

Exempt or confidential report: The following paragraph of Part 4b Section 10 of the constitution applies in respect of information within Appendices C to H inclusive and it is therefore exempt from publication. Information relating to the financial or business affairs of any particular person (including the Authority holding that information). Members and officers are advised not to disclose the contents of these appendices.

Committee: Overview and Scrutiny Commission

Date: 19th October 2021

Wards: Abbey, Figges Marsh, Ravensbury

Subject: Call in for Clarion estate regeneration support

Lead officer: Director of Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Housing, Regeneration and the Climate Emergency

Contact officer:

Recommendations:

That the Overview and Scrutiny Commission consider the information provided in response to the call-in request and decide whether to:

- A. Refer the decision back to Cabinet for reconsideration; or
 - B. Decide not to refer the matter back to Cabinet, in which case the decision shall take effect immediately.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. On 6th September 2021, Cabinet resolved to approve eight recommendations relating to supporting Clarion's estate regeneration of Eastfields, High Path and Ravensbury. The Cabinet meeting was preceded by a meeting of Merton's Sustainable Communities Overview and Scrutiny Panel on 2nd September which received a presentation on the contents of the Cabinet report and asked questions. This was attended by council officers and the council's independent financial advisors, SQW.
- 1.2. Following the Cabinet meeting, Cabinet's decision was called in by three councillors. This report addresses the issues raised in the call in form.
- 1.3. Appendix A to this report contains the call in request form relating to this report. Appendix B contains the September 2021 Cabinet report and appendices which can now be fully published with Clarion's agreement. Appendices C to H are exempt from publication. Appendix I contains the Clarions update of headline inputs and the council's independent review.
- 1.4. The report addresses each of the principles of decision-making raised in the call in form under specific headings.

2 DETAILS

- 2.1. The call in report states that Constitution Article 13(a) proportionality (i.e. the action must be proportionate to the desired outcome) has not been applied

based on the evidence in section 4. This has been divided into five headings below to cover the issues raised.

A-1 Proportionality

- 2.2. *“The decision to support the adjustment of the Sales Clawback mechanism in the Stock Transfer Agreement, and to suspend the council’s eligibility for 5% of the Sale Clawback mechanism, in exchange for Clarion carrying out its obligations that were agreed in the 2010 Stock Transfer Agreement is clearly not proportionate as this decision denies the council of millions of pounds that could be used to regenerate the borough.”*
- 2.3. As demonstrated in the Cabinet report and summarised below, a substantial amount of detailed financial scrutiny and exploration of different options over more than 12 months has led to officers’ concluding that waiving the Sales Clawback on the estate regeneration homes is proportionate to support the progression of the estate regeneration.
- 2.4. In addition, if Clarion do not progress with estate regeneration and revert to delivering Decent Homes, no clawback will be payable to the council.
- 2.5. As set out in paragraphs 2.21 and 2.2.2 of the Cabinet report, Clarion’s letter of April 2020 set out the extent of the viability deficit, which had arisen in respect of the Merton Estate Regeneration Programme reporting a £258m deficit; a negative c. £406m swing from the c. £148m surplus position reported in 2018.
- 2.6. Clarion was clear that it could not commit to delivering MERP on this basis.
- 2.7. As set out in the Cabinet report paragraph 2.2.2, , Clarion’s stated position of not being able to commit to estate regeneration delivery was considered to be entirely reasonable on the basis of this level of deficit.
- 2.8. Clarion’s letter to Merton Council dated 6 April 2020 (Appendix C to this report) made two requests of the council to enhance viability to support Clarion’s ability to deliver the estate regeneration of all three estates:
 - the removal of the Clawback Mechanism and
 - the suspension of Merton Council Community Infrastructure Levy.
- 2.9. Before considering these requests, Merton first sought to scrutinise Clarion’s financial model and interrogate the reported viability deficit. As set out in paragraph 2.5 of the Cabinet report, Merton Council appointed independent financial viability consultants SQW Ltd to review Clarion’s financial model on their behalf. SQW has advised Merton Council in relation to financial viability matters on MERP for some years, including undertaking the independent financial viability review as part of the original planning process so have an extensive knowledge of the programme.
- 2.10. As set out in paragraphs 2.4 and 2.7.1 of the Cabinet report, SQW’s review – including a forensic line-by-line review check, challenge and requests for further information – took place between April and June 2020. This resulted in a slight reduction in the deficit from -£258m to -£235m. Appendices E and F to this report contain SQW’s reports
- 2.11. As set out in the Cabinet report paragraph 2.7.1, this review clarified that the information provided by Clarion to substantiate the deficit position was

considered robust. It was based on full scrutiny and benchmarking against industry standards, and using a financial model that had been previously approved by Merton Council in terms of its structure and key fixed assumptions through the S106 process associated with the original planning permission (see para. 2.6 of the Cabinet Report).

- 2.12. Notwithstanding Merton Council's acceptance, based on independent advice, that Clarion's reported deficit of -£235m was substantiated, officers did not then immediately recommend that the council conceded to Clarion's requests made in Clarion's letter of 6 April 2020.
- 2.13. As set out in paragraph 2.5 of the Cabinet report, SQW's report of June 2020 (see Appendices E and F) included a number of recommendations of potential options which could be tested in seeking to reduce the viability gap: suspension of the Clawback Mechanism and Merton's Community Infrastructure Levy were only two of a range of potential mitigation strategies identified including cost plan optimisation, programme and phasing optimisation and scheme revisions to generate additional value.
- 2.14. As set out in paragraph 2.13 of the Cabinet report, these recommendations formed the basis for the options testing and dialogue which has taken place over the last 12 months, with a series of workshops with Clarion, Merton Council and their respective advisers, in parallel with regular Steering Group meetings comprising senior Merton Officers, Cabinet Members and senior Clarion representatives. Appendix H to this report contains Clarion's workshop presentations to the Merton Steering Group.
- 2.15. Paragraphs 2.18-2.58 of the Cabinet report set out in detail the outcome of this 12-month of options testing and dialogue process and the impacts of the various scheme changes tested. For the avoidance of doubt the focus of this process was on optimising the potential financial viability and deliverability and in no way fetters the planning process (see para. 2.52 of the Cabinet Report), noting that revised planning applications will be submitted by Clarion to secure additional private and affordable homes, to generate additional value. This development risk sits with Clarion.
- 2.16. As set out in paras. 2.55-2.58 of the Cabinet Report, as part of this process officers confirmed that it would not be willing to recommend suspending Merton's Community Infrastructure Levy (CIL) liability for Clarion's estate regeneration programme, so this was removed as an option. Indeed, based on the proposed densification scheme and other scheme enhancements, the potential Merton Council CIL receipt for Merton's estate regeneration programme will be c. £49.8m; a +£24m increase from the original Merton CIL receipt estimate for the 2018 planning approval of c. £25.8m.
- 2.17. Fundamentally, the Cabinet Report recommendation (particularly Recommendation E) is a proportionate response to the scale of the viability deficit. Recommendation E is to suspend the Clawback for the duration of the estate regeneration programme, but with a final accounting process built in at the end of the programme to ensure that Merton Council is eligible to capture any potential Clawback should the financial performance have improved to a break-even position.

- 2.18. As set out in the Cabinet report section 2, all of the other potential scheme changes explored over the last 12 months – programme efficiencies, cost savings, additional density – would not be sufficient to reduce the deficit to the point where Clarion would commit to delivery.
- 2.19. As set out in paragraphs 2.41 – 2.42 of the Cabinet Report the proposed suspension of Clawback will facilitate regeneration and the proposed structure of the proposed legal mechanism will protect Merton Council's interest, recouping Clawback receipts if the estate regeneration achieves break-even.
- 2.20. As reported in paragraph 2.40 of the Cabinet report, even with the suspension of Clawback as proposed, the scheme is still in a significant deficit position and is not commercially viable. Clarion is taking a holistic view balancing its wider housing and placemaking priorities in confirming it is willing to commit to delivery based on a significant deficit of c. -£65m.
- 2.21. As demonstrated in the Cabinet report and summarised above, a substantial amount of detailed financial scrutiny and exploration of different options over more than 12 months has led to the council concluding that waiving the Sales Clawback on the estate regeneration homes is proportionate to support the progression of the estate regeneration.
- 2.22. Merton Council would only have received Clawback in the event that Clarion delivered the Merton Estate Regeneration Programme and will receive Clawback if Clarion's estate regeneration programme reaches break-even during its 15-year lifetime. It is therefore not accurate to state that millions of pounds would otherwise be available to regenerate the borough as Clarion would not progress with the Merton Estate Regeneration Programme without the council's support, so the council would not receive any Clawback.
- 2.23. For the avoidance of doubt and as set out in Recommendation D of the Cabinet Report, in the event that Clarion were not to deliver MERP, they would revert to delivering Decent Homes on the three estates. In this scenario, no new homes would be built so Merton Council would not be eligible for any Sales Clawback. This is a realistic prospect if Merton Council does not suspend Sales Clawback on the basis proposed.

A-2 Proportionality

This decision is based on the financial viability assessment of April 2020, and no up to date data has been provided to show that this is still the case.

- 2.24. As set out in paragraphs 2.4 - 2.7.1 of the Cabinet report, SQW's assessment of Clarion's financial viability assessment took place between April and June 2020, based on appraisals and supporting information collated in this period by Clarion's financial viability advisers, Savills.
Appendices
- 2.25. The comparison undertaken between the 2018 financial model and the April 2020 financial model was substantiated by Clarion with supporting evidence
- both bespoke for the scheme (i.e. market reports on sales values from agents; cost reports from their cost consultants) and
 - benchmarking against industry standards, where appropriate (i.e. build costs – BCIS forecasting is the industry-accepted measure).

- 2.26. SQW undertook a detailed review at the time based on their own understanding of the scheme and scrutinising the evidence for particular cost and revenue inclusions and exclusions, and benchmarking using industry standard data-sets. As noted above, this exercise resulted in the immediate identification of +£23m savings (see paras 2.4-2.10 of the Cabinet Report).
- 2.27. As set out in paragraphs 2.15 – 2.17 of the Cabinet report, at this stage it was not clear how long it would take for Clarion to test further options for enhancing the viability and deliverability of MERP, however for simplicity core assumptions regarding principal costs and revenues were treated as a fixed variable during the options testing process following the first workshop where Clarion presented the outcome of a cost and programme optimisation exercise which resulted in a further improvement in the baseline from --£235m to -£194.5m.
- 2.28. As set out in paragraph 2.13 of the Cabinet report, the options testing process began in earnest in October 2020 with a series of 5 workshops which took place up until February 2021. The backdrop to this whole process, having begun in April 2020, has clearly been one of economic volatility driven by a number of factors, not least the economic shock of Covid-19 and associated UK Government response and Brexit (see Cabinet Report para. 2.9).
- 2.29. Acknowledging that some time has now passed since Clarion provided evidence to substantiate its sales values and cost assumptions, should the recommendations in the Cabinet report be resolved, the Cabinet Report paragraph 2.110, part 3 proposes as part of the draft Heads of Terms and ahead of any contractual commitments that Clarion will re-submit a full viability appraisal, with supporting evidence, for Merton Council's independent advisers to scrutinise and challenge (as per the review of April-June 2020). This will ensure a revised baseline position is established based on up-to-date inputs, including sales values and build costs, both current and forecast.
- 2.30. It took more than 12 months for the initial review to take place and it was considered proportionate not to require constant iterations and updates to this evidence base – which takes a significant amount of time to assemble, model, review and challenge – whilst also testing all of the variables noted above during the options testing process as this could have resulted in significant delays, such is the level of scrutiny applied by Merton Council and its advisers in challenging any evidence presented by Clarion.
- 2.31. Instead, the proposed approach of re-baselining and scrutinising Clarion's financial viability assumptions following the conclusion of the options testing but prior to entering into contract is considered a proportionate and prudent response to demonstrating the veracity of the financial model and its inputs prior to entering into legally binding commitments.

A-3 Proportionality

The report states that this is needed in order to prevent overcrowding, yet the housing number and density have risen and there has been no explanation as to how this will prevent future overcrowding.

- 2.32. The Cabinet report at paragraphs 1.5.2, 2.1.2, 2.1.5, and 2.2.4 refers to the Merton estate regeneration project helping to address overcrowding, particularly compared to refurbishing the existing buildings to Decent Homes standards. As referred to in paragraphs 2.1.2 and 2.1.5 this issue is explored as part of Merton's Estates Local Plan and the associated council decision-making reports on supporting estate regeneration, the links to which were contained in the Cabinet report Section 12 "Background Papers".
- 2.33. In summary from these reports, Clarion's delivery of the Merton Estate Regeneration Project will help to address future overcrowding in the following ways.
- 2.34. As linked in paragraph 12.1, in July 2014 Merton Council approved a report to suspend the clawback and start investigating estate regeneration via an Estates Local Plan as a method of improving housing conditions and increasing the numbers of new homes at Eastfields, High Path and Ravensbury.
- 2.35. As part of this work, in 2015 the council received and published a range of evidence including [Clarion's Housing Needs Study](#) and the case for regeneration for High Path. The High Path housing needs study identified 89 overcrowded and concealed households. This was used as evidence and published for consultation as part of Merton's Estates Local Plan and was then considered by an independent planning inspector. As per paragraph 12.3 of the Cabinet report, Merton Council adopted the Estates Local Plan in February 2018.
- 2.36. At the same meeting in February 2018, council resolved to support the recommendations of the report on *delivering Clarion Housing Regeneration project* (see paragraph 12.2 of the September 2021 Cabinet report) which described how the Merton Estate Regeneration Project would address overcrowding amongst social / affordable tenants by re-housing social / affordable tenants across all three estates on a "needs plus one" basis as some households are living in homes without adequate bedrooms for the household.
- 2.37. By the council supporting Clarion's delivery of estate regeneration on the basis of a residents offer of "need [for the number of bedrooms per individual or household] plus one [additional bedroom greater than their need]", each overcrowded social housing / affordable household would be rehoused in a home that provided one extra bedroom than their needs. There will be no loss of social/ affordable housing and the number of social/ affordable bed-spaces provided will increase as Clarion addresses overcrowding in the three neighbourhoods when rehousing the existing social/ affordable tenants based on needs plus one.
- 2.38. Therefore, should estate regeneration go ahead as supported by the recommendations in September 2021 Cabinet report, new homes will be built and overcrowded social / affordable housing tenants will be rehoused in homes that meet their needs for the number of bedrooms, plus one extra; thus addressing overcrowding which is known to exist.
- 2.39. As stated in paragraph 3.2 of the Cabinet report if the estate regeneration does not go ahead and delivery reverts to the Decent Homes programme,

no new homes will be built and overcrowding won't be addressed in this way.

A-4 Proportionality

Also there have been no detailed descriptions of why this is necessary apart from Clarion's complaints about their financial position which have not been presented using current data and has not taken into account the rise in property prices since April 2020.

- 2.40. Since 2014 Merton council has taken a series of decisions to support regeneration, these are included as links in the Section 12 of the Cabinet report.
- 2.41. The Cabinet report sets out comprehensively how Clarion's financial position has been extensively scrutinised and challenged since April 2020. It also explains clearly how, should the Cabinet recommendations be resolved, Merton Council will commission their independent advisors to undertake another comprehensive and up-to-date financial viability review of Clarion's business plan before entering into any contract to waive the clawback. This will capture any changes in values and costs, be subject to independent check and challenge, and any material impact on the deficit position. It also sets out how Clarion will provide annual updates to their financial business plan to ensure that the council is aware of any future opportunities and risks to regeneration. This is explained in more detail below.
- 2.42. Paragraphs 2.3 to 2.10 of the Cabinet report provides an overview of all of the principal drivers of the viability deficit based on SQW's independent analysis of Clarion's financial model.
- 2.43. These are not all repeated here for brevity; however it bears repeating that there is no single driver solely responsible for the adverse shift in financial viability since 2018. There is a cumulative impact of multiple factors, including:
- flatter sales values both current and forecast (see Cabinet report paras. 2.7.3 – 2.7.4),
 - increased leaseholder buy-backs (see Cabinet Report para. 2.7.13) and
 - increased construction costs (see Cabinet Report para. 2.7.12)
- 2.44. For example, on property prices the Cabinet report states at paragraph 2.7.4
- 2.45. *2.7.4 Savills' reporting on values was undertaken prior to Covid-19 and the subsequent Stamp Duty Land Tax relief measures imposed by HM Treasury. Whilst some locations around the UK, and even within London, have experienced significant house price growth particularly since Q3/Q4 2020, the impact has been geographically variable and has also been variable depending on house types (i.e. typically lower value growth for flats in denser, city locations compared to higher growth for detached homes with outside space beyond urban areas). These effects were not factored into reporting over the last 12 months, but both Merton Council, Clarion and their advisers acknowledge that the residential sales market has experienced significant volatility over the course of the pandemic, and there remains significant uncertainty regarding future market performance. In this context it was considered that Savills' more conservative assumptions made in April 2020 regarding values and future growth potential, which were backed up by*

market evidence and independent review at the time of initial reporting, were considered appropriate and pragmatic. This position will need to be monitored carefully in the future and any 'upside' opportunity through value growth will still be captured by the same S106 affordable housing review mechanism which will remain unchanged – the growth would, however, need to be considerable to have any material impact on viability”

- 2.46. As set out in the Cabinet report paragraph 2.7.15, cumulatively these factors have driven significantly higher finance (borrowing) costs, noting that the rate of interest assumed is in line with industry standards and is a relatively competitive lending rate. This is exacerbated by the single financial model linking the High Path, Eastfields and Ravensbury Estates; this model was essential to cross-subsidise the delivery of the regeneration of Eastfields which has always been significantly unviable, but also has the effect of generating disproportionately high finance costs when the financial performance of the High Path Estate significantly worsens, as was reported in April 2020 (see para 2.10 of the Cabinet report).
- 2.47. As set out in paragraph 2.7.4 (which is quoted above) the Cabinet report acknowledges that the impact of Brexit and Covid-19, together with the associated UK Government response – not least the impact of the Stamp Duty Land Tax relief measures – noting that these could have had an impact on viability since original reporting in April 2020.
- 2.48. To expedite the options testing process these inputs were kept as fixed assumptions whilst other measures were tested (see paras. 2.11 – 2.58 of the Cabinet Report), two principal measures have been proposed to protect Merton Council's position and to capture any upside benefit which might occur if values have increased over the last 12 months, or indeed if they increase across the delivery of MERP:
- a full and independent financial viability review will again be undertaken by Merton Council and their independent advisers prior to entering into contract to waive the Clawback to ensure the veracity and accuracy of Clarion's financial model and its underpinning assumptions and inputs. This will capture any changes in values and costs, subject to independent check and challenge, and any material impact on the deficit position. There will also be an annual review of key metrics to ensure the project is staying on track.
 - If values have increased, this will only be to Merton Council's benefit. As extensively dealt with in the Cabinet Report, it is only proposed that the Clawback Mechanism will be suspended so long as Clarion's estate regeneration programme's viability is in a deficit position. Whilst the Clawback is proposed to be suspended for the whole programme, a final accounting is proposed after the completion of 95% of private sales and if any surplus materialises above break-even then Merton Council will be entitled to a share of this surplus (exact share split to be confirmed) up to the value of the Clawback that would have been otherwise due, plus interest to compensate Merton Council for suspending the Clawback payments during the course of development.
- 2.49. This approach will have the dual effect of

- (a) facilitating regeneration and the delivery of the positive regeneration benefits outlined in the Cabinet Report (paras. 2.97 – 2.106) and
- (b) protecting Merton Council's position such that it will be eligible for Clawback payments at the end of the programme should viability have improved such that the scheme is no longer in deficit (see para. 2.108 of the Cabinet Report).
- 2.50. Accordingly, the Cabinet report clearly demonstrates how and why the analysis of Clarion's position to date has been forensic, robust and proportionate and that a range of measures and actions have been proposed to ensure that the effects of any increases in sales values will be captured to the benefit of Merton Council.
- 2.51. In response to the Scrutiny call in and in addition to the baseline and annual reviews referred to in paragraph 2.48 above, officers have sought up to date information on some key inputs to Clarion's financial viability. The updates provided above are for information and, as set out in the Cabinet report, are only some of the many factors within the financial model and will change over the +10 year lifetime of the project. Should Cabinet's recommendations be agreed, these will be updated again and interrogated by the council's independent financial advisors as part of the comprehensive baseline financial viability review described above, and also as part of the annual reviews during the lifetime of the project.
- 2.52. These inputs are based on publicly available information to enable thorough scrutiny and have been reviewed by Merton's independent financial advisors, SQW and found to be sound. (Appendix I to this report contains Clarion's data and SQW's review):
- Private residential sales values: growth since April 2020 of 1% to 3%
 - Private rental yields: change since April 2020 of -3.8% to 0% (staying the same)
 - Construction costs: growth since April 2020 of between 3% and 5%
- 2.53. For the avoidance of doubt, and as confirmed verbally by a representative from Merton's independent financial advisors to the Sustainable Communities Overview and Scrutiny Panel on 2 September 2021, Merton Council's independent viability consultants can confirm no conflict of interest: they are not acting on behalf of Clarion in any other capacity, and have not acted for them previously. SQW's duty of care is solely to Merton Council.

A-5 Proportionality

Therefore, this decision cannot be considered to be proportionate as it does not meet the stated aims of the estates regeneration project.

- 2.54. This decision is proportionate as it meets the stated aims of the estate regeneration project.
- 2.55. As outlined in the Cabinet report and linked in section 12, Merton Council has undertaken a series of decisions from 2014 to 2021 to support the delivery of estate regeneration. These decisions support the key drivers outlined in Merton's Estates Local Plan:

- 2.56. Improving homes and neighbourhoods: including providing modern, well designed new homes, streets, landscapes, play spaces, linking the estates within the wider neighbourhood and enhancing the feelings of safety
- 2.57. Delivering new homes: the estate regeneration will provide XX new homes including affordable homes across the next 15 years to help address Merton's share of London's housing needs and it will increase the size of affordable homes to help address overcrowding
- 2.58. Delivering regeneration across all three estates: all reports to councillors, including Merton's estates local plan and relevant planning applications, recognise that estate regeneration at Ravensbury and Eastfields is not viable unless linked to High Path. The recommendations to Cabinet in September 2021 continue to support the regeneration of all three estates.

D) a presumption in favour of openness;

The agreement to forego very significant sums has been hidden from the public and therefore from democratic scrutiny. This decision cannot be considered to have been made with a presumption of openness if it is hidden from those who wish to scrutinise it.

- 2.59. The proposed arrangements with Clarion were subject to pre decision scrutiny by the Sustainable Communities Panel. This included an officer presentation to the 2nd September Sustainable Communities Panel, attended by officers and a representative from the council's independent financial advisors SQW who delivered the presentation and were available to answer questions. The legal framework governing access to information contemplates that there will be situations where for perfectly good commercial reasons, it is not appropriate for extensive financial detail to be made available to members of the public. However, the existence of and broad description of the proposed agreement has been made public and the exempt information was sent to all sixty councillors in advance of the council meeting and was subject to debate at full council on 15 September 2021.
- 2.60. In addition to the above, Clarion have since clarified that in the interests of transparency they are willing to agree to the publication of their financial information contained within the previously exempt Cabinet / Council report. Appendix B to this report contains the Cabinet report 6th September 2021 and the associated appendices.

F) consideration and evaluation of alternatives

The council have not conducted their own independent valuation of the assets. Therefore, the council have not explored alternative options or sought to challenge the narrative put forward by Clarion.

- 2.61. The Cabinet report demonstrates that the council and their independent advisors have spent over 12 months extensively exploring all options towards delivering estate regeneration, including alternative options, and have consistently sought to investigate and challenge the narrative put forward by Clarion. It demonstrates that:

- Clarion’s assertions regarding the financial viability of their estate regeneration programme have been subject to extensive scrutiny at all stages,
 - an extensive process of dialogue reported in the Cabinet report has exhaustively tested all options available to Merton Council and Clarion, and
 - that protections have been put in place to ensure that the proposed contractual mechanisms as part of the Cabinet recommendations will protect Merton Council’s current and future position.
- 2.62. As set out in the Cabinet report paragraphs 2.1.11 and 2.1.12, in 2018 Merton appointed SQW (previously known as BBP Regeneration) to undertake an independent review of Clarion’s financial viability appraisal submitted to accompany Clarion’s 2018 planning applications.
- 2.63. As referred to in para 2.6 of the Cabinet report, the financial model provided by Clarion, and their financial viability advisers Savills, was submitted for approval as part of the S106 process. SQW, acting on behalf of Merton Council, reviewed this model and ensured that its form, structure and key underpinning assumptions were in line with industry best practice and guidance. This model formed the basis for the 2018 viability review, and all subsequent dialogue throughout 2020-21. It will continue to form the basis of all viability analysis and reporting for the remainder of the estate regeneration programme.
- 2.64. As set out in paragraph 2.5 of the Cabinet report, in 2020 Merton Council instructed SQW to undertake a full and independent review of Clarion’s reported viability position as of April 2020. SQW undertook a forensic line-by-line review of the submitted appraisals, testing, checking and critiquing all inputs, assumptions and outputs, submitting a detailed report for Merton council officers in early June 2020 (with a subsequent Addendum issued in late June 2020 further to the receipt of additional information from Clarion’s and their advisers, Savills in response to SQW requests for information).
- 2.65. Paragraphs 2.7.2 to 2.10 of the Cabinet report includes an analysis of the principal drivers of the viability deficit reported by Clarion in April 2020, validated by SQW in their independent reporting.
- 2.66. Furthermore, SQW’s reporting included a number of recommendations for testing further options to enhance viability and mitigate the deficit to enhance deliverability. Paragraphs 2.11 to 2.58 of the Cabinet report set out the full details of this process and all of the options tested which were included in SQW’s report to officers dated June 2020, and formed the basis of the dialogue and options testing which has taken place over the last 12 months.
- 2.67. As noted above, para 2.110 of the Cabinet report also includes the commitment to another full review of financial viability prior to entering into any contractual commitments to ensure the veracity and accuracy of all inputs and assumptions underpinning the viability model and stated deficit position, in acknowledgement of the time which has passed since the original assessment, thereby protecting Merton’s position.

- 2.68. Additionally, as set out in para. 2.110 and Appendix D of the Cabinet report, recommendations were also made by Merton’s advisers SQW, which are proposed to be captured in the Heads of Terms) to ensure that:
- Clarion provide a significant level of detail in regard to its business plan and financial model on an annual basis,
 - Merton and Clarion establish both operational and strategic forums for dialogue.
- 2.69. This will ensure Merton Council can continue this level of scrutiny and hold Clarion to account to ensure risks are being pre-empted and mitigated throughout the remainder of the process. Check and challenge will be an essential part of this process.
- 2.70. Accordingly, the Cabinet Paper demonstrates that Clarion’s assertions regarding the financial viability of their estate regeneration programme have been subject to extensive scrutiny at all stages, an extensive process of dialogue reported in the Cabinet report has exhaustively tested all options available to Merton Council and Clarion, and that protections have been put in place to ensure that the proposed contractual mechanisms as part of the Cabinet recommendations will protect Merton Council’s current and future position.

3 ALTERNATIVE OPTIONS

- 3.1. None for the purposes of this report.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None for the purposes of this report.

5 TIMETABLE

- 5.1. None for the purposes of this report.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. As set out in the body of this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The legal implications of the proposed agreement are set out in detail in the Cabinet report and represent a detailed legal analysis of all relevant issues. The Council is being supported by external legal advisers who will ensure the Council’s interests are protected in the heads of terms and subsequent legal agreement with Clarion.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None for the purposes of this report.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. As set out in the body of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- A. Merton Council call in request form relating to this report.
- B Cabinet report (6th September 2021) titled “Clarion estate regeneration programme support” (including appendices A-D).
- C. EXEMPT FROM PUBLICATION Letter from Merton’s Chief Exec to Clarion’s Chief Exec 4th March 2020 (plus follow up email from Clarion’s Chief Exec to Merton’s Chief Exec)
- D. EXEMPT FROM PUBLICATION SQW report dated 30 June 2020 incorporating an addendum in response to Savills update – fully FVA review.
- E. EXEMPT FROM PUBLICATION Briefing paper issued from Merton Council (SQW) to Clarion to set the context for and expectations from the workshop dialogue
- F. EXEMPT FROM PUBLICATION SQW’s three advice notes issued to Merton Council (in draft) setting out work in progress advice and thoughts:
 - i. December 2020,
 - ii. February 2021
 - iii. March 2021
- G EXEMPT FROM PUBLICATION Clarion’s five workshop presentations and Eastfields narrative:
 - i. MERP viability workshop 1 October 2020
 - ii. MERP viability workshop 2 October 2020
 - iii. MERP viability workshop 3 December 2020
 - iv. MERP viability workshop 4 January 2021
 - v. MERP viability workshop 5 February 2021
 - vi. MERP viability Eastfields narrative January 2021
- H. EXEMPT FROM PUBLICATION the three Merton Steering Group presentations (which ties together (a) to (d) above).
 - i. Merton Steering Group presentation 18th December 2020
 - ii. Merton Steering Group presentation 11th March 2021
 - iii. Merton Steering Group presentation 8th July 2021
- I Clarion’s costs and values update Sept 2021 and SQW’s review Sept21

12 BACKGROUND PAPERS

- 12.1. Contained in the appendices to this report.

Appendix A Merton Council - call-in request form

1. Decision to be called in: (required)

Clarion Estate Regeneration Programme Support

2. Which of the principles of decision making in Article 13 of the constitution has not been applied? (required)

Required by part 4E Section 16(c)(a)(ii) of the constitution - tick all that apply:

(a) proportionality (i.e. the action must be proportionate to the desired outcome);	<input checked="" type="checkbox"/>
(b) due consultation and the taking of professional advice from officers;	<input type="checkbox"/>
(c) respect for human rights and equalities;	<input type="checkbox"/>
(d) a presumption in favour of openness;	<input checked="" type="checkbox"/>
(e) clarity of aims and desired outcomes;	<input type="checkbox"/>
(f) consideration and evaluation of alternatives;	<input checked="" type="checkbox"/>
(g) irrelevant matters must be ignored.	<input type="checkbox"/>

3. Desired outcome

Part 4E Section 16(f) of the constitution- select one:

(a) The Panel/Commission to refer the decision back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns.	<input checked="" type="checkbox"/>
(b) To refer the matter to full Council where the Commission/Panel determines that the decision is contrary to the Policy and/or Budget Framework	<input type="checkbox"/>
(c) The Panel/Commission to decide not to refer the matter back to the decision making person or body *	<input type="checkbox"/>
* If you select (c) please explain the purpose of calling in the decision.	<input type="checkbox"/>

4. Evidence which demonstrates the alleged breach(es) indicated in 2 above (required)

Required by part 4E Section 16(c)(a)(ii) of the constitution:

A) proportionality (i.e. the action must be proportionate to the desired outcome);

The decision to support the adjustment of the Sales Clawback mechanism in the Stock Transfer Agreement, and to suspend the council's eligibility for 5% of the Sale Clawback mechanism, in exchange for Clarion carrying out its obligations that were agreed in the 2010 Stock Transfer Agreement is clearly not proportionate as this decision denies the council of millions of pounds that could be used to regenerate the borough.

This decision is based on the financial viability assessment of April 2020, and no up to date data has been provided to show that this is still the case.

The report states that this is needed in order to prevent overcrowding, yet the housing number and density have risen and there has been no explanation as to how this will prevent future overcrowding. Also there have been no detailed descriptions of why this is necessary apart from Clarion's complaints about their financial position which have not been presented using current data and has not taken into account the rise in property prices since April 2020. Therefore, this decision cannot be considered to be proportionate as it does not meet the stated aims of the estates regeneration project.

D) a presumption in favour of openness;

The agreement to forego very significant sums has been hidden from the public and therefore from democratic scrutiny. This decision cannot be considered to have been made with a presumption of openness if it is hidden from those who wish to scrutinise it.

F) consideration and evaluation of alternatives;

The council have not conducted their own independent valuation of the assets. Therefore, the council have not explored alternative options or sought to challenge the narrative put forward by Clarion.

5. Documents requested

All reports to the Cabinet Member and emails to and from officers referring to any attempts to challenge Clarion on their April 2020 valuation and any requests for recent figures.

6. Witnesses requested

Cllr Martin Whelton, Cabinet Member for Housing, Regeneration and the Climate Emergency

Chris Lee, Director for Environment and Regeneration

James McGinlay, Head of Regeneration

Paul McGarry, Paul McGarry, Head of Future Merton

Steve Langley, Head of Housing Needs

Michelle Reynolds, COO Clarion Housing

7. Signed

Cllr Ed Gretton

Cllr David Dean

Cllr Adam Bush

8. Notes – see part 4E section 16 of the constitution

Call-ins must be supported by at least three members of the Council.

The call in form and supporting requests must be received by 12 Noon on the third working day following the publication of the decision.

The form and/or supporting requests must be sent:

- **EITHER** by email from a Councillor's email account (no signature required) to democratic.services@merton.gov.uk
- **OR** as a signed paper copy to the Head of Democracy Services, 7th floor, Civic Centre, London Road, Morden SM4 5DX.

For further information or advice contact the Head of Democracy Services on 020 8545 3864