
South Kilburn Regeneration Programme, Single Delivery Partner Procurement

Commercial structure overview for PME

1 Overview

- 1.1 The London Borough of Brent (the “**Council**”) is seeking to procure a single delivery partner (“**Partner**”) to establish a contractual partnership to deliver the regeneration of a number of sites (each a “**Site**”) which comprise the remainder of the South Kilburn Regeneration Programme. The Council is seeking to establish a long-term partnership that promotes collaboration between the parties and has the flexibility and resilience to adapt over the term of the partnership.
- 1.2 The commercial arrangements for the partnership:
 - 1.2.1 seek to promote value gain overtime, with an equitable basis for sharing value uplift;
 - 1.2.2 provide for matters such as viability, masterplanning, phasing, and estate management to be considered on a programme wide basis; and
 - 1.2.3 establish a framework to facilitate a collaborative approach to matters such as enhancing the masterplan over time, as well as tackling project challenges as they may arise.
- 1.3 This paper is an abridged overview of the emerging commercial structure produced specifically for the purposes of preliminary market engagement. It is not final nor all encompassing and further detail on these and other aspects of the commercial structure / proposal will be issued by the Council in due course.
- 1.4 A flowchart is also appended for illustration purposes.

2 Structure

- 2.1 Following the procurement exercise, an overarching agreement (“**Partnering Agreement**”) will be entered into by the Council and the Partner. The Partnering Agreement will be the principal contractual agreement to govern the parties’ relationship / the operation of the partnership, including in relation to:
 - 2.1.1 Overarching partnership gateways – in order to unlock the remainder of the programme aside from Hereford and Exeter; and
 - 2.1.2 Site specific gateways, unlocking ‘draw down’ of individual Sites and entry into Site specific development agreements (each a “**Site Development Agreement**”).
- 2.2 Site Development Agreements will be the principal contractual agreements governing delivery at each of the Sites, based on a form appended to the Partnering Agreement. For

these purposes, a Site Development Agreement means an agreement under which the Partner will act as developer and (in return for a developer margin) take pre-development cost risk, construction risk and sales risk; being responsible for satisfying pre-conditions prior to grant of a land interest (including but not limited to securing planning and funding).

- 2.3 Pace of delivery is a priority for the Council. The Council has identified the Hereford and Exeter site as the first Site for delivery within the programme. Accordingly, the Council anticipates that the Site Development Agreement for Hereford and Exeter will be entered into by the parties concurrent with entry into the Partnering Agreement. Notwithstanding early entry into this Site Development Agreement, the Partner's performance in relation to the delivery of this Site will be monitored by the Council (under the Partnering Agreement) in the same manner as for all other Sites.
- 2.4 The Council reserves the right to require the Partner to procure a deed of guarantee (or equivalent alternative security) in respect of the Partner's obligations under the Partnering Agreement and each Site Development Agreement.

3 Partnering Agreement

- 3.1 The core purpose of the Partnering Agreement is to govern:
- 3.1.1 agreement and implementation of the Programme Delivery Plan (see below) to secure delivery of the Council's objectives, priorities and design requirements;
 - 3.1.2 agreement and implementation of a programme wide planning approach / strategy (anticipated to encompass a framework section 106 agreement, subject to further discussions with the local planning authority);
 - 3.1.3 a structured process for developing, agreeing and unlocking the delivery approach / strategy for each Site;
 - 3.1.4 interface with the District Energy Network;
 - 3.1.5 the roles and responsibilities of each party;
 - 3.1.6 performance management in relation to the Partner's development of Sites (including Hereford and Exeter) and continuous improvement; and
 - 3.1.7 the Partner's social value commitments.

Exclusivity

- 3.2 The Partner will, subject to overarching and site-specific gateways being successfully navigated and continued performance of its obligations at both Partnering Agreement and Site Development Agreement level, have the exclusive right to develop the Sites for the duration of the Partnering Agreement.

Further sites

- 3.3 The Partnering Agreement will include provisions for further sites to be introduced for delivery under the Partnering Agreement. Such further sites will be sites within the South Kilburn Regeneration Area.

Overarching gateways

- 3.4 The Partnering Agreement will set out three overarching gateways in order to unlock the remainder of the programme (aside from Hereford and Exeter):
- 3.4.1 agreement and implementation of the Programme Delivery Plan;
 - 3.4.2 agreement of a framework section 106 agreement with the local planning authority; and
 - 3.4.3 sufficient progress having been made by the Partner in relation to the delivery of Hereford and Exeter (the Council's current intention is that this milestone will be the Development Agreement in respect of Hereford and Exeter going unconditional).
- 3.5 The Partnering Agreement will append an initial draft Programme Delivery Plan¹, which will then be finalised by the parties to satisfy the overarching gateway against a long stop date. The initial draft Programme Delivery Plan will comprise elements of the Partner's successful tender together with materials issued by the Council during the procurement process.
- 3.6 The Council (as landowner) is currently in discussions with the local planning authority and the Greater London Authority to establish and implement a programme wide approach to affordable housing and viability. The Council's intention is that these discussions will be sufficiently advanced by the point at which the Partnering Agreement is entered into such that the finalisation of a framework section 106 agreement will also be an overarching gateway for the partnership.
- 3.7 As noted above, the Council anticipates that the Site Development Agreement for Hereford and Exeter will be entered into by the parties concurrent with entry into the Partnering Agreement. The Council will expect sufficient progress to have been made on the delivery of that Site before the remainder of the programme is made available to the Partner for delivery.

Site Specific Gateways

- 3.8 The Partnering Agreement will set out Site specific gateways to be navigated under the Partnering Agreement prior to entry into a Site Development Agreement in respect of a Site.

¹ Please note that the Programme Delivery Plan is anticipated to include: the Council's objectives, priorities and design requirements for the programme, overarching masterplan approach, overarching town planning approach, site assembly strategy, phasing plan and programme, overarching financial model, operational arrangements, community / social value commitments, resident engagement protocols, and meanwhile use approach.

Infrastructure and public realm

- 3.9 Alongside the development of the Sites, the Council will be procuring wider infrastructure / public realm works in the South Kilburn Regeneration Area, including (for example) improvements to the Carlton Vale Boulevard and the Queens Park Cullen Gyratory, the delivery of a school and other open space improvements.
- 3.10 These works will be procured via separate works packages; however, the Partner will be required under the Partnering Agreement to collaborate with the Council and its appointed contractor / professional teams in respect of design and delivery impacts.

4 Site Development Agreement

Developer obligations

- 4.1 Under a Site Development Agreement, the Partner (acting as developer) shall, at their own cost and risk, procure the carrying out and completion of the development of the Site in accordance with a Site-specific delivery strategy and the Programme Delivery Plan.
- 4.2 The Partner (acting as developer) will be obligated to:
- 4.2.1 Carry out all pre-development activity needed to bring forward the Site for development (save for vacant possession)– such as all site investigations and the design and planning work (being consistent with the proposals under the site draw down process), subject to appropriate Council engagement, review and approval;
 - 4.2.2 Engage in ongoing, Site specific, engagement and communication with stakeholders (including adjoining landowners, community and interest groups and statutory stakeholders);
 - 4.2.3 Obtain planning² and all other required consent (save for where such consents can only reasonably be obtained by the Council as landowner);
 - 4.2.4 Commission the professional team and building contractor appointments;
 - 4.2.5 Secure third-party funding;
 - 4.2.6 Market and manage the sale of all non-affordable residential properties (e.g. private market sale);
 - 4.2.7 Market and manage the letting of all non-residential units. [OBJ]
- 4.3 The Site Development Agreement will include performance milestones for the Partner to achieve (such as grant of planning permission, start on site and completion).

² Noting that there is an extant planning permission at Hereford and Exeter.

Land transfer

- 4.4 The Site Development Agreements will also set out the process for land transfer, subject to suitable landowner restrictions / protections during the construction period.

Affordable housing

- 4.5 In respect of all Sites:
- 4.5.1 The Council require nomination rights, and a form of nomination agreement will be appended to each Site Development Agreement; and
 - 4.5.2 Each Site Development Agreement will accordingly include provision for an affordable housing condition precedent requiring the Developer to have agreed (subject to contract) the contractual basis for the development and sale of all affordable housing delivered on the Site.³

5 Design / planning

- 5.1 A planning strategy (for the Hereford and Exeter site and for all other Sites) will be a product of the Partner's successful tender. Such planning strategy will be appended to / form part of the Partnering Agreement.
- 5.2 Under the Partnering Agreement, the Developer will be obliged to appoint a Masterplan Architect (identified as part of the procurement process). A programme wide masterplan will be prepared and provided to the Council for approval.
- 5.3 The Council expects that in respect of each Site, the Partner shall procure the design team (including the architect for the Site) by way of a mini competition conducted within parameters agreed with the Council.

6 Financial arrangements

- 6.1 The following financial elements will be settled and fixed as a product of the Partner's successful tender:
- 6.1.1 The Threshold Land Value (see below);
 - 6.1.2 Developer gross profit margin, varying depending on nature of activity and associated risk profile;
 - 6.1.3 Overage approach / split (under the Site Development Agreements); and

³ Whilst the Council may, in due course, elect to also acquire affordable housing delivered at, the Council will not expect any contractual protection re this position (e.g. by way of a pre-emption or similar) and the Partner shall not be fettered in exploring other options for sale to third party registered providers. It should be noted that the Council are reviewing whether it intends to acquire the affordable housing delivered at Hereford and Exeter and will confirm its intention during the procurement process.

-
- 6.1.4 In respect of the Hereford and Exeter site only, fixed land value.
- 6.2 The Partner's successful tender will also provide supporting build cost and revenue information in respect of Hereford and Exeter, which will be incorporated as a benchmarking reference point in relation to the development of other Sites.

Land value

- 6.3 The Partnering Agreement will set out a programme wide threshold land value ("**Threshold Land Value**") agreed as a product of the procurement process. Under the Partnering Agreement, the Partner will operate the overarching financial model (in a form and with such assumptions as are agreed with the Council). Concurrent with finalising the Programme Delivery Plan the Partner will update the overarching financial model and provide the same to the Council for approval.
- 6.4 Such updated overarching financial model will produce a projected aggregate land value across the programme. Where this projected aggregate land value is equal to or greater than the Threshold Land Value, such land value will become the "**Minimum Aggregate Land Value**" for the programme apportioned against each site (being the 'minimum site land value' for each Site).
- 6.5 Where the projected aggregate land value is below the Threshold Land Value, the parties will be required to review options, including the proposed masterplan approach. Sites will not be unlocked for delivery unless / until the Threshold Land Value has been met.
- 6.6 Under the Site Development Agreements, the minimum site land value is fixed (as per the apportioned Minimum Aggregate Land Value). On satisfaction of the conditions precedent, and as a product of the updated site financial model produced and agreed under the 'viability' condition, an actual site land value will be agreed, in accordance with Market Value principles. Such revised actual land value shall not be lower than the minimum site land value. Where the actual site land value is lower than the minimum site land value, the parties will be required to review the proposed development / scheme. The Council is not obliged to proceed with the development / scheme where a lower land value is produced.

Cost recovery

- 6.7 Under the Partnering Agreement:
- 6.7.1 the Council will require payments to be made by the Partner in respect of the Council's ongoing resourcing costs;
- 6.7.2 the Council anticipates meeting the costs of site assembly up to a capped amount;
- 6.7.3 other than these costs, save for where site assembly costs in excess of the capped amount have been agreed and incurred by the parties collectively, there will be no cost recovery by either party under the Partnering Agreement other than where the other is in breach of their obligations under the agreement and as provided for in the default / termination provisions.

-
- 6.8 Under Site Development Agreements, there will be no cost recovery by either party other than where the other is in breach of their obligations under the agreement and as provided for in the default / termination provisions.

END

