

<b>Contains Confidential or Exempt Information</b>	<b>YES (Part)</b> Confidential Appendix 1 contains information which is exempt by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972
<b>Title</b>	Southall Gateway redevelopment and disposal of land
<b>Responsible Officer(s)</b>	Lucy Taylor, Director of Growth and Sustainability
<b>Author(s)</b>	Eleanor Young, Strategic Regeneration Adviser
<b>Portfolio(s)</b>	Cllr Julian Bell, Transport and Regeneration, Cllr Mik Sabiers, Housing, Planning and Transformation
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	8 December 2020
<b>Implementation Date if Not Called In</b>	21 December 2020
<b>Affected Wards</b>	Southall Gateway
<b>Keywords/Index</b>	Southall Gateway, Park Avenue, Southall Big Plan

**Purpose of Report:**

To update Cabinet on proposals for Council owned land in Southall Gateway. To seek conditional authority to dispose of sites previously acquired for redevelopment to PA Housing (PAH) to develop a housing scheme.

**1. Recommendations**

Cabinet is recommended to:

- 1.1 Note the current position with regard to the proposed redevelopment of the Southall Gateway (Park Avenue) Site (known as 'the Site) and proposed disposal to with PA Housing for the purpose of redevelopment for housing, primarily affordable housing.
- 1.2 Agree to dispose of the Site as set out in section 2 below paragraphs 2.10-2.18 and shown on the plan in Figure 1.
- 1.3 Agree to delegate to the Executive Director, Place, in consultation with the Director of Democratic Services the authority to negotiate the detailed terms of, and the authority to agree that the Council enters into, a Development Agreement with PA Housing (and any necessary ancillary agreements) on the basis set out in paragraphs 2.19-2.20 below and Appendix 2, subject to formal GLA approval and 'best consideration' sign off.

- 1.4 Delegate formal sign off for the Development Agreement with PA Housing (and any necessary ancillary agreements including the necessary funding agreements with the GLA) to the Executive Director, Place, once formal approvals have been completed.
- 1.5 Authorise the Council to agree and enter into any agreements required by Network Rail to dispose of parcels of land as may be required to facilitate the development.
- 1.6 Agree in principle that the Southall Gateway (Park Avenue) Site be appropriated for planning purposes.
- 1.7 Delegate authority to the Executive Director of Place to agree the appropriation at the appropriate time following consultation with the Director of Legal and Democratic Services.

## **2. Reason for Decision and Options Considered**

### **Background**

- 2.1 In 2014, the adopted Southall Opportunity Area Planning Framework identified for development a site SOU4 from the sites DPD (adopted December 2013) known as 'Southall Gateway'. Prior to this the Council had carried out detailed discussions with the local Gurdwara (the Gurdwara Sri Singh Sabha) about a comprehensive scheme to redevelop the land next to the station and reprovide a new religious and community facility in land to the east of the former and proposed new pedestrian footbridge. To support this scheme, SPD for the site was adopted in 2015.
- 2.2 Having secured loan funding from the GLA via the LEAP scheme 'growing places' and the 'Housing Zone' funding, the Council set out to acquire sites then in third party ownership including Network Rail. The first acquisition of the 'Thames Materials' site was in 2016 followed by the Network Rail 'Silverline' site in 2018.
- 2.3 Despite the best efforts of both parties to work together on a collaborative scheme it did not prove possible to agree with the Gurdwara a suitable scheme that was financially viable for the site. The Gurdwara community became concerned that a new Gurdwara would be better suited to the west of the footbridge, rather than to the east as originally proposed.
- 2.4 Therefore in 2018 officers reported to members that the site would be split into two halves, with the west side controlled by the Gurdwara for reprovion of the religious / cultural / community facility and some additional commercial and housing provision, and the east site controlled by the Council to be disposed of for housing, with a large proportion of affordable housing (then assumed to be 50%) for affordable provision to meet local needs.

- 2.5 Officers had proposed to dispose of the Ealing Council owned Site via the London Development Panel once the other neighbours (PA Housing, owners of the Milan Road housing estate) had been consulted about this.

### **Progress since December 2018**

- 2.6 Since that last Cabinet report officers consulted the adjacent landowners, PA Housing. There had previously been a couple of discussions in the past however, at no stage had PA Housing (previously ASRA Housing) expressed any interest in redevelopment. However, in early 2019, PA Housing (PAH) told the Council it now wished to review the site as part of its development programme and would be interested in working with the Council to maximise their site's potential. PAH was aware that there was due to be considerable development to the east of its site, at the TfL / Grainger site on which a planning application was approved in September 2020. As a result, residents may have to put up with a lot of disruption and may wish to relocate away from the immediate area. That would not be possible for PAH to arrange unless as part of a redevelopment scheme (which would also give residents the option to return to a new home on site if that is what they preferred). PAH were also concerned that the residual site may look somewhat incongruous in the context of new development to the South, East and West of it.
- 2.7 At the same time, Ealing Council's own Housing team (on behalf of BLRP) was seeking to increase productivity of its own and had been successful in securing new GLA funding for affordable housing. As a result, the team working on the Council Housing Delivery Programme was actively looking for new sites.
- 2.8 An initial feasibility study in March 2019 concluded that either site developed in isolation would be sub-optimal and that if both sites came forward together there would be a net uplift of c. 200 new homes. Following this, PAH and LBE Housing agreed to enter into a 'collaboration agreement' to carry out a more detailed feasibility project aimed at resolving how to fund and deliver a scheme together on the two sites. As part of this collaboration work the two parties have:
- Commissioned an outline scheme and taken pre application advice from Ealing Council Planning Services and Network Rail
  - Commissioned cost consultants to advise on the scheme build costs
  - Carried out financial appraisals of the investment required to deliver the schemes
  - Taken wider market advice (both before and during the Covid 19 pandemic crisis) on prevailing sales opportunities and property values
  - Considered a delivery structure to take the project forward to the next stage
- 2.9 The team proposed a new scheme for the site which would be comprised largely of affordable housing. Council officers along with officers from PAH have been in discussion with GLA officers during the summer regarding options for social housing investment in the site. This has resulted in October 2020 in the GLA inviting bids to be made for funding in the current programme. As a result of this decision, there is thought to be a viable and

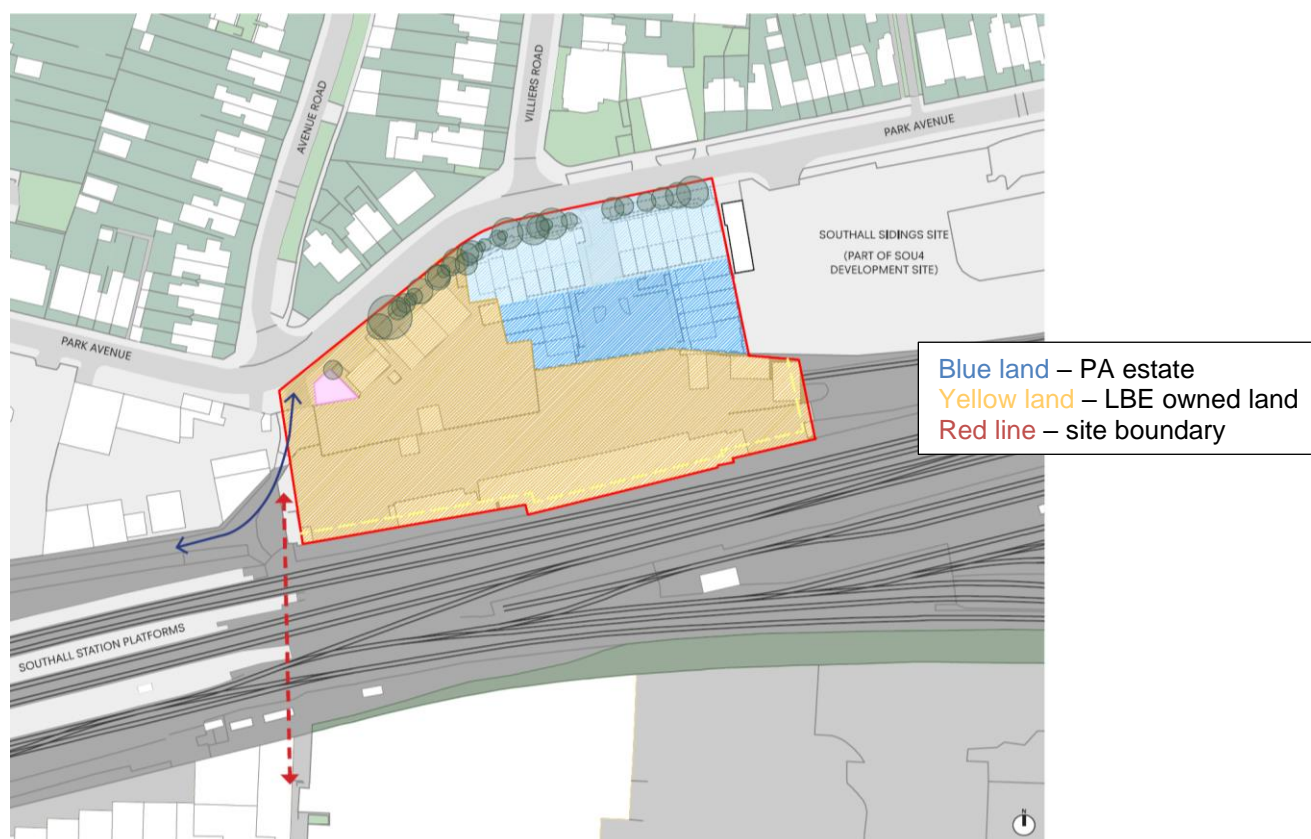
deliverable scheme. However, due to Broadway Living having a large programme recently agreed by Cabinet for delivery in the same period, BL has now withdrawn from bidding for the opportunity so as to allow PAH to deliver the site itself, which would be achievable within the constraints of the current GLA programme.

- 2.10 The GLA is clear that the scheme cannot be delayed beyond the current programme window and funding for it is contingent upon delivery within that period. Overall, officers consider that certainty of delivering outputs soon is desirable partly to benefit those families now waiting for a new affordable home and partly to meet the Council's existing contractual obligations to the GLA in respect of the land purchase delivering outputs. Therefore, officers are now recommending that the scheme be delivered by PAH acting alone rather than by PAH and Broadway Living acting together.

### The proposed new housing scheme

- 2.11 The feasibility stage of the work has now concluded and officers have assessed that there is a scheme which could be delivered which would optimise the development potential of the two sites together.

**Figure 1 – plan of the Park Avenue housing sites**



- 2.12 Overall the scheme proposed at present is expected to deliver 531 residential units. This model scheme is subject to planning and the design assumptions set out below are indicative. In addition to the homes, the combined site would

bring forward commercial spaces and public realm benefits. The combined scheme has been reviewed by the Planning Services at LBE and has received significant feedback and guidance accordingly.

2.13 Following recent financial modelling the entire premise of this project has been reconfigured to adapt to market conditions. Previously this was a market facing scheme with 50% of the units proposed for outright sale etc. However, due to adverse market conditions arising from both the Covid 19 pandemic and the forthcoming Brexit situation it is now proposed that the scheme should now be an affordable housing led project with a much-reduced outright sale element.

2.14 The current 531 home scheme would produce the following mix of homes:

**Table 1 – indicative unit type and mix**

Unit type	LAR	LLR	SO	OMS	Total
Number of units	190	105	160	76	<b>531</b>

LAR = London Affordable Rent; LLR = London Living Rent; SO = Shared Ownership; OMS = Market for Sale

2.15 The scheme must start in full by March 2023 to qualify for GLA grant as agreed. Completions are expected to be delivered in full by 2027.

2.16 Please note that the overall design is far from a finished presentation and the attached is simply to highlight design direction and potential massing. The current scheme design for the combined site is below:

**Figure 2 – indicative scheme massing**



2.17 The designed scheme will be procured to meet the highest environmental standard (subject to overall viability) and the architects Gort Scott will be

designing the scheme to attain Passiv Haus standard. The scheme has been reviewed by Network Rail and they were supportive of the project in principle subject to both build methodology and relationship to the railway being agreed.

- 2.18 The scheme is dependent on obtaining vacant possession. There are a number of industrial tenants on short term tenancies in the Thames Materials part of the site. The 'Silverline' site has now been cleared to allow for it to be used as a work site for the new foot and cycle bridge at Merrick Road. The pedestrian bridge is programmed to be installed in Dec 2020 and expected to be practically complete by July 2021. The bridge can only be installed on Christmas Day without incurring business interruption surcharges by Network Rail.
- 2.19 It is proposed to deal with the land disposal by way of a Development Agreement with PAH whereby PAH would build out the scheme under license, following completion of the scheme to 'golden brick' stage, the Council would transfer the relevant parcels of land to PAH on a freehold / long leasehold basis [subject to detailed agreement through legal workshop]. For the purposes of the DA the transfer fee is set out in **Confidential Appendix 1** however there would be a viability appraisal prior to transfer and if the market position had improved significantly or there had been any changes to the planning consent to allow for a different mix including more market or affordable housing then the position could be checked at that time. The 'Heads of Terms' for this agreement are attached as **Appendix 2**.
- 2.20 Authority to negotiate the detailed terms of, and the authority to agree that the Council enters into, the Development Agreement (DA) should be delegated to the Executive Director, Place. The DA cannot be signed until all the preconditions have been met which include:
- text of legal agreements being finalised by LBE and PAH legal teams
  - GLA grant approval for PA (social Housing Grant) and LBE (conversion of Housing Zone recyclable grant to deliver social housing units)
  - Section 123 'best consideration' sign off received from external surveyor

### 3. Key Implications and options considered

- 3.1 When considering the options for the future of the site there are a number of considerations:
- **Financial** – The Council has spent money acquiring the sites and this needs to be repaid or converted into a grant investment by the GLA. See **Confidential Appendix 1** for more details on this.
  - **Housing delivery / contractual outputs** – as well as the Council's own local planning housing delivery targets, the Council is contractually obliged to provide housing and affordable housing on these sites as a result of the GLA grant funding and loan requirements.
  - **Regeneration** – there is an existing small housing estate in situ on the PA site. One part of the Gateway site owned by the Council is industrial estate which is partly still operational (Thames Materials). The southern part of the Gateway site acquired by the Council (Silverline) has now been cleared of its

most of previous industrial tenants to allow for it to be used as a construction site for the Merrick Road Foot and Cycle Bridge. Once that project is complete the site needs to be secured or brought back into active uses to prevent dereliction and the opportunity for squatters / anti social behaviour to arise. The cycle bridge project is expected to complete in Summer 2021.

- **Legal** – the Council needs to show that it has achieved ‘best consideration’ for the site disposal and also that we have disposed of the site in a way that cannot be challenged by third parties.

3.2 Officers have considered a number of options for the future of this site and in December 2018 reported that the site would be advertised via the London Development Panel for redevelopment for a housing scheme with a minimum of 50% affordable housing. However once discussions began with PA and massing studies demonstrated that the scheme would be optimised if the two sites were brought together it became clear that from a regeneration / housing outputs point of view the site should be considered as a whole. The **benefits** of the proposed solution now are as follows:

- Optimise housing outputs by bringing two sites together, offer full replacement of existing social rented homes and allow for existing residents to move away permanently or return to a new home on site depending on their preference and circumstances.
- Generate a substantial proportion (up to 85%) net new affordable homes including an anticipated 190 new homes at LAR rent levels and 105 new homes at LLR for local families in need. There are a further 160 proposed shared ownership units in the scheme.
- Provide a scheme that can proceed quickly subject to legal agreements being put in place and the planning application being progressed

3.3 However there are a number of **risks** associated with the proposed scheme which are set out in more detail in section 8 below.

3.4 Officers have considered **alternative** scenarios to the one now proposed as can be seen from previous cabinet reports (listed at the end of this report). The most obvious alternative proposal now is to try to seek a private development partner on the open market to deliver an enhanced land receipt. However, at this stage, the risk of doing that is considered to outweigh the benefits due to prevailing market conditions and the likelihood that delivery of 50% affordable housing by a private partner would prove more challenging in the circumstances than usual. Further it would not be possible to deliver the site without PA housing, so any disposal by the Council to a third party would be for a smaller scheme, probably with fewer affordable units and would scupper the opportunity to realise the redevelopment potential of the two sites together.

3.5 In summary, the benefits of the scheme proposed now are considered substantial enough that the alternative scenario is not considered the best solution for the site.

3.6 The other option is to **do nothing** now. That way it may be possible to preserve the value of the asset pending an upturn in the market. However,

that is not considered an attractive option as it would not support the Council's key corporate priority of delivering new genuinely affordable homes and it would also allow the site to become vacant should the Council not find an alternative meanwhile use. This would also have cost implications, as the site will need to be made ready for letting post the bridge construction and will need to have security in place while it is vacant to avoid it being targeted by squatters. Further there are financial risks to the Council as failure to sell the land may mean the GLA insists on full repayment of the capital grant used to purchase the land in advance of a future sale, which is capital funds the Council does not have available.

#### 4. Financial

- 4.1 Please refer to **Confidential Appendix 1** for the financial background and issues.

#### 5. Legal

- 5.1 The Council has 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 its functions.
- 5.2 The Council may further rely upon the General Power of Competence provided for in Section 1 of the Localism Act 2011 to pursue the proposed land disposal by way of a Development Agreement with PAH and related contractual structure. 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.
- 5.3 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.
- 5.4 The Council has acquired the land for the Council element of the scheme for planning purposes under section 227 of the Town & Country Planning Act 1990. The Council has the power to dispose of property which is held for planning purposes under section 233 of the Town & Country Planning Act 1990. This is subject to an obligation to obtain the best consideration that can reasonably be obtained (except for leases of seven years or less), unless the Secretary of State's consent is obtained for the disposal.
- 5.5 Under section 203 of the Housing and Planning Act 2016 the Council may override easements and other third party rights in specified circumstances where land is held for planning purposes although the beneficiaries of any rights overridden may claim statutory compensation but cannot seek an injunction to delay or terminate the development.



- 5.6 Under the proposed land disposal, land in the Council's ownership will be transferred to PAH for development. By virtue of Section 123 of the Local Government Act 1972, the Council may dispose of land held by it in any manner it wishes subject to obtaining the best consideration reasonably obtainable. Therefore, at the time of disposal, the Council must ensure that the value attributed to the land meets the Council's s.123 obligations.
- 5.7 Officers have taken advice from colleagues in legal and procurement on the risk of challenge regarding a direct disposal of the Site to the neighbouring land owner, without whom the scheme could not proceed. While Regulation 10(a) of the Public Contract Regulations 2015 (PCR) specifically excludes land transfers, in this case the proposal is to proceed by way of a Development Agreement, so the transaction would not automatically be excluded from the full application of the PCR. However Regulation 32 (2) (b) (iii) of the PCR can be relied upon to justify no competitive procurement process being undertaken, on the basis that the developer (in this context the neighbouring land owner) has an exclusive right that other competitors could not take advantage of. The rationale being that no other potential developer would be able to carry out the development in the absence of the Council acquiring that land on their behalf, and the neighbouring landowner would either refuse to sell or would have good standing to object to a potential CPO.
- 5.8 The Council intends to procure external legal advice in relation to the land disposal by way of a Development Agreement with PAH, including in relation to compliance with the PCR.
- 5.9 The Council is obliged under legal agreements with the GLA in respect of Growing Places Funding (see Cabinet Report June 2014) and Housing Zone Funding (see Cabinet Report February 2015) to recoup and repay the costs of the land acquisition and to bring forward housing outputs on the sites that have been acquired using these funds unless otherwise agreed with the GLA.
- 5.10 State aid legal compliance will need to be managed by the Council on an ongoing basis, including in relation to land transfers and funding arrangements.
- 5.11 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.

## **6. Value For Money**

- 6.1 This proposed scheme is considered to be good value for money for the Council on the basis that:

- Ealing to attract ‘best consideration’ for the site
- PAH to deliver mixed tenure scheme with focus on affordable housing
- Scheme to be delivered to high quality design standards
- Scheme to be delivered to high environmental standards with the aim of achieving Passiv House compliance.

6.2 The proposed disposal will also need to meet the Council’s duties under Section 123 of the Local Government Act 1972 or Section 233 of the Town & Country Planning Act 1990, and prior to signing any development agreement an external surveyors’ report will be necessary to confirm this.

## 7. Sustainability Impact Appraisal

7.1 The sustainability issues for this scheme will be considered properly through the planning process so no additional sustainability impact appraisal is required. The scheme is proposed to be built to Passive Haus standards in line with the Council’s declaration of a Climate and Ecological Emergency in May 2020.

## 8. Risk Management

<b>Risk</b>	<b>Mitigation</b>	<b>Residual risk</b>
Sales values fall /market absorption issues on SO / Market units	Minimise number of units for open market sale; shared ownership units in scheme	Sales risk is still there but is needed to allow for cross subsidy to affordable units
Build costs increase	Robust assumptions about build costs have been made at feasibility stage including provision for high environmental standards.	This risk cannot be eliminated but by allowing for some inflation over time the valuation model
Network Rail (NR) objection to scheme	Initial discussions with NR at feasibility stage – positive feedback so far. NR has suggested that a sliver of land is sold back to them to enable efficiency of railway management.	This is usual in a scheme alongside the railway but can be managed through efficient design of scheme.
Neighbours objection to the scheme	There are two main neighbours to the West (the Gurdwara) and East (TfL Grainger) of the site plus an additional smaller neighbour (the Church). There are neighbours to the north who will be consulted as part of the planning process.	The scheme is considered acceptable in principle by planning officers. Building mass and heights have been kept to a maximum of four storeys on the Park Avenue frontage; towers to the south of the site are designed to mitigate the impact of taller towers south of the railway on views from the North of the site.

	The scheme is broadly acceptable in strategic policy terms.	
Residents on the existing housing estate object	Residents will be consulted 1-1 and will be offered suitable decant options. All residents on site are assured tenants. Discussions with PAH tenants are due to commence in early 2021.	PA Housing has experience of dealing with decant in regeneration schemes and is committed to making genuinely attractive offers to its existing tenants.

## 9. Community Safety

9.1 The scheme design of the new homes will have regard to the latest standards in safety design and the local police will be consulted about the plans. Currently the site is partly unoccupied and is being actively targeted for fly tipping and unauthorised occupation. Ealing Council has employed Carter Jonas to manage and secure the site until it is in active use as a worksite for the construction of the foot and cycle bridge but after that we do not wish to see a long period of vacancy which would allow for anti social behaviour in the area.

## 10. Links to the 3 Key Priorities for the Borough

10.1 The council's administration has three key priorities for Ealing. They are:

- Good, genuinely affordable homes
- Opportunities and living incomes
- A healthy and great place

10.2 The proposed scheme would contribute to all three of the above themes, particularly the first one through the provision of (net new) 508 homes of which the majority would be affordable including a total of 167 net new homes for social rent and a further 265 units for intermediate housing tenures. There would in addition be 76 private market units on site. The 23 existing social rent units would also be replaced in the new scheme. As such the scheme provides a total of 85% affordable housing on a net basis.

## 11. Equalities, Human Rights and Community Cohesion

An EAA has been carried out and is attached as Appendix 3. This scheme would contribute to meeting local affordable housing needs which disproportionately affects people of Black, Asian and Minority Ethnic origin. The scheme would also help meet the needs of disabled people by providing all housing to 'lifetime homes' standards and 10% of the new homes to be suitable for wheelchair users.

## 12. Staffing/Workforce and Accommodation implications:

None.

## 13. Property and Assets

This report affects council property / assets.

**14. Any other implications:**

None.

**15. Consultation**

This report has not been considered by a Scrutiny Panel. The Lead Member for Regeneration and Transport has been consulted.

**16. Timetable for Implementation**

November 2020 – PA Board approval

December 2020 – Cabinet approval

December 2020 – GLA grant funding approval expected

January / February 2020 – Legal agreements signed and detailed planning application to commence

Summer 2021 – Planning application and public consultation

Winter 2021/22 – Planning consent granted

Summer 2022 – start on site

Spring 2024 – completion of first homes

Autumn 2027 – completion of last homes

**17. Appendices**

- Confidential Appendix 1 – commercial / financial considerations
- Appendix 2 – Heads of Terms for Development Agreement
- Appendix 3 – Equalities Assessment Analysis

**18. Background Information**

Refer to previous cabinet reports:

- February 2014
- July 2015
- September 2017
- December 2018

## Consultation

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent to consultee</b>	<b>Date response received</b>	<b>Comments appear in paragraph:</b>
<b>Internal</b>				
Gary Alderson	Executive Director, Place	12/11/20	17/11/20	various
Lucy Taylor	Director, Growth and Sustainability	12/11/20	17/11/20	
Ross Brown	Chief Finance Officer	12/11/20		
Russell Dyer	Finance	3/11/20	10/11/20	Financial
Jackie Adams	Head of Legal (Commercial)	3/11/20	10/11/20	Throughout
Cllr Julian Bell	Lead Member Regeneration and Transport	12/11/20	24/11/20	
Cllr Mik Sabiers	Lead Member Housing, Planning and Transformation	12/11/20	16/11/20	
Sarah Hadland	Category Lead (Place), Commercial Hub	19/11/20	19/11/20	Procurement issues
<b>External</b>				
Suzannah Taylor	Assistant Director, PA Housing	3/11/20	5/11/20	References to proposed scheme, Milan Road and PA housing tenants
Nick Hurley	Associate, Browne Jacobson	12/11/20	18/11/20	Legal

## Report History

<b>Decision type:</b>	<b>Urgency item?</b>
EITHER: Key decision OR Non-key decision OR For information (delete as applicable)	Key Decision
Report no.:	Report author and contact for queries: 07765 896758 Eleanor Young, Strategic Regeneration Adviser