

CABINET

11 December 2018

Title: Purchase of Welbeck Wharf, 8 River Road, Barking	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report with Exempt Appendix 3 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972 as amended)	For Decision
Wards Affected: Thames	Key Decision: Yes
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Accountable Director: Ed Skeates, Development Director, Be First	
Accountable Strategic Leadership Director: Claire Symonds, Chief Operating Officer	
Summary <p>The area around River Road / Thames Road is a key regeneration focus within the Borough. The area acts as a gateway into the Barking Riverside Gateways Housing Zone and Barking Riverside, which in combination could deliver 13,800 new homes. An opportunity has arisen for the Council to purchase a key strategic site known as Welbeck Wharf, a 9.25-acre site that lies at the northern end of River Road and benefits from significant frontage onto River Road and the River Roding. The land acquisition of Welbeck Wharf also has the potential to unlock a further 27 acres of development land.</p> <p>The freehold interest in Welbeck Wharf is held by owner occupier Seabrook Holdings Limited and Montpelier Pension Trustees Limited (the Vendor), who have secured alternative premises in Thurrock for its wholesale drinks distribution business and wish to sell their freehold ownership of the site. Council ownership of this site would give the Council and Be First a greater stake in the regeneration of the area, ensuring this site becomes part of the development proposals including the potential intensification of industrial floorspace and the possible provision of new private and affordable housing.</p> <p>The Vendor has been in negotiations with other parties and in order for the Council to secure the purchase of the site without it being marketed on the open market the terms of the land acquisition have been agreed rapidly. Further work is needed on due diligence to secure the land acquisition, but this report sets out the scope of the transaction.</p> <p>Appendix 3, which is in the exempt section of the agenda, sets out the terms of the land acquisition and the critical next steps to completion.</p>	
Recommendation(s)	
The Cabinet is recommended to:	

- (i) Approve the acquisition by the Council of the Welbeck Wharf site, as shown in Appendix 1 to the report, on the terms set out in the report;
- (ii) Delegate authority to the Chief Operating Officer, advised by the Investment Panel and in consultation with the Director of Law and Governance, the Cabinet Members for Finance, Performance and Core Services and the Cabinet Member for Regeneration and Social Housing, to determine any short-term holding arrangements for the site and to enter into any necessary agreements to affect those arrangements;
- (iii) Approve funding 'in principle' for pre-development costs up to the sum specified in Appendix 3 to the report and delegate authority to the Chief Operating Officer, advised by the Investment Panel and in consultation with the Director of Law and Governance, the Cabinet Members for Finance, Performance and Core Services and the Cabinet Member for Regeneration and Social Housing, to approve the release of the appropriate pre-development funding; and
- (iv) Delegate authority to the Chief Operating Officer, in consultation with the Director of Law and Governance, to enter into all necessary agreements to complete the freehold purchase and lease back arrangements.

Reason(s)

- Regeneration and redevelopment of a key gateway site
- Secure a strategic parcel of land
- Support new housing and industrial intensification on land adjacent to the Barking Riverside Gateways Zone

1. Introduction and Background

- 1.1 Welbeck Wharf, 8 River Road, Barking IG11 0JE (the Site) is a 9.25-acre site that contains three bonded warehouses, with a total floorspace of 170,000 SQFT. The bonded warehouses are currently used for the storage and distribution of imported alcoholic products. The site also contains a vacant office building to its north. A site plan can be found in Appendix 1 of this report.
- 1.2 The Site is bounded by the River Roding to the west and River Road to the east. The bonded warehouses consist of typical industrial steel frame with metal cladding and lightly graded roofs. The entire site is concrete hardstanding and the ground is raised on its western side, where it is directly adjacent to the River Roding.
- 1.3 The Site is owned and operated by Seabrook Holdings Limited and Montpelier Pension Trustees Limited, who have acquired an alternative premise in Thurrock that better serves their needs and they therefore wish to sell the Site and relocate to Thurrock.

2. Proposal and Issues

Opportunity

- 2.1 The Council has been given the opportunity to acquire the Site as part of the regeneration of the River Road area generally and the Rose Industrial Estate that lies to the north in particular.
- 2.2 Welbeck Wharf is identified in the Be First business plan as a potential land acquisition and future development opportunity. The site is currently allocated as designated Strategic Industrial Land (SIL) in the current London Plan. However, the emerging London Plan allows for the introduction of residential uses provided that the existing level of industrial floorspace is retained in a completed scheme.

Heads of Terms

- 2.3 The structure of the transaction has been agreed between the Vendor and Be First as the Council's agent to include the following headlines clauses, the details of which are contained in the Appendix 3 (this document is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation - paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information):

- An Initial Land Payment that is topped up by;
 - A Bullet Payment which can be called by the Vendor up to 18 months after purchase, and consists of a fixed sum plus an amount based on each residential unit consented on the site
 - An Overage Payment if the Bullet Payment is not called after 18 months after acquisition may be triggered which would give the vendor a larger profit share in any subsequent redevelopment
- Any land remediation costs will be deducted from the Bullet Payment or Overage Payment
- Exchange and Completion to occur within industry standard timescales
- Exchange to occur with a 10% deposit
- A short-term lease back to allow the Vendor to stay in occupation at a market rent during the initial pre-development stage of the project

Short Term Lease Back

- 2.4 Throughout the period of negotiation on the HOTs, the Vendor was consistently clear that a lease back arrangement formed an integral part of the proposed transaction. Be First negotiated a short-term lease, with an initial term of one year with the Vendor. The lease will be contracted out of the Landlord and Tenant Act 1954, to ensure the Council can gain vacant possession at the end of the lease. The Vendor has the option to extend the lease by a maximum of an additional two years. Any extension to the lease beyond the initial one-year term will be subject to a rolling six-month break clause. The annual rent is contained in Appendix 3.
- 2.5 As the lease is for a maximum of three years, it is not subject to scrutiny under the 'best consideration' regulations, as these regulations only apply to lease's with terms of 7 years or more.

- 2.6 The proposed lease back to the Vendor does not breach State Aid rules, because the lease back is an essential part of the land transaction and the Vendor is not gaining an advantage over competitors. The Vendor already owns the Site and is only willing to sell the Site on the basis that they are granted a lease back at the proposed rental level. A higher annual rent would only increase the price the Council would have to pay for the land.
- 2.7 Purchasing the site with a tenant in occupation has a number of benefits for the Council, which include the tenant being responsible from the point of acquisition up to the end of their lease for paying rent to the Council, site security, maintaining and insuring the buildings along with the payment of business rates. Having a tenant in occupation also removes the Council's need to appoint letting agents to market the site in order to find a tenant willing to occupy the site on a short-term basis and the associated costs and timescales.
- 2.8 Once the Vendor vacates the site, the buildings will be potentially re-let on a short-term basis or demolished to reduce holding costs such as business rates and encourage redevelopment.

Relevant Planning Policies

- 2.9 The site is subject to the following planning designations:
- The site is designated Strategic Industrial Land ('SIL');
 - The site is a Safeguarded Wharf;
 - London Riverside Opportunity Area;
 - The entire site is located within Flood Zone 3 (High Risk). The southern part of the site benefits from flood protection; and,
 - None of the existing buildings are listed, either statutorily or locally, and the site does not fall within a conservation area.
- 2.10 The site is designated within the wider River Road Employment Area SIL and within the safeguarded Welbeck Wharf. The GLA's latest Safeguarded Wharves Review (May 2018) and the London Riverside OAPF recommend the removal of this wharf designation, as water-borne access to the site is challenging due to navigational limitations.
- 2.11 The Mayor of London's Safeguarded Wharves Review (Consultation Draft, May 2018) and the London Riverside OAPF (2015) recommend the removal of the Safeguarded Wharf designation. The public consultation on this document has now closed, and the GLA are considering responses. Timescales for making a recommendation to the Secretary of State are not yet confirmed.
- 2.12 Both adopted and emerging policy supports and encourages development proposals within SIL which fall within broad industrial type activities (e.g. Use Class B1(b), B1(c), B2 and B8 and other industrial-type functions such as waste management, aggregates etc (LP Policy 2.17, draft LP Policy E5). Draft Policy E5 also includes flexible premises suitable for Small Medium Enterprises (SMEs, B1(c)/B2/B8) and R&D industrial related products/processes falling within Use Class B1(b).
- 2.13 As noted above, emerging policy dictates that opportunities to make more efficient use of SIL in order to free up land for housing and other (non-SIL-related) land uses

is to be explored through Development Plan reviews, through Opportunity Area Planning Frameworks in collaboration with the GLA and other planning authorities or as part of a co-ordinated master planning process in collaboration with the GLA and relevant borough (draft LP Policies E5, E7).

- 2.14 London Plan ('LP') Policies 3.3 and 3.4 expects development to optimise housing output. Density guidelines for the site's suburban/PTAL 2 location are 150 – 200 habitable rooms per hectare (equivalent to 35 – 75 units per hectare). It should be noted that the New London Plan is moving away from these density guidelines, with a focus on high design quality instead.
 - 2.15 LP Policy 3.5 specifies minimum space standards for residential development, while LP Policy 3.6 requires provision to be made for play and informal recreation based on the expected generated child population.
 - 2.16 LP Policy 3.9 seeks mixed and balanced communities, particularly in some neighbourhoods where social renting predominates and there are concentrations of deprivation.
 - 2.17 LP Policy 6.13 specifies maximum car parking standards of up to 2 spaces per unit and minimum cycle parking standards of 1 space per 1 bed and 2 spaces for all other dwellings, plus 1 visitor space per 40 units.
 - 2.18 CS Policy CM2 supports the optimal delivery of additional residential development, particularly on previously developed land.
 - 2.19 CS Policy CC1 generally expects residential development of 10+ units to provide a minimum of 40% family accommodation, subject to site specifics.
 - 2.20 Draft London Plan Policy E4 sets out to protect existing industrial and warehousing uses, by resisting any net loss of 'floorspace capacity'. Floorspace capacity is defined as either:
 - a. existing industrial and warehousing floorspace; or,
 - b. the potential industrial and warehousing floorspace that could be accommodated on-site at a 65% plot ratio, whichever is greater.
 - 2.21 Draft London Plan paragraph 6.4.5A allows flexibility when looking at the 65% plot ratio measure, giving regard to "the characteristics and operational requirements of the different industrial uses". Developments must ensure that they provide sufficient yard space for the operational requirements of the use(s) being proposed.
 - 2.22 Draft London Plan Policy E5 seeks to sustain SILs as London's largest concentrations of industrial and related uses. This policy, therefore, supports the intensification of SILs and resists proposals for non-industrial uses (including residential, places of worship, etc), unless areas are "released through strategically co-ordinated process of SIL consolidation".
- Pre-Development Costs**
- 2.23 The sums set out in Appendix 3 make provision for the costs of undertaking the following pre-development activities:

- Detailed feasibility studies to establish the most suitable future development
- Costs for the design of a future development and the submission of a planning application, which will include the services of a full design and planning team, with the following main disciplines;
 - Architect
 - Landscape architect
 - Flood risk consultant
 - Townscape
 - Daylight and sunlight & Rights to light
 - Planning consultant
 - Community consultation
 - Highways engineer
 - Environmental consultant
 - Quantity Surveyor
 - Structural engineer / M&E engineer
 - Viability consultant
- The costs of clearing the site and making it ready for development. This includes the following activities:
 - Site security
 - Demolition hoarding
 - Demolition of existing buildings
 - Remediation of any contaminated ground
 - Archaeological investigations

Future Uses

2.24 As this report sets out, Welbeck Wharf sits on a strategic location within the Borough. Upon acquiring the land, Be First will undertake a detailed feasibility exercise to determine the most suitable future development for the site. Further details of possible future development options are set out in Appendix 3.

Flood Risk

- 2.25 It is acknowledged that Welbeck Wharf sits within Flood Zone 3, and that the southern part of the Site benefits from flood protection. However, provided suitable flood risk mitigation measures are incorporated into the future scheme's design, this is not a barrier to future development.
- 2.26 Prior to any detailed design work commencing on a future development, an independent flood risk consultant will be appointed to provide a flood risk strategy. The strategy will provide guidance and recommendations to the design team to ensure suitable mitigation measures are designed into any future scheme from an early stage.
- 2.27 A flood risk assessment will then accompany any future planning application on the Site. Along with all other planning submission documents, the flood risk assessment will be reviewed by LBBDD planning case officers, who will have the ability to appoint their own independent expert to undertake a peer review.

3. Options Appraisal

3.1 Option One – Acquire the Site

- Acquiring the Site will ensure the Council and Be First take control of a strategically important parcel of land within the Borough and unlock access to a further 27 acres of future development land.
- Ownership of the site will enable the Council and Be First to undertake extensive feasibility studies to establish the most suitable future development to bring forwards on the site.
- When the most suitable future development solution has been established on the site, Be First will appoint a professional team to work up and submit a planning application which will be presented to the Council's Planning Committee for consideration.
- If the planning application is approved, the existing buildings on the site will be demolished and the ground remediated. This will ensure the site can be sold as a cleared development opportunity with planning permission under the delegated powers this report seeks for the Chief Operating Officer. The alternative to selling the cleared and development ready site will be for Be First to deliver the planning permission and potentially return the completed building subject to securing additional funds for construction.
- If planning permission is not secured, further development opportunities will be considered.

3.2 Option Two – Do not acquire the Site

- If the Site is not acquired by the Council, it is likely that the existing owner occupier will continue with its planned business relocation to Thurrock, as the site in Thurrock has already been purchased and a modern purpose-built facility has been constructed.
- The existing owner will then have the following options for the site:
 - Sell the Site to a private developer. A private developer is likely to bring forwards speculative development proposals that could see a delay in the delivery of a planning compliant scheme.
 - Land bank the site for a future sale. This could result in the land falling vacant and becoming hub for antisocial behaviour, fly tipping and loss of business rates income.
 - Let the site and hold it as a long-term investment. This will result in delaying the Council's and Be First's plans to regenerate the area.
- Loss of the Council's and Be First's ability to acquire a gateway site, which unlocks an additional 27 acres of land for future development

4. Consultation

- 4.1 Given the need to move quickly, and the sensitive nature of the discussions between the Vendor and Be First, there has been limited consultation on the site purchase. The site has been identified within Be First's business plan as a potential opportunity which would be funded through the £100m development fund. Consultation would take place with a wide range of stakeholders as development proposals move forward through the planning process. Regeneration in the area is well established under the Riverside Gateways Housing Zone and the Council's 's current Local Plan.
- 4.2 The proposal was discussed at Investment Panel on 17th October 2018 which supported the recommendation to proceed with the purchase.

5. Commissioning Implications

Implications completed by: Graeme Cooke, Strategic Director of Inclusive Growth

- 5.1 This is a strategically located site at the gateway to the Barking Riverside Gateway Housing Zone and Barking Riverside. The proposal to re-provide the existing commercial floorspace and provide 50% affordable housing (or potentially 35% affordable housing if the site is sold to a private developer once planning is secured by the Council/ Be First) mean this site has the potential to make a significant contribution to the Council's and Be First's new homes, affordable homes and jobs targets as set out in the Be First Business Plan and Borough Manifesto albeit beyond the current Business Plan period. Moving forward it will be essential for local communities to be engaged in the plans for this site and for social value to be maximised both during construction and in the benefits the development delivers.

6. Investment Implications

Implications completed by: Andrew Sivess, Investment Manager

- 6.1 The proposals within this report are consistent with the objectives on the Investment and Acquisition Strategy (IAS). The acquisition would significantly support delivery of the Thames Road Housing Zone area as a high-quality mixed-use redevelopment area.
- 6.2 In principle the acquisition falls within the ambit of the Land and Acquisition Budget approved by Cabinet to help delivery the IAS. However, this budget was established as £100m revolving budget. The initial land purchase cost set out in Appendix 3 will need to be funded from this budget and a further call at a level set out in Appendix 3 may also need to be funded from within this budget. At the grant of planning permission these land acquisition costs should be refinanced and repaid to the Land Acquisition Budget as a scheme development cost, financed from long-term funding. The overage costs should also be treated as a development cost.
- 6.3 The investment returns (NPV and IRR) set out in the body of this report fall within the limits of acceptable returns set-out in the IAS.
- 6.4 Cabinet approval will be required to approve the purchase of this site.

7. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 7.1 The purchase of Welbeck Wharf is part of the Be First Business plan agreed in March 2018.
- 7.2 Appendix 3 in the exempt section of the agenda outlines the Heads of Terms and market appraisal for the proposed purchase of the site. The proposed costs do allow the current site owner to participate financially in any development of the site and this additional cost will impact any potential income generated from the site development.
- 7.3 Were the Council to proceed with a large residential development on the site then this would increase the site costs to higher than originally budgeted in the Be First business plan and would require a significant level of borrowing. Additional borrowing costs to fund the purchase and subsequent development of the site will need to be funded through an increase in the interest budget within the Medium-Term Financial Strategy.
- 7.4 There are a number of options available to develop the site after it has been purchased but each option will require a full appraisal to be completed. The report is seeking to delegate approval to the Chief Operating Officer to determine the most suitable strategy once planning permission has been secured.
- 7.5 The pre-development costs outlined in Appendix 3 are significant but includes feasibility studies, planning and site clearing.
- 7.6 The site falls within Flood Zone 3 (High Risk) and this risk will need to be addressed as part of any site development.

8. Legal Implications

Implications completed by: Suzan Yildiz / Paul Feild, Legal Practice

- 8.1 This report proposes the freehold acquisition of the Site known as Welbeck Wharf. Key legal considerations will be: -
 - the land purchase and the leaseback,
 - the lease should ensure that the security of tenure under the landlord and Tenant Act 1954 is excluded,
 - the need to realise the heads of terms in a legally binding and commercially sound form,
 - the legal powers to enable the transaction,
 - consideration of the entity that will acquire the site and enter into an agreement based on the heads of terms,
 - the need to minimise the Council's exposure to risk and unforeseen liabilities particularly with regard to the size of the site, its current and future investment value, planning, development and environmental risks.

- 8.2 The purchase will be at market value. The Council has the power to acquire land by virtue of Section 120 of the Local Government Act 1972 and to carry out the proposed scheme by the general power of competence given by section 1 of the Localism Act 2011 (GPC). Under the GPC power the Council can do anything that individuals generally may do provided that there is no prohibition against it elsewhere. Section 1(5) of the Localism Act provides that the general power of competence under section 1 is not limited by the existence of any other power of the authority which (to any extent) overlaps with the general power of competence. The use of the power in section 1 of the Localism Act 2011 is, akin to the use of any other powers, subject to Wednesbury reasonableness constraints and must be used for a proper purpose.
- 8.3 Whilst the general power of competence in section 1 of the Localism Act 2011 provides sufficient power for the Council to participate in the transaction and enter into the various proposed agreements, further support is available under Section 111 of the Local Government Act 1972 which enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of its functions, whether or not involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
- 8.4 The purpose for which land is acquired is relevant to the powers to be relied upon. The report has identified the site as a development opportunity and detailed feasibility assessments are being carried out to determine the most suitable development strategy. Therefore, options are still being appraised and a preferred option has not emerged. However, the primary purpose of the acquisition appears to be the regeneration and wellbeing of the Council's area.
- 8.5 Investment Aspects - In exercising the power of general competence and in making any investment decisions (to the extent that any aspect of this transaction is considered to involve investment decisions), the Council must have regard to the functions for the purpose of which it is exercising the power, must act reasonably and also have regard to the following: -
- i. Compliance with the Statutory Guidance on Local Government Investments (the Statutory Guidance);
 - ii. Fulfilling its fiduciary duty to tax payers;
 - iii. Obtaining best consideration for any disposal;
 - iv. Compliance with Section 24 of the Local Government Act 1988 in relation to giving financial assistance to any person (which either benefits from a general consent or requires express consent by the Secretary of State);
 - v. Compliance with any other relevant considerations such as state aid and procurement;
- 8.6 Development/Land Risks and Considerations - Apart from the requirement to purchase the land at no more than the market value there will be the imperative to ensure that all land, development and environmental risks are identified and managed through feasibility studies to ensure the preferred development option is deliverable before significant pre-development expenditure, and mitigation strategies put in place. Potential risk arising include, but are not limited to, any third-party rights or restrictions or incumbrances which may frustrate or prevent the Council's regeneration objectives and development of the land. In terms of

environmental risks, caution must be exercised in that a post-industrial site may raise risks of land contamination and if so, any remedial action and the costs of such remediation would need to be factored into the feasibility and viability considerations. Specifically, there should be early due diligence before contractually committing to the transaction to ensuring that the site is suitable for the construction of dwellings and is without risk of historical contamination, or in the alternative that any contamination is capable of being remedied and costs are both factored into the acquisition price and do not compromise the viability of any residential development. A full environmental survey, development appraisals and sound understanding will be a necessity if the Council seek to pursue mixed use or residential development on the site.

- 8.7 Heads of Terms into Agreements - In terms of the purchase process and the use of lease-back and overage clauses this will need specialist drafting and financial provision should be made accordingly. It is essential that the Council will have complete vacant possession when it is ready to proceed with its development plans. Triggers for additional payments of the bullet and overage need to reflect the land remediation costs are to be deducted from these payments.
- 8.8 State Aid - As local government is an emanation of the state, the Council must comply with European Law regarding State Aid. This means that local authorities cannot subsidise commercial undertakings or confer upon them an unfair economic advantage. This report does not identify any specific aspect of the proposed acquisition or lease back which is other than a commercial transaction on normative market terms. Thus, this arrangement satisfies the requirement that it should be on market terms and would not raise state aid concerns.
- 8.9 Human Rights – The scheme as described does not seek the use of compulsory purchase powers or result in the displacement of any residents, therefore, there do not appear to be critical risks associated with a Human Rights Act challenge. Nevertheless, matters should be kept under review in case such considerations should arise.

9. Other Implications

- 9.1 **Risk Management** – The land purchase risk has been mitigated via the independent market appraisal undertaken by CBRE and due diligence to date. Extensive legal due diligence work is taking place regarding the acquisition. A phase 2 ground investigation survey is currently being tendered to ensure a full picture of any ground contamination is established as soon as possible.
- 9.2 **Contractual Issues** - The proposal is for the Council to purchase the land freehold and enter into the necessary agreements. The heads of terms need to be adjusted accordingly to reflect realistic timescales.
- 9.3 **Staffing Issues** – The delivery of this project will be undertaken by Be First in line with agreed fees.
- 9.4 **Safeguarding Children** – Design development undertaken on all new projects by Be First will take into account the needs of local communities including children, with a focus on creating high-quality, accessible spaces that allow for freedom of movement and social cohesion. The development process will explore opportunities

to introduce new or improve existing play facilities and create safer walking routes to schools.

9.5 **Health Issues** – There is considerable evidence that improvements to housing and the local environment can improve health and well-being outcomes for local people. Health issue will be taken into consideration during the development process, where applicable, with a view to improving health and well-being for new and existing residents.

9.6 **Crime and Disorder Issues** – Section 17 of the Crime and Disorder Act 1998 places a responsibility on councils to consider the crime and disorder implications of any proposals. The proposals set out in this report will help make the areas safer by improving the quality of the environment, creating safer more natural surveillance for public areas and pedestrian routes. All new developments will fully meet the requirements for Secured By Design accreditation.

9.7 **Property / Asset Issues** - The proposal involves a freehold purchase providing an additional asset for the Council.

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

List of appendices:

- Appendix 1: Site Plan
- Appendix 2: The site within its regeneration context
- Appendix 3: Proposed Terms of the Land Acquisition (exempt document)