changes or deviation whilst subject to published indices, will be given effect, in full compliance with regulation 72 Public Contracts Regulations 2015 (PCR 2015). The inclusion of Church Street Future Sites Agreement within the CN will facilitate compliance with PCR 2015.

It is understood that officers have undertaken extensive public consultations in respect of the entire Church Street Project and specifically in respect of Site A. The consultations were necessary to inform the Council's project plan and ensure that the requirements of the Equalities Act 2010 can be satisfied.

As mentioned above the suite of legal documents to be issued to shortlisted bidders invited to tender will also include a draft Development Agreement, draft Members Agreement and draft lease. It is intended that the JV partnership will be granted a long leasehold interest in Site A Scheme once pre-conditions are satisfied including one demonstrating financial viability.

The successful tenderer will be the partner offering the best commercial terms and best quality proposal. The Council's initial financial contribution to the JV will be its costs of achieving a developable site for the Scheme, recognised by secured loan notes issued by the JV. The partner will match this contribution on the same basis. Both parties to the JV will be able to raise senior debt for the development but the Council will retain the right to do so in its discretion. Debt will be secured on the land. Any third party providing senior debt will be required to enter an agreement to undertake the development in case of JV default.

The Council must satisfy s123 of the Local Government Act 1972 in disposing of its land interest to the JV (achieve the best consideration reasonably obtainable). This will require valuation advice in due course to demonstrate that this duty is met. The terms of the General Consent to dispose of local authority land will also need to be satisfied.

## **7. Carbon Impact**

Whilst the procurement procedure in itself, which this report seeks approval of, does not produce a carbon impact the carbon impact of the development Scheme on Site A has been measured. The Site A development proposal has a whole life cycle carbon assessment WLC of 1136 kgCO<sub>2</sub>e/m<sup>2</sup>.

## **8. Consultation**

Ward Members were initially briefed on the Church Street Site A Redevelopment Strategy and Delivery Plan via a detailed briefing that took place on the 12th December 2018.

Numerous consultations with the local community have been undertaken over the previous years, culminating in a residents' ballot. The ballot was a success and recorded a majority 'yes' vote on the 22<sup>nd</sup> December 2022. Officers have

undertaken extensive public consultations in respect of the entire Church Street Development Project and specifically in respect of Site A Scheme. The consultations were necessary to inform the Council’s project plan and ensure that the requirements of the Equalities Act 2010 can be satisfied. Consultations have been undertaken and are still ongoing with the residents and businesses situated in the Church Street District.

## 9. Procurement Programme

Stage	Date(s)
Market warming engagement	16-23 <sup>rd</sup> Sept 22
Internal Governance Complete	18 Jan 23
Publish FTS notice	23 Jan 23
Publish Contracts Finder notice and capitalEsourcing notice	23 Jan 23
SQ submission return	10 Mar 23
Evaluation period	13 – 24 Mar 23
Announce Short List & Publish Feedback to Unsuccessful Candidates	10 – 14 Apr 23
Publish Invitation to Participate in Negotiation	17 Apr 23
Negotiation Period	1 May – 4 Aug 23
Publish Invitation to Submit Final Tenders	7 Aug 23
Deadline for Final Tender Response	4 Sept 23
Evaluation & Moderation of Final Tenders	18 – 29 Sept 23
Internal Governance	Oct – Jan 2024
Contract award report (CGRB) – obtain recommendation to proceed to approval	Oct - Nov 23
Executive Director approval obtained	Nov 23
Cabinet– approval obtained	Dec 23/ Jan 24
Standstill – issue letters to tenderers	Jan / Feb 24
Finalise contract terms / contract signing	Feb 24
Contract commences / Go live	Feb / Mar 24

If you have any queries about this Report or wish to review further any of the Background Papers attached, please contact:

Evie Hodgkin ehodgkin@westminstergov.uk

## BACKGROUND PAPERS

- *The Procurement Strategy – which includes the following documents:*
  - *Prior Information Notice and Market Event Engagement Report*
  - *Analysis of Commercial Structures*
  - *Analysis of the procurement routes*

- *The parameters*
- *Outline Business Case*
- *Church Street Masterplan*

## **APPENDICES**

Appendix A – Other Implications

Appendix B – Procurement Strategy (Exempt from Publication)

*NB: For individual Cabinet Member reports only*

For completion by the **Cabinet Member for Climate Action, Regeneration & Renters**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed:  Date: 23/01/2023  
NAME: **Councillor Matt Noble**

State nature of interest if any:

*(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled **Church Street Procurement Strategy** and reject any alternative options which are referred to but not recommended.

Signed: 

Cabinet Member for Climate Action, Regeneration & Renters  
23/01/2023  
Date:

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant

considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

*NB: For individual Cabinet Member reports only*

For completion by the **Cabinet Member for Finance and Council Reform**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report



Signed:

Date: 18/01/2023

NAME: **Councillor David Boothroyd**

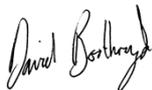
State nature of interest if any:

*(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled

**Church Street Procurement Strategy** and reject any alternative options which are referred to but not recommended.

Signed:



Cabinet Member for Finance and Council Reform

18/01/2023

Date:

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your

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