

Birmingham City Council

Report to Cabinet

15 December 2020



Subject: **BIRMINGHAM SMITHFIELD DEVELOPMENT PARTNER CONTRACT AWARD**

Report of: **ACTING DIRECTOR, INCLUSIVE GROWTH**

Relevant Cabinet Member: **Councillor Ian Ward, the Leader of the Council**
Councillor Tristan Chatfield, Cabinet Member for Finance and Resources

Relevant O & S Chair(s): **Councillor Sir Albert Bore – Resources**
Councillor Lou Robson – Economy and Skills

Report author: Ashley Innis
Major Projects Development Manager
Email Address: ashley.innis@birmingham.gov.uk

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--------------------------------------------------|
| Are specific wards affected? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No – All wards affected |
| If yes, name(s) of ward(s): Bordesley & Highgate | | |
| Is this a key decision? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| If relevant, add Forward Plan Reference: 006459/2019 | | |
| Is the decision eligible for call-in? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does the report contain confidential or exempt information? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| If relevant, provide exempt information paragraph number or reason if confidential: Exempt Appendix A, Annexes A-D. Exempt information relating to the financial or business affairs of any particular person (including the Council) | | |

1 Executive Summary

- 1.1** Birmingham Smithfield is one of the City's most significant development opportunities and a key strand of the transformational plans for the City Centre.
- 1.2** On 11 December 2018 Cabinet approved the selection of Lendlease Europe Holdings Ltd ("Lendlease Europe") as the preferred development partner to work with Birmingham City Council ('the Council') to deliver the Birmingham Smithfield redevelopment.

- 1.3** On 22nd July 2020, the Council confirmed that the Birmingham Smithfield Development site will be used as a venue for the Commonwealth Games Birmingham 2022. This has resulted in a delay to the Lendlease programme and as such on the 8th September 2020 Cabinet approved early enabling works to be carried out by the Council.
- 1.4** The purpose of this report is to seek approval for the Council to enter into a Joint Venture Agreement (“JVA”) with the JVA Private Sector Partner (PSP) for the development of Birmingham Smithfield, Lendlease Europe (the contractual appointment being with Lendlease Smithfield Development LLP, a subsidiary of Lendlease Europe, guaranteed by Lendlease’s Australian parent company, Lendlease Corporation Limited), subject to the successful completion of the Business Plan, Strategic Outline Case and finalising the Joint Venture Agreement and associated contracts, and to note that the commercial details pertaining to this report are included in Exempt Appendix A, Annexes A-D.

2 Recommendations

- 2.1** Approves appointment of Lendlease Smithfield Development LLP as development partner for Birmingham Smithfield, and for the Council to enter into a JVA (“JVA”) and associated contracts including (conditionally) a Phase Development Agreement (separate Agreement per Phase) with Lendlease Smithfield Development LLP or (for each Phase Development Agreement) a special purpose vehicle (a “Phase PSP”).
- 2.2** Notes that Lendlease Europe will create one Phase PSP per Phase, which may be funded/owned/controlled up to 50% by third parties (over 50% with Council consent - as to which the Council has an absolute discretion). Each Phase PSP will develop the Phase with Lendlease Corporation guaranteeing development obligations under each Phase PSP.
- 2.3** Notes that in accordance with the JVA the Birmingham Smithfield development will be delivered on a phased basis under a Phase Development Agreement. For each phase of the development the Council will grant a 250-year Phase Lease to a Phase PSP. The grant of each Phase Development Agreement and 250-year lease is subject to the discharge of conditions precedent as set out in the Legal Report in Exempt Appendix A, Annex C.
- 2.4** Approves the delegation to the Assistant Director of Property, to grant a 250-year lease for the development, on a phase by phase basis, including for the first phase of the development, the following:
- grant to the Phase PSP (and those authorised by it, or to whom it passes the rights), for the lease term of 250 years, of the right to use the market (once redeveloped by the JV PSP) as a market; and
 - in order to protect the markets, as redeveloped by the JV PSP, covenants by the Council, which are effective from the date of the JVA:
 - (a) not to open or permit a competing market of equivalent scale to the market in the first Phase development, on any of the Council’s currently owned, or acquired land within the area shown on the plan at Exempt Appendix A, Annex D (the Restricted Land), excluding any market which normally operates for a period of two consecutive months or less during any 12-month period; and

(b) if the Council becomes aware that a third-party plans to develop a competing market of equivalent scale within the Restricted Land not in Council ownership, the Council will consult with Lendlease and the Phase PSP of the first Phase on whether the Council will exercise its statutory powers in relation to such market.

- 2.5** Approves the initial Birmingham Smithfield Development Business Plan as summarised at Exempt Appendix A, Annex A.
- 2.6** Notes Lendlease Europe's Masterplan contained in the Exempt Appendix A, Annex A Birmingham Smithfield Development Business Plan, which is consistent with the Birmingham Smithfield Masterplan adopted by the Council in September 2016.
- 2.7** Endorses the submission of the Strategic Outline Case (SOC) (value of £131.4m) to Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) as summarised at Exempt Appendix A, Annex B for GBSLEP Board approval on 5th December 2020.
- 2.8** Endorses the submission of a change request to the GBSLEP for a further £1m of development funding, this sum will fund the project to Full Business Case (FBC) stage.
- 2.9** Delegates authority to the Acting Director, Inclusive Growth to submit the future Outline Business Case and Full Business Case to the GBSLEP.
- 2.10** Authorises the Acting Director, Inclusive Growth, to apply for, and receive via a grant funding agreement grant funding of £131.4m from the GBSLEP Enterprise Zone Fund. The funding will contribute towards the scheme by funding costs incurred by, or (through the Birmingham Smithfield Joint Venture Agreement on behalf of the Council), associated with infrastructure, and staff costs to support the implementation of the Birmingham Smithfield Development Business Plan.
- 2.11** Authorises the Acting Director, Inclusive Growth, to submit an Outline Business Case (OBC) and FBC to GBSLEP and receive grant funding (£5.7m of the overall £131.4m total) for the Enabling works included in the Wholesale Market and adjacent area asset management Cabinet report of 8th September 2020.
- 2.12** Approves the governance and the decision-making arrangements for the Birmingham Smithfield Development Joint Venture, including the Scheme of Delegations, comprising Joint Venture Members (key decisions); Project Board (management of the Joint Venture); and an Implementation Group (day-to-day running of the Development), as set out and detailed in Appendix C, and delegates Authority to the Acting Director, Inclusive Growth, to adjust the Governance if required to include any changes associated with funding agreements
- 2.13** Approves the procurement strategy for external property advice for the Smithfield Development using the Homes England Property Professional Services Framework Agreement, as outlined at Appendix E.
- 2.14** Delegates the award of the contracts for external property advice for the Smithfield Development to the Assistant Director of Property Services, in conjunction with the Assistant Director - Development and Commercial (or their delegate), the Interim Chief Finance Officer (or their delegate) and the City Solicitor (or their delegate).
- 2.15** Authorises the Assistant Director of Property and the Interim Chief Finance Officer to commence the work to develop a business case to support an alternative Site Assembly

Agreement, (which is detailed in Exempt Appendix A). If the business case is deemed viable, it will be bought back to Cabinet at a future date for approval.

- 2.16** Delegates authority to the Acting Director, Inclusive Growth to enter into all negotiations and agree final terms for all legal agreements necessary to facilitate execution of the JVA and Site Assembly agreements.
- 2.17** Authorises the City Solicitor to finalise, execute and complete all relevant legal documentation to give effect to the above recommendations.
- 2.18** Authorises the Director of Human Resources, in conjunction with the City Solicitor, to negotiate, execute and complete any documents, required to enact the TUPE transfer of staff to 'the new entity' created to develop the first Phase (Phase PSP) and/or another operating company which will be contracted with at the time to run the site.
- 2.19** Notes that a separate report is also being made to Cabinet to seek in principle the authority to develop the basis for making a Compulsory Purchase Order (CPO) to support the development of Birmingham Smithfield subject to due diligence and the case for CPO being established.

3 Background

- 3.1** On 20 September 2016 Cabinet approved the Birmingham Smithfield Masterplan which sets out the vision to transform the former Wholesale Markets site and its surrounding environs. The site totals approximately 17 hectares. The vision for Birmingham Smithfield is to create a new destination in the heart of the city centre, including new cultural and leisure attractions, vibrant retail markets and spaces for new and existing small businesses, as well as a residential neighbourhood with a high-quality public realm and integrated public transport links to the wider city centre. Birmingham Smithfield is one of the five areas of transformation that will deliver the growth of the City Centre, as set out in the Big City Plan (2011), is a major development site in the statutory Birmingham Development Plan 2031, and the largest Enterprise Zone site.
- 3.2** On 11 December 2018 Cabinet approved the selection of Lendlease Europe as the Preferred Bidder for the Birmingham Smithfield Development to work with the Council to produce a detailed Masterplan and Business Case for the development of Birmingham Smithfield.
- 3.3** Over the last 2 years the Council has worked collaboratively with Lendlease Europe to produce a robust Business Plan summarised at Exempt Appendix A, Annex A and HM Treasury Green Book-compliant Strategic Outline Case summarised at Exempt Appendix A, Annex B for the development; and finalise the JVA and associated contracts.
- 3.4** The JVA is summarised in the Legal Report included in Exempt Appendix A, Annex C which is substantially based on Lendlease Europe's final tender submission and agreed detailed Heads of Terms.
- 3.5** The Lendlease Europe Masterplan contained in the Exempt Appendix A, Annex A Birmingham Smithfield Business Plan remains in line with the Council's original Birmingham Smithfield Masterplan 2016, with:

- the creation of new cultural and leisure attractions, retail markets, spaces for new and existing small businesses, a residential neighbourhood; and
- supporting economic and social infrastructure that includes a public square, school and the provision of interconnected and interdependent public transport routes for the Metro and Sprint bus which supports the creation of a comprehensive strategic infrastructure network system for the wider City Centre area and beyond.

3.6 The Lendlease Europe Masterplan will continue to evolve through further design development and stakeholder feedback, with the intention that it will remain consistent with Birmingham Smithfield Masterplan 2016.

3.7 A Temporary Use Plan has been produced which forms part of the Business Plan summarised at Exempt Appendix A, Annex A, that aims to build engagement and create a renewed focus and level of interest in the site and future redevelopment. The temporary uses will activate the site throughout the redevelopment phases. It will involve interim uses, activities, temporary installations, and align with community events and engagement. The Temporary Use Plan includes the use of the Smithfield site to host Pride in 2021 and the Commonwealth Games in 2022.

3.8 Due to the scale of the scheme a Strategic Outline Case has been produced for the whole scheme, which is summarised at Exempt Appendix A, Annex B; and subsequently an Outline Business Case will be produced once the hybrid planning application for the full site is developed (Quarter 4 2021). Full Business Cases will be produced once the detailed design for each development phase has been fixed, and decisions required for drawdown of land and Enterprise Zone (EZ) Funding have been agreed. Under the Joint Venture Agreement, the parties will be legally committed to work together to finalise such design and agree such matters.

3.9 The Strategic Outline Case will provide the approval in principle to fund, infrastructure and therefore “sets the envelope” by which follow-up OBC and FBCs to the LEP will be approved, to then facilitate “drawdown” of the approved funding as:

- the Development progresses and detailed design and costings become available; or
- where supportable cases for acceleration of key assets can be made

The majority of funding is currently expected to be drawn down in Phases 1 and 2 (subject to testing of the BCC EZ model).

3.10 The preferred option within the Strategic Outline Case identifies that the gap funding required for the overall scheme to make it commercially viable would be some £127.4m. This gap will be met through GBSLEP EZ funding which has a maximum of £150m of public sector funding allocated to Birmingham Smithfield (Southern Gateway) in the EZ Investment Programme 2019. In addition to the £127.4m, circa £4m is required for BCC’s programme management costs bringing the bid to £131.4m in total.

3.11 The GBSLEP have approved EZ funding of £1m for development costs. A change request for a further £1m has been submitted for approval by GBSLEP. This sum will fund the project to will fund services and documents relevant to the programme to date and for use at OBC and FBC stage.

- 3.12** The Birmingham Smithfield Development project has applied best practice methodologies in the project management and development of business cases along with learning outcomes from other major projects such as Brindley Place, Library of Birmingham, Grand Central and Paradise Circus, to ensure the project is structured and managed in the most robust and effective way to achieve delivery and minimise public sector risk. This includes undertaking a comprehensive appraisal of potential delivery structures and procurement routes to ensure appropriate levels of control/influence and apportionment of risks and rewards; having a robust governance structure to effectively control and monitor the project.

4 Options considered and Recommended Proposal

- 4.1** The options contained in the Strategic Outline Case as summarised at Exempt Appendix A, Annex B are as follows:

- 4.1.1 Option 1: abandon the Procurement Process and do nothing. To abandon the procurement process undertaken and do nothing will not enable the Council to bring forward the development of the area in a holistic, coherent manner that optimises the opportunity to attract private sector investment and provide the best value for money. It would also fail to deliver the social, economic and environmental benefits, the aspirations for which were previously reported to Cabinet.
- 4.1.2 Option 2: appoint Lendlease Europe as the Development Partner and deliver masterplan with reduced infrastructure.
- 4.1.3 Option 3: appoint Lendlease Europe as the Development Partner to work in partnership with the Council to develop Birmingham Smithfield.
- 4.1.4 Option 4: appoint Lendlease Europe as the Development Partner to deliver the proposals detailed in their final tender submission with the accelerated delivery of final phase containing the cultural building.

4.2 Recommended Proposal

- 4.2.1 Option 3 - appoint Lendlease Europe as the Development Partner to work in partnership with the Council to develop Birmingham Smithfield, is the recommended option as it will deliver the Council's vision and policies for the site. This recommendation is based on the below Benefit-Cost Ratio (BCR) assessment:
- 4.2.2 In line with the Ministry of Housing, Communities and Local Government (MHCLG) Appraisal Guide, which identifies two elements - the private benefit associated with the change in land use and the net external impact of the resulting development.
- 4.2.3 Options 2, 3 and 4 have been evaluated on these two elements: -
- In terms of the private economic benefit, land value uplift is now MHCLG's recommended approach to valuing the benefit of development;
 - Net external impact covers elements such as health, regeneration, cultural and environmental benefits.
- 4.2.4 When all these elements were brought together the costs and benefits of the shortlisted intervention options provides an overall indication of value for money in terms of the BCR and Net Present Social Value (NPSV).

4.2.5 The key findings of the economic analysis are that Option 3 is the best-performing option and would offer very high value for money and deliver substantial wider benefits.

The BCR outcomes for options 2, 3 and 4 are set out below: -

- Option 2 (reduced infrastructure scheme), achieved a significantly low BCR of 2.62:1 compared to other options.
- Option 3 (the Lendlease scheme), achieves a BCR of 4.34:1, which represents 'very high' value for money; and is slightly above that of:
- Option 4 (accelerated cultural building), scored 4.32 but that option would be less financially viable and would also require significantly higher levels of cash in those early years and potentially more Enterprise Zone (EZ) funding.

In addition to the achieving the highest BCR, Option 3 will also deliver the following key outputs and benefits;

| OPTION OUTPUTS, OUTCOMES AND BENEFITS | Circa |
|----------------------------------------------------------------------------------------------------------|-----------------|
| New floor space for businesses (NIA) | 888,000 sqft |
| New modern sustainable homes | 3,079 |
| New Park | 1 |
| Jobs (Gross) | 8,253 |
| Jobs (Net) | 3,959 |
| Additional GVA | £750m |
| Investment | £1.9bn |
| New Market Complex | 24,700sqm (GEA) |
| Leisure Facilities | 20,200sqm (GEA) |
| Primary School | 1 |
| Creche | 1 |
| Cultural Facilities | 6,624 sqm (NIA) |
| Major Civic Squares | 3 |
| Integrated Public Transportation Route (incl. facilitation of infrastructure for the Midland Metro Line) | 1 |

5 Consultation

- 5.1** Key Stakeholders and the general public were consulted in both March 2015 and March 2016 on the Birmingham Smithfield Masterplan. The comments received in relation to the delivery strategy are reflected in the project. The project objectives which were used to construct the criteria for the evaluation of final tenders and selection of a preferred development partner were based upon the Birmingham Smithfield Masterplan.
- 5.2** The GBSLEP has been engaged in the development of the Strategic Outline Case summarised at Exempt Appendix A, Annex B. Ongoing engagement and consultation will continue in developing the Outline Business Case and Full Business Case(s).
- 5.3** The Local Ward Councillor has been contacted about the content of this report, no comments were received.

6 Risk Management

- 6.1** Risks have been, and will continue to be, identified, evaluated and controlled in line with the Council's Risk Management Methodology 2017. A risk register is included in the Birmingham Smithfield Business Plan and Outline Business Case.
- 6.2** The key risks for the project are detailed in the risk register at Appendix G.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The redevelopment of Birmingham Smithfield is a specific action within the Council's Plan and Budget 2018-2022 (as updated in 2019) strategic outcomes; to support the priority of jobs and skills to create conditions for inclusive and sustainable growth which delivers and sustains jobs and homes across Birmingham. It also supports the priority action to use the Council's property assets for development, regeneration and investment.
- 7.1.2 The development of the Birmingham Smithfield area also supports the housing priority as it will contribute to the provision of housing in a range of types and tenures, to meet the housing needs of all current and future citizens of Birmingham; and the city's leading role in tackling climate change, as the project adopts international best practice in climate change and carbon reduction activity, and has an evaluation framework to monitor the climate impact during the design and construction of the development.
- 7.1.3 The delivery of the Birmingham Smithfield Masterplan forms part of the Council's statutory adopted Birmingham Development Plan 2031, the Big City Plan, the Birmingham Smithfield Masterplan and the Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) Enterprise Zone Investment Plan. It also supports the Birmingham Connected five core objectives.
- 7.1.4 Lendlease Europe is a certified signatory to the Birmingham Business Charter for Social Responsibility (BBC4SR) and has produced an action plan proportionate to the value of the proposed contract. These actions will be managed and monitored during the contract period.
- 7.1.5 All main and sub-contracted organisations involved in the redevelopment of the site will maximise employment outcomes for local people through the development, and by prioritising Birmingham's job-seeking residents.

7.2 Legal Implications

- 7.2.1 The Council has a duty to efficiently manage its assets and has the power to hold, appropriate and dispose of land under Sections 120, 122 and 123 of the Local Government Act 1972. Each phase drawdown will be subject to a viability appraisal to determine the residual land value of that phase.
- 7.2.2 Section 12 (the Investment Power) of the Local Government Act 2003 contains the Council's primary investment powers which can be exercised for any purpose relevant to its functions or for the prudent management of its financial affairs, the

Council's primary investment power. Investment in economic development is made pursuant to the general power of competence contained in Section 1 of the Localism Act 2011. Section 111 of the Local Government Act 1972 contains the Council's ancillary financial and expenditure powers in relation to the discharge of its functions.

- 7.2.3 Under the Birmingham Corporation (Consolidation) Act 1883 the Council's rights to run the Smithfield market can in accordance with the Joint Venture Agreement be passed on to Lendlease Smithfield Development LLP or its Phase PSP (and those it passes the rights to or authorises) under the grant of a 250-year lease of Phase 1 of the Birmingham Smithfield Development for the duration of the lease.
- 7.2.4 State Aid clearance for the report recommendations has been obtained from Bevan Brittan, the Council's solicitors dated 13th October 2020, which does not raise any material State Aid implications. The principal argument is based on the Council having selected Lendlease Europe through an open, transparent, and fair tender process under EU law and the Public Contracts Regulations 2015, consequently it can be presumed that no advantage was granted by state (public) resources, to provide assistance to Lendlease Europe which would give Lendlease Europe an advantage over others. In any event the works to be supported include a wide range of public infrastructure and permitted site preparation works, which are taken into account in the calculation for the residual land value. If necessary, other block exemption regulations could also be relied on.
- 7.2.5 The information contained in the Exempt Appendices is confidential or exempt as it relates to the financial and business affairs of Lendlease Europe and other members of its group. Therefore, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

7.3 Financial Implications

- 7.3.1 The preferred option within the Strategic Outline Case submitted to the GBSLEP in October 2020, identifies that gap funding is required for the overall scheme to make it commercially viable (£127.4m). The Council will make an application for EZ funding to seek finance to fund the gap, plus circa £4m required for BCC's programme management costs bringing the bid to £131.4m in total.
- 7.3.2 On 8th September 2020 Cabinet approved early enabling works to be carried out by the Council, the costs of these works (up to £5.7m) are initially being funded by the Council through prudential borrowing. An OBC and FBC will be submitted to GBSLEP to recover those costs.
- 7.3.3 The Strategic Outline Case summarised in Exempt Appendix A, Annex B justifies public sector investment, as it provides an acceptable Benefit Cost Ratio (BCR) and Value for Money (VfM) which satisfies HM Treasury Green Book benchmarks. This will be further developed and satisfied in the Outline Business Case and Full Business Case(s).
- 7.3.4 Once the Business Plan and Strategic Outline Case have been approved by the Cabinet, the Council will seek to secure Enterprise Zone (EZ) capital grant funding from the GBSLEP to support the delivery of associated infrastructure costs. The prudential borrowing costs arising from the subsequent award of EZ funding will be

funded through the uplift in business rates in the EZ area for which Birmingham City Council acts as the Accountable Body.

- 7.3.5 Once the funding is approved at FBC stage, any amendment to the scheme will be part of a change request process to the LEP. However, the risk of overspend and change will be managed through the contractual JVA. There will be no additional funding expectation on the part of the Council.
- 7.3.6 The report from the Council's adviser Cushman and Wakefield (C&W) provides a position which allows the Section 151 Officer to sign off on the basis that best consideration under Section 123 of the 1972 Local Government Act is achieved via the procurement of Lendlease Europe as development partner for BCC.
- 7.3.7 C&W has reviewed the core appraisal assumptions on a sector-by-sector basis, including rental values, incentives, yields, quantum, phasing and development costs. C&W has undertaken sensitivity analysis and scenario-testing to consider the impact upon the profitability and viability of the scheme against Lendlease Europe's hurdle rates
- 7.3.8 The C&W report has concluded that the core appraisal assumptions adopted by Lendlease Europe are reasonable and are in line with the current market conditions.
- 7.3.9 In line with the requirements of Section 123 of the Local Government Act 1972 (as amended), we are able to confirm that the structure of the Joint Venture Agreement (JVA) provides for a methodology through the drawdown process to arrive at a land receipt payable to the Council and that this structure represents best consideration in the market for a development of this scale and complexity.
- 7.3.10 In March 2020 the Council valued the Smithfield site as part of its cyclical fixed asset valuation process. This valuation concluded that the highest value of the site would be for residential development and could achieve a figure in the region of £65.4m on the private market – this value is based on assumption that planning consent and any other approvals for residential use would be in place. At the point of granting the headlease to the JV PSP, the site will be re-valued as part of the approved wider redevelopment scheme and the Council's book value adjusted appropriately, reflecting the agreed Smithfield scheme and resultant value ascribed under the relevant headlease.
- 7.3.11 At each phase or land draw down, the project will be assessed for viability. If the project has significantly changed, and the phase does not go ahead, there is a risk that officer time will not be recoverable (where it exceeds LEP funding or not part of an approved change request), in these instances it will remain a cost to Inclusive Growth or the relevant support function.
- 7.3.12 With regards to the procurement of external property advice, for the first stage, the estimated cost will be initially funded from prudential borrowing and will be recoverable 'development costs', reimbursed to the Council by the LEP. If this funding is not recoverable from the LEP then the cost will be funded from the Inclusive Growth Directorate Budget. The costs for the second stage of this work are expected to be recoverable development costs from the Joint Venture. These costs are set out within the Exempt Appendix A.

7.3.13 The cost for any external legal advice to support the making of CPOs will be recoverable development costs from the Joint Venture.

7.3.14 Other Funding

The strategic importance and mixed-use nature of this Development opens further funding opportunities, which could be particularly significant if it provides the City with wider economic, environmental and social benefit. Should opportunities arise to link with the Smithfield project, we would consider these if they are beneficial to public spend.

7.3.15 Taxation

7.3.15.1 The potential tax implications (Corporation Tax, Stamp Duty Land Tax (SDLT), and VAT) have been considered by Deloitte - based on the emerging terms for the proposed contractual JV (Smithfield Development Heads of Terms – Tax Review, August 2019 and updated February 2020).

7.3.15.2 Deloitte has not identified any tax costs that are likely to be considered significant enough to prevent commercial negotiations being finalised.

7.3.15.3 Key considerations will be discussed, and advice will be obtained, at a number of points during the life of the project, for example on transfer of land via lease to Lendlease's Phase PSP at each Phase drawdown, to ensure that the process is tax-efficient for BCC and the project overall.

7.3.15.4 The contractual structure being used is a contractual partnership where BCC procures a development partner (Private Sector Partner), with delivery arrangements governed by a JV Development Agreement (JVA) between the parties and via a Phase by Phase Development Agreement (PDA). It is unlikely to result in significant issues from a Corporation Tax, VAT and SDLT perspective, but advice will be sought where necessary by Phase in advance.

7.3.15.5 BCC is exempt from Corporation Tax but will incur Stamp Duty and Land Tax (SDLT) (and possibly VAT) on land acquisitions unless any SDLT reliefs are available. This should be the situation for the vast majority of the CPO planned, and the strategy will be to effectively manage the acquisitions with a view to minimising any tax. Any VAT liability will depend upon whether or not the seller has opted to tax and charges VAT to BCC, but VAT should not be a cost to BCC.

7.3.15.6 Once a CPO has been made and confirmed (anticipated that the CPO will be made late 2021), there should be no SDLT for BCC to pay on the acquisition of land interests.

7.3.15.7 If BCC opts to "purchase" part of a Phase back from Phase PSP, this might result in an SDLT liability, although BCC is not obliged to make such purchases, and would be able to consider the cost of purchase, including any SDLT and other costs and financial implications, at the time.

7.3.15.8 BCC must ensure that tax advice is correctly sought and planned in advance. BCC has opted to tax the Smithfield site to protect BCC's VAT

recovery position. Where (before a CPO is made and confirmed) BCC pays VAT on the acquisition, for the Development, of third party-owned land, BCC is likely to have to pay SDLT on the VAT inclusive purchase price of that land. The VAT and SDLT implications of all land acquisitions by BCC for the Development should be monitored and fully considered prior to each individual land acquisition to manage BCC's tax position.

7.3.16 Other financial Implications and Taxation

7.3.16.1 Details of the financial implications and issues felt to be commercially confidential are included in Exempt Appendix A.

7.3.16.2 Other Financial implications, such as procurement, environment or project specific issues, which the Council and Lendlease will actively monitor, are detailed in the risk register in Appendix G

7.4 Procurement Implications

7.4.1 This report concerns the award of a contract following a procurement process and the implications are detailed throughout the report. Bevan Brittan LLP as solicitors advising the Council in relation to the JVA, have confirmed to the Council that the JVA and its related legal documents are substantially compliant with Lendlease's bid submission.

7.4.2 There is a requirement for property advice to support the delivery of the scheme and the Council's obligations which are set out in the Joint Venture Agreement. The procurement strategy is detailed in Appendix E.

7.4.3 Any legal advice required to support the in-house resource to support the work associated with the making of the CPOs, will be engaged in accordance with the Constitution and the Procurement Governance Arrangements.

7.5 Human Resources Implications

7.5.1 The Council has identified the resources required to provide support in the delivery of the Birmingham Smithfield Development and management of the contract between the Council and Lendlease Europe's relevant subsidiary, some of these officers form part of the project team shown at Appendix D.

7.5.2 TUPE

7.5.2.1 As a result of BCC signing the Smithfield Project Joint Venture Agreement (JVA) and related Project legal documents, there is a possibility that some staff who are presently employed to operate the markets on the Smithfield site may be in scope to transfer to the new entity created to develop the first Phase (Phase Private Sector Partner) and/or another operating company, which may be contracted with at the time to run the site. Any transfer, if required, will be in accordance Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) as amended 2014.

7.5.2.2 In the first instance the undertaking will be scoped to identify those potentially assigned to the transfer and these matters will also be subject to consultation with Trades Unions and affected staff.

7.5.2.3 If TUPE is applicable, then this may potentially affect a small number of staff and any issues associated with a transfer will be managed and reported on where required by BCC up to any transfer of employment occurs.

7.6 Public Sector Equality Duty

7.6.1 The Birmingham Smithfield Development Partner Contract Award supports the delivery of the Birmingham Smithfield Masterplan approved by Cabinet on 20 September 2016, for which an Equality Analysis was undertaken (attached Appendix F). This Equality Analysis has been reviewed and it is concluded that the award of the Development Contract is unlikely to have a disproportionate impact on any of the protected groups and characteristics under the Equality Act 2010. The Equality Analysis will be reviewed again once the detailed Masterplan and Full Business Case (FBC) for the scheme have been produced

8 List of Appendices accompanying this Report

8.1 Exempt Appendix A Birmingham Smithfield Development Contract Award

- a) Exempt Annex A - Birmingham Smithfield Development Business Plan Executive Summary
- b) Exempt Annex B - Birmingham Smithfield Development Strategic Outline Case Executive Summary
- c) Exempt Annex C - Birmingham Smithfield Legal Report Summary
- d) Exempt Annex D - Plan of Restricted Area for Market Operations

- Appendix B - Birmingham Smithfield redline boundary plan.
- Appendix C - Birmingham Smithfield Joint Venture Governance and Scheme of Delegations
- Appendix D - Birmingham Smithfield Development Birmingham City Council Project Team
- Appendix E - Procurement Approach for Property Adviser
- Appendix F – Equality Analysis
- Appendix G – Risk Register

9 Background Documents

- 9.1** Birmingham Smithfield Development Procurement Strategy Cabinet Report, 25 July 2017.
- 9.2** Birmingham Smithfield Development Option Appraisal and Selection of Preferred Bidder Cabinet Report, 11 December 2018.
- 9.3** City Council Plan 2018-2022.
- 9.4** Wholesale Market and adjacent area asset management procurement strategy Cabinet Report, 8 September 2020.