

REPORT TO:	CABINET January 25th 2023
SUBJECT:	Whitgift Indemnity and Land Transfer Agreement (ILTA) Remedy
LEAD OFFICER:	Nick Hibberd Corporate Director of Sustainable Communities, Regeneration and Economic Recovery Heather Cheesbrough, Director of Planning and Sustainable Regeneration
CABINET MEMBER:	Cllr Bains Cabinet Member for Planning and Regeneration
WARDS:	Fairfield & Addiscombe West (in part)

SUMMARY OF REPORT: The report sets out the basis of the remedy and works that are required under the ILTA by Croydon Limited Partnership (CLP), following the non-delivery of the redevelopment of the Whitgift Centre within the specified timeframe.

FINANCIAL IMPACT: If the Council serve a notice on CLP under the ILTA, CLP are required to carry out of “Improvements to North End to a cost of £4 million indexed” or pay this amount to the Council to be applied in carrying out such improvements. If the Council do not to serve the notice, CLP are released from this liability.

Approval to serve the notice is sought to protect the Council’s position on the remedy.

KEY DECISION REFERENCE NO.: [insert]

1. RECOMMENDATIONS

The Executive Mayor, in Cabinet, is recommended to:

1.1 Agree to the Council triggering the retail remedy under clause 11.1(c) of the Indemnity Land & Transfer Agreement (“ILTA”) by issuing a written notice to CLP as soon as possible, before the deadline of 21 February 2023, in order to seek improvements to North End to a cost of £4 million Indexed (from 5 February 2014) and a programme of asset management initiatives at the existing Whitgift Centre (the “Remedy Notice”).

1.2 Agree that the Corporate Director of Sustainable Communities, Regeneration and Economic Recovery be authorised to:

- a) Issue the written Remedy Notice referred to in recommendation 1.1 above;
- b) Finalise the details of the specification for the clause 11.1(c) North End works remedy to be agreed with CLP (in consultation with the Mayor and the Cabinet Member for Planning and Regeneration); and
- c) take all other necessary steps in relation to the Remedy Notice and the Council's obligations under the ILTA.

1. Reasons for Recommendations

- 1.1 The Notice period for serving the written notice on CLP to trigger the remedy under clause 11.1(c) of the Indemnity & Land Transfer Agreement (ILTA) will expire on the 21st February 2023. The notice must be served by the deadline otherwise CLP are released from this liability.

2. Background

- 2.1 A timeline is provided in Appendix 1 (Chronology 2013-2022).
- 2.2 The Indemnity & Land Transfer Agreement was entered into in April 2014, by the Council and CLP and related parties and has been updated by three supplemental agreements. The Agreement sets out the how the Council's Compulsory Purchase Order (CPO) powers would be used to facilitate the redevelopment of the Whitgift Centre and surrounding land by CLP. The Agreement includes provisions for the non-delivery of the redevelopment, with a remedy for the Council, which would consist of "Improvements to North End to a cost of £4m indexed" to be carried out by the developer and a programme of asset management initiatives at the Whitgift Centre
- 2.3 The Council and CLP have been in active dialogue throughout the entire period of the proposed redevelopment, with the Council seeking to encourage and bring forward the Whitgift redevelopment.
- 2.4 As part of this active dialogue, the Council had formal discussions with CLP as set out in the ILTA under clause 11.1(a). These discussions ran for the prescribed maximum period of 12 months to identify the best option as to how to proceed in the event of there having been no substantial start on site, five years after the confirmation date of the CPO (as defined in the ILTA). Following the expiry of this 12 month period, as there was no agreement between the Council and CLP on the best option to proceed and CLP had not given notice of its intention to dispose of its interests in the site, the ILTA provides the Council with the option to serve a written notice on CLP within a further period of 12 months, requiring CLP to carry out improvements to North End to a cost of £4m indexed and asset management initiatives at the Whitgift Centre.
- 2.5 The Council has limited levers to bring forward the redevelopment of the Whitgift site in terms of land ownership and funding and the ILTA was

informed by this context. However, the ILTA is still relevant and important, including in respect of the remedy provision.

- 2.6 Apart from the ILTA, the Council has the ability to shape and facilitate redevelopment and regeneration through its statutory functions as the local planning authority and as highway authority and its powers to acquire land, as well as its convening ability to bring partners together. The Council also delivers regenerative activity through initiatives such as The Growth Zone, the projects that flow from this and the submission of external bids such as through the Levelling Up Fund (LUF).
- 2.7 Details are provided in Part B of this report as it contains exempt information as defined in paragraph nos. 3 and 5 of Schedule 12A to the Local Government Act 1972 (as amended): Information relating to the financial or business affairs of any particular person (including the authority holding that information) and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. In all the circumstances, the public interest in maintaining the exemptions outweigh the public interest in disclosing the information.

3. Activity over the past 12 months

- 3.1 CLP have put forward a business plan for the Whitgift redevelopment which includes research and analysis, the appointment of a team of masterplanners to produce a Strategic Planning Framework, the activation of the former Alders building, and the procurement of a range of new tenants and mixed uses, which would allow the curation of regenerative activities that is anticipated would drive footfall and help reset the Whitgift as a destination for activities other than retail. These new uses are precursors to more permanent uses, and, if there is proof of concept, these uses may take additional space or transition into more permanent accommodation.
- 3.2 CLP are proposing that masterplanning work will commence in 2023 with the outputs of a non-statutory strategic masterplanning framework, to underpin their future planning applications in line with emerging planning policy in the Review of the Local Plan. CLP envisages that a new planning application will emerge from this work for an initial phase of the redevelopment. Alongside this work will be engagement and consultation with businesses and the local community.
- 3.3 The Council has also been developing proposals for an Urban Room, this will be a hub for engagement around the regeneration of the town centre and provide a public facing focus for an exciting programme with partners that is being currently firmed up, which includes a partnership with the GLA for engaging with young people pan London in a competition around placemaking using Croydon town centre. The Urban Room is proposing to open Q2 2023.

- 3.4 The former Alders building has now been cleared, with works ongoing to make the building capable of occupation by the public. A programme of meanwhile uses and activities is being explored. The building, acquired through the CPO process, has now been transferred to CLP under the ILTA.
- 3.5 It should be noted that the regeneration of the town centre is much wider than the Whitgift redevelopment, although a revitalised retail and mixed-use core is a central component. The Council is continuing to deliver projects and activities through the Growth Zone and significant residential development is also underway, which has greatly boosted the town centre population. The Council is anticipating a decision by the Government on the LUF bid submitted last summer, which if successful, would provide funding for a range of public realm projects throughout the town centre. Within this context the remedy would provide funding and asset improvements for the Whitgift and its immediate surrounding area.

4. The ILTA Remedies

- 4.1 Clause 11 of the ILTA is entitled “Remedies – Retail Component”. In the event of failure to commence the retail element of the Whitgift redevelopment, this clause sets out a procedure for the parties to seek to agree a way forward, or failing that, for certain remedies to apply to mitigate the impact of failure to redevelop.
- 4.2 The 12 month clause 11 “discussion period” began on 23 February 2021 and ended on 22 February 2022. Under the clause, the Council is entitled to serve notice on CLP at any time before 21 February 2023 requiring CLP to:
- (i) Carry out improvements to North End to a cost £4 million indexed from 5 February 2014 or, at CLP’s election, to instead pay that sum to the Council to carry out those improvements (both parties to act reasonably in agreeing a specification for the works); and
 - (ii) carry out a programme of asset management initiatives at the existing Whitgift Centre with the objective of maintaining a vibrant and attractive destination and maximising footfall in so far as reasonably practicable “having regard to the state of the land and the physical context.
- 4.3 “North End” is defined by reference to a plan. Please see Appendix 2 to this report for the land edged red included within North End. The “improvements to North End” are not defined but, as noted above, a specification for the works is to be agreed between the Council and CLP, both acting reasonably.
- 4.4 If, as an alternative to undertaking the works itself, CLP elects to pay the sum of £4 million indexed to the Council then, under the terms of the ILTA, that sum is to be used by the Council solely to carry out the North End improvements.
- 4.5 The Council's aim has always been the redevelopment of the Whitgift Centre and surrounding land and the regeneration of the town centre. It would

Cabinet & Executive Template

therefore wish to direct the outputs and outcome of the remedy in the most beneficial way for the town centre, in current circumstances.

- 4.6 As a potential alternative to the North End improvement works, Council officers have therefore continued discussions with CLP since the expiry of the formal 12 month discussion period in February 2022 aimed at finding a mutually acceptable way forward which ensures that the immediate impact of the failure to redevelop is mitigated so far as possible, and that longer term proposals are brought forward.
- 4.7 Those discussions have focused on four broad themes or initiatives touched on in Section 3 above (and as further described in the Part B report) including:
- Measures to activate North End including the former Allders building and the Arcade
 - Environment improvements to North End and the Whitgift Mall and a CLP contribution towards a public consultation space – the Urban Room
 - Connectivity infrastructure – in particular a surface level crossing in Wellesley Road
 - A programme for CLP to bring forward a strategic masterplan for the town centre and subsequent planning applications in order to address the longer term health of the town centre
- 4.8 Although discussions have not reached a satisfactory conclusion, Council officers wish to continue to seek clarity from CLP on these initiatives including timescales and quantum of investment.
- 4.9 The Council also wishes to see the Whitgift asset management initiatives implemented as set out in 4.2 ii. An initial conversation has been held with CLP to explore the components of a schedule and timescales of potential works.

5. Alternative Options Considered

- 5.1 Not to serve the remedy notice –this is not recommended as CLP would be released from their liability.
- 5.2 Further options are set out in Part B.

6. CONSULTATION

- 6.1 The ILTA is a contract between the Council and CLP and is not subject to consultation. However, with the lapsing of the previous planning consents and the need for a new approach to the redevelopment of the Whitgift Centre and regeneration of the town centre, it is recognised that consultation would be beneficial in informing the new vision for the town centre. To facilitate this the Urban Room would be the focal point for a range of engagement activities with the public and partners. CLP are also proposing to undertake

public engagement as part of their Strategic Planning Framework activities in 2023. Pre-decision scrutiny is also proposed.

7. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

The effect of the decision

- 7.1 Under the ILTA CLP do not make a direct payment to the Council unless it elects to do so.

Future savings/efficiencies

- 7.2 Should the projects in the remedies be pursued, or the Council be in receipt of the ILTA remedy payment and pursue projects, these projects will be largely CLP funded. Therefore, this report does not increase the funding the Council has committed to the regeneration of the town centre.

Approved by: Darrell Jones Acting Head of Finance Sustainable Communities, Regeneration and Economic Recovery

8 LEGAL CONSIDERATIONS

- 8.1 The Head of Commercial & Property Law comments on behalf of the Director of Legal Services & Monitoring Officer that the Council has taken legal advice from external solicitors, Pinsent Masons LLP which is referred to further in the separate report in Part B.
- 8.2 The Executive Mayor has the power to exercise executive functions pursuant to s9E of the Local Government Act 2000 and has the power to delegate those functions. This report seeks relevant delegations to exercise executive functions.
- 8.3 The Council has the power to proceed with the recommendations in this report under the general power of competence (Localism Act 2011), which gives local authorities the power to do anything that individuals generally may do.
- 8.4 The Council has an existing contractual relationship with CLP under the ILTA, as explained in this report, and may seek to rely on relevant remedies pursuant to that agreement. This report recommends issuing a notice under clause 11.1(c) of the ILTA to seek to secure the retail remedy before the expiry of this remedy.

Approved by Kiri Bailey, Head of Commercial & Property Law on behalf of the Director of Legal Services & Monitoring Officer

9 HUMAN RESOURCES IMPACT

- 9.1 There are no Human Resource implications or impacts in this report. Some officer time within legal is recharged to CLP, with other officers absorbing time spent on the Whitgift redevelopment as business as usual. Officers also benefit from an external professional team recharged to CLP.
- 9.2 If any issues arise these will be managed under the Council's Policies and Procedures.

Approved by: Jennifer Sankar, Head of HR, Housing Directorate and Sustainable Communities, Regeneration and Economic Recovery Directorate, for and on behalf of Dean Shoesmith, Chief People Officer.

10 EQUALITIES IMPACT

- 10.1 There are no negative equalities impacts in this report, which focuses on options arising from the ILTA contractual arrangement between the Council and CLP. However, should the projects in the remedies be pursued, or the Council be in receipt of the ILTA remedy payment and pursue projects, each individual project will be, as necessary, subject to its own Equalities Assessment.

Approved by: Gavin Handford Director of Policy, Programmes & Performance

11 ENVIRONMENTAL IMPACT

- 11.1 There are no direct environmental impacts arising from this report, which focuses on options arising from the ILTA contractual arrangement between the Council and CLP. However, as necessary in accordance with environmental legislation, environmental impacts for the projects in the remedies, or should the Council be in receipt of the ILTA remedy payment and pursue projects, would be assessed and mitigated.

Approved by Heather Cheesbrough Director of Planning and Sustainable Regeneration

12 CRIME AND DISORDER REDUCTION IMPACT

- 12.1 There are no direct crime and disorder impacts arising from this report, which focuses on options arising from the ILTA contractual arrangement between the Council and CLP. However, should the projects in the remedies be pursued, or the Council be in receipt of the ILTA remedy payment and pursue projects, it is well understood that increasing the vitality and activation of the town centre will contribute to addressing the negative impact of crime and disorder.

Approved by Kristian Aspinall Director of Culture and Community Safety.

13 DATA PROTECTION IMPLICATIONS

13.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

Approved by the Director of Planning and Sustainable Regeneration

CONTACT OFFICER: *Heather Cheesbrough Director of Planning and Sustainable Regeneration Internal Tel No. 28313*

APPENDICES TO THIS REPORT:

Appendix 1 Chronology 2013-2022

Appendix 2 North End Plan

BACKGROUND DOCUMENTS – LOCAL GOVERNMENT ACT 1972

16th August 2021 Cabinet Report Post Covid Vision for the Town Centre

11th June 2018 Cabinet Report: Delivering the Whitgift Redevelopment – Proposed revisions to the CPO Indemnity and Land Transfer Agreement & Preconditions to Drawdown of Land

Cabinet Report 7 April 2014 – Agenda item 6 - Whitgift Centre and surrounding land Proposed compulsory purchase order (including Equality Analysis Appendix F)

Cabinet Report 15 September 2014 - Agenda item 7 - Strategic Metropolitan Centre – Update