



**Cabinet**  
16 August 2021

**Report from the Strategic Director  
of Regeneration & Environment**

**Wembley Housing Zone – Approval of Procurement for  
Development of Council sites and Associated Matters**

<b>Wards Affected:</b>	Wembley Central
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt <i>Appendix 1, 2, 3, 4, 5 and 6 are not for publication as they contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)".</i>
<b>No. of Appendices:</b>	Seven: Appendix 1: Soft Market Testing April 2021 (exempt) Appendix 2: WHZ procurement overview (exempt) Appendix 3: WHZ development appraisals summary 2021 (exempt) Appendix 4: WHZ development appraisals 2021 (exempt) Appendix 5: WHZ internal financial appraisal summary (exempt) Appendix 6: WHZ EY VAT Advice July 2020 (exempt) Appendix 7: WHZ Equalities Analysis
<b>Background Papers:</b>	Cabinet January 2018 - Wembley Housing Zone update and appointment of architecturally led multidisciplinary design team  Cabinet July 2016 - Wembley Housing Zone Programme: Property Acquisition  Cabinet July 2015 - Wembley and Alperton Housing Zones
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## **1.0 Purpose of the Report**

- 1.1 This report updates Cabinet on progress on council-led mixed use regeneration of the eastern end of Wembley High Road within the Wembley Housing Zone, and seeks approvals to procure a delivery partner and associated matters, to redevelop both the land to the east of Cecil Avenue and Ujima House.

## **2.0 Recommendations for Cabinet**

Cabinet are asked to:

- 2.1 Note the progress made to date in the Wembley Housing Zone programme;
- 2.2 Approve the preferred delivery option for the regeneration of the sites known as land to the east of Cecil Avenue and Ujima House ('the Sites') as detailed in paragraph 3.5.1;
- 2.3 Note the financial viability of the scheme and approve the budget requirement to deliver the preferred option as detailed in Appendix 5;
- 2.4 Approve the procurement of a delivery partner for the Sites, through inviting tenders using a Competitive Procedure with Negotiation under the Public Contracts Regulations 2015;
- 2.5 Delegate to the Strategic Director of Regeneration & Environment, in consultation with the Lead Member for Regeneration, Property & Planning, the decision on alternative development scheme proposals and procurement routes, if procurement of the preferred option is unsuccessful in relation to the Sites;
- 2.6 Delegate to the Strategic Director of Regeneration & Environment, in consultation with the Lead Member for Regeneration, Property & Planning, approval of pre-tender considerations set out in Standing Order 89 in respect of the procurement of a delivery partner for the Sites.
- 2.7 Delegate authority to the Strategic Director of Regeneration & Environment, in consultation with the Lead Member for Regeneration, Property & Planning, to award the contract to the preferred bidder to progress delivery of the Sites;
- 2.8 Note there will be appointment of professional consultants to support delivery of the Sites, using powers delegated under the Constitution;
- 2.9 Delegate authority to the Strategic Director of Regeneration & Environment, in consultation with the Cabinet Member for Regeneration, Property & Planning to consult with those affected by the appropriation of the Sites and to consider the responses of the consultation and thereafter, and where relevant, to appropriate the Sites for planning purposes in order to facilitate the redevelopment of the site for which Planning Permission has been provided;
- 2.10 Delegate authority to the Strategic Director of Regeneration & Environment, in consultation with the Cabinet Member for Regeneration, Property & Planning to appropriate the Sites for planning purposes pursuant to section 122 of the Local

Government Act 1972 and to override third party rights and interests in the Sites pursuant to section 203 of the Housing and Planning Act 2016; and

- 2.11 Agree to apply section 203 of the Housing and Planning Act to override third party rights and to pay affected third parties compensation where required by statute.
- 2.12 Delegate authority to the Strategic Director of Regeneration & Environment, in consultation with the Cabinet Member for Regeneration, Property & Planning, to make amendments to the Wembley Housing Zone funding contract or enter a new agreement with the Greater London Authority to receive grant to deliver the Sites for the reasons detailed in paragraph 3.3.2.

### **3.0 Detail**

#### **3.1 Summary**

- 3.1.1 Brent Council in partnership with the GLA established in 2015 the Wembley Housing Zone (WHZ) to increase and accelerate the delivery of new homes. Legal agreements signed with the GLA secured £8m grant to deliver a rolling programme of development across six sites and regenerate the area by 2025. Brent Cabinet in July 2016 resolved to use GLA grant to buy Ujima House, and then in January 2018 to progress design and planning of its land interests at Cecil Avenue and Ujima House.
- 3.1.2 Cabinet Members were consulted in July 2020 and indicated a preferred delivery option for the Cecil Avenue site, namely that the Council finance construction, retain the affordable housing, and procure a developer partner to build out and take the private sales housing – subject to Secretary of State de-designation of the site from school use and Brent Cabinet approval.
- 3.1.3 Successful mixed use regeneration of these two key council-owned sites would unlock the vision to revitalise the eastern stretch of Wembley High Road, with commercial and community uses creating an active frontage in this gateway location, linking the established Wembley Central town centre with the new Wembley Park regeneration.
- 3.1.4 Planning decisions issued in February 2021 on the two sites are for high quality, housing-led development comprising over 300 new homes, including affordable and larger family sized homes, and would increase housing supply, and boost town centre footfall and spend. Workspace to support job creation and economic growth, community space, highway and public realm improvements, and new publicly accessible green space completes the regeneration. At the same time, heads of terms are now agreed with the GLA to amend the existing funding agreement and grant to deliver 50% affordable homes on the two-council owned sites, with lower London Affordable Rents.
- 3.1.5 With planning decisions issued, GLA funding refocused on the two council-owned sites, and Department for Education (DfE) June 2021 confirming Secretary of State conditional consent to dispose of the Cecil Avenue land, the proposal is to bring the Cecil Avenue and Ujima House sites to the market together, build out the schemes, and maximise benefits for local residents, businesses and communities.

### **3.2 Planning Update**

- 3.2.1 Planning permissions were granted for both sites in February 2021. The larger Cecil Avenue scheme comprises 250 new homes, with 26% or 64 larger 3 and 4 bedroom family homes, c3,600sqm commercial and community floorspace, and a publicly accessible landscaped courtyard. The smaller Ujima House scheme comprises 54 new homes and c650sqm workspace. Together the schemes provide the opportunity to regenerate the eastern end of Wembley High Road, through high quality mixed used redevelopment and deliver new homes, jobs and infrastructure.
- 3.2.3 Planning decisions are for a minimum 35% affordable housing, with remaining homes for private sale to cross subsidise the affordable housing and regeneration of the area, and provide a mixed tenure development. After reviewing the funding position with the GLA, an increase to 50% affordable housing is proposed across the sites, to better match local housing needs, and align with Council and GLA policy and targets.

### **3.3 GLA WHZ Funding Update**

- 3.3.1 Brent Council signed funding agreements with the GLA in 2016 and 2018, securing £8m grant to deliver 215 affordable homes across six sites within the WHZ by 2025, through a rolling programme of acquisition and development, and used £4.8m grant to acquire Ujima House.
- 3.3.2 Given many of the original WHZ sites have come forward for development privately, heads of terms are agreed with the GLA to amend the existing WHZ funding agreement to refocus the £8m grant to deliver 152 affordable homes solely on the two council-owned Cecil Avenue and Ujima House sites. 50% affordable housing is proposed across the two sites, with London Affordable Rent homes, increasing the amount and affordability of affordable housing above minimum levels secured at planning. Reviewing WHZ financial viability, the GLA have also agreed in principle an additional £5.5m grant to deliver the scheme, but which is subject to confirmation.

### **3.4 Cecil Avenue site de-designation from Educational Use**

- 3.4.1 The Department for Education (DfE) confirmed Secretary of State consent to the appropriation and disposal of the Cecil Avenue site 30th June 2021, with relevant council officer acceptance of the conditions sent to the DfE 9th July 2021.

### **3.5 Preferred Delivery Option**

- 3.5.1 Cabinet Members were consulted in July 2020 concerning three delivery options set out below to develop the land to the east of Cecil Avenue, and indicated a preference for Delivery Option 2:
- Delivery Option 1 – Council retains the site, leads on all aspects of development, and takes all risks.
  - **Delivery Option 2 (preferred option) – Council constructs scheme and procures a partner to deal with the private housing sales.**
  - Delivery Option 3 – Council disposes of the site to the open market with a development agreement.

**Table 1 – Pros and Cons of Preferred Delivery Option**

Delivery Option 2 - Council constructs scheme and procures a developer partner to share private housing sales risk	
<p><b>Pros</b></p> <p>There is a lower financial return than option 1, however this approach reduces construction and sales risk for the Council.</p> <p>Under this option the Council retains the right to a revenue stream or a one-off capital receipt.</p> <p>The Council could receive a share of profits realised via an overage mechanism.</p> <p>The Council retains significant control of the scheme, scheme outputs and place making opportunities.</p>	<p><b>Cons</b></p> <p>Medium risk, however this comes with a lower financial return.</p> <p>A developer may seek to influence the final scheme, compromising the overall place making vision and regeneration benefits for the area.</p>

- 3.5.2 The strategy and analysis for the preferred delivery option is still considered sound. The medium risk option gives the Council significant control over a high profile regeneration scheme, whilst balancing risks and return. The Council takes and manages construction risk, which it has experience of doing through its housing and schools capital programmes, but a developer partner is sought to take and dispose the private sales housing, of which the Council has no experience. By financing construction, the Council can use lower public sector borrowing rates and reduce finance costs. Housing confirm interest in retaining the affordable housing developed as part of the scheme, and the Council would seek an equitable profit share, commensurate with the relative risks borne by the respective parties. A hybrid development agreement for long leasehold disposal of the private housing plus a design and build contract for construction works would secure such arrangements.
- 3.5.3 The proposal is to bring the Cecil Avenue and Ujima House sites to the market together, to deliver the ambition for regeneration of the eastern end of Wembley High Road, with 50% affordable housing across both schemes: 39% affordable housing on Cecil Avenue and 100% affordable housing on Ujima House. This approach spreads the GLA WHZ outputs across both sites, lends to straightforward delivery and management arrangements, and is agreed in principle with the GLA. The combined option also represents a larger development package, viewed as more attractive to the market, and with greater scope for procurement and delivery efficiencies.
- 3.5.4 Soft market testing interviews with five developers undertaken April 2021 confirm general market appetite for new housing development opportunities, specific market appetite for Wembley as a location for private sales housing, the two planning schemes, preferred delivery approach for 50% affordable housing, procurement and contractual arrangements. (Appendix 1). Other developers have also contacted officers expressing interest in the schemes post issue of the planning decisions.

### **3.6 Council retention of affordable housing, commercial and community uses**

- 3.6.1 Brent Council could retain or sell the affordable housing, commercial and community spaces delivered in the schemes. Housing and Property have confirmed their interest in retaining these elements of the schemes.
- 3.6.2 Brent Council has an affordable housing development programme to deliver new council homes, to which these schemes would contribute, and manages its housing stock in-house. Housing advise that were the affordable housing retained, then the 91 London Affordable Rent homes would sit in the Housing Revenue Account (HRA). The 61 Intermediate homes would be delivered as either shared ownership or intermediate rent and could sit in the HRA or be transferred to i4B depending on the wider housing finance strategy. Brent Council also manages a commercial portfolio. Landlord opportunities here include more control over commercial uses and community outputs in a priority regeneration area, and to generate additional revenue. Property advise that were the commercial and community floorspace retained, appropriate management and letting arrangement would need to be agreed moving forward.
- 3.6.3 Financially, retention of the affordable housing, commercial and community uses means foregoing a one off capital receipt in exchange for a recurring revenue stream.

### **3.7 Procurement**

- 3.7.1 A Competitive Procedure with Negotiation (CPN) procurement route taking approximately 12 months is considered most appropriate to appoint a Tier 1 developer partner, enabling further detailed discussion with shortlisted bidders. An overview of the procurement timeline is at Appendix 2. Soft market testing indicates a hybrid development agreement for long leasehold disposal of the private housing plus a design and build contract for construction works within it to be the most effective contract structure to deliver the optimum regeneration outcomes. As part of tender returns, bidders would be required to provide a cost for the build out and guaranteed monetary consideration for the private homes. A down payment for the private housing would provide the Council security, and an overage clause capture the profit share arrangement.
- 3.7.2 It is envisaged that the selected bidder would act as the “Contractor / Developer Partner” with the Council as the “Employer / Landowner”. Staged payments for building works would be made by the Council as Employer to the selected bidder (as Contractor / Developer Partner) in the normal way pursuant to a JCT Design and Build Contract. However, at the time the bidder is granted residential leases of the private sale homes, then contractually it would have to pay the guaranteed monetary consideration for those homes. In the event of unsuccessful procurement under such preferred arrangement, authority would be sought for a fall back option e.g. conditional land sale and development agreement. In order to avoid delay in the procurement of the delivery partner for the Sites, Officers have included various delegations to the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Property & Planning.
- 3.7.3 Professional services, including development management, cost consultant and employer’s agent would be appointed ahead of the contractor developer partner procurement. The Property team’s capacity would be increased to project manage delivery of what is a large and relatively complex construction, through recruitment to

a fixed term role or in sourcing of private sector development management services to be embedded within the Council. The proposed capital budget professional fees allowance would cover these costs.

3.7.4 The Cecil Avenue planning scheme is designed to RIBA Stage 3. The Ujima scheme is designed to RIBA Stage 2. Soft market testing confirms officers view that prior to commissioning full RIBA Stage 4 designs it is important to have a contractor developer partner on board to input into the technical design, improve efficiencies and add value, particularly for the private sale homes. For the Cecil Avenue scheme, it is however recommended that key details are worked up to RIBA Stage 4a, including façade materials and landscaping, to allow for more accurate pricing in tender returns. The Council would also challenge the design team to improve environmental sustainability to further reduce the carbon footprint and increase local biodiversity. This approach also allows for greater control over the quality of external elements crucial to place making of the area. The existing contract with the design team is extendable to RIBA Stage 4a. On the Ujima House site, given the overlap in interest with Network Rail, it would likely be beneficial to have a contractor on board to work through site constraints and input on construction management, and therefore no further design work would be undertaken in advance of procurement of a delivery partner for the Sites.

### **3.8 Financial Viability**

3.8.1 Planning permissions for the schemes requires a minimum 35% affordable housing, however the proposal is to deliver 50% affordable housing across the schemes.

3.8.2 One financial benefit of the preferred delivery option is that the Council can take advantage of PWLB borrowing rates, typically lower than borrowing rates secured by private developers, to finance scheme construction. Lower public finance costs, plus GLA agreement to increase grant levels, would help deliver 50% affordable housing, with 152 affordable homes delivered across the schemes, including London Affordable Rent homes. These changes both increase the amount of much needed affordable housing, and the affordability of the homes, better aligning with the Council's policies and ambitions, for the benefit of local residents.

3.8.3 Development appraisals for the preferred delivery option for the two schemes are at Appendices 3 and 4. Viability improvements to be explored through the programme would include efficiency savings on estimated construction costs through procurement and more detailed design.

#### Risks

3.8.4 The proposed hybrid contract structure of a build contract and private housing long-leasehold disposal is less common than the standard conditional land sale and development agreement model, as used locally in South Kilburn regeneration. However, recent soft market engagement has shown interest and appetite for this structure, and it has also been successfully used elsewhere, notably in LB Hackney.

3.8.5 Financial viability is another key risk, informed by the costs and values of the schemes. Movements in these variables means the Council could suffer or benefit financially. Further financial risk analysis is provided in the Financial Implications in section 4.

3.8.6 It is actual procurement that provides the acid test of the marketplace however. The proposed CPN approach (see above section 3.7) would seek to reach out to a wide range of prospective developer partners, before shortlisting, to mitigate the risks outlined. Officers also propose Cabinet delegate authority for alternative development scheme proposals and procurement routes, if procurement is unsuccessful in relation to the Sites, so as to be able to nimbly respond with another option to the market and meet the agreed GLA WHZ funding timetable to complete the schemes by 2025.

#### Public realm improvements

3.8.7 As part of the planning permission for the schemes, considerable public realm improvements are proposed along the High Road frontage of both sites, including pavement widening, new materials and an increase in street trees.

3.8.8 Transport are also working with TfL to look at the wider stretch of the High Road between Ealing Road and Scrubs Lane as part of the Healthy Streets programme, including realignment of the Wembley Triangle junction and provision of a new cycle route. Works are subject approvals and funding, but would facilitate comprehensive and consistent public realm improvements along the eastern section of the High Road, and would help better link Wembley town centre into the Wembley Park regeneration. The Council is also pursuing highway and public realm improvements under the Strategic Transformation Borough Priorities programme.

### **4.0 Financial Implications**

4.1 The delivery options 1 – 3 noted in this report in paragraph 3.5.1 each come with different levels of financial return and risk. Table 1 above provides a side by side comparison of the pros and cons associated with each option.

4.2 The financial viability and budget requirement to deliver the preferred option is as set out in Appendices 3 and 4 of this report. An internal viability assessment modelled on the council's cash flows is summarised in Appendix 5.

4.3 The affordable homes wholly owned by the Council will be appropriated to Housing Revenue Account (HRA) once constructed, to deliver Council landlord functions.

4.4 The Government's new-shared ownership model could require landlords to cover the cost of any repairs and maintenance for new Shared Ownership homes for an initial 10-year period. This could increase costs to the Council were any of the 61 Intermediate homes delivered as shared ownership.

4.5 DfE conditions on the appropriation and disposal of the Cecil Avenue site, to reinvest the full value of the site in education provision in the borough. The Council has agreed to the conditions, although work on the design and full cost of the education provision is ongoing.



### Financial Risks

- 4.6 The financial risks summarised below (paragraph 4.7 – 4.9) are specific to the proposals set out in this report. In addition to this all construction schemes (by their nature) will carry one or more of the following risks, all of which can have an impact on financial viability.
- 4.7 Construction Inflation Risk – inflation over and above that budgeted by the Council's professionals and advisors and built into project budgets could impact on the affordability of the project.
- 4.8 Regulation Risk – capital schemes need to comply with the latest law and regulations which can change leading to an impact on construction costs and may be retrospective.
- 4.9 Commercial Values – the proposals within this report contain assumptions regarding the market value of future assets, income from property letting, and generation of capital receipts from property sales in some cases post development, attracting developers to projects based on a potential share of profits and other revenue/capital financial flows. Should market movements worsen the Council may suffer financially. Conversely, if market conditions improve the Council could benefit.

### Tax Considerations

- 4.10 Ernst & Young (EY) have last year provided advice on tax considerations for the different delivery routes, primarily focussed on VAT (Appendix 6). EY advise that SDLT is not a consideration for the Council as it already owns the sites, but any partner would need to procure their own SDLT advice.
- 4.11 EY advise that a structure where the Council constructs the private residential homes to 'golden brick' level (beyond foundation level) and then transfers the private housing to the developer partner under long-leases is VAT efficient, and should allow the developer partner to be able recover all directly attributable VAT costs incurred on the project.
- 4.12 EY suggest the Council may need to opt to tax the commercial space i.e. charge VAT on rental income to ensure that the Council does not exceed its de-minimis threshold and can recover all its VAT incurred. Discussions are ongoing with Finance to understand what impact this may have on the Council's de-minimis threshold and if opting to tax is necessary.

## **5.0 Legal Implications**

- 5.1 All three delivery options noted at 3.5.1 of this report are permissible under current laws. They each raise different legal issues that would require careful consideration as set out below.
- 5.2 Delivery Option 1, 2 and 3: The Council must first obtain the permission of the Secretary of State prior to any disposal or appropriation of the Council land in accordance with section 77 of the School and Standard Framework Act 1998 (SSFA 1998). Once the Council has obtained the Secretary of State's consent the Council will

then appropriate the land to planning purposes in accordance with section 122 of the Local Government Act 1972.

- 5.3 The Council has the power to override third party rights in accordance with section 203 of the Housing and Planning Act 2016. This power is useful for the Council when developing its land to ensure that third parties with certain rights over the site is overridden. s203 prevents third parties from obtaining an injunction to prevent development however compensation may be payable. The Council is required to consult with third parties prior to invoking s203 and the officers should therefore ensure that they build in a period of consultation prior to building and assessing the level of compensation payable.
- 5.4 Delivery Option 1: The Council's general power of competence derived from s1(1) of the Localism Act 2011, affords the Council the power to undertake commercial activities that arise under this option (building and sales of commercial property). Usually such powers are exercised through a company. However, under some of the options envisaged under Delivery Option 1, the Council would be holding the commercial property as an adjunct to other functions and a company may not be required. The appropriate vehicle would need to be clarified if this option were pursued.
- 5.5 Delivery Option 2: The Council's general power of competence derived from s1(1) of the Localism Act 2011 would allow it enter into the type of contractual partnership envisaged under this option. The contract with the Development Partner, who is expected to take on the risk for the private sale homes, would carefully detail out the risk to be taken by such partner, the safeguards for the Council and exit mechanisms in the event the partnership fails to achieve its objective. The appropriate procurement procedure is considered at section 3.6 of this report.
- 5.6 The Council is required under s123 of the Local Government Act 1972 to ensure good value is achieved in all land disposal. Option 3 envisages an open market value which should meet this requirement. The Development Agreement would build on recent experiences and would be drafted to avoid development risks.
- 5.7 Under all three Delivery Options, the procurement of contractors and / or delivery partners would require the Council to observe the requirements of the Public Contracts Regulations 2015 and the Council's Standing Orders and Financial Regulations with regard to contracts. Also due regard would have to be given to relevant Statutory publications and guidance as it regards investment of Local Authority Funds.
- 5.8 As noted above the de-designation of the land to the east of Cecil Avenue from educational use is required for the proposed development to be allowed. Conditional consent from the Secretary of State has been received. Once finalised, the Council will then appropriate the land to planning purposes in accordance with section 122 of the Local Government Act 1972. After these requirements have been met, the Council may also use powers under section 203 Housing and Planning Act 2016 to override third party rights with certain types of interest over the site (this is with payment of compensation) to allow the development proceed, if required.

5.9 In considering whether or not the Council-owned land within the Sites should be appropriated for planning purposes, thereafter engaging the powers conferred by Section 203 of the Housing and Planning Act 2016, the Strategic Director of Regeneration & Environment, in consultation with the Cabinet Member for Regeneration, Property & Planning to consider:

- Whether the land which is to be appropriated is already owned by the Council (this is a prerequisite to appropriation);
- Whether the land which is to be appropriated is no longer required by the Council for the purposes it is currently held (this is a prerequisite to appropriation);
- Whether the purposes for which the Council would be appropriating the land is a purpose authorised by statute (in the case of land to be appropriated for planning purposes, the relevant purposes would be authorised by sections 226 and 227 of the Town and Country Planning Act 1990);
- Whether the proposed redevelopment of the site would be in the public interest;
- Whether the public interest benefits which would arise from the redevelopment of the site would be sufficient to justify the interference with any private rights, such that the interference was proportionate;
- Whether the Council could (in the alternative) acquire the land compulsorily for the purposes of the redevelopment;
- Whether any related financial liabilities of the Council would be indemnified and
- Whether prior consultation had taken place (as outlined above).

5.10 The Cecil Avenue is currently held for education purposes, and Ujima House is currently tenanted on a short lease by Meanwhile Space. Prior to appropriating the Cecil Avenue Site the Council must obtain the consent of the Secretary of State pursuant to the Academies Act 2010. Appropriation of part of the Sites for planning purposes would facilitate the carrying out of the development. There is a compelling case in the public interest to appropriate the sites for planning purposes, as developing the sites would serve the public interest by providing new and improved housing and accordingly, such development outweighs the effect of the appropriation on the private rights of individuals.

5.11 In addition, the carrying out of the proposed development and improvement of the Sites will ultimately contribute to the promotion and improvement of the economic and social wellbeing of the Council's area – and these benefits could not be realised within a reasonable timescale without interference with the private (third party) rights affected by the appropriation.

5.12 If a third party is able to establish that it has an easement or a right over the Sites or part thereof (such easements could include but not limited to a right of way or a Right of Light) then the third party could potentially obstruct the redevelopment of the Sites by applying for an injunction to prevent the delivery of the development. The effect of appropriation, and the resulting engagement of the powers in section 203 of the Housing and Planning Act 2016, is therefore to facilitate the re-development and improvement of the Sites despite interference with existing third party rights over the site (subject to the payment of compensation as required by statute). It should be noted that third parties may be entitled to compensation for loss of their rights. Such compensation would be awarded for injurious affection (compensating for any depreciation in the value of the land or property arising from the interference with the right) rather than on a reinstatement or ransom basis.

- 5.13 Section 204 of the Housing and Planning Act 2016 provides for compensation payable to third parties in respect of the diminution in value of the third party's land. A specialist valuer will need to be undertake assessment to confirm the amount of compensation payable in respect of any such losses.
- 5.14 An application was made to the Secretary of State pursuant to Schedule 1 of the Academies Act 2010 (the Act) to dispose of school land. By way of a letter dated 30th June 2021 (the Letter) the Department of Education provided Consent to appropriate the Land from education purposes and thereafter to sell the land. Such Consent was provided subject to conditions as outlined above. Schedule 1 paragraph 4 (2) and 6(2) of the Act Provides that the Council may not dispose or appropriate school land unless the Secretary of State consents. Paragraph 8 of the Act states that for the purpose of paragraph 4(2) and 6(2) the consent of the Secretary of State may be given subject to conditions.
- 5.15 The Conditions therefore form part of the Consent and non-compliance with the conditions would enable the Secretary of State to purchase the land using compulsory purchase powers and recover compensation and loss from the Council where the land had been appropriated or repudiate the contract where the Council has contracted to sell the land (but not yet completed).
- 5.16 The letter clearly sets out that subject to there being surplus monies available after (a) build of a new 64-place school for children with special educational needs and disabilities (SEN school) to (b) no later than 31st December 2024 pay the sums as outlined into the bank account of the schools and (c) Invest into its school capital programme.
- 5.17 The Council will need to decide upon whether a SEN school as outlined is in fact required in the Borough. If the Council decides that a SEN school as outlined is not required then the Council may make enquiries with the Department for Education in relation to whether they would be prepared to amend conditions, although the Council would require good reason for requiring that the Conditions be amended.
- 5.18 The preferred delivery option would require the procurement of a Contractor/ Developer Partner. Given then value of the contract, the procurement process would be required to adhere to the requirements of the Public Contracts Regulations 2015 ("PCR 2015") (as it would be an above threshold procurement). The intention is to use the Competitive Procedure with Negotiation pursuant to Regulation 29 of the PCR 2015, requiring advertising in 'Find a Tender' and a process to shortlist tenderers. If it is necessary for whatever reason to adopt a fall back option of conditional land sale and development agreement, Officers would be advised by Procurement as to whether this could be provided through one of the procurement process detailed in the PCR 2015 or alternatively using a framework.
- 5.19 The value of the contract for a delivery partner for the Sites is such that it is classed as a High Value Contract under the Council's Contract Standing Orders and Financial Regulations. As such Cabinet approval is required for the inviting of tenders and approval of pre-tender considerations and award. Cabinet approval is sought to invite tenders, with approval to the pre-tender considerations and the subsequent award delegated the Strategic Director of Regeneration & Environment, in consultation with the Lead Member for Regeneration, Property and Planning, for the reasons detailed in paragraph 3.7.2.

- 5.20 Legal Services would provide support through the procurement process and draft all agreements for the proposed development, ensuring that the Council's interests is protected. The approach would be to use the Council's standard amendments to the JCT contract for the design and build phase and to agree a suitable development agreement to cover other aspects of the preferred option.
- 5.21 The Council currently has a design team that has designed to RIBA Stage 3 for Cecil Avenue and RIBA Stage 2 for Ujima House. As detailed in paragraph 3.6.4, the intention would be to extend the existing contract to RIBA stage 4A for Cecil Avenue. However, a procurement process would then be undertaken for a design team to take design work beyond RIBA Stage 4A for Cecil Avenue and beyond RIBA Stage 2 for Ujima House. It is likely that a contract or contracts for consultants would be classed as a Medium Value Contract under the Council's Contract Standing Orders and procured under delegated powers using a procurement process under the PCR 2015 or alternatively a framework.
- 5.22 A number of other professional services will be required to support development of the sites, including development management, cost consultant and employer's agent. The values of such contracts will vary and for those over the relevant threshold for application of the PCR 2015, will need to be procured in accordance with the PCR 2015. Officers have delegated powers under Part 3 of the Constitution to procure and award Low and Medium Value Contracts.
- 5.23 As detailed at paragraph 3.3.2, heads of terms are agreed with the GLA for a deed of variation to allocate the £8m funding to Cecil Avenue and Ujima House sites rather than six sites previously agreed. As detailed at paragraph 3.3.3, the GLA and the Council have also agreed in principle an additional £5.5m funding. Delegated authority is sought to make amendments to the Wembley Housing Zone funding contract or enter a new agreement with the Greater London Authority to receive grant to deliver the two schemes.

## **6.0 Equality Implications**

- 6.1 The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a "protected characteristic" and those who do not share that protected characteristic. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.2 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.3 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary. Cabinet is referred to the contents of this report for information, in particular the

Equalities Analysis for development of the Cecil Avenue and Ujima House sites can be found at Appendix 7.

- 6.4 The Wembley Housing Zone regeneration is viewed as having positive impacts on groups with the protected characteristics of sex, race and disability. Provision of affordable housing and new larger family homes would help accommodate people on the Council housing waiting list and diverse communities within Brent with larger families. Wheelchair housing with disabled parking, distributed across the schemes, would accommodate people with disabilities. Council retention of workspace for businesses and employment has the potential to advance equality of opportunity for groups disproportionately affected by unemployment and economic inactivity.
- 6.5 Ujima House is leased by Meanwhile Space, who rent spaces to local business and community groups, including a youth group. Whilst Meanwhile Space lease and occupation was always on a temporary peppercorn rent basis, in advance of the building being redeveloped, the Council will want to work with landlord Meanwhile Space to assist their tenants in their efforts to find suitable alternative premises.
- 6.6 The proposal is viewed to have neutral impacts on the other protected characteristics; sex, sexual orientation, gender reassignment, religion or belief, pregnancy or maternity and marriage.
- 6.7 Regard to all protected characteristics will follow through to the next stages of delivery, and the Equality Analysis reviewed and updated accordingly.

## **7.0 Consultation with Ward Members and Stakeholders**

- 7.1 Cabinet Members and the Lead Member for Regeneration, Property & Planning have been briefed on delivery options for the Wembley Housing Zone.
- 7.2 The GLA receives regular briefings on the Wembley Housing Zone.
- 7.3 Consultation events have been held with residents and local stakeholders, including Ward Members, local schools and other Council departments, to inform designs for the two planning schemes, which were also subject to statutory planning consultation.

## **8.0 Human Resources/Property Implications**

- 8.1 Property implications have been discussed throughout this paper. Capacity of the Property team will need to be increased to deliver the schemes. Appropriate management and letting arrangement for the retained commercial and community floorspace will also need to be agreed moving forward.

**Report sign off:**

**Alan Lunt**

**STRATEGIC DIRECTOR**

Strategic Director of Regeneration & Environment