

CABINET

23 January 2018

Title: Barking and Dagenham Reside – A Reinvigorated Approach	
Report of the Cabinet Member for Finance, Growth and Investment	
Open Report	For Decision
Wards Affected: None	Key Decision: Yes
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Summary	
<p>This report sets out a refreshed approach for the future strategic direction and operational management of Barking and Dagenham Reside. The proposals have been developed to enhance the role of Reside as a social purpose landlord, strengthen corporate governance arrangements, and improve the quality of service provided through enhanced commissioning processes. As the Council's programme of housing development brings new properties into Reside's property portfolio, it is critical that the company is managed effectively to optimise value for money, investment returns and protect assets, while demonstrating the values of a social housing provider. The actions set out in this report will enable Reside to operate on a sound commercial basis within the rented sector, providing a range of housing choices at affordable rents.</p>	
<p>In November 2012, Cabinet approved the creation of Barking and Dagenham Reside (Reside) as a structure to hold and manage affordable housing developments. Reside is composed of a number of corporate vehicles structured as special purpose vehicles (SPVs) in line with Cabinet approvals for each project. Currently these vehicles are set up purely as investment vehicles to hold and manage property assets. Reside as an entity has no directly employed staff and the services to residents, such as repairs and tenant relations are delivered under a commissioned contract.</p>	
<p>Over the next five years the programme of housing development will bring at least a further 3,000 properties into the Reside portfolio. These developments are central to the council's ambition to enable greater access to affordable housing across all tenures and incomes, over and above meeting its statutory responsibilities towards those in housing need via HRA accommodation. This increased property portfolio will require Reside to operate a more robust and commercially competitive approach within the private rented sector. This report sets out proposals to:</p>	
<ul style="list-style-type: none">• Establish appropriate governance• Recruit a core staff directly employed by Reside.• Strengthen the business planning and commercial performance of Reside.• Establish positive collaboration with Be First, the borough's development company.	

- Provide high quality services to tenants of Reside through effective commissioning and rigorous contract monitoring.
- Develop the brand identity of Reside as a private rented sector landlord with a strong social purpose.

This report seeks Cabinet approval to recruit a new Board and refresh the governance arrangements and recruit a proportionate operational resource to take forward the development of Reside as a professional private sector landlord.

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve the creation of a Reside Management Company;
- (ii) Agree that the shareholder role of the Council shall be exercised through Cabinet advised by the Shareholder Panel;
- (iii) Delegate authority to the Chief Operating Officer, in consultation with the Director of Law and Governance, to commence the recruitment and selection of a Chair of the Board of Directors; and
- (iv) Delegate authority to the Director of Law and Governance to prepare and execute articles of association or partnership agreement, and any relevant legal agreements or documents on behalf of the Council to implement the creation of the new Reside company.

Reason(s)

The rationale for these proposals is in line with the Council's ambitions to improve access to affordable housing and encourage strong and resilient communities. The London Borough of Barking and Dagenham has great regeneration potential particularly in relation to housing provision. Through the Investment and Acquisition Strategy the council will be enabling the creation of significant numbers of new properties to meet local housing need as well as providing a sustainable portfolio of assets. Reside is a key vehicle for the management and marketing of the council's non-HRA property.

1. Introduction and Background

- 1.1 Housing is at the heart of the Council's drive to improve the quality of life for residents and to create thriving communities and attractive places where people positively choose to live. The Council's objective is to ensure that residents can find an affordable and high-quality home at a mix of tenures and prices across the borough. Reside as a private sector landlord with a social purpose is the ownership vehicle through which the council will deliver this objective.
- 1.2 Set up in November 2012, Reside was initially created as a structure to develop and manage affordable housing at William Street Quarter and Thames View East. Originally intended as a single entity with the addition of two further developments at Abbey Road and Gascoigne East, Reside is now formed of a number limited liability partnerships and limited companies as investment vehicles for each

subsequent scheme.

- 1.3 Although, the Reside companies own property and are the legal landlord, the companies have no staff and all the services are delivered to tenants by the Council, either by commissioned services from My Place or officers within Inclusive Growth.
- 1.4 Each Reside SPV Board has a common membership and exists to govern special purpose vehicles individually established for each project. They operate in a similar manner to pension funds holding and managing assets. To date this approach has been proportionate given the scale of the property portfolio and enabled a beneficial tax position. However, going forward with an increase in the properties managed by Reside, this structure may need to be revisited, should the creation of a single company entity be demonstrated as more operationally efficient and consistent to discharge the investment and housing management obligations of current and future projects
- 1.5 With a significant property portfolio, Reside will need to develop its strategic landlord function in relation to the acquisition of property and effectively maintaining these assets. Whilst this is fundamental to delivering investment returns, it is also vital that the governance arrangements ensure that Reside's Business Plan and delivery activities remain consistent with the Council's Manifesto commitments and retain a focus on social purpose.
- 1.6 The Reside portfolio currently consists of over 600 homes with a further 200 due in early 2018. 80% of these properties are let to working households and 20% to those households on the Housing Register. Over the next five years there is an opportunity to increase this by a further 3,000. The future increase in the portfolio will be dependent of the performance of Be First and decisions of the Investment Panel for the initial identified 44 sites. Reside's Business Plan will need to evidence how the units will be let, the estimated value of rents against each band (50-65-80 and full market rent), for each property type. Shared Ownership and private sale tenures will also be developed and sold by Reside.
- 1.7 In addition, the Council and Reside will need to determine how the street acquisition properties and disposals that may be transferred to this structure will be managed. While Reside focuses on branding its homes for working households, it will continue to receive nominations from the Housing Register, estate regeneration activities and other sources. A separate exercise will need to look at how the units let to vulnerable groups will be managed recognising that, aside from rent collection and repairs, they will require a dedicated level of management specifically in tenancy sustainment and controlling the risks arising from Welfare Reform and the roll out of Universal Credit.
- 1.8 This report, therefore, sets out a direction of travel for Members to consider and agree. It will ensure that as the property portfolio develops and diversifies the new Reside Board and the Council have the flexibility to consider and manage the impact of various inter-dependencies, tax implications and potential advantages of various company structures dependant on the nature of the asset. It will also enable Reside to develop positive relations with key partners such as Barking and Dagenham Renew.

2. Proposal and Issues

2.1 To realise the potential opportunities of Reside as an ethically driven social housing provider there are several key actions which the council is required to undertake as set out below: -

- Establish new membership for the Reside Board and redefine the governance relationship with the council as the shareholder.
- Create a single management entity and in collaboration with the Reside Board consider the future optimal company structure(s) to realise the investment objectives of the council
- Recruit a suitably experienced manager to lead the development of the Reside contracts, standards and brand.
- Agree the Reside Business Plan and collaborative engagement with Be First
- Charge the Reside Board and manager with the development of robust standards and supporting commissioning arrangements to provide a high-quality service to Reside tenants.

Roles and Responsibilities of the Board and Executive functions

2.2 It is recommended that a new Board with an independent Chair is created that will drive the change in Reside. This will mean that Reside will be an arms-length organisation, not dissimilar to Be First and Barking and Dagenham Trading Partnership, where the Council will retain control through a shareholder agreement, which will include the approval of the business plan which brings together all the relevant factors to enable the company to thrive and deliver the Council's key requirements. The Board will be responsible for:

- Setting strategic direction and longer-term planning,
- Setting and maintaining control of the business plan,
- Ensuring, through the Executive team, that the company has the adequate resources to implement the business plan,
- Establishing policy and procedures to ensure compliance with all regulations,
- Control and oversight of financial affairs of the company(s),
- Monitoring performance of the company, resident satisfaction, and improvement plans,
- Managing risk.

2.3 The Council and Board of Directors will need to consider the resources required and staffing appropriate for to carry out the following functions:

- Governance, relationships, and financial conduct compliance
- Contract Management: service standards, improvement, monitoring, cost management
- Asset management, valuations, and agreement of specifications for pipeline development.

2.4 It is proposed that the Shareholder Panel will include the Reside structure as one of its responsibilities and that the Investment Panel will make key recommendations and decisions in relation to proposals brought forward by Be First in relation to property, banking and corporate matters to maximise investment returns.

Relationship with the Council

- 2.5 It is recommended that the Cabinet, advised by the Shareholder Panel, has control of the strategic direction of the company through the approval of the business plan on an annual basis. It is recommended that the Chief Operating Officer be delegated authority to commence the recruitment of Chair of the Board of the new Reside company, in a similar manner to the process followed for Be First and the Barking & Dagenham Trading Partnership. It will be for the Chair thereafter to recruit to the Board and any other position. The Investment Panel and Shareholder Panel (as appropriate) will have operational oversight of existing and new vehicles which fulfil investment and asset holding functions as well as the financial performance of the portfolio.
- 2.6 The Council as shareholder will hold the Reside Board to account through properly defined parameters. Reside will require a small team of professionals to manage its affairs and contract manage the relationship with its contractors. It will be responsible for ensuring that tenants receive the services they pay for and ensuring that all legal landlord requirements are met. It will also be a key consultee for future investment schemes delivered by Be First to ensure that its portfolio is balanced and can perform well in the market, delivering the Council's investment returns Inclusive Growth will be the commissioning body for Reside ensuring that there is a co-ordinated approach to delivery of outcomes.

Creating a Reside Management Company

- 2.7 The current Reside structures has been dictated by the Council's investment objectives and regulatory environment. This report makes no proposed changes to how the stock is currently held in investment vehicles on terms agreed by the Council. There is however a requirement to bring more consistency and recognised standards to the property management functions under the control of a single managing entity. Creating more robust management will enable a focus on ensuring that the Council's investment pipeline fits within its operating model, the specifications and branding requirements, and that the profile of the stock is balanced and continues to meet its marketing, operational and financial requirements. Sufficient staff resources are currently not in place and this report recommends the recruitment of a Contracts Manager for Reside to undertake this key role. This post will initially be supported by administrative resource from the council but over time it would be for Reside to determine its own staff requirements with the parameters of delivering their business plan and financial objectives.
- 2.8 The creation of a single point of reference for all governance and strategic management will assist Reside develop its own brand. The new Reside company would operate as an overarching management company funded from a portion of the current and future rental income or a short term working capital loan. Further legal and tax advice will be required to ensure that current and future structures are not compromised or new unforeseen liabilities emerge.
- 2.9 The management company will be formally constituted and will discharge all the functions of a landlord as agent of property owning entities and hold its contractors to account using contracts, compliance monitoring tools, and ability to make decisions that are in the best interests of the company and its tenants.

- 2.10 Should, over time an alternative model for the holding of the existing and new investments provide a more suitable structure for these assets, the Council in collaboration with the Reside Board will consider these options.

Reside Business Plan

- 2.11 The Reside Business Plan will be considered by the Council and the Board on an annual basis. The plan will set out how Reside will deliver the council's aims of increasing access to well-managed, affordable homes; ensuring a sustainable return on the level of capital investment and effective stewardship of public assets. The business plan will be set in the context of Reside's role as a social purpose landlord.
- 2.12 Key issues that will need to be addressed within the business plan are outlined in the following paragraphs:

The Brand

- 2.13 The private rented sector is a highly competitive market, with an increasing number of institutional investors now entering the borough. Reside will require a strong brand image and product to distinguish itself as landlord with a social purpose. The foundation for this brand will be the unique offer of excellent quality homes and stability of tenure at a rent that is affordable to working households.
- 2.14 The Council will enable Reside to expand and develop its portfolio through the funding of a balance of property types and sizes that are marketable, sustain their rental value and can be maintained cost effectively. Choice, affordability and high standards are the elements of the brand that Reside will need to demonstrate in their business objectives and plans. There will be an on-going dialogue with Be First to ensure that investment proposals brought to Investment Panel by Be First for approval can be effectively managed by Reside to deliver long-term value and investment returns for the Council.

Existing projects and Pipeline projects

- 2.15 The Reside portfolio currently consists of over 600 homes with a further 200 due in early 2018. Over the next five years there is an opportunity to increase this by a further 3,000. The future increase in the portfolio will be dependent on Be First delivering new units and decisions of the Investment Panel for the initial identified 44 sites. However, Reside's Business Plan will need to evidence how the units will be let, the estimated value of rents against each band (50-65-80 and full market rent), for each property type. This will also be considered by Investment Panel.

Standard Property Specifications

- 2.16 Reside will manage homes that the Council has decided to fund following scrutiny by the Investment Panel, and having passed the Council's criteria for investment, Reside will need to be able to influence those decisions through an agreed methodology with Be First. Consultation with My Place has already established the need to standardise specifications across developments - for example lifts, M&E items, kitchen and bathrooms – through a single set of design and technical

performance specifications. This will enable more effective commissioning of management services and consistency in marketing.

Landlord Services, costs and service charges

- 2.17 This is the area that will require the greatest attention. My Place is still preparing itself for trading and will bring together all the property management functions that are currently delivered by the Council. Reside and My Place have commenced a new relationship which will lead to a clear, defined and costed contract for the delivery of services. This will enable evidence based reporting and monitoring. As the portfolio grows, Reside and My Place will be able to drive down costs. My Place and Reside are already focusing on establishing a good management standard.

Financial strategy

- 2.18 The key financial drivers for Reside will be scrutinised by the Investment Panel and ultimately determined by the Cabinet through agreement of the Business Plan. The Investment Panel will determine funding conditions, it will also oversee the financial management of the company(s) and how improvements to its management can further increase its base. Reside will have a key role in the Be First Gateway process to ensure the design of new housing units are fit for purpose. In addition, Reside will need to state its own financial position against key requirements, rent collection, void and bad debt, management costs etc. It will track the performance of property types and size in relation to market demand to ensure that there is no disproportionate impact on its future performance.

3. Options appraisal

- 3.1 The alternative option would be to continue with the current management arrangements, with staff capacity for Reside provided by council staff. However, with the growth in the number of properties within the portfolio, this is not a sustainable approach. To fully realise the potential of Reside and deliver the required improvement in the commissioning and contract management a more formally constituted management company is required.

4. Consultation

- 4.1 Officer from Inclusive Growth have produced this report and included findings and feedback from officers across the Council and Members. The report has been discussed at officer level in line with the agreed governance arrangements.

5. Financial Implications

Implications completed by: Kathy Freeman, Finance Director

- 5.1 At present, there are currently very little overheads or costs charged to the various Reside special purpose vehicles (SPV). The structures are operating on a very lean and efficient basis. There are currently c600 units across the various Reside SPVs.
- 5.2 Cabinet approved the Investment Strategy in September 2017, setting out the Council's ambitious plans to build and fund 7,400 units directly so there will be a

need to scale up the current Reside Housing management functions to be able to effectively deal with a significant number of units going forward.

- 5.3 A Housing Management company has been proposed which has financial implications. The functions set out in section 2.2 will require resourcing. The number of posts has yet to be determined, as have the grades of the posts. It is the intention that the company will also recruit to a Board, and appoint a Chair and two directors who will provide strategic direction to the company. Until the company proposed manages over 2,000 properties, the staffing costs of the company are unlikely to be self-financing unless efficiencies and savings through effective contract management can be made
- 5.4 It should be proposed that salaries for the Board are kept minimal, and to mirror the salaries of Board members for Registered Social Landlords and Housing Associations (between £3k to £6k). The cost of the Manager is yet to be costed. There is no existing funding for this function so this cost, alongside the cost of the Board will be funded from the existing income generated from the current SPVs and could reduce the income from the £5.125m investment strategy target until the company manages over 2,000 units – the estimated breakeven point. An effective housing management company will reduce costs at the design/planning stage and support the delivery of lower cost yet good quality housing. Another objective for the company will be to drive down the costs of management and maintenance, further increasing the net profit from the SPVs.
- 5.5 The form of the vehicle will require careful consideration as it will determine the implications on corporation tax and VAT. If the company is set up as a limited company guaranteed by shares, it will be subject to corporation tax. Legal advice will need to be sought for tax planning purposes.
- 5.6 If there are existing staff who may qualify for TUPE to the Housing Management company, consideration needs to be given to Pension matters and approval sought from the Pension Panel before admission to the LB Barking and Dagenham fund.

6. Legal Implications

Implications completed by: Suzan Yildiz, Deputy Head of Legal Services and Paul Field, Senior Governance Lawyer

- 6.1 As set out in the report there are a number of legal formalities which will be necessary to ensure Reside has a fit for purpose and future proof structure to ensure the success of its business plan and effective management of housing stock.
- 6.2 Whilst Reside differs from the Council's other Special Purpose Vehicles, in that it has been extant and operational for some years, for reasons of simplicity, transparency and sound management, the governance arrangements are best designed to broadly conform with the design for Be First, with similar structures for strategic oversight by the Shareholder Panel and the Investment Panel. However, there are a number of complexities which are under consideration and may shape the emergent structures of Reside, and will be addressed in due course, namely: -
- i. The impact of any new structural changes upon existing special purpose

vehicles and the role of LLPs in the Reside structure;

- ii. The impacts of the imminent Green Paper on Social Housing and the role of a registered provider company within the Reside structure; and
- iii. The ability of the Council, Be First and / or Reside to be able to access grant funding for schemes (for example in the Housing Zones) by utilising a registered provider in the Reside structure.

- 6.3 The power to establish a group of companies such as Reside is available through the exercise of the “general power of competence” under Section 1 of the Localism Act 2011, which gives the local authority the power “...*to do anything that individuals generally may do*”. The power is not limited either by the need to evidence a benefit accruing to the local authority’s area, or in geographical scope. However, existing and future restrictions contained in the legislation continue to apply.
- 6.4 The legal status of Reside (which is effectively a group of companies created for special purposes) is a Teckal company, that is a specific entity for the purposes of European law which is a wholly owned company of the Council and accountable to the Council, as shareholder, for delivery of its socio-economic, regeneration or housing objectives. A Teckal company is not subject to the European Procurement regime in so far as it can award contracts to the Council as its parent body and vice versa. As a Teckal company, Reside has some degree of autonomy in how it goes about its business. However, it is ultimately answerable to the Council for its strategic direction and performance. As a Teckal company Reside is required to conduct 80% or more of its activities for the Council.
- 6.5 The suite of contractual and governance documents including the Articles of Association together with Shareholder and Service Level Agreement regulate the relationship between Reside and the Council and seek to ensure that the company’s strategic direction and activities accord with the Council’s corporate objectives for growth and regeneration.
- 6.6 The Teckal arrangement creates an exemption from procurement requirements and enables the Council’s own services to be provided to Reside without extensive and expensive tendering obligations. Furthermore, it enables a seamless working with other Council controlled companies such as Be First.
- 6.7 Observance will be taken with the Local Government Act 2003 enables the Council to finance Reside its work and projects subject to complying with the Treasury guidance and State Aid rules.
- 6.8 As identified in the report there are no specific staffing implications at this point but in any event if such should emerge then the Transfer of Undertaking Regulations and required consultation would apply, together with the necessary protection to terms and conditions and pension provisions of any affected staff.
- 6.9 The following documentation will be necessary once the optimum structure is settled:

- **Shareholder Agreement** - The Shareholder Agreement sets out the relationship by which the Council will participate in the Reside Company as its shareholder. It defines the business of the company, how it will conduct its affairs, the composition of the Reside Board of Directors, how it will be financed, what matters will need to be referred to the Council, and how it will produce its accounts. It also includes provisions, rights to information, anticorruption, duration and termination, payment of dividends, confidentiality and assignment.
- **Articles of Association** - The Articles of Association form the Reside Constitution. They define the Directors' powers and responsibilities, and meeting arrangements. They include provisions covering conflicts of interest, appointment and termination of directors, remuneration of directors, shares, dividends, capitalisation of profits, decision-making by Shareholders, general meetings, administrative arrangements, and directors' indemnity and insurance.
- **Service Agreement** - The Service Agreement defines all the terms and conditions relating to the provision of services by Reside to the Council. This will include Key Performance Indicators, fees and financial information including audit. This could be a services concession contract for an initial period to be agreed under which Reside is granted a 'concession' to deliver a range of services to the Council under agreed terms.
- **Council Service Level Agreement** detailing the services that Reside will buy back from the Council (including IT, HR, payroll, procurement, and legal) and the commercial and performance terms for those agreements.
- **Financial Arrangements** – detailing any loans, security and reporting of risks

7. Other Issues

- 7.1 **Risk Management** – A risk management section will be included in the Business Plan.
- 7.2 **Contractual Issues** – These have been addressed in the body of the report
- 7.3 **Staffing Issues** – None at this stage but, subject to further activities, TUPE may be a relevant issue for which any affected staff will be consulted.
- 7.4 **Corporate Policy and Customer Impact** – Providing good customer services to Reside Tenants is a key theme of the Business Plan, but no specific changes are being recommended at this stage.
- 7.5 **Property / Asset Issues** – Reside is a holding and management property company. Key issues are addressed in the Business Plan and any decisions will be taken following the Council's governance arrangements.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None