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Delivery Options Analysis

On behalf of

Harrow Council

Prepared by

Lambert Smith Hampton

Tel: +44 (0)207 198 2000
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1. INTRODUCTION

This report is intended to provide an overview of the most likely delivery options available to the Council when pursuing a programme of development. For each of the options presented, we have provided a headline review of the powers involved, the ownership and legal structure, procurement and state aid compliance, tax implications and the key financial outputs and implications.

The shortlist of strategies has been scaled down from a longer list. Through LSH's experience in dealing with public sector development programmes, we have evaluated a large number of strategies against council-led Critical Success Factors. The evaluations have typically considered qualitative and quantitative criteria such as the following:

Qualitative

- Degree of council corporate control in relation to housing outputs (pace, numbers and mix)
- Adequacy of human resource to meet the ambition around housing outputs (timing and quantum)
- Whether the vehicle can contract with public and private partners
- Marketability of the proposition
- Ability to secure wider objectives and drive innovation
- Whether the vehicle can take commercial decisions and operate at pace within agreed parameters
- Ability of the vehicle to hold assets

Quantitative

- Ability to manage level and nature of potential financial exposure
- Funding to the vehicle in accordance with the business case assumptions
- The degree to which the vehicle manages the risk profile for the council
- Whether there is a positive / neutral impact on the council's general revenue budget
- The level of procurement / set-up costs

The shortlist that follows presents five options that cover a broad spectrum of strategies in terms of risk, ranging from minimal risk in the form of a site disposal to a third party, to the highest risk in the form of a direct delivery. In full, the five presented are:

1) Site Disposal (with a Development Agreement)
2) Direct Delivery
3) Council as the Master Developer
4) Joint Venture – Matched Equity structure
5) Corporate Joint Venture – Priority Return structure

In terms of return, it is the strategies and structures that provide the highest risk that also provide the highest returns.

The lower risk strategies such as Site Disposal and Master Developer involve a minimal level of investment from the council and provide a receipt within a short timeframe once the strategy is implemented. As a result, the majority of the investment risks and time risks (uncertainty over future events) are left with the purchaser, and as a condition for taking these risks the purchaser will require a large share of the profits. The result for the council is therefore a smaller share of the profits.

Conversely, the higher risk strategies such as Direct Delivery and Matched Equity involve larger levels of investment from the council and also see the council involved for the duration of the programme. This places a large share, if not all, of the risk on the council, and in return they would expect to see a relative share of the profits. It is also worth noting that if there are any losses on the scheme, then the council would be expected to absorb a relative share of these.

All the options are explained in more detail in the following sections, and this will enable the council to better understand the returns and risk associated with different delivery models.

2. DELIVERY OPTIONS

2.1. OPTION 1: SITE DISPOSAL

Headline Description

This option is based on the council disposing of the site to developers and Registered Providers (RP) with outline planning consent. The transaction will be a land deal (or multiple land deals) which falls outside formal Official Journal of the European Union (OJEU) procurement and the council receives a residual land value. The council is required to demonstrate Best Consideration subject to affordable housing and State Aid considerations.

Option 1a assumes that the land is sold with no Development Agreement (DA) in place and that a competitive bidding process would see developers reapply for permission to build a higher number of units with a lower overall percentage of affordable housing, allowing them to purchase the land at a higher initial price. The purchaser would exchange contracts subject to planning permission and seek a revised consent prior to completion. From the council's perspective, no positive control is exerted on timing or mix of homes.

Option 1b assumes that the site is sold with a DA in place to provide control over the outputs, in this case requiring the developer to build a scheme as per the council-led base design. OJEU compliance will be required if control is sought but this will depend upon the extent to which positive obligations on the developer are required.

Powers

The council will largely rely on its powers to dispose of land under Section 123 of the Local Government Act 1972 or Section 32 of the Housing Act 1985 (and the related general disposal consent). Proper marketing of the opportunity should negate any best consideration and related concerns.

Transfer and ownership of assets

Unless a ground rent arrangement is entered into, the ownership will transfer to the developer on a long leasehold basis and the council will receive payment of the land value as a capital receipt. In complex cases, consideration can be given to a structure where ownership is not transferred until works are completed, with short term occupation for development under licence or short term lease.

Legal Structure

The disposal could be conditional on obtaining planning permission as per Option 1a, or the council could obtain planning permission first and sell with the benefit of it. The council may consider imposing overage provisions.

Procurement

As the disposal relates to a land transaction, the disposal will not be caught by the Public Contract Regulations (PCR). An obligation to build a given number of affordable homes dictated through planning consent will not trigger the PCR. However, in the case of Option 1b where a Development Agreement is in place, this may trigger an OJEU process depending on the obligations to develop.

State Aid

Proper marketing of the opportunity should negate any State Aid concerns. Assuming that the land is transferred at best consideration there are no State Aid issues to consider.

Tax issues

The scope of work does not include tax advice and we recommend that further advice on the tax implications of this option is taken. Key issues to consider include advice on whether it opts to tax its land disposal for VAT purposes and the impact of Stamp Duty Land Tax ("SDLT") payable by the purchaser.

Key financial considerations

This is essentially "business as usual" for the council. The council will receive a capital receipt for its land on disposal. As noted above the council should seek best consideration for the land disposal. It may also include an overage clause with the sale contract to secure a percentage of additional profit realised by the developer on completion of the development over and above the assumed profit level when calculating the land value on disposal.

Main Advantages	***Main Disadvantages***
• Provides capital receipts within a shorter timeframe	• Council cannot hold residential assets and unless ground rental deals are entered into no revenue returns are received
• Low cost and low financial risk	• (Option 1a) Only has control over affordable housing delivery through planning system and this is subject to viability and a return to a developer which in most cases reduces the number of affordable homes below policy level
• (Option 1b) Control over the delivery of affordable housing and wider objectives for the Borough through the provision of a Development Agreement	• (Option 1a) No control over timing and mix of homes or delivering wider objectives to the Borough
	• (Option 1b) Time consuming if a site by site DA is required and unattractive to the market for low value opportunities

2.2. OPTION 2: DIRECT DELIVERY

Headline Description

This option is based on the council implementing the planning permission themselves, and delivering the scheme at its own cost and risk. The council would be required to fund (i.e. secure debt / PWLB funding) and resource the development and would likely need a number of internal and external staff (for example a Development Manager) in order to ensure delivery. The council will likely require more resource than a developer due to their relative inexperience when compared to their competitors who develop housing as part of their business as usual activities.

The council would use the receipts from the completed units to pay back any debt and fees, before retaining any surplus as profit. The scheme will be multi-phase, in which case the council would need to reinvest any surplus at the end of each phase into subsequent phases in order to minimize debt requirements and maximize viability. As a result, the council would not receive any genuine "profit" until completion of the whole scheme (although we understand that the council may be able to model the interest repayments differently such that debt can be "rolled up" and repaid with a bullet repayment). The council would need to procure a lead contractor, which would require an OJEU process. In the event that the council wished to retain any assets (for example, freehold of apartment blocks), they could transfer these into a Wholly Owned Company (WOC) once the units have been sold to end purchasers.

Powers

The council will need to comply with OJEU regulations in order to procure a contractor to deliver the scheme. We have assumed that the council directly disposes of the private units to the market and sells the affordable housing units to an RP. In this way it directly benefits from the profit as opposed to transferring the units for sale into a WOC.

Transfer and ownership of assets

The site will remain in the council's ownership until disposal of individual units on a long leasehold basis. We have assumed that the freehold will be transferred to the council's Wholly Owned Company, which will collect any ground rent due and be required to operate estate management functions (although further work will be required to determine the exact specifics of delivery).

Legal Structure

None applicable.

Procurement

The council will need to comply with OJEU regulations in relation to procuring a lead contractor to construct the scheme.

State Aid

We recommend that the council seeks advice in relation to State Aid, but we do not foresee there being any complications as the council are not lending to a third party.

Tax issues

The scope of work does not include tax advice and we recommend that further advice on the tax implications of this option is taken. Key issues to consider include advice on whether it opts to tax its land for VAT purposes, which may be beneficial during construction.

Key financial considerations

The council will need to secure funding for delivery of a multi-million pound scheme which will span a number of years and multiple phases. This long term debt funding structure will need to be serviced, irrespective of the success of the development. Furthermore, should market conditions suffer a catastrophic collapse, the council may elect to mothball the scheme, in which case they will need to repay any outstanding debt or continue to service that debt when receipts are not being received. The council should carry out detailed financial analysis as part of any business case to support this option to ensure that the ramifications of failure to deliver are fully understood.

Main Advantages	*Main Disadvantages*
• Council will receive 100% of the profits generated through the scheme	• Requires significant council resourcing requirement and commitment
• Scheme design, delivery and quality under the control of the council	• Returns delayed pending all phases of development, with no certainty of returns until sales programme has completed
• Specific council requirements can be incorporated	• Council exposed to entirety of market and construction cost risk. In a worst case scenario, the council could be obliged to pay substantial costs without securing sufficient returns to pay for those costs
• This option would result in maximum returns to council in comparison to other options described herein using the same scheme design.	• Council exposed to additional debt during development
	• Potential changes in taxation regime could impact receipts (i.e. a development value surcharge). Council would bear the full impact of this charge in a direct delivery scenario
	• Perception and reputational risk of council delivered scheme. Council is not a household developer name and a council delivered scheme will compete with other developers well known in the market, potentially impacting receipts from difficulties in securing purchasers and attaining the assumed purchase prices. There is further reputational risk in the event that the scheme design or quality is inferior to competitors
	• The council could be left with residual liability in the event the scheme is not delivered properly and their contractor(s) have ceased to operate (e.g. insolvency etc). Even with NHBC warranties, the contractor is responsible for putting defects right for the first two years post-PC and the council could be left with a residual liability
	• The council could be left with residual liability in relation to remediation of the site in an event where the remediation contractor has ceased to operate. (e.g. insolvency etc) This risk would continue post completion of the development. The risk could be both financial and reputational

2.3. OPTION 3: COUNCIL AS MASTER DEVELOPER

Headline Description

This option is based on the council implementing the planning permission themselves, and delivering the key infrastructure requirements for the scheme. The benefit of this approach is that by funding the upfront cost of infrastructure delivery and reducing an element of risk within the development programme, the council can secure a slightly enhanced land value. Furthermore, the council can dispose of sites incrementally to multiple developers as opposed to seeking a single developer (or consortium) to deliver the scheme, which could be appealing for a site of this size.

The council would be required to fund (i.e. secure debt funding) and resource the initial stages of development and would likely need a number of internal and external staff (for example a Development Manager) in order to ensure delivery. The council will likely require more resource than a developer due to their relative inexperience when compared to their competitors who develop housing as part of their business as usual activities. As a result, delivery of serviced land parcels is likely to be more expensive for the council than for an experienced developer. It is unlikely however that the increased costs would be proportionately higher than the increased land value achieved in progressing the development programme combined with the reduction in development risk.

The council would dispose of the sites, undeveloped, but serviced. It is likely that Best Consideration would be tested at the point of transfer of each parcel to a developer.

Powers

The council will need to comply with OJEU regulations in order to procure a contractor to deliver the infrastructure works. The council will largely rely on its powers to dispose of land under section 123 of the Local Government Act 1972 or section 32 of the Housing Act 1985 (and the related general disposal consent). Proper marketing of the opportunity should negate any best consideration and related concerns.

Transfer and ownership of assets

The site will remain in the council's ownership during the initial stage of delivery with disposal of serviced land parcels to a number of parties. It is likely that serviced land parcels will be released to the market incrementally in order to avoid creating an anti-competitive environment which would reduce achievable values for the site.

Legal Structure

None applicable. Disposal of the serviced land parcels is expected to be on an unconditional basis. The council may consider incorporating overage provisions within any sale contract, although this may be resisted by some or all of the developers.

Procurement

The council will need to comply with OJEU regulations in relation to procuring a lead contractor to install the initial infrastructure. Any land disposals will not be caught by the Public Contract Regulations (PCR), unless the transactions require an obligation to develop.

State Aid

Proper marketing of the opportunity should negate any State Aid concerns.

Tax issues

The scope of work does not include tax advice and we recommend that further advice on the tax implications of this option is taken. Key issues to consider include advice on whether it opts to tax its land for VAT purposes, which may be beneficial during construction, however, this will have Stamp Duty Land Tax (SDLT) implications for the developers when purchasing the serviced land parcels.

Key financial considerations

The council will need to secure funding for delivery of the initial infrastructure works and will need to service this debt during construction, and whilst awaiting receipts from the various land sales. The council will be exposed to potential market failure and may need to mothball the sites in the event that purchasers cannot be found for all of the serviced land parcels. Any debt funding will still need to be serviced during this period (although we understand that there is potential for the council to "roll up" interest for payment at a later date). The council should carry out detailed financial analysis as part of any business case to support this option to ensure that the ramifications of failure to deliver are fully understood.

Main Advantages	*Main Disadvantages*
• Land price for the serviced land parcels will be enhanced due to the council's early investment in infrastructure and services (but council incurs cost to achieve this land price).	• Requires significant council resourcing requirement and commitment
• The council can have total control over design principles, quality and programme through a site-by-site DA structure	• No certainty of returns until land sales have completed, which would need to be staggered to avoid diluting competition
• Council not exposed to full cost of delivery of scheme, and therefore does not absorb full market risk	• Council exposed to all cost risks during the pre-development phase such as remediation, and some market and construction cost risk at the point of sale (in determining the land value payable)
• The council can implement high quality estate management and land stewardship strategy	• Council exposed to additional debt during initial phases of development
• Council can deliver the full extent of social value that is required, but at cost of impacting financial returns.	• Perception and reputational risk of council delivered infrastructure, which may not meet requirements of developers. Developers may consider the sites carry greater risk and require greater due diligence than sites delivered by a commercial developer. This is likely to impact on the purchase price achievable
	• If the market deteriorates, the council may have to mothball the sites, delaying disposal and timescale for receipts. There would also be an ongoing insurance and security responsibility for the sites
	• The market for serviced land parcels is generally thinner in Greater London with developers preferring to deliver the entire scheme themselves
	• Likelihood that third party developers will seek to alter the outline consent (which council will not have control over, unless plots are disposed of with restrictions which will impact value)
	• More restricted potential to benefit from value uplift given the shorter timeframe to sale
	• Positive DA obligations will require OJEU procurement

2.4. OPTION 4: JOINT VENTURE (MATCHED EQUITY)

The term Joint Venture (JV) can describe a range of different commercial (corporate and contractual) arrangements between two or more separate entities. Joint Ventures can either be delivered through a contractual relationship or through the creation of an entity, the latter of which can take numerous forms; traditionally either Limited Partnerships (LP) or Limited Liability Partnerships (LLP). Contractual JV assets tend to remain on the balance sheet of the original owner and are not transferred a new entity, meaning that the JV parties retain ownership of their individual assets and are not normally liable for the debts of the other JV party unless specified through third party contracts. Conversely, entity JV's tend to receive assets in the form of land and property directly into the LP or LLP, normally from the partners to the project and liabilities are often shared.

For the purposes of this report we have assumed that the Joint Ventures considered are corporate in nature.

Headline Description

A Joint Venture set-up where the council contributes the land and the Private Sector Partner (PSP) contributes equity and arranges debt finance. The land value will represent the council's equity stake, and the Partner will contribute to the project an equity amount equal to the land value. The returns to the council would comprise an equal share of the surplus returns.

In Option 4 there are no guarantees that a certain level of financial returns will be received, with the council receiving an equal share of the overall financial surplus whatever it may be, in a similar form to Direct Delivery (Option 2). The land value is the council's nominal equity in the scheme which is matched by the Joint Venture Partner (JVP) with cash equity. The JVP's equity will initially pay for all development costs including those incurred in the pre-development phase, up to the point at which their equity invested matches the council's land value. At this point, debt finance will fund the development in place of the JVP's equity.

The distribution of capital receipts is structured so that the senior debt provider has first priority return being the re-imbursement of debt with finance rate, followed by the council and JVP sharing the surplus on an equal basis.

Within this option if the financial performance of the scheme is prejudiced through high construction costs, unforeseen expenditure or market adjustments then the council's return could fall below the guaranteed land value structure seen in the Priority Return model in Option 5. Consequently the council is exposed to more risk.

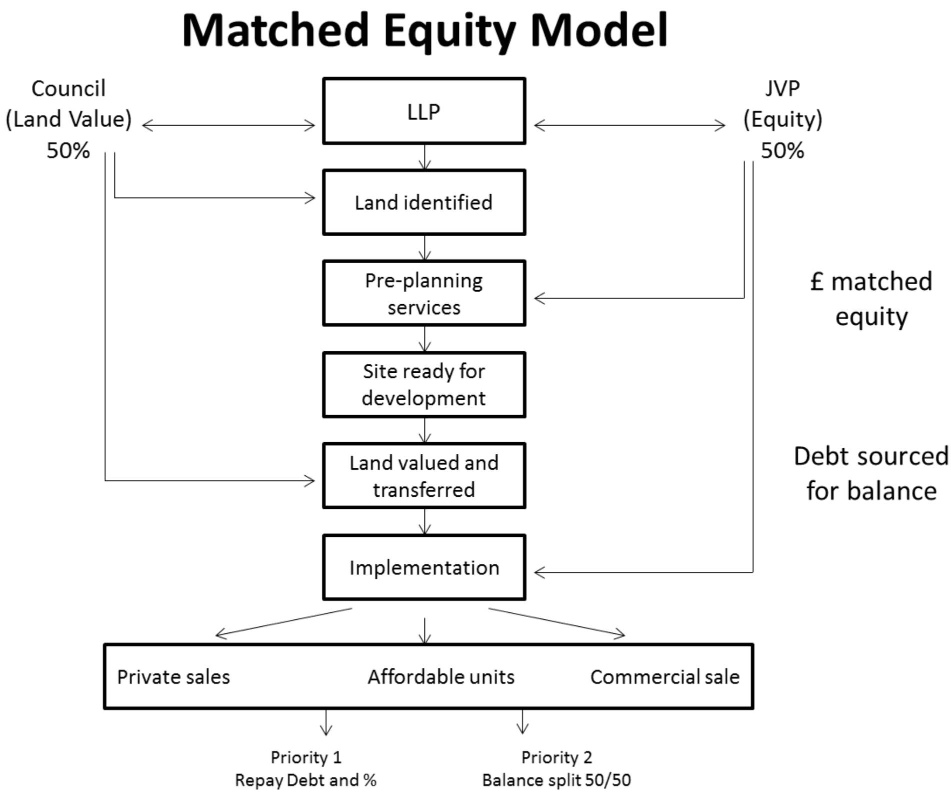
It should also be noted that an agreement would have to exist for the council to reimburse the Partner of any pre-development equity spent prior to the formation of the Joint Venture Partnership, should the proposal for the Partnership not proceed for any unforeseen reason. The reimbursement would likely comprise the equity spent plus a pre-agreed rate of interest.

The requirement for an OJEU process is dependent on whether there is a direct contractual obligation to do works between the council and the JV partner. The Joint Venture Partnership could potentially take the form of a Limited Liability Partnership (LLP). The JV will enter into a Land Transfer Agreement with the council to regulate drawdown for development on the satisfaction of Conditions Precedent. The JV will be a development vehicle focused on Poet's Corner but with the future potential to include other sites as required.

It is envisaged that the JV will be established as a 50 / 50 deadlock structure. The exact legal structure will be agreed with the selected partner as part of the final negotiation, but it is anticipated that on the satisfaction of Conditions Precedent (VP, planning permission, viability), the council will transfer its land interest into the JV on a phased basis.

Development costs (including for pre-development activity to satisfy the pre-conditions) will be funded through a combination of cash equity from the partner and third party debt (if required).

On the point of land transfer, the land will be valued (based on redevelopment value) and the Market Value fixed at this point. The receipt of land value will be delayed until PC of the development at the choice of the council and confirmed at the time of the detailed business case. The JV Partner can have Development Management responsibilities if secured through a procurement process.



The council will enter into a Land Transfer Agreement (LTA) in parallel with a Members' Agreement, to regulate drawdown.

The following rights and obligations will be embedded under the JV:

- The council will ensure that vacant possession of the entire masterplan site is provided;
- The council will transfer the land to the JV in accordance with the Land Agreement when pre-conditions are met. The main pre-conditions are expected to be detailed planning permission for a site or phase, viability, funding, and vacant possession;
- The long term land interest will transfer into the JV on satisfaction of Conditions Precedents;
- The JV Partner will undertake to provide or procure funds necessary to undertake development activity (including those necessary to achieve satisfaction of the pre-conditions);
- The JV Partner will provide the resources and expertise to support the development requirements of the JV. The JV will adopt a procurement, marketing and management (if required) strategy to underpin the delivery of the LLP's objectives.

Powers

Use of the general power of competence allied with the land disposal powers outlined above. Use of section 24 of the Local Government Act 1988 (and associated general consent) may also be considered where applicable.

Transfer and ownership of assets

The JV will have an option to acquire the land when certain pre-conditions are satisfied. The land will be used as security for senior debt raised by the JV. The JV is unlikely to be a long term holder of completed dwellings which would therefore be sold on completion. This option could be used as a side by side option with the council's Wholly Owned Company or the council's HRA buying completed dwellings from the JV (e.g. using the council's 50/50 share of super profit).

The council is required to obtain best consideration for its land. We have assumed that land identified for development within the council is transferred into the JV on a long leasehold basis in return for an interest bearing loan note. The loan note is repaid when there are funds available within the JV in line with its priority within the cash waterfall.

Housing developed by the JV will be sold to third parties. The current assumption is that affordable housing will be sold to a Registered Provider.

Legal Structure

The JV will be a company limited by shares or a limited liability partnership governed by a shareholders' or members' agreement. The JV will procure development management and allied services.

Procurement

A form of procurement will be needed. If a positive obligation to develop is required, an OJEU compliant process will be required, however, there are structures which would not require an OJEU compliant process and a lighter touch route to procurement is appropriate.

State Aid

A robust procurement including advertisement of the land disposal should obviate State Aid risks. The council may wish to provide funding to the JV by on-lending funds secured through Public Works Loan Board (PWLB) borrowing. The council will need to seek advice in relation to Stage Aid from its legal advisors. Governance and risk management will be key given the fact that the council's land asset will be at risk of default by the JV. The JV may be available for investment of s106 affordable homes contributions and RTB capital receipts.

Tax issues

The scope of work does not include tax advice and we recommend that further advice on the tax implications of this option should be taken.

Key issues to consider include whether the council opts to tax its land disposal for VAT purposes, the impact of SDLT on the transfer of land into the JV, and Value Added Tax ("VAT") recovery within the JV.

The proposed structure assumes that the JV is a LLP. A LLP is transparent for the purposes of corporation tax (i.e. profits are not taxed in the LLP but in its members). However, we recommend that the council considers more detailed legal advice on its powers to enter directly into an LLP rather than use a company limited by shares (CLS) and advice on the tax implications of either structure.

Key financial considerations

We have assumed land is transferred on a long lease and therefore the council would retain the freehold. This transfer is treated as a sale of land to the JV. The land is being used for the construction of an asset which will be sold therefore the council should re-classify the land as a non-current asset held for sale and re-value the asset on transfer.

Main Advantages	*Main Disadvantages*
• Proposition can be delivered via a non-OJEU route if there is no positive obligation to develop by the JV	• Council to lose a degree of direct control over its assets albeit that control can be exercised over the councils control over the JV or (with an investment partnership) influence within the JV
• Levering cash investment	• Higher procurement and set up costs due to more complicated structure
• Proactive council role in delivery through role on the JV – objectives can be embedded into the JV Members Agreement	• Loss of some of the profits and surplus to the private sector
• Has the ability to trade with public and private sector partners	• Risk that single partner does not perform
• Control over the development mix and timing through active role within the JV (the Strategic Plan, 50/50 decision making and step-in rights)	• Liability for the council to repay the pre-development costs if the JV Partnership does not materialise
• Larger pipeline can drive down profit requirement from the private sector to be reinvested in increased affordable housing	• Greater risk in receipt of returns, with no guaranteed payments and a split of the profits whether these exceed and fall below the levels expected
• The council can implement high quality estate management and land stewardship strategy through the JV principles	
• Ability to bring in development and risk management expertise and resources	
• The council is being seen to be participating in development in the Borough in a well-managed way	
• Partnering with an established developer enhances marketability as the scheme can benefit from the partner's wider brand and experience	

2.5. OPTION 5: CORPORATE JOINT VENTURE 2 (PRIORITY RETURN)

Headline Description

A Joint Venture set-up where the council contributes the land and the Private Sector Partner (PSP) contributes equity and arranges debt finance. Repayments are made by way of a waterfall structure.

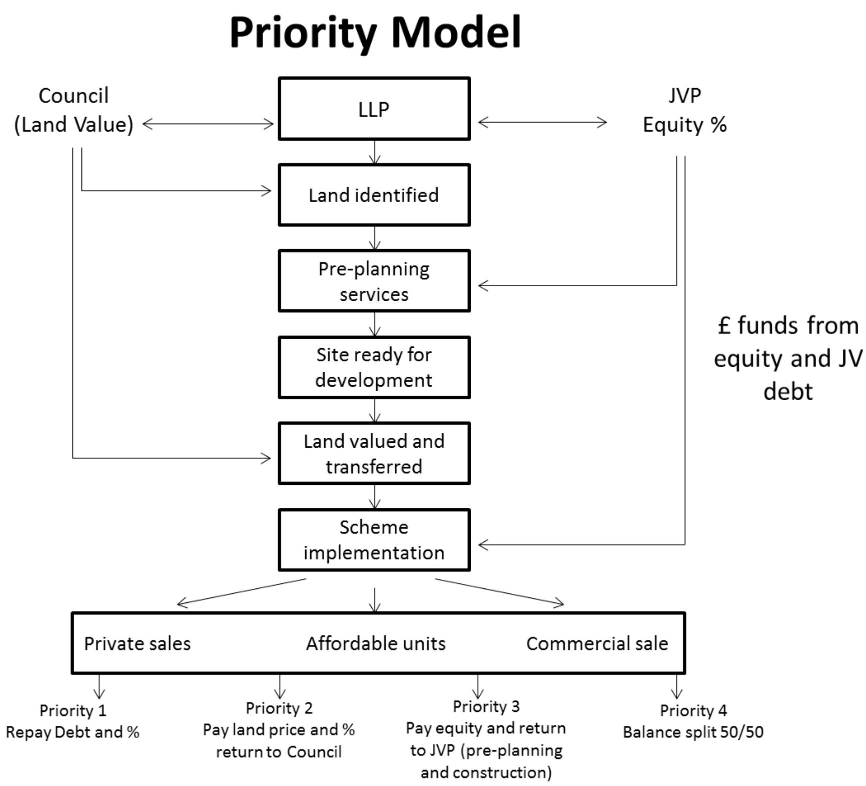
The Joint Venture Partnership could potentially take the form of a Limited Liability Partnership (LLP). The JV will enter into a Land Transfer Agreement with the council to regulate drawdown for development on the satisfaction of Conditions Precedent. The JV will be a development vehicle focused on Poet's Corner but with the future potential to include other sites as required.

It is envisaged that the JV will be established as a 50 / 50 deadlock structure. The exact legal structure will be agreed with the selected partner as part of the final negotiation, but it is anticipated that on the satisfaction of Conditions Precedent (VP, planning permission, viability), the council will transfer its land interest into the JV on a phased basis.

Development costs (including for pre-development activity to satisfy the pre-conditions) will be funded through a combination of cash equity from the partner and third party debt (if required).

On the point of land transfer, the land will be valued (based on redevelopment value) and the Market Value fixed at this point. The receipt of land value will be delayed until PC of the development at the choice of the council and confirmed at the time of the detailed business case. The JV Partner can have Development Management responsibilities if secured through a procurement process. The waterfall of revenues from the JV will be distributed to pay:

1) Third party debt and interest
2) Council land value
3) Priority return to the JV partner (say 10 - 12% return on the sales values)
4) Remainder is split between the council and the JV Partner on a 50/50 basis.



The council will enter into a Land Transfer Agreement (LTA) in parallel with a Members' Agreement, to regulate drawdown.

The following rights and obligations will be embedded under the JV:

- The council will ensure that vacant possession of the entire masterplan site is provided;
- The council will transfer the land to the JV in accordance with the Land Agreement when pre-conditions are met. The main pre-conditions are expected to be detailed planning permission for a site or phase, viability, funding, and vacant possession;
- The long term land interest will transfer into the JV on satisfaction of CP's;
- The JV Partner will undertake to provide or procure funds necessary to undertake development activity (including those necessary to achieve satisfaction of the pre-conditions);
- The JV Partner will provide the resources and expertise to support the development requirements of the JV. The JV will adopt a procurement, marketing and management (if required) strategy to underpin the delivery of the LLP's objectives.

Powers

Use of the general power of competence allied with the land disposal powers outlined above. Use of section 24 of the Local Government Act 1988 (and associated general consent) may also be considered where applicable.

Transfer and ownership of assets

The JV will have an option to acquire the land when certain pre-conditions are satisfied. The land will be used as security for senior debt raised by the JV. The JV is unlikely to be a long term holder of completed dwellings which would therefore be sold on completion. This option could be used as a side by side option with the council's Wholly Owned Company or the council's HRA buying completed dwellings from the JV (e.g. using the council's 50/50 share of super profit).

The council is required to obtain best consideration for its land. We have assumed that land identified for development within the council is transferred into the JV on a long leasehold basis in return for an interest bearing loan note. The loan note is repaid when there are funds available within the JV in line with its priority within the cash waterfall.

Housing developed by the JV will be sold to third parties. The current assumption is that affordable housing will be sold to a Registered Provider.

Legal Structure

The JV will be a company limited by shares or a limited liability partnership governed by a shareholders' or members' agreement. The JV will procure development management and allied services.

Procurement

A form of procurement will be needed. If a positive obligation to develop is required, an OJEU compliant process will be required, however, the structure we have outlined above, would not require an OJEU compliant process and a lighter touch route to procurement is appropriate.

State Aid

A robust procurement including advertisement of the land disposal should obviate State Aid risks. The council may wish to provide funding to the JV by on-lending funds secured through Public Works Loan Board (PWLB) borrowing. The council will need to seek advice in relation to Stage Aid from its legal advisors. Governance and risk management will be key given the fact that the council's land asset will be at risk of default by the JV. The JV may be available for investment of s106 affordable homes contributions and RTB capital receipts.

Tax issues

The scope of work does not include tax advice and we recommend that further advice on the tax implications of this option should be taken.

Key issues to consider include whether the council opts to tax its land disposal for VAT purposes, the impact of SDLT on the transfer of land into the JV, and Value Added Tax ("VAT") recovery within the JV.

The proposed structure assumes that the JV is a LLP. A LLP is transparent for the purposes of corporation tax (i.e. profits are not taxed in the LLP but in its members). However, we recommend that the council considers more detailed legal advice on its powers to enter directly into an LLP rather than use a company limited by shares (CLS) and advice on the tax implications of either structure.

Key financial considerations

We have assumed land is transferred on a long lease and therefore the council would retain the freehold. This transfer is treated as a sale of land to the JV. The land is being used for the construction of an asset which will be sold therefore the council should re-classify the land as a non-current asset held for sale and re-value the asset on transfer.

Main Advantages	***Main Disadvantages***
• Proposition can be delivered via a non-OJEU route if there is no positive obligation to develop by the JV	• Council to lose a degree of direct control over its assets albeit that control can be exercised over the councils control over the JV or (with an investment partnership) influence within the JV
• Priority structure ensures council receives returns prior to the JV Partner	• Liability for the council to repay the pre-development costs if the JV Partnership does not materialise
• Levering cash investment	• Higher procurement and set up costs due to more complicated structure
• Proactive council role in delivery through role on the JV – objectives can be embedded into the JV Members Agreement	• Loss of some of the profits and surplus to the private sector
• Has the ability to trade with public and private sector partners	• Risk that single partner does not perform
• Control over the development mix and timing through active role within the JV (the Strategic Plan, 50/50 decision making and step-in rights)	
• Larger pipeline can drive down profit requirement from the private sector to be reinvested in increased affordable housing	
• The council can implement high quality estate management and land stewardship strategy through the JV principles	
• Ability to bring in development and risk management expertise and resources	
• The council is being seen to be participating in development in the Borough in a well-managed way	
• Partnering with an established developer enhances marketability as the scheme can benefit from the partner's wider brand and experience	