

## **CABINET**

**13 December, 2017**

### **Subject Heading:**

**Rainham and Beam Park Housing Zone  
- Appointment of a Joint Venture  
Development Partner.**

### **Cabinet Member:**

**Councillor Roger Ramsey, Leader of  
the Council  
Councillor Ron Ower  
Cabinet Member for Housing  
Company Development and  
OneSource Management**

### **SLT Lead:**

**Steve Moore**, Director of Neighbourhoods

### **Report Author and contact details:**

**Christopher Barter**, Development  
Programmes and Projects Manager

### **Policy context:**

**Havering Housing Strategy,  
Havering Economic Development  
Strategy.**

**Rainham and Beam Park Housing Zone  
submission.**

**Rainham and Beam Park Housing Zone  
Overarching Borough Agreement.**

**Rainham and Beam Park Planning  
Framework. 2016**

**Havering Proposed Submission Local  
Plan 2017**

### **Financial summary:**

The report seeks Cabinet approval in principle to invest capital into a Limited Liability Partnership to contribute to the delivery of the Rainham and Beam Park Housing Zone through the development of at least 774 new homes with 35% i.e. 270, affordable units. This investment is in excess of the available budget within the Approved Capital Programme and falls outside the approved Treasury

Management Strategy. It will therefore require consideration and approval by Full Council. Therefore, subject to Cabinet approval of the recommendations within this report, the scheme will be included in the proposed capital programme to be considered as part of the 2018/19 budget process and will be subject to approval of the Capital Programme and Treasury Management Strategy in February 2018.

A revenue surplus for the Council is forecast as a result of this regeneration scheme after meeting capital financing costs of borrowing.

The financial details are contained within the exempt agenda report.

**Is this a Key Decision?**

**Yes**

**When should this matter be reviewed?**

**Autumn 2020**

**Reviewing OSC:**

**Towns and Communities OSC**

**The subject matter of this report deals with the following Council Objectives**

Communities making Havering	[x]
Places making Havering	[x]
Opportunities making Havering	[x]
Connections making Havering	[x]

<b>SUMMARY</b>
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This report seeks the Cabinet's approval to appoint Notting Hill Housing Group (NHHG) as the development partner to implement the Rainham and Beam Park Housing Zone, the A1306 Land Acquisition and Development Strategy to assemble key sites along the A1306 corridor, and to undertake the associated residential development schemes. NHHG operates through various companies and charitable entities. Approval is sought for the Council to enter into a joint venture Limited Liability Partnership (JVLLP) with Notting Hill Commercial Properties Ltd (NHCP), noting that the acquisition process will be implemented by Notting Hill Housing Trust (NHHT) and is to be supported by the making of a Compulsory Purchase Order (CPO) to enable the acquisition of the land interests that cannot be acquired by private treaty. The making of the CPO, as approved by Cabinet on February 2016, will be the subject of a separate report to Cabinet setting out further details in due course.

The acquisition of the A1306 sites will act as a catalyst to kick-start development activity and unlock development opportunities along the A1306 New Road and the wider Rainham and Beam Park Housing Zone. In parallel the Council is embarking on the ambitious HRA 12 Estates housing transformation programme which includes the major residential regeneration opportunity at New Plymouth and Napier houses on the A1306. Together these opportunities create a major opportunity to build a new strong sustainable community with its own identity based around the new station and local centre at Beam Park; integrating and improving connectivity between existing and proposed new residential neighbourhoods.

The Rainham and Beam Park Housing Zone will deliver 3,500 new homes supported by a new 3FE primary school, new health facilities, local retail provision, a new rail station served by bus services and extensive green and open space provision and the creation of a linear park along the A1306 corridor.

The need for new and affordable housing to meet increasing demand is recognised at national and regional level. The London Plan 2015 sets out an indicative capacity for new homes to be delivered in the London Riverside area, of which Rainham and Beam Park is a part, for the plan period to 2035. The policy establishes the strategy of managed release of surplus industrial land for housing and other complementary uses, and recognises the need for improved public transport capacity. Significant residential developments are underway on Barking Riverside and Barking Town Centre and demand is moving steadily eastwards. The extensive brownfield development sites along the A1306 are becoming available and are the last remaining sites where values, in relation to other areas, are able to deliver relatively affordable high quality housing.

This report sets out the rationale and justification for entering into the JVLLP. The business case to support entering into the JVLLP is contained within an exempt Part B report and is distinct from the scope and parameters of the proposed Overarching Business Plan for the JVLLP which are described in this report

Cabinet is asked to approve the Council's involvement in delivering the scheme noting the significant regeneration benefit for Rainham and the contribution towards Havering's target for housing delivery, and also the expected financial returns.

<b>RECOMMENDATIONS</b>
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That Cabinet:

1. **Note** that Notting Hill Housing Trust will provide an indemnity for the Council's CPO costs of £50 million should it not be possible to acquire properties by negotiation. These costs whilst initially born by NHHT through the CPO indemnity, will need to be covered in full by the JVLLP when drawn down for development or at a longstop date;
2. **Approve** inclusion of this allocation within the proposed capital programme that will be considered by Cabinet on the same agenda in December 2017 and recommended to Council for final approval in February 2018.
3. **Approve** the inclusion of the scheme with a budget allocation a further £10 million to meet the Council's equity contribution within the proposed capital programme that will be considered by Cabinet on the same agenda in December 2017 and recommended to Council for final approval in February 2018.
4. **Note** that a further report addressing the governance framework and staff resources required to develop and deliver the Rainham scheme and other economic development schemes will be presented for consideration and approval by Cabinet in January.

Subject to the approval of the required budget and funding at recommendation 1 above, that Cabinet:

5. **Agree** to establish a Limited Liability Partnership for the purpose of meeting the Council's regeneration objectives for Rainham by entering into a Members' Agreement with Notting Hill Commercial Property ("NHCP") (company registration number 01523328) on the basis of the Business Case and the Legal Summary appended to the exempt agenda report.
6. **Agree** to delegate to the Leader, after consultation with the Director of Neighbourhoods, the authority to agree the name of the LLP, negotiate the final detailed terms of the agreements being entered into, and authority to agree that the Council enter into the following agreements:
  - Members' Agreement;
  - Strategic Land Agreement;
  - CPO Indemnity Agreement;
  - Any ancillary agreements or documents necessary to give effect to the setting up of the JV LLP in accordance with this Report and its appendices (all as described in the Legal Summary appended to the exempt agenda report).
7. **Authorise** the LLP to enter into the Development Management Agreement with Notting Hill Home Ownership, one of the Notting Hill group of companies, when in agreed form.

8. **Agree** to delegate to the Leader, after consultation with the Director of Neighbourhoods, authority to agree the terms of the Development Management Agreement referred to in recommendation 5 on behalf of the Council as Member of the LLP established in accordance with recommendations 3 and 4.
9. **Agree** to delegate to the Leader, after consultation with the Director of Neighbourhoods and the Section 151 Officer, authority to approve the first Overarching Business Plan of the LLP on behalf of the Council.
10. **Agree** to delegate to the Leader, after consultation with Cabinet Member for the Housing Company Development and OneSource Management and the Director of Neighbourhoods, authority to approve the consultation and communication plans for the regeneration of Rainham.
11. **Agree** to delegate to the Leader, after consultation with the Director of Neighbourhoods, the appointment of nominees to represent the Council on the JVLLP board and indemnify them under the Local Authorities (Indemnities for Members and Officers) Order 2004 once the JVLLP has been set up;
12. **Agree** that the primary purpose of the Councils participation in the JV LLP is to secure the regeneration of the Rainham and Beam Park Housing Zone.

<b>REPORT DETAIL</b>
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## **1. Background**

- 1.1. Following Cabinet approval on the 24<sup>th</sup> September 2014 the Rainham and Beam Park Housing Zone bid was submitted to the Greater London Authority (GLA). The submission was successful and Havering's status as a Housing Zone Borough was announced on the 25<sup>th</sup> June 2015. Cabinet approved the Overarching Borough Agreement authorising the Council's entry into the funding contract with the GLA on the 4<sup>th</sup> November 2015.
- 1.2. Further Cabinet approval was given on the 10<sup>th</sup> February 2016 for the Council to seek a development partner and to implement the Housing Zone A1306 Land Acquisition Strategy, including the principle of using the Council's CPO powers to acquire land, and to work to bring forward quality housing either on its own or in partnership with other developers on land acquired.
- 1.3. Within the Housing Zone there are major sites that will be brought forward for development by the market notably Beam Park, Somerfield and Mudlands. However, there are also sites that will require direct intervention from the Council to enable development that accords with the overall Housing Zone objectives. 9 sites have been identified for residential development and 1 site to provide access to the new station and these are shown at Appendix A.

- 1.4. Due to historically low values as well as other technical and economic constraints (including a pattern of disparate land ownership), previously only a limited number of residential schemes have come forward. These have been on a small scale piecemeal basis, generally offering poor design and build quality with limited contribution to affordable housing provision, the environment and infrastructure provision.
- 1.5. Typical existing uses undertaken in the area include scrap yards, tyre warehouses, trade counters, MOT centres, and car repair and body workshop businesses. The businesses tend to face out onto the main road frontages and while a few are well presented many, in terms of their physical appearance and operations, detract from physical or environmental quality and long term economic viability of the area.
- 1.6. The Land Acquisition Strategy is intended to secure comprehensive residential development by organising sites currently in multiple, complex ownership into developable plots in single ownership. The sites will be acquired through private treaty or CPO, if necessary, and will be brought forward for comprehensive residential development by the JVLLP in partnership with NHHT.
- 1.7. The 9 residential sites, when aggregated, total 6Ha of developable land with the potential for the development of at least 774 new homes with a gross development value (GDV) of over £250m. Property Cost Estimates and valuations have been undertaken by advisors and these have been used as part of the analysis of the scheme described in the Business Case attached to Part B of this report (exempt Agenda) undertaken by Glenney in support of the proposed CPO indicate a total acquisition cost for all 10 sites (including RE01 which is being acquired to provide bus and pedestrian access to the proposed Beam Park Station), with a large proportion of these figures relating to compensation costs.
- 1.8. With such a significant level of investment required and a large scale of development proposed within a complex regeneration environment, it is apparent that the Council alone would not have the resources or capacity to finance development, bear risk and deliver development schemes alone. An experienced development partner is required.
- 1.9. Therefore, a joint venture arrangement would best enable the Council to:
  - i. Deliver its regeneration objectives for the Rainham and Beam Park Housing Zone;
  - ii. Acquire and assemble the Rainham and Beam Park development sites via private treaty, supported by the CPO process;
  - iii. Meet Council's costs of undertaking the CPO (and associated costs).
  - iv. Obtain satisfactory planning approvals for all 9 sites.
  - v. Generate returns commensurate with risks taken and enable reinvested in the acquisition and/or development of the future sites.
  - vi. Procure consultants, contractors and a supply chain to deliver the developments.
  - vii. Bring forward innovative proposals that will support the wider regeneration of the Rainham area, including employment and social infrastructure;

- 1.10. The proposed contractual arrangements to govern the relationship between the Council and NHCP, and provide for the arrangements described above, are described in the Legal Summary appended to the exempt agenda report.

## **2. Development Partner procurement.**

- 2.1. A selection process commenced in March 2016 designed to ensure the development partnering offer was market focussed, appropriate and attractive to the market.
- 2.2. This was followed by a two stage process.
- 2.3. Stage 1 was assessed against:
  - i. Bidder Details
  - ii. Financial Capability
  - iii. Track record of the bidder (particularly within a regeneration and CPO environment)
  - iv. Development Partnership Scope and Approach
  - v. New Development Project Stage 1 - site NR09
- 2.4. Three bidders were shortlisted to proceed to Stage 2 – Countryside, Keepmoat and Notting Hill Housing Trust (NHHT).

### **Stage 2 tender**

- 2.5. The Stage 2 process was designed to establish a robust and comprehensive understanding of the development partner and include both qualitative and quantitative requirements to give the selection team the ability to compare bidders utilising a consistent approach in terms of planning, risk appetite, approach to development management and market optimism.
- 2.6. This required bidders to set out their proposals for working with the Council by:
  - i. Developing viable business plans including designs and financial proposals for sample sites NR02/03;
  - ii. Setting out proposals for delivering the sample schemes and the remaining sites including development management, finance and risk management;
  - iii. Setting out proposals for an Overarching Business Plan for the joint venture addressing all the identified sites including proposals for development management, phasing, funding, cash flow and high level information on design and anticipated sales values;
  - iv. Setting out proposals for marketing and branding; and
  - v. Setting out proposals for managing and delivering the whole development of identified sites including performance management, fees and reporting.
- 2.7. Following the Stage 2 tender evaluation, officers recommended that NHHT should be selected as the Council's preferred development partner
- 2.8. Following a briefing of the Leader of the Council, Roger Ramsey, and Councillor Ron Ower (Portfolio Holder for the Rainham & Beam Park Housing Zone), this

approach was agreed and NHHT were confirmed as the Council's preferred development partner on 22<sup>nd</sup> December 2016.

### **3. Notting Hill Housing Trust**

- 3.1. The Notting Hill Housing Group is made up of a number of organisations including Notting Hill Commercial Properties Ltd (NHCP) and Notting Hill Housing Trust. The focus of each business varies, from buying and developing land to selling homes, to managing tenancies and communities. NHHT is an exempt charity incorporated as a Registered Society under the Co-operative and Community Benefit Societies Act 2014. It is also registered with the Homes and Communities Agency (number L0035), and is one of the foremost providers of social housing in London. It has a significant track record in bringing forward successful housing developments and regeneration programmes of the scale proposed by the Council. NHHT has been creating and participating in successful joint ventures with a diverse range of partners for over a decade.
- 3.2. NHHT is a financially robust housing association with expertise far beyond traditional affordable housing provision, including residential development for sale, market rent, student accommodation and commercial premises.
- 3.3. NHCP is funded by NHHT and is established to deliver commercial developments in which NHHT participate to facilitate affordable housing delivery and operation NHHT funds projects through its balance sheet, cash reserves and loan facilities. Financial strength has been a key factor in the selection of NHHT to partner with the Council in the JVLLP. NHHT's strength is evidenced in the approach to delivering larger schemes which often have lifespans straddling economic cycles. The first phase of NHHT's scheme at Royal Docks was acquired prior to the 2008 economic downturn, the latter phase acquired and joint venture partnerships formed in 2012. The first phase completion of that scheme has completed and works on phase 2 are currently taking place. Strategic development of this scale and duration requires long-term vision and resilience.
- 3.4. NHHT's approach as a long-term owner and manager of property means that they are committed to building homes and communities that will last, as they will be maintaining and managing these developments for many years to come.
- 3.5. The JV LLP will be established with access to a strong team of in-house experts to deal with the required development, finance, project management and construction, and will also have access to a number of frameworks from which to source consultants to provide advice including design, planning, community engagement, site assembly, construction and facilities management.
- 3.6. Accordingly, the JVLLP will be well placed to undertake and deliver a scheme of this nature and scale.
- 3.7. Notting Hill has agreed in principle to form a new partnership with Genesis. The new organisation will be called Notting Hill Genesis. It will have circa 64,000 homes and 170,000 residents, and a stated turnover of about £700m with combined reserves of £3.1bn. This merger will not impact on the proposed JV LLP and the Notting Hill organisations mentioned are to remain in existence. Any later change in membership of the JV LLP (or in the identity of the



companies supporting it) would be from within the merged organisation and without diluting the Council's position.

#### **4. Business Case**

The Business Case will be attached to the Part B (Exempt Agenda) report.

##### **4.1. Strategic Case**

- 4.1.1. The vision for the Housing Zone is the transformation of a declining industrial area into a vibrant new residential community providing much needed new housing including family homes, plus social, physical and green infrastructure with access to public transport and employment opportunities.
- 4.1.2. The Rainham and Beam Park Housing Zone will deliver 3,500 new homes supported by a new 3FE primary school, new health facilities, local retail provision, a new rail station served by bus services and extensive green and open space provision and the creation of a linear park along the A1306 corridor.
- 4.1.3. The JVLLP intends to deliver at least 774 new homes including 35% affordable homes on 9 sites that the market is unlikely to be able to deliver comprehensive and high quality schemes. Without this intervention the existing low value commercial land uses would remain in place and infrastructure would not be improved. It will also not be possible to facilitate comprehensive residential development and any residential development that is brought forward is likely to be poor quality and piecemeal. It will fail to deliver the required mix, tenures or typology necessary to meet the objectives of the Housing Zone.
- 4.1.4. The 9 sites are currently in multiple, complex ownership and require assembly into developable plots in single ownership. To do this will require the support of a CPO to enable the acquisition of the land interests that cannot be acquired by private treaty. The making of the CPO will be the subject of a separate report to Cabinet in due course. It is vital that when making a CPO that there is robust evidence to confirm the deliverability of proposed schemes.
- 4.1.5. The primary purpose of the Council's participation in the JV is to secure the regeneration of the housing zone.
- 4.1.6. In the event that a proposed site does not achieve the minimum return to be agreed in the Overarching Business Case, the Council has the ability to consider reinvesting some or all of its share of the profit from the remainder of the scheme in order to secure that its overall regeneration objectives are met. This would be a decision to be made by the Council as a Member of the JV LLP (and not for the JV LLP Board); and would be entirely at the discretion of the Council.

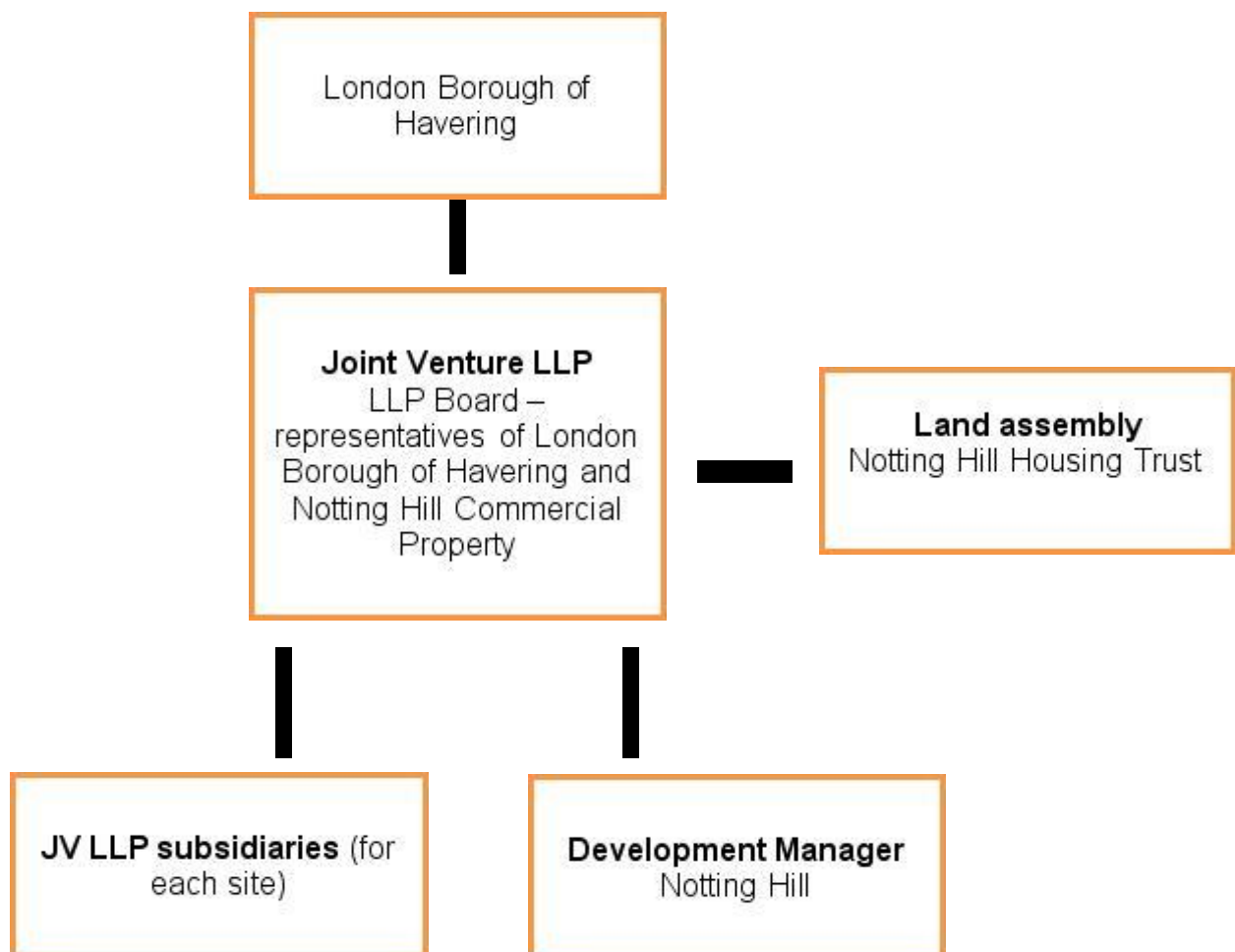
- 4.1.7. Based on current proposals the scheme is expected to deliver: more than 774 new homes, 35% of which will be affordable.
- 4.1.8. The total value of the scheme, including sales, is expected to be more than £250m. The schemes will generate local jobs and training opportunities, including 37 apprenticeships and 77 training places, during construction, new council tax income and s106 receipts.

#### **4.2. Commercial Case**

- 4.2.1. A viable procurement has been undertaken and a well-structured deal is being put in place
- 4.2.2. Following a procurement and selection exercise Notting Hill Housing Trust have been selected as preferred partner and it is proposed that the Council form a 50/50 joint venture with Notting Hill Commercial Properties, part of the Notting Hill Housing Trust Group (see section 3 above).
- 4.2.3. The objective of the JV will be to facilitate the delivery of schemes with the right mix, typology and quality to accord with the regeneration objectives of the Housing Zone, local, regional and national planning policy. The application of NHCP's experience in delivering both market and affordable homes will also improve the economic viability, amenity and visual appearance of the area.
- 4.2.4. It is proposed that Notting Hill Housing Trust conduct the necessary land assembly and that when complete this will be drawn down by the JV for development. Because NHHT is assisting with land assembly rather than taking development risk, all land assembled for the scheme will pass to the JV LLP, including where economic conditions have changed and/or a site may not meet the necessary conditions for development. Should this occur, the JV LLP will determine and implement the steps necessary to deal with the site.
- 4.2.5. NHCP and the Council will invest equally in the JV.

#### **5. Proposed Joint Venture**

- 5.1. The overall JV LLP structure and governance arrangements are represented in the diagram below and summarised in the Legal Summary appended to the exempt agenda report. Proposals for the Council's own governance arrangements across the regeneration programme will be made in a subsequent report to Cabinet.



- 5.2. This structure means that the JV LLP will be owned, funded, and managed on a 50/50 basis by the Council and Notting Hill (via its group member Notting Hill Commercial Property (“NHCP”). Decision-making will be by consensus and where there may be disagreement by escalation or reference to a suitable expert. The relationship between the two corporate members of the JV LLP (i.e. the Council and NHCP) will be regulated by a Members’ Agreement (equivalent to the Articles of a company). The Council and the JV LLP will also enter into an

agreement to regulate land assembly. The involvement of NHHT is beneficial from a tax point of view. The third key agreement is the Development Management agreement, under which Notting Hill will provide development management services to the JV LLP (against a specification of services and agreed payment terms). Finally, NHHT will indemnify the Council for its CPO costs under a CPO indemnity agreement; but with these costs ultimately being met by the JV LLP, and therefore 50% funded by the Council.

- 5.3. The legal agreements reflect how similar arrangements between councils and development partners have been structured and detailed. Both the parties to the JV LLP (the Council and NHCP) will be obliged to work together to pursue the regeneration objective for Rainham and Beam Park housing zone, supported by the development manager. The Members' Agreement ensures that conflicts of interest are declared and that neither member is able to deliberately frustrate the partnership. As private sector partner, NHCP are unable to sell their interest in the JV LLP to a third party without first offering that opportunity to the Council (and may not sell to persons unsatisfactory to the Council). The legal agreements all incentivise the partnership to operate in a manner designed to further the regeneration objectives of the Council.
- 5.4. The JV LLP will be acting as the developer of the scheme, funded by its two members (the Council and NHCP). As such, it will assume development risks, as well as sharing in any rewards. For example, the JV LLP will ultimately meet the CPO costs borne by NHHT under the CPO indemnity, and all land assembled for the scheme will transfer into the JV LLP (see paragraph 4.2.5 above). The land transfers will normally occur when a site is assembled and all the pre-conditions for development have been met. However, there will be "long-stop" dates by when land assembled must transfer into the JV LLP, irrespective of whether those conditions are met.

## **6. Over Arching Business Plan**

- 6.1. The OABP governs the commercial approach required to deliver the programme. It sets the performance thresholds and expected returns resulting from the JV delivering the sites subject of this Business Case.
- 6.2. The OABP will be agreed annually. The scope of the first OABP will be consistent with the scope for land assembly required to provide the 10 sites referred to in this paper.
- 6.3. The OABP set out a financial strategy to assemble land and then deliver schemes within agreed financial tolerances, including surplus.
- 6.4. The JV once established will deliver schemes subject to the JV board agreeing viability.
- 6.5. Viability is determined through a Gateway process that will, amongst other matters, identify that schemes can deliver a minimum profitability on development value of market homes.
- 6.6. The financial strategy will also set out financial contributions required from Members and third parties.

- 6.7. Modelling of the proposed scope of the first OABP, has been undertaken based on a series of assumptions including the cost of land assembly, development costs including finance, and sales revenues. Each of these inputs has been subject to close review and it is determined, following professional advice, that these currently reflect figures representative of the current market or which are representative of uplift in land value and house prices achievable following a plan for comprehensive regeneration.
- 6.8. The modelling shows that development of each of the sites in accordance with the base case proposals is capable of achieving a positive return in accordance with the financial strategy.
- 6.9. The modelling is based on an assumed programme of site acquisition and whilst this might change the commercial targets will still need to be achieved.
- 6.10. The OABP, once agreed, will govern the ability of the DV to proceed with individual transactions; if proposals reach a Gateway stage and fall outside of the parameters set out and agreed within the OABP then the JV cannot proceed without further shareholder approval.
- 6.11. If the JV cannot proceed for any reason it will be obliged to mitigate any costs that arise until it is capable of doing so.

## **REASONS AND OPTIONS**

### **7. Reasons for the decision:**

Supporting the Housing Zone:

- 7.1. By entering into a Joint Venture Limited Liability Partnership, the Council secures significant investment and specialism from the private sector whilst acquiring a degree of control over the scheme. The Council is therefore better placed to secure its regeneration objectives for the site than if it relied solely on its role as planning authority and its land assembly powers.
- 7.2. The Housing Zone Land Acquisition and Development Strategy supports a major component of the delivery of the Housing Zone objectives enabling the assembly of sites to catalyse and kick start comprehensive residential development. This will in turn encourage the market to come forward and participate in the delivery of high quality viable development schemes in the area. In order to deploy adequate financial and development resources necessary bring forward and implement the Land Acquisition and Development Strategy a Development Partner is required to work with the Council in a Joint Venture LLP.

### **Other options considered:**

- 7.3. Not appointing a development partner to work with the Council to implement the Housing Zone Land Acquisition and Development Strategy, would not enable the Council to acquire the land necessary to promote comprehensive residential

development in the A1306 gateway. Without this intervention the existing low value commercial land uses would remain in place and infrastructure would not be improved. It would also not be possible to facilitate comprehensive residential development and any residential development brought forward would more likely be of poor quality and piecemeal. Alternative strategies would fail to deliver the required mix of tenures or typology necessary to meet the objectives of the Housing Zone. Working alone, the Council would not be able to adequately evidence the deliverability of these sites, and the risk of failure to confirm the CPO at inquiry would be high. A development partner is required that can assist with land assembly, scheme delivery, and the CPO process. The selected approach provides a robust delivery model supported by a partner with market knowledge and experience of delivering large scale housing programmes, including homes for market sale in a competitive environment.

## **IMPLICATIONS AND RISKS**

### **8. Financial implications and risks:**

- 8.1. The report seeks Cabinet approval in principle to invest capital into a Limited Liability Partnership to contribute to the delivery of the Rainham and Beam Park Housing Zone through the development of at least 774 new homes with 35%, at least 270, affordable units. This investment is in excess of the available budget within the Approved Capital Programme and falls outside the approved Treasury Management Strategy. It will therefore require consideration and approval by Full Council. Therefore, subject to Cabinet approval of the recommendations within this report, the scheme will be included in the proposed capital programme to be considered as part of the 2018/19 budget process and will be subject to approval of the Capital Programme and Treasury Management Strategy in February 2018.
- 8.2. A revenue surplus for the Council is forecast as a result of this regeneration scheme after meeting capital financing costs of borrowing.
- 8.3. The financial details are contained within the exempt agenda report.

### **9. Legal implications and risks:**

- 9.1. The Council entered negotiations with Notting Hill after carrying out a competitive process, with a view to forming a limited liability partnership to carry out the comprehensive redevelopment of the Rainham and Beam Park housing zone. The Council is acting lawfully under the Public Contracts Regulations 2015 ("the PCR) in not adopting an OJEU procurement approach to select Notting Hill because the main object of the transaction is the assembly and transfer of land into the JVLLP for development, subject to planning. The object of the Council and the agreements to be entered into is not the carrying out of specified works through legally enforceable obligations to do so.
- 9.2. Where a council procures works and services above a threshold value, a competitive process under the PCR would normally be required, unless there

are lawful exceptions to that requirement under the PCR and case law. The sale or purchase of land by a local authority is not subject to the PCR. On legal advice, the Council may regard this transaction as being equivalent to a land transaction because there will be no binding obligations on the JVLLP to carry out specified works.

- 9.3. In the case of this project, any land transfers from the Council to the JVLLP will be for the purpose of the land assembly by the JVLLP, at full value, and without development agreement obligations to carry out specified works.
- 9.4. The JVLLP will not be a contracting authority for the purposes of the PCR because it will not meet the definition of a "body governed by public law". This means that the JVLLP will not itself be required to comply with the PCR in placing contracts for services or works; meaning that such contracts do not necessarily need to be procured by way of OJEU under the PCR. However, to give assurance that the redevelopment is conducted in a way which ensures value for money, the JVLLP will adopt a procurement policy with value for money objectives.
- 9.5. Under the Council's constitution, there is a general requirement to follow EU competitive tendering requirements. However, paragraph 14.6.5 of the Council's Contracts Procedure Rules exempts the Council from compliance where there is a specific exemption under EU law (as there is in this case).

#### **Powers**

- 9.6. Members are advised that the Council may rely upon the General Power of Competence ("general power") provided for in Section 1 of the Localism Act 2011 to pursue the proposed development scheme and related contractual structure with Notting Hill. Other statutory powers enable the making of the CPO. The general power is a wide power which allows the Council to do anything that an individual may do (subject to public law principles), but it is subject to certain statutory limitations.
- 9.7. Section 4 of the Localism Act 2011 provides that if the Council is exercising the general power for a commercial purpose then it must do so using a company. For this project the Council is proposing to enter into a joint venture arrangement with NHCP by way of the JVLLP. This approach is permissible because the Council's primary purposes in being a corporate member in the JVLLP are non-commercial and socio-economic in nature. The primary purpose behind the joint venture, and setting up of the JVLLP, is to deliver the Rainham and Beam Park Housing Zone project, by way of housing development (to include affordable housing).
- 9.8. There is no current case law on the parameters of section 4 and what amounts to a "commercial purpose" in the circumstances, although many other local authorities have, on legal advice (including by way of Counsel's opinion), established LLPs on the basis of a regeneration purpose. There is currently a legal challenge against another local authority on their use of an LLP, although the facts are not the same as this matter. The outcome of that case is awaited and any implications will be evaluated.

- 9.9. Sections 8 and 9 of the Housing Act 1985 impose a duty on local authorities to review housing needs in their district and provides them with related powers to provide housing accommodation by building and acquiring houses or by converting other buildings into houses. These powers can include provision via third parties.
- 9.10. Section 123 of the Local Government Act 1972 provides the Council with the power to dispose of non-housing land for best consideration. The Council will therefore need to demonstrate its compliance with section 123 when transferring, if any, land into the JVLLP. In order to demonstrate full compliance with section 123, the Council will need to take any necessary further independent valuation advice where necessary throughout the delivery of the project. However, the agreed position with Notting Hill is that land will transfer a full value and therefore in accordance with section 123.
- 9.11. The Members' Agreement will allow for the JVLLP to set up subsidiaries to undertake site developments, by the agreement of the JVLLP's members. This approach may be beneficial for the purposes of raising finance in a cost-efficient way. Any such subsidiary would be subject to prior approval of both JVLLP members (i.e. by the Council and NHCP). The establishment of subsidiaries will be lawful for both the Council and the JVLLP, where supported by a Business Plan in furtherance of the regeneration of Rainham and Beam Park Housing Zone and therefore the purpose for which the JVLLP is established.

#### **State aid**

- 9.12. State aid legal compliance will be managed on an ongoing basis. All land assembly will be funded on the basis that full value is paid so as to avoid a transaction being deemed to include the grant of state aid. Transfer at an open market value based on an independent valuation will comply with these guidelines.
- 9.13. The Council intends to invest on commercial terms that would be acceptable to a prudent private sector investor in the same circumstances. In doing so, the Council may rely upon the Market Economy Investor Principle and the proposed structure (contractual and investment) should be kept under review as the project progresses to make sure that the Council's investment (by way of either land or finance), is always State aid compliant.
- 9.14. GLA funding will be used to support the development, via an agreement made between Notting Hill and the GLA, and it will be for both NHCP and the JVLLP to ensure that (i) the GLA funding is only used in accordance with any specific requirements in the funding agreement (for example, to only apply the funding to any specified permitted costs), and (ii) that all such funding is State aid compliant (as required by the GLA).

#### **General**

- 9.15. The Council has taken external legal advice regarding its overall approach to the project and has been advised that the Council is acting lawfully, and that the legal structure is appropriate for the transaction. Public law constraints will apply to the project, including the Council's fiduciary duty to act prudently with public monies entrusted to it. The Council therefore must establish (and maintain a full



audit trail to support) that the project and its various components are 'intra vires' and that the decision to undertake the project is made after having given due and proper consideration to all relevant factors (disregarding irrelevant factors) and in accordance with normal public law considerations.

- 9.16. The JVLLP is a separate legal entity and as such has legal capacity to make planning applications and appeal adverse decisions. However, the Council will need to be mindful of the essential need to separate its decision-making (in its capacity as a member of the JVLLP) from its functions as a planning authority. This also has bearing on the appointment of nominees to the JVLLP's board.

### **Risks**

- 9.17. The principle risks in the project are as follows:

- i. **Other forms of legal challenge** – It is always possible for third parties to make challenge under judicial review to attempt to halt progress with projects of this kind, and this risk cannot be ruled out entirely. However, the legal advice that the Council has obtained confirms the lawfulness of the proposed arrangement and the statutory powers being relied on.
- ii. **Commercial** – The project is structured as a joint venture and, as such, the Council should recognise that it will be acting as a stakeholder in the JVLLP, and taking a share of the development risk in the project. These risks would include the normal development risks, such as JVLLP or joint venture partner defaults or insolvency, market collapse, delay in land assembly, planning and CPO delay (including highways, stopping up, etc.). The Council's exposure to these types of risks will be limited to the extent of its investment in the JVLLP. Also, the decision making and business planning structure of the JVLLP enables the Council to participate in decisions at both board and corporate member level.

- 9.18. Any joint venture arrangement, especially where parties establish a joint venture vehicle, involves complex and detailed legal commitments, which are intended to last the duration of the development scheme. Were one of the Parties to withdraw or alter the arrangement without agreement this would have considerable complex legal consequences that would almost certainly involve irrecoverable costs.

- 9.19. The exempt agenda report contains a detailed legal summary on the JV LLP relationship that contains information that is of a commercial and financially sensitive basis.

### **10. Human Resources implications and risks:**

- 10.1. The Rainham JVLLP project will require continued involvement of officers from the Development team and other Council services. The Rainham and Beam Park Housing Zone forms part of the Council's overall regeneration programme and a separate report setting out the Director of Neighbourhood Services' proposed arrangements will be presented to Cabinet in January 2017.

**11. Equalities implications and risks:**

- 11.1. The Rainham and Beam Park Housing Zone will unlock significant investment for housing – both market and affordable – and enable key infrastructure in South Hornchurch and Rainham and Wennington Wards which are among the most deprived in the Borough and London.
- 11.2. The allocation of affordable housing would be subject to the Council's Allocation Scheme and any local lettings policies that would be drawn up to promote Rainham and South Hornchurch residents' interests. Thus, delivery of affordable housing would benefit some of the borough's most disadvantaged residents. The new homes built would include a proportion of homes built to lifetime homes and disabled living standards.
- 11.3. Investment in new transport, schools and leisure facilities would ensure that those living in the south of the borough benefit from improvements in amenities without needing to travel to other parts of the borough, incurring costs and inconvenience.
- 11.4. The needs of disabled people and carers will be an integral feature of housing stock, allocation and lettings policies. No 'protected' group will be disadvantaged by the developments, however, where there is the possibility of a negative impact, a full Equality Impact Assessment will be carried out.

**BACKGROUND PAPERS**