

Scrutiny & Overview Committee Agenda



To: Councillor Rowenna Davis (Chair), Councillor Richard Chatterjee (Vice-Chair), Leila Ben-Hassel (Deputy-Chair), Jade Appleton, Sean Fitzsimons and Simon Fox

Reserve Members: Sue Bennett, Sherwan Chowdhury, Amy Foster, Gayle Gander, Mohammed Islam and Joseph

A meeting of the **Scrutiny & Overview Committee** which you are hereby summoned to attend, will be held on **Monday, 23 January 2023 at 6.30 pm** in **Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX.**

Katherine Kerswell
Chief Executive
London Borough of Croydon
Bernard Weatherill House
8 Mint Walk, Croydon CR0 1EA

Simon Trevaskis
Senior Democratic Services & Governance
Officer - Scrutiny
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www.croydon.gov.uk/meetings
Friday, 13 January 2023

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AGENDA – PART A

1. Apologies for Absence

To receive any apologies for absence from any members of the Committee.

2. Minutes of the Previous Meeting (Pages 5 - 16)

To approve the minutes of the meeting held on 6 December 2022 as an accurate record.

3. Disclosure of Interests

Members are invited to declare any disclosable pecuniary interests (DPIs) and other registrable and non-registrable interests they may have in relation to any item(s) of business on today's agenda.

4. Urgent Business (if any)

To receive notice of any business not on the agenda which in the opinion of the Chair, by reason of special circumstances, be considered as a matter of urgency.

5. Pre-Decision Scrutiny: Whitgift Indemnity and Land Transfer Agreement (ILTA) Remedy (Pages 17 - 32)

The Scrutiny & Overview Committee is asked review the Cabinet report due to be considered by the Mayor on 25 January 2023 and decide whether it wishes to submit any comments or recommendations on the report for the Mayor to take account of as part of his decision making.

6. Pre-Decision Scrutiny: People & Cultural Transformation Strategy 2022-2026

The Scrutiny & Overview Committee is asked review the Cabinet report due to be considered by the Mayor on 25 January 2023 and decide whether it wishes to submit any comments or recommendations on the report for the Mayor to take account of as part of his decision making.

(Report to follow)

7. Scrutiny Work Programme 2022-23 (Pages 33 - 36)

The Scrutiny and Overview Committee is asked: -

1. To note the most recent version of the Work Programme.
2. Consider whether there are any other items that should be provisionally added to the work programme as a result of the discussions held during the meeting.

8. Exclusion of the Press and Public

The following motion is to be moved and seconded where it is proposed to exclude the press and public from the remainder of a meeting:

“That, under Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information falling within those paragraphs indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended.”

PART B

9. Pre-Decision Scrutiny: Whitgift Indemnity and Land Transfer Agreement (ILTA) Remedy (Pages 37 - 44)

This item sets out the confidential Part B report that accompanies the report under item 5.

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Public Document Pack Agenda Item 2

Scrutiny & Overview Committee

Meeting held on Tuesday, 6 December 2022 at 6.30 pm in Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX

MINUTES

Present: Councillor Rowenna Davis (Chair); Councillor Richard Chatterjee (Vice-Chair); Leila Ben-Hassel, Jade Appleton, Sean Fitzsimons and Simon Fox

Also Present: Councillors Jason Cummings (Cabinet Member for Finance) and Andy Stranack (Cabinet Member for Communities & Culture), Brigitte Graham (Shadow Cabinet for Communities & Culture) and Amy Foster (online attendance)

PART A

60/22 **Minutes of the Previous Meeting**

The Part A and Part B minutes of the meeting held on 11 October 2022 were agreed as an accurate record, subject to the correction of the misspelling of the name Katherine on page 9, the correct spelling being Catherine.

61/22 **Disclosure of Interests**

Councillor Jade Appleton disclosed an interest relating to the 'Update on Borough Culture' item as through her employment with London Councils she had worked with the Arts Council.

62/22 **Urgent Business (if any)**

There was no urgent business for discussion by the Scrutiny & Overview Committee at this meeting.

63/22 **Update on the Borough of Culture**

The Committee received a presentation delivered by the Council's Director of Culture and Community Safety, Kristian Aspinall, which provided an update on the preparations for the Borough of Culture cultural programme which was due to commence in April 2023. This update had been included on the agenda to allow the Committee to seek reassurance that sufficient resource was being invested in the preparation of the programme to ensure the Borough of Culture in Croydon was a success.

A copy of the presentation delivered by Mr Aspinall can be viewed on the following link: -

<https://democracy.croydon.gov.uk/ieListDocuments.aspx?CIId=166&MIId=2927&Ver=4>

In addition to the Council's Director of Culture & Community Safety, others in attendance for this item included the Cabinet Member for Communities & Culture, Councillor Andy Stranack, the Corporate Director for Sustainable Communities, Regeneration and Economic Recovery, Nick Hibbard and Dan Winder, Chair of the Borough of Culture Steering Group.

Following the introduction provided for this item the Committee had the opportunity to question the attendees on the information provided. The first question related to the plans for Croydon Pride event in the Borough of Culture programme. It was advised that the vision was for Croydon Pride to be an event for the whole of London and by bringing it under the Borough of Culture banner, it unlocked additional funding to attract more people to attend. It was planned that there would be an overarching 'This is Croydon' brand which was recognised and used across all the events scheduled as part of the Borough of Culture programme.

It was confirmed that there had been conversations with the previous Borough of Culture hosts including the London boroughs of Brent, Waltham Forest and Lewisham, to learn from their experience. This had highlighted the need for archiving across the programme and to have a specific communications budget in place to adequately promote Borough of Culture events.

In terms of equality and diversity, it was questioned how this would be applied on a geographical basis. It was advised that there was an intention to deliver an inclusive range of events across the Borough of Culture programme rather than targeting specific, underrepresented geographical areas, with access being the key issue. An Access Advisory Group had been set up to provide guidance on equality and diversity and was in the process of finalising a manifesto for all groups to sign up to.

In response to a question about the geographical spread of the events, it was advised that some of the flagship events would take place across the borough, such as one being organised by the Brit School. As would be expected the majority of the large scale events were in the centre of the borough, where there were more cultural organisations. However, the Ignite Fund was a key opportunity to ensure there were events located across the borough.

As a follow-up, confirmation was requested on what percentage of the Ignite Fund would be awarded to local organisations. It was confirmed that although it was not possible to explicitly close off the fund to out of borough bids, its aim was to support local events within the borough, so it was likely that the majority would be awarded to local groups.

It was questioned how the organisers of the Borough of Culture engaged with local businesses and whether any thought had been given to using empty business premises for 'meanwhile' opportunity cultural events. It was confirmed that there was business representation on the Steering Group and the Croydon Stands Tall event was being run by the Croydon BID. The Steering Group was actively exploring activating empty spaces, particularly for

events not in a fixed location. The Committee agreed that it endorsed the use of meanwhile space wherever possible.

In response to a question about what the organisers were doing to ensure that the Borough of Culture reached communities that would not normally have access to culture, it was advised that it was important to make the definition of culture as broad as possible. The Steering Group had chosen to expand its definition of culture to include food, faith and comedy events. It was highlighted that there was a specific strand aimed at ensuring the inclusion of the amateur arts sector in the programme to ensure there was as wide a reach as possible.

In response to a question about whether there was support available for smaller local groups, it was confirmed that funding was in place for three community producers to assist smaller groups in delivering events. There was also support available to assist smaller organisations with bidding for Arts Council funding.

It was suggested that Members could be used to disseminate messaging on the Borough of Culture to local community groups. In response it was advised that a large part of the planned communication with Members had been on hold until the programme was finalised. The Committee welcomed confirmation from those present that they would be happy to engage with the political groups on the Council about how to encourage community involvement.

It was confirmed that the total budget for the Borough of Culture was £3.989m, with the vast majority of this obtained from outside sources. £900,000 had been contributed through Public Health and Growth Zone funding from within the Council. It had been made clear to all event organisers that no additional support would be available to deliver events that went over budget. If an event could not be delivered within its original budget, it would not be delivered.

The Council's Programme Management Office was providing support to the Borough of Culture and a comprehensive risk register had been prepared with specific criteria on the use of contingency funds. Support had been provided with fund raising for some of the programmes to help find additional funding sources. It was important to recognise that the Council did not have the skills to deliver the programme internally and as such needed to trust and work with its cultural sector partners.

It was confirmed that there were specific workstreams aimed at young people, such as one run by the Talawa Theatre Group and the Brit School working with other schools across the borough. The Brit School would also help to provide a focus on the infrastructure of the cultural industries such as lighting and other technical fields. The digital strand of the Borough of Culture programme would also be an area that would help reach young people in the borough.

Regarding evaluating the success of the Borough of Culture, the Committee was invited to make recommendations on potential indicators to measure its impact. Every grant awarded had several staple criteria that needed to be measured which would help to judge the wider impact. There was also a GLA evaluation framework that was being tweaked for local needs.

At the conclusion of this item the Chair thanked those present for their attendance at the meeting and their engagement with the questions of the Committee.

Actions arising from the meeting

Following the discussion of the Borough of Culture item at the meeting, the Committee agreed the following actions that would be followed up after the meeting.

1. That a copy of the marketing strategy for the borough of culture is circulated to the Committee once it is finalised.
2. That the evaluation criteria on which the success of the Borough of Culture will be judged is provided once it is finalised.
3. That a copy of the risk register for the Borough of Culture is shared with the Scrutiny and Overview Committee for its information.
4. That the amount allocated as a contingency fund for the Borough of Culture is confirmed to the Scrutiny & Overview Committee.

Conclusions

1. The Committee commended the team for the hard work that had gone into preparing the Borough of Culture programme and agreed that all involved had fantastic intentions and demonstrated a commitment to the widest possible engagement.
2. The Committee welcomed the approach from the organisers of the Borough of Culture to widen the definition of culture, beyond that defined by the Arts Council, to include areas such as faith based activity, food and comedy.
3. The Committee welcomed confirmation that options for utilising unused business space, such as empty shop units, for Borough of Culture events were being actively explored
4. The Committee welcomed confirmation that the Ignite Fund would be used to expand the reach of the Borough of Culture programme to under-represented parts of the borough and would encourage the Steering Group to continue targeting areas without representation in the Borough of Culture programme.

Recommendations

The Committee agreed that it would submit the following recommendations to the Executive Mayor and the Cabinet Member for Communities & Culture: -

1. That an all-Member Briefing is provided in advance of the launch event to update Councillors on the Borough of Culture programme, explain how to encourage community involvement and detail the support available for individual artists wanting to participate.
2. That the evaluation of the success of the Borough of Culture is tested by a group made up of Members and Officers.

64/22 2023-24 Budget Update, Medium Term Financial Strategy and Savings Proposals

The Committee considered a report set out on pages 19 to 84 of the agenda which was the report considered by the Cabinet at its meeting on 30 November 2022 relating to the preparation of 2023-24 budget. This report was included on the agenda to inform the budget scrutiny process.

The Cabinet Member for Finance, Councillor Jason Cummings, the Corporate Director for Finance & Section 151 Officer, Jane West and the Corporate Director for Sustainable Communities, Regeneration and Economic Recovery, Nick Hibberd, attended the meeting for this item.

The first question from the Committee requested a summary on the key budget assumptions included in the Cabinet report. During the response to this question, the following information was noted: -

- The Cabinet report set out a framework for the budget setting strategy based on broad assumptions. The detailed information required to set the Budget would be included in the report setting out the Administration's proposed budget, which was due in February 2023.
- The current assumption for interest from the Public Work Loan Board was 4.65%, although this may need to be revised.
- An assumption of 5% on contract inflation and 3% on pay inflation had been included in the report. It was highlighted that some of contract inflation contingency in the 2022-23 budget had been reallocated to pay inflation as contract demands had been received later in the year than planned. It was highlighted that at this stage it was difficult to predict the level of inflation in 2023-24.
- £10m had provisionally been included in the Medium Term Financial Strategy to manage additional demand pressures in social care and within the Housing service for homelessness support.

- At the time of the meeting, the Government's plans for its Homelessness Prevention Grant were not clear, so an assumption had been made that the £3m fund would be lost. It would be added back into the budget if the Government decided to continue the fund.
- Income saving built into the previous Medium Term Financial Strategy model had been taken out, with fees and charges savings being made instead at a departmental level.
- An assumption of £2.6m had been made for Minimum Revenue Provision (MRP).

It was questioned whether there had been any assumptions made on the use of reserves in the 2023-24 budget. It was advised that it was currently assumed that reserves would not be used. It was highlighted that it was important for the Council to reach a position where its budgets balanced in-year. It was also important to increase certainty and sustainability in the reserves held to ensure the Council was better able to weather any future storms.

In response to a question about whether reserves would be used to mitigate against any of the risks that had materialised in the present year, such as those linked to Croydon Affordable Homes, it was acknowledged that reserves could be used to mitigate against potential risks but had not been allocated to a specific risk.

An update on the current strengths and weaknesses of the Council's financial systems was requested. It was advised that staff were a key part of the system and the Council had gone a long way towards ensuring staff understood the risks around budget ownership and the need for accurate monitoring. However, the available data and systems were still not where they should be. The Fusion Oracle finance system was introduced two years ago but was not performing as well as expected. As previously recommended by the Committee, a project had been put in place to resolve these issues.

In relation to issuing of the Section 114 Notice for the 2023-24 Budget by the Section 151 Officer, it was questioned why this potential outcome had not been flagged at previous Committee meetings. In response it was advised that the possibility of the Council needing to issue another Section 114 Notice had been included in the Corporate Risk Register, reviewed by the Audit & Governance Committee, since the spring when the S151 Officer started in her role. The possibility of issuing a new Section 114 Notice had been mentioned at previous Scrutiny & Overview Committee meetings, but until the recent interest rate increases and the budget announcement from the Government, the risk had not fully materialised. The decision to issue a Section 114 Notice had been taken following consultation with the consultants delivering the 'Opening the Books' project and the Department for Levelling Up, Homes & Communities. Although the Committee accepted the timeline for issuing the Section 114 Notice, some of the Member felt that more could have been done to flag the emerging risks earlier in the year.

Given that lower than anticipated parking income had exacerbated the challenge in delivering the in-year budget, it was questioned how future forecasting could be made more accurate. It was advised that there were six income streams for parking income, which had all been modelled on genuine assumptions. The reasons for under recovery of income were complex and included changing behaviours following the Covid-19 pandemic and other economic factors. Going forward a new spreadsheet developed over the previous twelve months would be used that would allow modelling based on data accumulated over several years to help refine the assumptions included in the budget. There was an aim to move from spreadsheet modelling to a more bespoke system, but this would take time to implement. An approach had been made to London Councils about the possibility of a London wide project on parking income modelling as other areas were also seeing an under recovery. This approach was supported by the Committee.

In response to a question about the lessons learnt from issues with Croydon Affordable Homes, it was noted that there needed to be robust due diligence undertaken when starting any significant projects, which were informed by advice from independent, external sources. Once the correct approach was identified, it was essential to ensure that it was delivered within the set parameters. For future projects it should be expected that there would be a more rigorous challenge from both officers and Members if a project's processes were not sufficiently robust.

It was questioned whether the issue concerning the incorrect charging of expenditure to the Housing Revenue Account (HRA) rather than General Fund could have been happening for a longer period than the three years identified in the report. It was advised that it was not possible to confirm at this stage how long the recharge errors had occurred as it was still being worked on at the time of the meeting. It was likely that the scale of the original mischarge would have been within reasonable margins of error but had built up over time. Work was also ongoing to establish how the error had been made, to ensure there was no reoccurrence.

In response to a question about how much had been added to the budget to deliver the Mayor's priorities, it was advised that until a deal had been worked out with the Department for Levelling Up, Housing and Communities, it would not be possible to give any confirmation. However, it was highlighted that the Mayor had been elected on his priorities and was intent on delivering them. The cost for the Graffiti Team had been included in the budget and initial exploratory work had been commissioned to establish the options for reopening Purley Pool. Any options for reopening the pool would need to be considered in light of the financial challenges facing the Council.

It had been noted by the Committee when it met with the Mayor on 14 June 2022 that it was possible that funding could be redirected from low priority services to pay for the delivery of the Mayor's Business Plan. As such, it was questioned whether any decisions had been taken on the redirection of funding as part of the budget setting process. It was advised that the budget setting process was still ongoing and that continually involved decisions being

taken on services, as the Council was operating within a limited financial envelope.

As it was possible that there would be a greater demand for some of the advice services provided by the Council's voluntary sector partners because of the cost of living crisis, it was questioned how they could be supported given the Council's financial challenges. In response, the partnering approach used for the Borough of Culture was highlighted as an example of the Council working with the voluntary sector without needing to provide significant funding. It was not possible to renew the Community Fund, which was due to expire in March 2023, as the Council was not able to provide new funding. Other types of support that were provided for the sector included commissioning opportunities, support with accessing funding and community asset transfers. It was agreed that the Council's partnering approach with the voluntary sector would be reviewed at a future meeting of the Committee.

In response to a question about whether the Council was being ambitious enough in its savings targets for Adults and Childrens Social Care, given that these services equated to a large proportion of the Council budget, it was highlighted that significant work had been invested in both services to reduce the cost of care which was now approximately in line with the London average. Social Care was a complex, demand led area which needed to ensure the safety of those receiving care. To achieve significant savings would likely need different types of delivery model to be explored through a longer term transformational programme.

Regarding the timescales for delivering the transformation projects outlined in Appendix C of the Cabinet report, it was confirmed that transformation would be an ongoing process. Each of the 39 streams identified would require different lengths of time to deliver depending on the available capacity and their complexity. It was agreed that further reassurance on transformation processes would be sought at the next meeting of the Committee with a deep dive on one or two specific projects.

It was noted that depending on the definition used, 'toxic debt' at present equated to 25% of the Council's debt. This assumed that toxic debt related to assets with negative equity. It was confirmed that Bernard Weatherill House was listed as a toxic asset as more had been spent on its building than could be recovered from its sale.

In response to a final question about how the conversations with the Government were progressing, it was advised that they were going well, but there had been no indication on the potential outcome at the time of the Committee meeting. It was not possible to confirm when the Government would respond and it may be possible that an interim solution was required when the Council comes to agree the budget at the end of February

Actions arising from the meeting

Following the discussion of the Borough of Culture item at the meeting, the Committee agreed the following actions that would be followed up after the meeting.

1. The Scrutiny Chairs & Vice-Chairs would meet before Christmas to plan the budget scrutiny process for the New Year.
2. It was agreed that the Children & Young People Sub-Committee and the Health & Social Care Sub-Committee should undertake deep dives on the ongoing transformation savings programmes in Children and Adult Social Care.
3. It was agreed that the Council's partnering arrangements with the voluntary sector would be scheduled at a convenient point in the New Year.
4. A request was made for the Scrutiny and Overview Committee to be provided with a process map of the budgeting setting process for 2023-24 in comparison to last year.
5. It was agreed that further information would be sought to confirm the timing of the CIL annual statement and allocation.

Conclusions

1. The Committee was highly concerned that the Council had the potential to become stuck in a 'debt trap' and agreed that it endorsed the efforts of the political and administrative leadership in focussing on reducing the Council's debt with support from national government, as without support in this area it was difficult to envision how the Council could become a sustainable authority in the long term.
2. The Committee was concerned that this year's budget was being drafted on a series of Microsoft Word and Excel documents, and strongly welcomed the Council's intention to move towards a more professional system of budget recording next year, which it believes is imperative.
3. The Committee noted that work continued towards the integration of the full range of functionality within the Fusion finance system, to ensure it was delivering the maximum benefit for the Council.
4. The Committee wanted to see more detail about the transformation projects proposed, as the projects listed often felt more like 'salami slicing' rather than true transformation. The Committee also wanted more reassurance that the Council would be able to meet the scale of transformation needed to achieve financial sustainability with the capacity constraints that it currently has.

5. The Committee agreed that it would look in further detail at one or two of transformation projects proposed in the Cabinet report, at its January meeting to provide reassurance that a robust framework was in place for these projects including ensure they were properly resourced and at their conclusion could provide a definitive evaluation of their success.
6. Although the Committee accepted the rationale for and the explanation of the timeline leading up to the Section 151 Officer issuing the Section 114 notice for 2023-24 budget year, some Members of the Committee felt there could have been additional emphasis placed on highlighting the potential risk of the Council needing to issue another Section 114 earlier in the year as contributory risks materialised.
7. The Committee welcomed confirmation that the Council would be engaging with the Audit Reporting and Governance Authority to provide reassurance that the Council was taking a best practice approach to its financial processes.
8. The Committee also welcomed confirmation that the Council had started to engage with London Councils on using London-wide data to inform modelling of future parking income.

65/22 **Membership of Scrutiny Sub-Committees**

The Committee considered a report set out on pages 85 to 86 of the agenda which set out proposed changes to the membership of the scrutiny sub-committees, which in accordance with the Council's Constitution needed to be formally approved by the Scrutiny & Overview Committee.

Resolved: That: -

1. Agree the changes to the membership of the Scrutiny Sub-Committees proposed by the Conservative Group.
2. Agree the allocation of a non-voting co-optee representing service users to the membership of the Health & Social Care Sub-Committee.
3. Note that this newly created role will replace the non-voting Cooptee from the Croydon Adult Social Services User Panel.
4. Agree the appointment of the former CASSUP Vice Chair to fill the new co-optee role for the remainder of 2022-23.

66/22 **Scrutiny Recommendations**

The Sub-Committee considered a report on pages 87 to 114 of the agenda which presented recommendations proposed by the scrutiny sub-committees for sign-off ahead of submission to the Executive Mayor and responses from the Mayor to previously made decisions.

From a brief review of the response provided by the Mayor to recommendations made by the Scrutiny & Overview Committee, it was noted that the special responsibility allowance for Cabinet Members would be reviewed as part of the wider review of Member Allowances. It was also noted that a Carbon Neutrality Strategy would be forthcoming. However, there was disappointment that the recommendation for a compensation scheme for Council tenants who experienced issues with housing repairs had been reject.

Resolved: That:-

1. The recommendations made by the Scrutiny Sub-Committees are approved for submission to the Executive Mayor for his consideration.
2. The response provided by the Mayor to recommendations made by the Scrutiny & Overview Committee is noted.

67/22 **Scrutiny Work Programme 2022-23**

The Committee considered a report on pages 115 to 116 of the agenda which presented the work programme for review.

Resolved: That the work programme for the Scrutiny & Overview Committee is noted.

68/22 **Exclusion of the Press and Public**

This motion was not required.

The meeting ended at 9.51pm

Signed:

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Date:

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Agenda Item 5

REPORT TO:	Scrutiny & Overview Committee 23 January 2023
SUBJECT:	PRE-DECISION SCRUTINY: 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 Jeet Bains, Cabinet Member for Planning and Regeneration
PUBLIC/EXEMPT:	Public

ORIGIN OF ITEM:	The attached report is due to be considered by the Mayor at the Cabinet meeting on 25 January 2023. Ahead of a decision being made, the report has been submitted for pre-decision scrutiny by the Scrutiny & Overview Committee.
BRIEF FOR THE COMMITTEE:	The Scrutiny & Overview Committee is asked review the Cabinet report due to be considered by the Mayor on 25 January 2023 and decide whether it wishes to submit any comments or recommendations on the report for the Mayor to take account of as part of his decision making.

1. **PRE-DECISION SCRUTINY: WHITGIFT INDEMNITY AND LAND TRANSFER AGREEMENT (ILTA) REMEDY**

- 1.1. Attached at Appendix A to this cover report is a report scheduled to be considered by the Mayor at the Cabinet Meeting on 25 January 2023. The appended report, sets out recommendations to be determined by the Mayor, relating to the Whitgift Indemnity and Land Transfer Agreement Remedy.
- 1.2. The report is presented to the Scrutiny & Overview Committee ahead of its consideration by the Mayor at Cabinet, to provide the Committee the opportunity to review the content and provide feedback on the recommendations. Any feedback from the Committee will be relayed to the Mayor by the Chair of the Scrutiny & Overview Committee at the Cabinet meeting on 25 January 2023.

CONTACT OFFICER:

Simon Trevaskis – Senior Democratic Services & Governance Officer – Scrutiny

Email: Simon.trevaskis@croydon.gov.uk

Appendix A: Cabinet Report - Whitgift Indemnity and Land Transfer Agreement (ILTA) Remedy

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 Jeet 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.:

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 Allders 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 Allders 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 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

PROPOSED REDEVELOPMENT OF THE WHIGIFT CENTRE AND SURROUNDING LAND

SUMMARY OF EVENTS 2013 – 2022

Main abbreviations and parties:

The CPO: The London Borough of Croydon (Whitgift Centre and Surrounding Land bounded by and including parts of Poplar Walk, Wellesley Road, George Street and North End) Compulsory Purchase Order 2014

CLP: Croydon Limited Partnership (current “ultimate parent companies” : Unibail-Rodamco-Westfield (**URW**) and Hammerson UK Properties plc)

WLP: Whitgift Limited Partnership – CLP’s “property owning arm” – holds a long leasehold interest in the Whitgift Centre, subject to a number of sub-leases

ILTA: CPO Indemnity and Land Transfer Agreement between the Council, CLP, WLP and the Sureties which provides for the assembly of land for the redevelopment of the Whitgift Centre and surrounding land and CLP to indemnify the Council. The ILTA has been supplemented as explained below. The sureties are currently: Westfield Corporation Limited and Hammerson UK Properties plc

SoS: Secretary of State

SUO: Stopping up Order

NoE: Notice of Entry

NTT: Notice to Treat

GVD: General Vesting Declaration

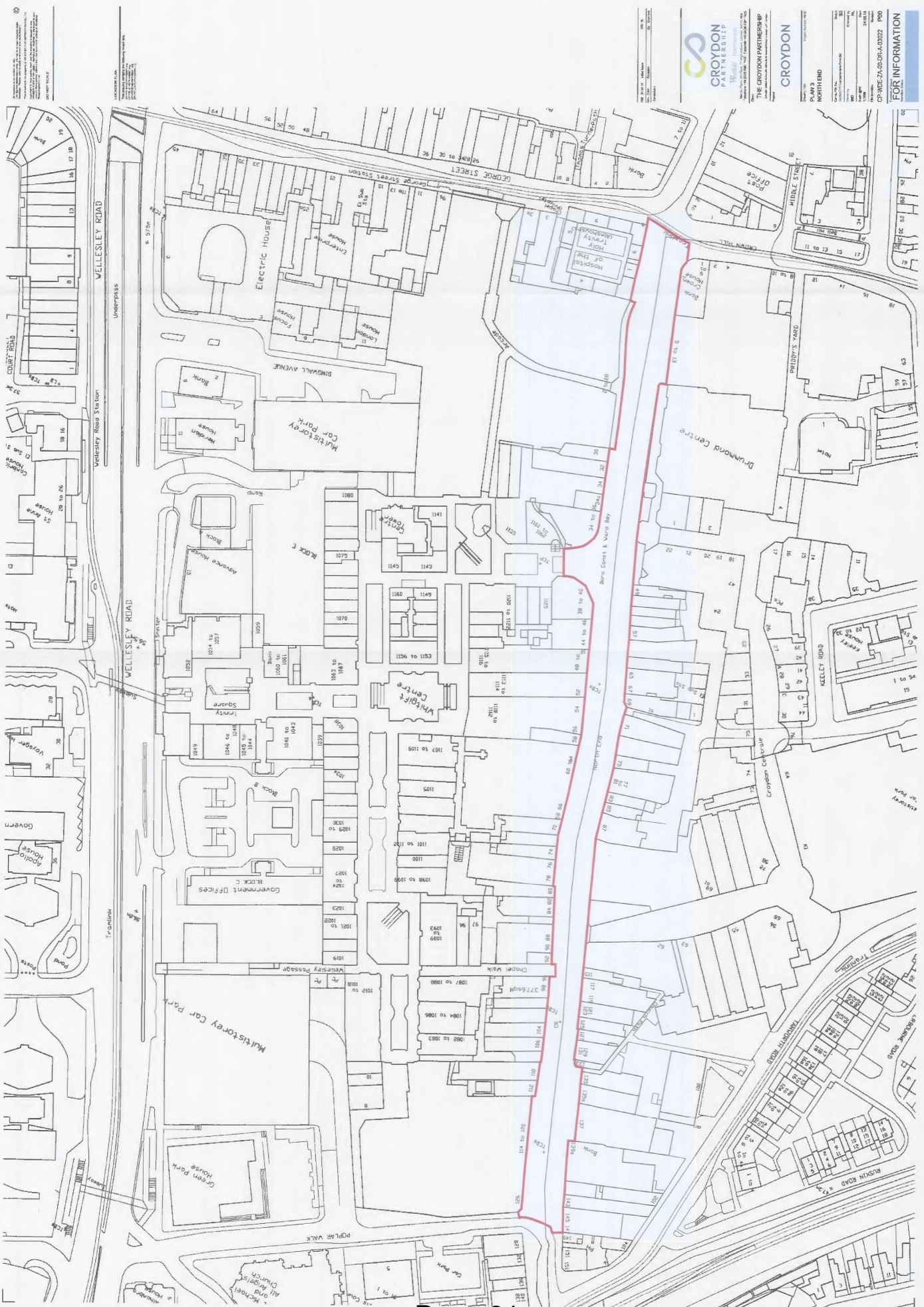
WF: Whitgift Foundation – the freehold owner of the majority of the CPO land, most of whose interests were excluded from the CPO

Date	Event
January 2013	The Mayor of London adopted the Croydon Opportunity Area Planning Framework (OAPF) as supplementary planning guidance, indicating that major development was needed to deliver successful regeneration of Croydon’s retail core. The OAPF was adopted by the Council as a supplementary planning document in April 2013.
5 February 2014	Outline planning permission and conservation area consent granted: refs 12/02542/P and 12/12543/CA for a mixed use retail-led scheme, providing for comprehensive redevelopment of the Whitgift Centre and surrounding land. Related s106 agreement entered into.
7 April 2014	Cabinet resolved to make a CPO to assemble the land needed to facilitate the comprehensive redevelopment of the Whitgift Centre and surrounding land and gave authority to enter into contractual arrangements with CLP and related parties in relation to the scheme. Delegated authority was given to specified officers to take all necessary steps to promote the CPO, acquire land and rights by agreement or under the CPO and to complete the contractual arrangements with CLP.

15 April 2014	The Council entered into the ILTA (see above). The CPO was made by the Council and submitted to the SoS.
18 April 2014	First publication of the making of the CPO.
10 November 2014	Judicial review claim brought by the Whitgift Trust in respect of the outline planning permission dismissed by the Court.
24 December 2014	Detailed planning permission granted for a small part of the site (Chapel Walk) 14/02824/P.
28 January 2015	Non-material amendment of outline planning permission 12/02542/P approved.
4 February 2015	Supplemental and novation agreement to ILTA entered into and a related "Access Management and Maintenance Agreement" re land in Dingwall Avenue proposed to be stopped up (proposed frontage to a new John Lewis store).
February – March 2015	Public Inquiry: CPO & SUO (SUO for part of Dingwall Avenue).
25 September 2015	First publication of notice of confirmation of CPO (but "Confirmation Date" in ILTA is specially defined as 23.02.16).
16 February 2016	Statutory challenge to confirmation of the CPO withdrawn by consent WLP completes purchase of long leasehold interests in the Whitgift car park and the Allders car park.
16 December 2016	Dingwall Avenue SUO published (but not implemented).
20 April 2018	Second outline planning permission for larger retail and housing scheme granted ref: 16/05418/OUT and s106 agreement completed.
8 June 2018	Takeover of Westfield Corporation Limited, one of the participants in CLP, by Unibail-Rodamco SE. Unibail-Rodamco-Westfield SE formed (URW).
11 June 2018	Cabinet considered a report regarding CLP's "reasonable prospects of delivery" of the scheme and the implications of the revised planning permission, authorised execution of GVD(s) and service of NTTs (subject to relevant notices being served by CLP under ILTA) and amendment of the ILTA re Second Planning Permission. Cabinet authorised officers to take all necessary steps to implement the CPO and in relation to the Council's obligations under the ILTA.
4 July 2018	Second Supplemental Agreement to ILTA in light of Second Planning Permission and amended timescales. Escrow Agreement entered into on the same date.
18 July 2018	Second Dingwall Avenue and Poplar Walk SUOs published (again not implemented).
17 August 2018	CLP served "Drawdown Notice" and "RFD Notice" under the ILTA requesting service of notices/ execution of GVDs to implement CPO in

	specified ways in respect of individual plots. The RFD Notice confirmed that the Third Party Interests and New Rights proposed by CLP were required for the purposes of the Development (as then envisaged).
17 August 2018	Third Supplemental Agreement to ILTA and “Standstill Agreement” with Marks & Spencer PLC entered into (in connection with CLP’s proposed agreement with M&S).
September 2018	CLP paid estimated CPO compensation into an Escrow Account. 3 GVDs were executed by the Council and Notices of GVDs and NTTs were served (+ NoEs in limited circumstances). The service exercise began on 5 September 2018 and the majority of NTTs were served on 6 September 2018. Service of notice of each of the GVDs was completed on 6, 10 and 12 September 2018.
February 2019	Most of the site vested in LBC pursuant to the 3 GVDs. <u>Exceptions</u> included interests held by: WF WLP M&S – where NTTs served Occupational tenants – mainly in the Whitgift Centre – where NTTs served Possession of the GVD land was taken on the GVD vesting dates: GVD1: 5 February 2019, GVD2: 1 February 2019 (referred to as “the L&G Land”) GVD3: 7 February 2019 – with the exception of the Optima interest in the former Alders Store (see further 16 July 2019 below)
14 February 2019	Evening Standard reports that “Westfield’s £1.4bn Croydon development is ‘under review due to Brexit and structural changes on the high street”
16 July 2019	Possession of the former Alders Building taken pursuant to warrants issued to High Court Enforcement Officers. VP against Optima and concessionaires obtained. Some concessionaires relocated by CLP
12 February 2020	URW publishes 2019 Full Year results stating that Croydon has been removed from its development pipeline
June/July 2020	CLP “Vacant Possession Strategy” for the Whitgift site – CLP considering allowing occupational tenants to remain in situ beyond the life of the NTTs
23 February 2021	“Remedies – Retail Component” provisions in clause 11 of the ILTA came into effect – providing for a 12 month period of discussion about the best option going forward – or failing agreement allowing CLP to dispose of its interests or failing that for CLP to pay for or undertake improvements to North End (£4m indexed) and initiate a programme of asset management initiatives at the Whitgift Centre
20 April 2021	Second Planning Permission lapsed

21 May 2021	NoEs served in respect of 3 new rights plots to enable the separation of property formerly wholly owned by L&G (now part owned by its L&G's successor ReAssure Ltd)
16 August 2021	Cabinet considered a report on Post Covid Vision for the Town Centre
September 2021	Most NTTs lapsed and notice of expiry given
22 February 2022	12 month period for discussion between Council and CLP regarding best option as to how to proceed (under clause 11.1 (a) ILTA) ends without agreement having been reached or CLP having given notice that it intends to dispose of its interests.
Upcoming 21 February 2023	End date for service of notice by the Council requiring CLP to pay for or undertake improvements to North End (£4m indexed) and initiate a programme of asset management initiatives at the Whitgift Centre




CROYDON PARTNERSHIP
 The Croydon Partnership is a joint venture between Croydon Council and the private sector to regenerate the town of Croydon.
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FOR INFORMATION
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Agenda Item 7

REPORT TO:	Scrutiny & Overview Committee 23 January 2023
SUBJECT:	SCRUTINY & OVERVIEW COMMITTEE WORK PROGRAMME 2022-23
PERSON LEADING AT SCRUTINY COMMITTEE MEETING:	Councillor Rowenna Davis – Chair of the Scrutiny & Overview Committee
PUBLIC/EXEMPT:	Public

ORIGIN OF ITEM:	The work programme of the Scrutiny & Overview Committee and its Sub-Committees is included as a standard item on each agenda.
BRIEF FOR THE COMMITTEE:	The Scrutiny and Overview Committee is asked: - <ol style="list-style-type: none">1. To note the most recent version of the Work Programme.2. Consider whether there are any other items that should be provisionally added to the work programme as a result of the discussions held during the meeting.

1. **SCRUTINY & OVERVIEW COMMITTEE WORK PROGRAMME 2022-23**

- 1.1. Appended to this report is the most recent version of the 2022-23 Work Programme for the Scrutiny & Overview Committee and its sub-committees. This is provided to give the Committee the opportunity to review its upcoming schedule and consider whether any changes need to be made.
- 1.2. The Work Programme can be found at Appendix A.

CONTACT OFFICER:

Simon Trevaskis – Senior Democratic Services & Governance Officer – Scrutiny

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Appendices

Appendix 1: Scrutiny Work Programme 2022-23

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Scrutiny & Overview Committee Work Programme

The below table sets out the working version of the Scrutiny & Overview Committee work programme

Meeting Date	Item	Scope	Directorate & Lead Officer
23/01/2023	Town Centre Report	Pre-Decision: report scheduled for Cabinet on 25 January 2023	SCRER Heather Cheesbrough
	People Strategy	Pre-Decision: report scheduled for Cabinet on 25 January 2023	ACE Dean Shoesmith
30/01/23	Asylum Seekers, Homes for Ukraine & UASC	To review the support provided by the Council.	Children, Young People & Education Debbie Jones
	Budget Scrutiny	Deep Dives on Transformation Projects & Funding relationship with the Community & Voluntary Sector and to review the outcome from the Budget consultation	
14/02/23	Final Budget Scrutiny Session	To sign-off the Scrutiny report on the Budget Scrutiny process which will be submitted to the Budget Council meeting.	Resources Jane West
28/03/23	Climate Change	The Scrutiny & Overview Committee would like the opportunity to conduct pre-scrutiny on this report prior to its consideration by the Executive Mayor at Cabinet.	SCRER Nick Hibbard

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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