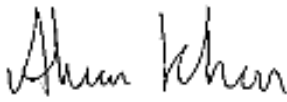


LONDON BOROUGH OF WALTHAM FOREST

Meeting Date	Cabinet 22 September 2022	
Report Title	Avenue Road Regeneration – Variation to Development Agreement	
Cabinet Portfolio	Councillor Ahsan Khan, Deputy Leader and Portfolio Lead Member for Housing & Regeneration	
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Wards affected	Cann Hall	
Public Access	OPEN except for Appendices A, B & C which are EXEMPT in accordance with Section 100(A-H) of the Local Government Act 1972 and Schedule 12A as amended, on the grounds that it involves the likely disclosure of exempt information as defined in Part 1, paragraph 3, as it contains information relating to the financial or business affairs of any particular person (including the authority holding the information) and disclosure would not be in the public interest.	
Appendices	Appendix A – Carter Jonas Advice (Exempt) Appendix B – Pinsent Masons Legal Advice (Exempt) Appendix C – Financial (Exempt) Appendix D – Equality Analysis Appendix E – Sustainability Matrix	

1. SUMMARY

- 1.1 The recommendations in this report are required to progress the comprehensive redevelopment of Avenue Road Estate as initially approved by Cabinet in April 2020.
- 1.2 This report details the requirement to enter into a Deed of Variation in respect of the Development Agreement and sets out the reasons for this.

- 1.3 The report also sets out the opportunity to increase the amount of affordable housing at Avenue Road Regeneration and recommends the acquisition of additional affordable housing units from the developer.

2. RECOMMENDATIONS

- 2.1 Cabinet is recommended to:
- 2.1.1 Authorise the Deed of Variation to the Development Agreement to be entered into by the Council with Bellway Homes Limited for the Avenue Road Regeneration.
- 2.1.2 Delegate the final terms of the Deed of Variation to the Corporate Director of Housing in consultation with the Commercial Director of Property and Delivery, the Strategic Director of Finance and Governance and the Director of Governance and Law.
- 2.1.3 Agree to exercise the option to acquire up to 54 additional units at Avenue Road as set out in the exempt Appendix C.
- 2.1.4 The final number of units to be acquired and financial terms to be delegated to the Corporate Director of Housing, in consultation with the Commercial Director – Property and Delivery, and the Strategic Director of Finance and Governance.

3. PROPOSALS

3.1 Background

- 3.1.1 In February 2021 Cabinet gave approval to proceed with the comprehensive redevelopment of Avenue Road Estate following a successful resident ballot.
- 3.1.2 The final scheme will deliver numerous benefits including:
- Demolition and re-provision of all social rented homes and both community spaces on site
 - Increase in housing on site to meet the demands in the borough
 - A new mixed tenure housing development that meets the needs of a diverse resident community
 - Safe and secure communal areas and enhanced public realm
 - An improved relationship and connectivity with the surrounding area and local community
 - Delivery of £22m social value for the local community in addition to s106 contribution
- 3.1.3 In September 2021 Cabinet gave approval to enter into a Development Agreement with Bellway Homes Limited (Bellway) as the preferred development partner following a procurement process using the GLA's London Development Panel 2 (LDP2) Framework.

- 3.1.4 The Council has been working closely with Bellway since September 2021 to finalise the detail of the Development Agreement which will be entered into by both parties.

Deed of Variation to the Development Agreement

- 3.2 Bellway advised the Council in June 2022 that if they were to proceed on the basis of the financial model submitted in their original bid, they would face a fundamental challenge to the delivery of the Avenue Road Regeneration.
- 3.3 The challenge has arisen due to the significant change in the economic environment that occurred from the time the bid was submitted, specifically relating to build cost inflation which has reached unanticipated levels over the period following the submission of their bid and which has resulted in the agreed financial model for the scheme no longer being viable.
- 3.4 The Council acknowledged that there have been significant changes in the market over this period that could not reasonably have been foreseen and requested that Bellway set out a revised scheme costing to demonstrate the updated financial position.
- 3.5 The Council have subsequently taken independent financial advice to assess the revised costings for the scheme that Bellway have submitted and to verify that these are robust and reasonable in the current market.
- 3.6 The verification of these figures is set out by the Council's cost consultants, Carter Jonas, in the exempt Appendix A.
- 3.7 In order to make the scheme viable and to reflect the increase in costs, Bellway have asked the Council to vary the Development Agreement to include, amongst other things, an increased acquisition price for the re-provided affordable dwellings.
- 3.8 The total value of the proposed financial revisions requires Cabinet approval. However, it should be noted that the revised total is within the overall budget allocated for the scheme prior to the commencement of the procurement process, as agreed by Cabinet in February 2021. Also, when the additional contribution required from the Council is considered, the Bellway financial submission remains the most economically advantageous to the Council.
- 3.9 Cabinet is therefore recommended to agree to enter into a Deed of Variation to the Development Agreement to reflect the revisions that are necessary to the financial bid submitted by Bellway. There are no substantive changes beyond the revised financial position to the agreed scheme and associated legal documents.
- 3.10 The additional contribution made by the Council at this time will be mitigated by an amendment to the Overage clause in the Development Agreement. The amendment will stipulate that the Council receives a higher percentage of any overage that the scheme accrues to recover its additional investment should the financial position improve over the course of the schemes' life.

- 3.11 Pinsent Masons have provided independent legal advice to the Council on this project in relation to the variation of the Development Agreement and the LDP2 procurement process. Their advice is included in Appendix B and is referred to in the legal commentary 7.2.
- 3.12 It should be noted that the Council have agreed to indemnify Bellway, should the scheme not proceed, for 50% of the planning costs incurred over the period June 30th to September 22nd 2022 in order to ensure that the Planning process continues to programme.
- 3.13 Bellway have restated their commitment to the Avenue Road Regeneration and intend to work closely with the Council to meet the shared objective of delivering new affordable homes for residents, a commercially viable scheme and best value to the Council.

Opportunity to Acquire Additional Affordable Housing

- 3.14 The Development Agreement contains an option for the Council to acquire a further 51 units across the development. The breakdown of the units relating to the option is as follows:

Unit Type	Number
1B2P	7
2B4P	7
3B5P	19
4B6P	18

- 3.15 The additional units will be particularly beneficial to the Council as a significant proportion are large family sized homes.
- 3.16 The option is available to the Council for the period of two calendar months from the date of planning consent for the development. This report seeks approval from Cabinet to exercise the option to acquire these units during the period stated.
- 3.17 The Council has also negotiated the possible acquisition of an additional 3 units. These units are 4 bedroom houses that are part of the low rise Block H and the acquisition will provide much needed family sized homes that will be let through the Housing Register.
- 3.18 The purchase of the 3 additional houses will be negotiated further with Bellway and can be exercised independently of the option to acquire the 51 units.
- 3.19 It is recommended that a final decision, based on the financial viability for the Council, be delegated to the Corporate Director of Housing, in consultation with the Commercial Director – Property and Delivery, and the Strategic Director of Finance and Governance
- 3.20 The financial detail of the proposed acquisitions is contained in the exempt Appendix C.
- 3.21 An updated indicative programme for the Avenue Road Regeneration is as follows:

Milestone	Date
Development Agreement & DOV signed	September 2022
Planning application determined	December 2022
Start on site	December 2022
Delivery of Phase 1	Spring 2025

4. OPTIONS & ALTERNATIVES CONSIDERED

- 4.1 An alternative option to entering into a Deed of Variation to the Development Agreement is to not proceed any further with Bellway as a development partner. In this scenario the Council would have three options available.
- 4.1.1 Do nothing. This option has already been considered and disregarded in respect of Avenue Road estate in the appraisal of investment options presented to Cabinet in April 2020. The costs associated with maintaining the properties to a statutory level are significant and residents have already indicated their overwhelming support for much needed redevelopment of the estate.
- 4.1.2 The Council would therefore have two options available to undertake the regeneration of Avenue Road:
- (a) Direct delivery. This option was considered as part of the assessment of delivery options in the Cabinet report of April 2020. At the time it was not considered to be financially viable for the Council to deliver the regeneration itself, or through its wholly owned building company, Sixty Bricks. That viability would be further negatively impacted by the increased build cost inflation that requires revision to the Bellway bid.
 - (b) Re-procurement. This would result in the Council being required to run a further procurement exercise at significant expense and would cause an unnecessary delay to the redevelopment of the estate and further disruption to residents, whilst also incurring additional costs to maintain the current properties. Any successful bidder would also be subject to the same build cost inflation issues as set out previously in this report.
- 4.1.3 Both of the above options would additionally result in the Council being unable to drawdown GLA funding that has been secured for the scheme, as well as causing a significant delay in providing much needed new homes to the residents of Avenue Road estate.
- 4.2 The costs to the Council of not proceeding with Bellway would therefore outweigh those necessary to ensure the present scheme progresses.

5. SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)

- 5.1 The Council has set ambitious plans for housing delivery and has demanding housing targets to reach from the Mayor of London. The redevelopment of Avenue Road will contribute to meeting these targets by providing 634 homes, an increased percentage of which will be social rented homes following the acquisition from Bellway.
- 5.2 There will be significant opportunities for construction training, apprenticeships and jobs as a result of the regeneration.
- 5.3 Planning policy will guide sustainability proposals. There are no implications directly arising from this report.

6. CONSULTATION

- 6.1 The preferred development option for Avenue Road Estate of comprehensive redevelopment was subject to a Resident Ballot.
- 6.2 At the ballot there was a turnout of 65% with 91.5% voting in favour of the regeneration proposals.
- 6.3 No consultation is required in respect of this decision.

7. IMPLICATIONS

7.1 Finance, Value for Money and Risk

Deed of Variation to the Development Agreement

- 7.1.1 The Council's evaluation criteria for this scheme have been calibrated to enable the Council to bring forward a scheme with a partner that provides the best balance between quality, deliverability and affordability to the Council's Housing Revenue Account.
- 7.1.2 A summary of the financial evaluation incorporating the Deed of Variation is included within exempt Appendix C.
- 7.1.3 This variation represents a viable scheme for the HRA within its standard viability assessment parameters. Following on from the assessment of the impact of the Deed of Variation the procurement process continues to support the appointment of Bellway Partnerships as the preferred Developer Partner for Avenue Road Estate Regeneration.
- 7.1.4 The revised bid includes a financial offer that is still within the parameters of the budget that is set aside in the HRA capital programme. This is laid out in more detail in the exempt Appendix C.

Opportunity to Acquire Additional Affordable Housing

- 7.1.5 The budget set aside in the HRA Capital Programme for Avenue Road Estate Regeneration is in excess of what is required as part of the revised Development Agreement.

- 7.1.6 Acquiring additional Affordable Housing on this scheme would ensure that the Council is able to maximise the use of this budget, along with maximising the use of GLA Grant, whilst delivering up to 54 new homes. An additional contribution from the HRA Capital programme would be required as set out in exempt Appendix C. This acquisition represents a viable scheme for the HRA within its standard viability assessment parameters.

7.2 Legal

- 7.2.1 The Council must comply with s123 Local Government Act 1972 by ensuring that it continues to seek best value from any disposal of land under the varied terms.
- 7.2.2 The Council has the power to acquire property, should it decide to exercise its option to purchase the additional affordable dwellings, for any of its functions under s120 Local Government Act 1972 and Section 1 of the Localism Act 2011 gives the Council the power to do anything that individuals may generally do (the general power of competence) and the Council has the power under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate or is conducive or incidental to the discharge of any of its functions.
- 7.2.3 The variation of the Development Agreement must be in compliance with Regulation 72 of the Public Contract Regulations 2015 and the Council's Contract Procedure Rules.
- 7.2.4 Regulation 72(1)(c) of the Public Contract Regulations 2015 states that modifications are permitted where the following conditions are satisfied: (i) the need for the modification has been brought about by circumstances which a diligent authority could not have foreseen; (ii) the modification does not alter the overall nature of the contract; (iii) any increase in price does not exceed 50% of the value of the original contract.
- 7.2.5 Specialist legal advice has been sought in relation to procurement and this is attached at Appendix B.

7.3 Equalities and Diversity

- 7.3.1 A full EQIA was prepared in 2020 and an updated version, further to the February 2021 Cabinet report, is attached at Appendix D.
- 7.3.2 It is not anticipated that there will be any impacts on protected characteristics as a result of this decision that have not already been considered as part of the Equality Analysis.

7.4 Sustainability (including climate change, health, crime and disorder)

- 7.4.1 The Sustainability Matrix is attached at Appendix E of this report which sets out the principal sustainability and climate resilience proposals within the scheme.
- 7.4.2 There are not considered to be any additional sustainability implications as a result of this decision.

7.5 Council Infrastructure

7.5.1 N/A

BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)

None