

Cabinet – 14 December 2022

Willenhall Framework Plan: Phase 1 Developer Partner Procurement Approach and Funding Update

Portfolio: Councillor Andrew, Regeneration

Related portfolios: N/A

Service: Regeneration, Housing and Economy

Wards: Willenhall South and Short Heath

Key decision: Yes

Forward plan: Yes

1. Aim

- 1.1 Further to the report received by Cabinet at its meeting on 9 February 2022, this report aims to secure approval for the procurement route to support delivery of Willenhall Garden City Phase 1 (Moat Street and Villiers Street) which will lead to the development of new homes.

2. Summary

- 2.1 Willenhall has been identified by the Council as an area for strategic intervention with Cabinet previously agreeing to support a targeted programme of activity to regenerate the area. Since the Council identified Willenhall as a strategic priority for intervention, Officers have continued to explore and promote opportunities for growth and investment. The planned opening of the new railway station and promotion of the Walsall to Wolverhampton Inclusive Growth Corridor as a priority for housing delivery and sustainable growth provides a real opportunity to promote Willenhall as a place that people aspire to live, work, and spend leisure time.
- 2.2 At its meeting on 9 February 2022 amongst a number of recommendations, Cabinet:
- Supported the Willenhall Framework Plan, a 10-year vision for housing growth and place making in the area that identifies Moat Street and Villiers Street as a Phase 1 opportunity for residential development.
 - Approved the use of Compulsory Purchase Powers in-principle for Phase 1 where land cannot be acquired by agreement within a reasonable timeframe, noting that approval to make any compulsory purchase order would be subject to a future Cabinet report.

- Approved the outline business case for Phase 1 and the associated budget to support land assembly.
- Approved further work to identify a preferred development partner procurement route noting that approval of the procurement approach would be subject to a future Cabinet report.

- 2.3 Officers continue to develop Phase 1 with progress being made to submit an outline planning application and negotiations continuing to acquire land parcels via private treaty in line with the requirements of the in-principle approval to the use of the Council's compulsory purchase powers. This report sets out the work that has been undertaken following Cabinet approval earlier this year to identify a preferred development partner procurement route, advising on the recommended route; and provides an update on the cost estimate for Phase1.
- 2.4 This report requires a key decision as the recommendations require significant expenditure by the Council (in excess of £500,000).

3. Recommendations

Note: Following consideration of the confidential information in the private session of the agenda:

- 3.1 That Cabinet note and approve the preferred developer partner procurement route set out in this report.
- 3.2 That Cabinet authorise Officers to commence the procurement of a developer partner for Willenhall Garden City: Moat Street and Villiers Street (Phase 1) via the Homes England Dynamic Purchasing System (DPS) noting that the appointment of the successful bidder will be the subject of a future Cabinet decision.
- 3.3 That Cabinet delegate authority to the Executive Director for Economy, Environment and Communities, in consultation with the Portfolio Holder for Regeneration to approve the Invitation To Tender documentation specifically relating to the Council's minimum requirements and the evaluation criteria.
- 3.4 That Cabinet notes the updated funding position for Willenhall Garden City: Phase 1 resulting from work on the Levelling Up Round 2 and Black Country LEP Land and Property Investment Fund bids.

4. Report detail - know

Context

4.1 Phase 1 developer partner procurement

As reported to Cabinet at its meeting on 9 February 2022, a delivery options review was completed by Arcadis, acting as the Council's Strategic Advisor, to ascertain the most suitable delivery option for the Council to pursue in its aim

to accelerate housing delivery in Willenhall. The recommendation from this review was that the Master Developer Option was likely to be the fastest and least risky route to commencement of delivery and will provide flexibility to address specific challenges on each phase of the Willenhall Garden City programme.

- 4.2 At the same meeting Cabinet agreed that the Council should take on the role of Master Developer for Willenhall Garden City whereby it will take responsibility for facilitating delivery and guiding the development of each phase of the Willenhall Garden City programme. The approach provides the Council with control over what is delivered, when and by whom. It allows a large degree of flexibility, which ensures the most suitable approach is taken for each individual phase. As a minimum the Council would acquire land (for each phase) to create a development parcel and secure an outline planning approval for that phase. At that point, there are several options for delivery, which could include de-risking the site further through advanced demolition and site remediation prior to disposal or procuring a developer partner. The role of the Council can be reviewed for each proposed phase.
- 4.3 As approved by Cabinet, the agreed delivery route for Phase 1 is for the Council to simultaneously assemble the site and secure an outline planning permission. The Council will also procure a developer partner to develop the site. It is anticipated that the appointed developer partner will clear and remediate the site unless any secured external funding deadlines require an alternative approach.
- 4.4 Cabinet at the meeting in February 2022 agreed for officers to undertake further work in relation to the procurement route for a delivery partner and to report back to Cabinet on the outcome of the due diligence undertaken to identify a suitable procurement route. This further work is restricted to Phase 1 only but an option to extend any appointment to later phases at the discretion of the Council can be considered. Arcadis, working closely with the Council's Development Team, has now completed the due diligence on the procurement routes available and based on this a preferred procurement route has been identified.
- 4.5 Three alternative procurement routes have been considered. These are:
- The use of an existing framework,
 - A procurement procedure under the Public Contract Regulations 2015 (as amended) (PCR) and
 - The Homes England Dynamic Purchasing System (DPS).
- 4.6 Existing frameworks
Three frameworks available to the Council were considered. Two frameworks were discounted as they were contractor, rather than developer led and therefore do not meet the Council's requirements. The Council is not seeking to pay a contractor to build out the scheme that would be handed over to the Council on completion and developed at the Council's risk. A third framework was discounted due to cost and the smaller number of housebuilder/developers on the framework compared to the Homes England DPS.

4.7 Procurement procedure under the Public Contract Regulations 2015 (as amended) (PCR)

The procurement procedures under the PCR are not restricted to a specific form of contract and so allow flexibility for the Council to procure a developer to enter into a Willenhall Development Partnership Agreement. The available procedures considered were the open procedure, restricted procedure, competitive with negotiation, innovation partnership and competitive dialogue.

4.8 Following a review of the procurement procedures under the PCR, it was concluded that the competitive dialogue procedure was not only the most suited to complex projects, but it also allows the Council to enter into an element of dialogue with a minimum of three (two may be permissible in specific circumstances) short listed applicants with a view to identifying the solution(s) capable of meeting its needs. Limited non-substantive negotiations may also take place after the bidder with the most economically advantageous offer has been identified, with a view to finalising the terms of the contract. The competitive dialogue procedure is capable of being utilised in the situations described in PCR 26(4) and the Council would need to record its justification for using this procedure in its Regulation 84 report.

4.9 The rules governing the competitive dialogue procedure require the Council to set out its 'needs and requirements' in the contract notice, which can be further expanded on in a descriptive document. The descriptive document can also be used to set out further background to the project/process. Given that competitive dialogue procedures are common for 'particularly complex' contracts, it is often the case that contracting authorities are not able to objectively define the technical specifications for their particular requirements with sufficient precision and/or set out the legal/ financial make-up of the project at the outset. On this basis the Council is not required to draw up detailed specifications on which bids are invited but can instead elect to set out its 'needs and requirements,' in the descriptive document which are often less detailed and/or prescriptive than typical specifications.

4.10 Homes England Dynamic Purchasing System

The Homes England Dynamic Purchasing System (DPS) replaced the former Delivery Partner Panel (DPP3) from July 2021. It is understood from Homes England that the DPS has been procured through a fully compliant procurement process and can be used to run a call for competition with housebuilders who are members of the DPS to build housing led- developments on land owned by Homes England and other public sector bodies. The DPS has been designed specifically to be available to help other public sector bodies to procure house builders to accelerate delivery. The option to enter into dialogue with prospective bidders is not a feature of the DPS.

4.11 As of June 2022, 30+ house builders are members of the DPS with the list being open for others to join at any time subject to satisfying pre-qualification criterion set and assessed by Homes England. As the DPS is understood to be procurement compliant it enables users to control the quality and speed of homes that can be delivered. Homes England provide copies of their standard

building lease and suggested evaluation criteria that can be utilised by those using the DPS, whilst allowing the flexibility to fine tune them. Whilst it should be noted that all development works procured through the DPS require project specific contracts, the availability of the standard documents is considered to be an advantage from a resource point of view but also because the market is familiar with these requirements.

- 4.12 From an initial review of the procurement options available it was considered that the DPS route was likely to be the best option for the Council to achieve its aims and objectives in the most effective and efficient manner; however, to ensure a thorough review, a comparison between the DPS and the existing frameworks and the DPS and the competitive dialogue process was undertaken.
- 4.13 The features of the existing frameworks and that of the DPS, including programme and costs were reviewed. Generally, the DPS was considered to be more favourable due to the number of developers signed up (and the ability for others to join), the tendering process being established and familiar in the market, a quicker programme, and reduced costs.
- 4.14 A direct comparison between the Homes England DPS and a competitive dialogue procedure considered process, programme, and costs. This comparison concluded that the DPS would be better suited for the Council's requirements mainly because:
- Soft market testing for Willenhall has established market interest for the development opportunity. It is considered that bidder appetite will be reduced, and some parties may be dissuaded from bidding due to the extra requirements of a competitive dialogue process whereas the DPS route has been established and is well known and received by the market.
 - The DPS has more favourable timescales – the procurement can be concluded by up to 9 weeks sooner.
 - The competitive dialogue procedure will generate higher costs - although there are no fees payable for either the DPS or competitive dialogue route, internal costs and sub consultants' costs are considered to be materially higher for the competitive dialogue procedure (eg additional costs from dialogue sessions including Legal and Property advice).
 - The DPS has been developed by Homes England to help the public sector accelerate delivery of schemes like that proposed for Phase 1.
- 4.15 The review of the procurement options available to the Council has therefore concluded:
- That the three existing frameworks are less attractive options than the Homes England DPS which offers access to a larger number of developers at less cost. Additionally, the DPS remains open for further developers to join should they wish to as the procurement is publicised.
 - The competitive dialogue procedure offers an opportunity to create a 'bespoke' process with the ability to engage with bidders during the

procurement process. However, since the Council's expectations for quality and other requirements can be made clear in the tender documentation for the DPS, the dialogue stage is not considered to be a critical requirement for the process. Whilst this project does have some complexity, it is no different from the types of projects for which Homes England have designed the DPS. Compared to the competitive dialogue procedure the DPS offers the Council a procurement process over a shorter timeframe, which is less costly and is likely to generate stronger market interest due to the nature of the process and requirements for developers to participate.

- 4.16 The Homes England DPS is therefore considered to offer the Council the best available procurement process balancing the ability to shape and control the procurement process to achieve its aims in the most effective and efficient way. The successful developer appointed via the Homes England DPS could potentially also be used for subsequent phases, if desired by the Council and subject to setting out information relating to future phases within any contractual documentation.
- 4.17 Homes England Dynamic Purchasing System – further details
To use the DPS, the Council must sign an access agreement and access the ProContract portal. Importantly, no fee is payable. Access to the DPS will enable the Council to provide the opportunity to tender directly to the 33 current housebuilder members of the DPS in addition to making public its intention to run a procurement via this route which may attract other members to seek to join the DPS. The DPS includes well established developers who are active in the region. A list of the developers as of June 2022 is provided in **Appendix A**.
- 4.18 Applications for developers to join the DPS remain open and so developers who may be interested in tendering for a specific site can apply to join at any time. Early market engagement can alert housebuilders to forthcoming opportunities, so they have time to apply to join the DPS prior to the call for competition commencing. Based on market engagement to date, the Council is aware of several developers who are interested in the Phase 1 opportunity. The process for the DPS includes a call for competition that consists of: Stage 1 – Expression of interest and Stage 2 – Tender stage (2a and 2b).
- 4.19 In order to commence the procurement exercise the Council will need to set out the scope of the opportunity along with its minimum requirements (including evaluation criteria and associated methodology) for the proposed development and in turn those that the selected developer must meet; this will need to be set out within the Invitation to Tender (ITT). The minimum requirements will need to be agreed prior to the commencement of the tender process but are likely to include targets around: tenure mix, housing type, the affordable housing % target as well as the number of homes, space, quality standards or Modern Methods of Construction use. Whilst these minimum requirements are important to set out, they will need to be balanced to ensure that the ability of the selected developer to work collaboratively with the Council to develop the scheme is not hindered. Subject to Cabinet approval, Officers will undertake appropriate due diligence to set out these minimum requirements and seek the necessary approvals as set out in Paragraph 3.3.

4.20 The proposed contractual arrangements and the roles and responsibilities of the Council and the selected developer are set out in the Legal section of this report. Subject to Cabinet approval, it is anticipated that the procurement process will commence early in 2023 and a further report, setting out the outcome of the procurement exercise, will be presented to Cabinet later in 2023. A programme for the delivery of phase 1 has been developed and is reviewed regularly by the project team. A high-level programme will be included on the Council's website. The indicative programme as of October 2022 is set out below:

- Land assembly Oct 2022- September 2024 (compensation may take up to 6 years)
- Outline Planning Application April 2022 – Spring 2023
- Reserved Matters Application Spring 2024 – January 2025
- Demolition and Remediation: Summer 2024 – Spring 2025
- Main Works January 2025 – November 2026

4.21 Funding position

Cabinet at its meeting in February 2022 approved the outline business case for Phase 1 and the associated budget to support land assembly noting that external public sector funding would be explored to provide the necessary funds to assist with acquisition costs. Cabinet also noted that additional public sector funding to assist with viability was likely to be required to deliver the new homes. The appointed developer partner will be required to secure the finances to develop and deliver new homes with the assistance of the Council where this involves additional public sector investment such as funding which may be available from the West Midlands Combined Authority.

4.22 Since the report to Cabinet earlier this year, Phase 1 has been included within the Council's Levelling Up Fund bid to Government under round two (LUF2). Officers have also submitted a full business case to the Black Country LEP under the Land and Property Investment Fund (LPIF). As part of the preparation for the LUF2 bid, it was considered prudent to review the project costs due to increases in construction costs globally. Project costs have increased and have been included within the funding ask from LUF2 and LPIF. Phase 1 has also been included in the tranche of Walsall projects that form part of the WMCA's recent Investment Zones submission. The outcome of the LUF2 bid is expected this Autumn/Winter, while the LPIF submission is anticipated to conclude early next year. The Government is yet to release the timeline for the Investment Zones. It should be noted that while there are expected to be financial benefits arising from Investment Zones, these will not take the form of grant funding.

Council Plan priorities

4.23 The Council's corporate Plan (2022 – 2025) focuses on five key areas that include:

- Economic – Enable greater local opportunities for all people, communities, and businesses; with a key outcome being-

Supporting a dynamic, resilient and diverse economy where businesses invest, and everyone has the right jobs and the right housing in the right place. The procurement of a developer partner will be an important step in delivering new homes in Willenhall.

- Communities – Empower our communities so that they feel they are connected and belong in Walsall, creating safe and healthy places whilst building a strong sense of community; with a key outcome being-

Our communities will be more resilient and supportive of each other. The Willenhall Framework Plan which sets out a vision for the area over a ten-year period aims to grow Willenhall into a vibrant, connected, and welcoming town with a strong sense of place which celebrates its diverse communities and promotes safe, healthy, and active lifestyles. The delivery of the Willenhall Framework Plan will ultimately benefit the local community.

Risk management

4.24 Risk: Delay in procuring a developer partner.

In line with the preferred delivery approach (i.e. master developer), the Council will need to procure a developer to deliver the end residential scheme and Phase 1 indirect outputs once the land has been assembled. If compulsory purchase powers are required to be exercised, the procurement of a preferred developer partner will need to be sufficiently advanced at the point of making any compulsory purchase order to demonstrate deliverability. There is a risk that the procurement of the developer partner is not sufficiently advanced due to lack of developer interest or unacceptable contractual terms which could impact on the case for making any potential CPO.

Mitigation: The procurement strategy has been prepared prior to commencement of a procurement process and sets out the preferred procurement route, including project objectives, programme, and risk appraisal. The proposed DPS route is also known to the market and is likely to generate stronger market interest due to the nature of the process and requirements for developers to participate.

Subject to Cabinet approval, the tender documentation that will be issued as part of the procurement process will ensure that the Council's minimum requirements and contractual requirements are clearly set to provide clarity to developers to inform their tender response.

Soft market testing has already been carried out with developers and housing providers about the project, which has shown that there is interest from the market, subject to terms. The DPS route also enables the Council to undertake a further optional soft marketing exercise before starting the formal procurement process. Should this option be taken, this will help determine the level of interest in the opportunity and market appetite. Whilst not securing a

developer is a very low risk based on the market intelligence, in the event this occurs, the Council would still own a land asset which could be retained (for a temporary use e.g. public space) until there is a change in the market.

4.25 Risk: Demolition and remediation costs exceed estimated budget.

The procurement strategy assumes that the selected developer will be procured in advance of the demolition and remediation works being undertaken and that it would be the responsibility of the developer to commission and instruct the demolition and remediation works. As such costs will only be estimated by the developer during the procurement process, this element of the project would be on a strictly open book basis to quantify costs and ensures transparency to justify spend. There is a risk that costs could exceed available budget.

Mitigation: A robust cost estimate for the demolition and remediation costs has been provided by Arcadis based on the information currently available. This cost estimate has been used to submit bids to secure external resources to help fund project costs (LUF2 and LPIF). In the event that actual costs exceed the cost estimate, changes may be made to the development proposals to improve viability, or the Council may be required to provide additional resources to ensure delivery. An update on this risk will be provided within the Cabinet report that seeks approval to appoint a developer partner.

4.26 Risk: Programme slippage.

A programme has been developed for Phase 1 to ensure that all project dependencies are met to ensure successful delivery. Should there be unforeseen issues that delay the appointment of a developer partner, there is a risk that this could impact on the developer partners ability to deliver the demolition and remediation elements of the overall project as any external funding secured for this element of the project is likely to be time dependent.

Mitigation: The Council anticipates that the developer partner will deliver the demolition and remediation elements of the project. The detailed programme is reviewed regularly, and should it transpire that the developer partner may not be appointed in time to undertake the demolition and remediation works within any timescales prescribed by funders (eg LUF) the Council will need to consider entering into a separate contract to complete the demolition and remediation works on land in the Council's ownership at that time. In such a scenario, Cabinet will be updated, and the necessary approvals sought prior to any action being taken.

4.27 Risk: Funding.

The Council has submitted LUF2 and LPIF funding bids to secure external resources to fund the project. There is a risk that either or both these funding bids may not be successful in which case the delivery of the project could be at risk.

Mitigation: The Council is aware of the funding position and senior management will be kept informed of progress with the funding bids and Cabinet updated at the appropriate time.

4.28 Risk: DPS procurement.

The Council would need to ensure that the proposed opportunity falls within the scope of the OJEU Contract Notice and associated procurement documents relating to the DPS. Bevan Brittan (external legal advisors) have advised that there are minor procurement risks in utilising the flexibilities of the DPS such as modifying/tailoring the original DPS evaluation criteria and contractual arrangements or departing from the processes set out in it. A challenge could be brought on the basis that such changes are considered to be 'material.'

Mitigation: To mitigate risk in both managing expectations and triggering the limitation periods for challenge, Bevan Brittan recommends providing full transparency of the intended approach (including evaluation criteria and associated methodology) within the Invitation to Tender and any other documents issued by the Council for the competition to be conducted under the DPS. Bevan Brittan have also advised that the Homes England criteria should be followed as closely as possible, including the use of the form of legal/contractual documentation expressly provided for in the DPS and associated procurement documents.

In addition to the above, the Council should consider voluntarily providing debriefing information to unsuccessful bidders and observing a 10-day standstill period prior to entering into any contractual arrangements with the successful bidder. This would serve to commence the usual, 30-day limitation period for bringing a procurement challenge (noting that, under PCR 92(2) the court is able to extend this period for up to 3 months where there is good reason to do so).

It should be noted that the DPS came into use from July 2021 and Homes England have advised that no challenges have been made since this time.

4.29 Land Assembly that requires a CPO

The Council will make every effort to acquire land parcels via private treaty and has engaged Property Consultants Avison Young to assist with negotiations. However, should such negotiations prove to be unsuccessful within a reasonable timeframe the Council will need to consider the use of its CPO powers. There is a risk that any future CPO may not be confirmed by the confirming authority.

Mitigation: Various public bodies, including Local Authorities, have a range of powers to compulsorily acquire land. As a local authority, the Council has powers to acquire land in private ownership to enable comprehensive and safe development, providing it can be shown that there is a "compelling case in the public interest." The legal test for the use of CPO powers is set high: there must be a clear case in the public interest, the site must be developable and deliverable so there must be a clear scheme for the redevelopment or regeneration of the area and funding in place; and the making of a compulsory purchase order must always be done as a last resort, when all efforts to acquire by negotiation within a reasonable timescale have failed, amongst other things. Cabinet has already agreed in principle to the use of CPO powers and whilst officers continue to seek acquisitions via private treaty, the legal test required

for CPO is also closely monitored to ensure that should a CPO be required in the future the Council would be able to satisfy the rigorous test set.

Financial implications

- 4.30 The funding required to procure a developer partner has already been agreed by Cabinet and therefore there are no financial implications arising from this specific activity. A further report will be presented to Cabinet at the appropriate time that will set out the outcome of the procurement exercise together with detail on any financial implications. Cabinet should however note the risk associated with the demolition and remediation costs as set out in Paragraph 4.25.
- 4.31 As set out in Paragraph 4.22 the Council has submitted funding bids to secure external grant funding for Phase 1 - LUF2 and LPIF. Subject to both bids, in particular LUF2 being successful, then there is a sufficient budget for Phase 1 (cost estimate).

Legal implications

- 4.32 The Council has appointed Bevan Brittan LLP as its external legal advisors for the Willenhall Framework Plan and associated workstreams. Bevan Brittan LLP, have recommended that as Homes England have developed a standard building lease and suggested evaluation criteria and these documents are available for users of the DPS, such documents and criteria should be adopted to reduce any risk of challenge to the procurement route noting that these can then be adapted to produce project specific contracts so long as the changes are not material. The project specific contracts setting out the Council's requirements will need to be prepared in advance of the procurement process with drafts included within the pack of full tender documents issued to bidders.
- 4.33 The Delivery Partner Procurement Strategy Report considered the evaluation criteria set out in the DPS and recommended some high-level criteria for evaluation. As the evaluation criteria will need to be set out in the ITT, it is recommended that these are further considered and finalised following confirmation of the Council's minimum requirements that will be included in the tender documentation.
- 4.34 In line with the advice from Bevan Brittan LLP, the procurement strategy for Phase 1 recommends that the Council and the developer partner enter into an agreement for lease followed by a building lease. The lease will be a long-term lease in excess of 100 years which allows for the freehold interest in completed units to be transferred to end purchasers. It should also be noted that the structure used by Homes England provides a secure process for achieving the Council's aims and objectives whilst retaining control over the proposed development.
- 4.35 Agreement for lease
The agreement for lease will form a conditional contract between the Council and the successful developer. Once conditions are satisfied, the developer will

draw down a building lease. The building lease will be the development agreement between the Council and the developer.

4.36 The developer's main obligations under the Agreement for Lease will be to:

- Work collaboratively with the Council to develop and progress a scheme through the planning process.
- Secure Reserved Matters approval for their scheme (or a new full planning application), the basis of which must be based on the development of the scheme tendered and which has been produced in collaboration with the Council and agreed by the Council, and to discharge all pre-start planning conditions.
- Secure all necessary funding required to deliver a viable scheme. It is not unusual for the developer to be responsible for applying for, and obtaining, grants for any funding gap that may be required to deliver new homes. This, if required, will be in addition to any funding the Council is committed to providing. It is anticipated that the developer will have experience of securing grant funding but will be supported by the Council in this process.
- Satisfy a development viability condition whereby the viability for the development is determined as "viable" by reference to a development appraisal prepared by the developer following the grant of the reserved matters application, the provision of any funding and as agreed with the Council.

4.37 The Council's obligations under the Agreement for Lease will be to:

- Work collaboratively with the developer to develop and progress a scheme through the planning process. (Note that in this case, use of 'the Council' refers to its role as a landowner for the development and the developer will have to follow the statutory planning process).
- Deliver vacant possession of the site by an agreed longstop date.
- Deliver any funding for which they are the recipient/provider.

4.38 Once the conditions have been satisfied the building lease will be completed.

4.39 Building lease

The developer's obligations under the building lease will involve building out of the planning consented scheme to include the minimum requirements.

Duties placed on the developer will include: -

- To coordinate effective management of the site and discharge all statutory health and safety duties.
- To arrange the delivery and management of all construction activities across the site in compliance with the terms of the planning approval.
- To raise the finance required to cover the scheme's peak funding requirement and arrange any credit lines that may be needed to meet cost overruns / cash flow shortfalls.
- To manage all marketing and sales of dwellings across the site.

Development risks such as cost overruns or poor sales will be the responsibility of the developer.

- 4.40 The developer will be obligated to start on site within a fixed period following draw down of the lease and once the development has commenced it must achieve the practical completion of all dwellings in accordance with the programme agreed. The building lease will also contain forfeiture and step in provisions which would allow the Council to take back control of the development should the developer fail to meet their obligations for delivery under the lease.
- 4.41 On practical completion of the market homes, the Council will transfer the freehold interest in each dwelling to the home buyer, through the agency of the developer who will agree the house sales in the open market and provide the Council with a form of transfer, sales report, completion certificate and other specified information. Similarly, the freehold interest in the affordable homes will be transferred by the Council to a registered provider procured by the developer. The Council will need to instruct solicitors to act on its behalf in completing these plot sales which will have a resource implication. This additional resource has been estimated and can be accommodated within the overall budget for Willenhall.
- 4.42 Overage agreement
It is expected that if the developer delivers a more commercially successful scheme than was anticipated in the tender, it will share additional income over and above this threshold with the Council in an agreed proportion.
- 4.43 Demolition and remediation
It is anticipated that the demolition and remediation works will be undertaken by the developer providing the land assembly has been completed and the developer appointed in time for these works to be delivered within the timescales attached to any public funding. However, in the scenario that demolition and remediation works need to be carried out in advance of the developer entering a building lease (eg to meet funding timescales) then the Council may consider entering into a separate licence to ensure that the works can be undertaken without delay; ensuring that all necessary warranties are included.

Procurement Implications/Social Value

- 4.44 The proposed procurement strategy has been developed in consultation with Procurement Services and adheres to current procurement regulations. The Homes England DPS is a recognised DPS set up by the agency to help accelerate the development of much needed new homes. Subject to Cabinet's approval of recommendations 3.1 and 3.2, the outcome of the procurement process will be reported to a future Cabinet meeting where approval will be sought to appoint the successful bidder.

- 4.45 The evaluation criteria for the procurement of a developer partner are yet to be finalised. However, in line with the criteria suggested by Homes England and indeed the Council it will include social value, particularly how bidder's proposals will deliver social value and any measures which will be binding commitments.

Property implications

- 4.46 The appointment of a developer partner will be the subject of a future Cabinet report. The successful acquisition of Phase 1 interests will result in the Council being liable for maintenance and management of additional land and property until such time that the Phase 1 delivery commences. Costs associated with holding costs and site security hoardings have already been factored into the overall project costs. The recommended procurement process will ensure that there is an exit route for the Council that diminishes any related liabilities.

Health and wellbeing implications

- 4.47 The Willenhall Framework Plan considers the wellbeing benefits of the proposed development and concludes that proposals will contribute to the social, economic, and environmental wellbeing of the area. The procurement of a developer partner will help facilitate the development of Willenhall as a place where individuals aspire to live, work, and spend leisure time. There is therefore a positive impact on health and wellbeing.

Reducing Inequalities

- 4.48 An Equalities Impact Assessment (EQIA) has been produced for the Willenhall Framework Plan. The EQIA will continue be reviewed and updated as proposals within the plan are developed.
- 4.49 The Willenhall Framework Plan provides the support to drive forward the regeneration of the area. As well as setting out the Council's aspiration to promote Willenhall as an area that is a sustainable place to live, work and spend leisure time it also contributes towards the Council's vision as outlined in the Corporate Plan (2022-2025): Inequalities are reduced and all potential is maximised. The delivery of new homes in particular will aim to diversify the type and tenure of homes available in the area so that the needs of the community can be met.

Staffing implications

- 4.50 To date this key strategic project has required significant input from staff within Regeneration, Housing and Economy alongside support from other areas of the Council as appropriate: Finance, Legal, Corporate Landlord and Development Management. The procurement of a delivery partner will require this work to continue with a particular supporting role for staff in Procurement Services. The transfer of homes to the end purchaser may also have staffing implications for Legal Services and this will need to be considered further as Phase 1 progresses.

Climate Impact

- 4.51 The project links to the Resilience and Adaptation theme of the Council's Climate Change Action Plan and the aim to align climate action with regeneration, construction, and planning policy to enable economic prosperity and promotion of sustainability.

Consultation

- 4.52 As part of the development of the Willenhall Framework Plan, engagement with the local community and key stakeholders took place in order to better understand key issues that the Framework Plan needed to address; bringing derelict or redundant sites back into use was a high priority for respondents from the community. The approval of the developer partner procurement strategy will directly assist the Council in responding to community priorities.

5. Decide

- 5.1 Having discounted the option to consider existing frameworks, there are three options left to consider: "do nothing"; proceed with a procurement procedure under the Public Contracts Regulations (as amended) (PCR) 2015 or choose to use the Homes England DPS route.
- 5.2 Do Nothing: The Walsall Site Allocation Document sets the planning framework for Willenhall and the Borough. The Council could therefore choose to do nothing and wait for landowners to bring sites forward for development or to the market. However, this will not assist with meeting the Borough's housing targets or the wider regeneration of Willenhall as Officers are aware that viability issues due to abnormal site costs, high land value expectations and fragmented ownership are known to hinder sites being brought forward. Cabinet will recall that it has agreed to a CPO in principle for Phase 1. In the event that a CPO is required, the Council will need to meet key tests to satisfy the case for CPO; the procurement of a developer partner will need to be complete or well underway to help the Council meet the CPO tests.
- 5.3 Use of a procurement procedure under the Public Contracts Regulations 2015 (PCR): Arcadis in their review of procurement options available to the Council conclude that of the alternative procurement procedures available under PCR, the competitive dialogue process could be considered as an acceptable procurement route for Phase 1. The competitive dialogue procedure offers an opportunity to engage with bidders during the procurement process; however, since the Council's expectations for quality and other requirements can be made clear during the tendering process under the preferred approach set out in Paragraph 5.4, a dialogue stage is not regarded as being a critical requirement for Phase 1. The preferred approach is also considered to be more advantageous in terms of timescales, cost, and market appetite.

- 5.4 Use of Homes England's DPS: In reviewing the possible procurement routes that the Council could choose, the Arcadis work has concluded that the Homes England DPS offers the Council the best available procurement route balancing the ability to shape and control the procurement process to achieve its aims and objectives in the most effective and efficient manner. In comparison to the alternative approach of competitive dialogue, the DPS offers the Council a procurement process over a shorter timeframe, which is less costly and is likely to generate stronger market interest due to the nature of the process and requirements for developers to participate.
- 5.5 It is recommended that the Council proceeds with the DPS route.

6. Respond

- 6.1 Subject to Cabinet approval of the recommendations set out in this report Officers will finalise the documentation required for the DPS route. Subject to the recommendations set out in Paragraphs 3.1 and 3.2 the Council will also commence the procurement process.

7. Review

- 7.1 Officers will continuously review progress against the programme for the procurement of a developer partner and update Cabinet on the outcome of the procurement process at the appropriate time seeking any necessary approvals.

Appendices

Appendix A - Homes England DPS – Members

Background papers

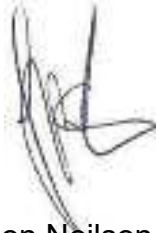
- a) Willenhall Economic And Development Programme, Cabinet Report, 19 October 2015
- b) Willenhall Masterplan: Strategic Land Acquisitions, Cabinet Report, 10 February 2021
- c) Willenhall Framework Plan, Cabinet Report, 09 February 2022

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Simon Neilson
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14 December 2022



Councillor Andrew
Portfolio holder

14 December 2022