

## CABINET

17 September 2019

<b>Title:</b> Redevelopment of 263 - 285 Rainham Road North and 291 - 301 Oxlow Lane	
<b>Report of the Cabinet Member for Regeneration and Social Housing</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> Heath	<b>Key Decision:</b> Yes
<b>Report Author:</b> Mark Crane, Head of Affordable Housing Delivery, Be First	<b>Contact Details:</b> Tel: 020 8227 2350 E-mail: <a href="mailto:mark.crane@befirst.london">mark.crane@befirst.london</a>
<b>Accountable Director:</b> Ed Skeates, Development Director, Be First	
<b>Accountable Strategic Leadership Directors:</b> Claire Symonds, Chief Operating Officer, and Graeme Cooke, Director of Inclusive Growth	
<b>Summary</b>	
<p>263-285 Rainham Road North and 291-301 Oxlow Lane comprise 17 properties, of which 12 are occupied by Council tenants and 5 by leaseholders. The existing buildings are in reasonable condition. However, the site is under-utilised with poor quality open space. The estate has long been considered as a potential redevelopment scheme because of the potential to significantly increase the amount of housing on the site. It was identified in the Council's Estate Renewal Programme 2015-2021, the Investment and Acquisition Strategy 2017, and Be First's Business Plan 2019 – 2024; all of which have been approved by Cabinet.</p> <p>Feasibility work has been undertaken to assess the development potential of the site, which identified that there is significant potential to intensify the use of the site to provide c.60 new homes. The proposed scheme is 100% affordable; 65% Affordable Rent and 35% London Affordable Rent/Council target rent (homes at target rent will be provided for existing tenants of the blocks who wish to return to a new build home on the site). This represents a significant increase in both the number of affordable homes on the site and the number of homes at LAR/target rent which can be allocated to households from the Council's housing register. The scheme has been endorsed by the Investment Panel.</p> <p>The existing tenants have a legal right under Section 105 of the Housing Act 1985 to be consulted on matters of housing management, which include any development proposal resulting in the potential relocation of tenants. This consultation has now been carried out, and it sought to understand their views on the redevelopment proposals and their housing needs to ensure that suitable alternative housing could be found if the redevelopment goes ahead. The two options discussed were:</p> <ul style="list-style-type: none"><li>- Do nothing</li><li>- Comprehensive redevelopment</li></ul>	

The vast majority (c.77%) of residents who provided feedback were supportive of the option to comprehensively redevelop the site.

In accordance with standard Council practice for estate renewal projects, it is proposed that Initial Demolition Notices are served on the existing tenants to enable vacant possession of the site to be secured for redevelopment.

It is intended that vacant possession should be achieved through discussion and agreement with the tenants and leaseholders, although the use of the Council's compulsory purchase powers may be required as a last resort. Cabinet approval is sought in principle to the use by the Council of its Compulsory Purchase Order (CPO) making powers, should they prove necessary to facilitate the future redevelopment of the site.

It is envisaged that the ownership of the new homes will be within the Reside structure, which is outside of the Housing Act. Pursuant to section 122 of the Local Government Act 1972, Cabinet approval is required to appropriate the land from the Housing Revenue Account to the General Fund.

The Cabinet report explains the outcome of the resident engagement, and seeks the following approvals so that the redevelopment can proceed:

- approval to serve demolition notices and use of Compulsory Purchase Order (CPO) powers;
- approval to appropriate the land from the Housing Revenue Account to the General Fund.

If approved, Be First would prepare a detailed planning application to redevelop the site to deliver a residential scheme comprising c.60 affordable homes (65% Affordable Rent and 35% London Affordable Rent/Council target rent).

### **Recommendation(s)**

The Cabinet is recommended to:

- (i) Approve the proposed redevelopment of 263-285 Rainham Road North and 291-301 Oxlow Lane, RM10 7NJ, as shown edged red in the plan at Appendix 1 to the report, having considered the outcomes of the consultation with affected residents as summarised in section 2 and Appendix 3;
- (ii) Agree the service of Initial Demolition Notices on all secure tenants at the affected properties at the appropriate time, in order to suspend the requirement for the Council to complete Right to Buy applications for as long as the notices remain in force and delegate approval and timing of final notices to the Director of Inclusive Growth, in consultation with the Director of Law and Governance;
- (iii) Approve in principle to the use by the Council of its Compulsory Purchase Order (CPO) making powers, should they prove necessary to facilitate the future redevelopment of the site;

- (iv) Approve in principle the appropriation of the land, as shown edged red in the plan at Appendix 2 to the report, under Section 122 of the Local Government Act 1972 from the Housing Revenue Account to the General Fund;
- (v) Agree to allocate £2,243,000 from the Investment & Acquisition Budget to fund the pre-development costs:
- (vi) Agree the inclusion of the project in the Council's Capital Programme in the total sum of £15,484,000 subject to securing planning permission and procurement of a contractor in accordance with the project outputs and budget;
- (vii) Agree in principle the funding strategy set out in section 4 of the report, including borrowing up to £10,203,000 within the General Fund from the Public Works Loan Board, to finance the development and ownership of the affordable rent homes via a loan agreement made between the Council and any suitable vehicle that the new units may be held in (e.g. a new B&D Reside Registered Provider or other Reside vehicle);
- (viii) Delegate authority to the Director of Inclusive Growth, in consultation with the Chief Operating Officer, the Director of Law and Governance and the Cabinet Members for Finance, Performance and Core Services and Regeneration and Social Housing, to determine the final arrangements and agree the contract and ancillary legal documents to fully implement and effect the proposals set out in the report; and
- (ix) Authorise the Director of Law and Governance to execute all the legal agreements, contracts and other documents on behalf of the Council.

**Reason(s)**

The recommendations are designed to increase the amount of affordable homes in the borough and ensure that these new homes benefit local residents, including those already living on the estate. As such they are aligned to the Council's strategy for Inclusive Growth.

**1. Introduction and Background**

- 1.1 265-285 Rainham Road North and 291-301 Oxlow Lane are currently occupied by 17 residents (12 tenants and 5 leaseholders, two of whom are private landlords).
- 1.2 The estate was first identified as a potential estate renewal scheme as part of the Council's Estate Renewal Programme 2015-2021, which was approved by Cabinet on 27 January 2015. It was included in the Pipeline Regeneration Programme contained within the Council's Investment and Acquisition Strategy 2017 approved by Cabinet on 19 September 2017. The scheme is included in the Be First Business Plan approved by Cabinet on 21 May 2019.
- 1.3 In January 2015 Cabinet agreed a number of recommendations to deliver the Estate Renewal Programme 2015-21. However, at that stage, the statutory consultation relating to this estate had not been undertaken. This has now been done, and the findings summarised in this report. As such, Cabinet is now asked to

consider the recommendations in this report in light of the findings of the consultation alongside the wider benefits the proposals would bring as set out in this report, including a significant uplift in the number of affordable homes on the site.

- 1.4 The buildings on the estate are in reasonable condition. However, the open spaces are poorly configured and under-used, and the site has significant development capacity to provide additional affordable housing. An aerial photo of the site is provided in Appendix 1. Feasibility work has been undertaken, which has identified that there is potential to redevelop the site to provide c.60 new homes, together with improved open spaces. The proposals have been reviewed and approved by the Investment Panel as an investable proposition.
- 1.5 The existing tenants and leaseholders have a legal right under Section 105(1) and (2) of the Housing Act 1985 to be consulted on matters of housing management, which include any development proposal resulting in the potential displacement of tenants or relocation of demolition.
- 1.6 The consultation with existing residents has been carried out, which is explained in further detail in the following section.

## **2. Resident Consultation**

### **Methodology**

- 2.1 Successful visits were undertaken with 13 of the 17 residents, including 11 of the 12 tenants. The residents were asked their preference from the following options:
  - Do Nothing
  - Comprehensive redevelopment
- 2.2 The following information was also gathered during the visits:
  - What they liked/disliked about their current housing and the local area.
  - Whether their current housing needs were being met.
  - What impact moving home would have on them.
  - Specific support they would need in order to relocate.
  - Whether they would like to return.
- 2.3 Demographic information was also gathered in relation to Gender, Age, Ethnicity, Religion, and Disability.

### **Resident feedback**

- 2.4 The feedback on the development options was:
  - 10 were in favour of comprehensive redevelopment.
  - 2 were opposed to comprehensive development.
  - 1 was undecided.
  - 4 provided no feedback (as unable to arrange visits or telephone call).

2.5 Common points raised in the feedback from residents was:

- current housing is spacious and meets residents' needs,
- security and safety concern of the car park area, where there is some anti-social behaviour,
- security into the buildings, particularly the main door entry which needs repairing
- poor ventilation within the flats creating moisture and damp in the kitchen and bathrooms,
- poor quality communal areas and open spaces,
- preservation of the open space facing Rainham Road North important,
- would like the front of the building to look modern to create a more attractive frontage onto Rainham Road North.

2.6 Should redevelopment go ahead key points raised by residents were:

- concerns about the stress of moving
- help with finding a suitable home and removal
- financial support
- support with decoration of new home

2.7 Further detail on the consultation feedback is provided in Appendix 3.

2.8 Based on the feedback from residents along with the wider considerations on the merits of the proposals as a way to further meet housing need in the borough, it is proposed that the existing buildings are demolished in order to create new high-quality housing and open spaces.

### 3. Proposals

3.1 Feasibility work has been undertaken, which has been reviewed by the Investment Panel, who approved the following proposal:

- 60 homes, all of which would be affordable based on the following tenure mix:
  - i) 65% Affordable Rent (39 units)
  - ii) 35% London Affordable Rent/Council target rent (21 units)

3.2 The total development costs for the project are estimated at £15,484,000, which includes pre-development costs of £2,243,000.

3.3 The financial performance of the project against the Council's investment criteria has been assessed as follows:

<b>Investment Criteria</b>	<b>Target</b>	<b>Actual</b>
Year 1 Surplus/Deficit	£0k	£224k
Repayment Period (Yrs)	30	23
Cash Flow IRR	5.6%	7.7%
Yield on Cost	4.0%	5.2%
Profit on Cost	5.0%	11%

## 4. Delivery Arrangements

### Rehousing and Leaseholder buyback offer

- 4.1 Be First's portfolio of council-owned estate renewal schemes includes a large number that require the demolition and replacement of tenanted blocks. There is therefore a need to manage the development of these extremely sensitively with the early engagement of the affected residents and communities. In June Cabinet agreed an estate renewal resident offer, and also agreed that this is the offer that will apply to the residents of Oxlow Lane if Cabinet agrees to proceed with the proposed redevelopment. The offer is summarised as follows:

#### Council tenants:

- Tenants will have top priority to bid for an alternative Council home in the borough
- Tenants will have a Right to Return to one of the new homes within Reside – at a Council target rent and on an Assured tenancy
- A home loss payment of £6,300 (updated annually) and disturbance payments to cover the cost of moving
- Help to move out of the borough, if they want to

#### Resident leaseholders:

- Resident leaseholders will get market value for their home plus a 10% home loss payment
- No resident leaseholder will need to move away from the local area if they don't want to – the Council will give assistance if they can't afford a suitable property on their own
- Resident leaseholders will have a Right to Return to one of the new homes – with assistance if they can't afford on their own

#### Non-resident leaseholders:

- Non-resident leaseholders will get market value for their property plus a statutory basic loss payment of 7.5%.

- 4.2 The proposal set out in this report requires the leaseholder buyback of 5 properties, and the rehousing of 12 tenanted households.
- 4.3 Should the development be approved, Be First and Council staff will work with the existing residents to enable them to find a new home that meets their housing needs. Council tenants will be given high priority to bid for alternative accommodation through the Choice Homes scheme. This will give them access to alternative council homes as well as housing association properties that become available to let through the scheme. They will also be offered the opportunity to return to live in one of the new homes on similar rents to those they are currently paying should they wish to do so. The new homes will be offered at rents set using the Target Formula to align with the policy for HRA re-lets, meaning a move to an alternative Council home or a Reside new home in this development would be on the same rental terms.
- 4.4 For leaseholders, the Council will buy back their home at market value. The Council may also give financial assistance to leaseholders to buy an alternative home.

- 4.5 In the event that the leaseholders' interests cannot be purchased by agreement, the Council may need to use its Compulsory Purchase powers in order to secure vacant possession of the site. The Council recognises that its Compulsory Purchase Order powers are among the strongest powers enabling delivery of development proposals, and that their potential to impact on the human rights of the individuals affected by the proposals. The Council will make every effort to pursue redevelopment in consultation with tenants and through voluntary agreement with owners of individual interests. Negotiations will continue in parallel with the preparation and making of a CPO which will be a final resort.
- 4.6 Tenants and leaseholders who need to move as result of the regeneration proposals will be eligible for a home-loss payment if they have been living in their home for 12 months or more. Tenants and leaseholders will also receive payments towards the cost of moving fixtures and fittings and have their removals organised by the Decant Team.
- 4.7 Approval for Initial Demolition Notices is requested subject to a delegation to do so at the appropriate time and having regard to consultation responses. The ground for possession for the tenanted household will be under Housing Act 1985, Sch 2 Ground 10, i.e.

*The landlord intends, within a reasonable time of obtaining possession of the dwelling- to demolish or reconstruct the building or part of the building comprising the dwelling-house.*

Ground 10 requires that alternative accommodation is offered to the secure tenant.

### **Planning process**

- 4.8 Planning permission will be required for the proposed development, which will be managed by Be First on behalf of the Council. Tenants, leaseholders and the wider local community will be involved in the design and planning process. Public consultation events will be carried out where residents can view and comment on the proposals. There will also be an opportunity to view and comment online through a dedicated website.

### **Programme**

- 4.9 Subject to approval of the recommendations in this report, consultation will commence on the development proposals during early October, with a planning application being submitted in late 2019/early 2020. It is proposed the scheme is delivered by Be First, who will progress the project through the planning process, manage site preparation, the delivery of the works and management of the completed scheme. It is proposed that a contractor for the works is procured through the new Be First development framework.

- 4.10 An indicative timetable is set out below, which allows 18 months from the Cabinet decision to complete the decant process, prior to starting the construction works:

<b>Milestone</b>	<b>Date</b>
Cabinet decision	September 2019
Planning submission	December 2019
Planning approval	March 2020
Start on Site	March 2021
Practical Completion works	March 2023

## **Funding**

- 4.11 The estimated development costs are c.£15,484,000 to be funded through a combination of HRA funding, Right to Buy receipts and borrowing, broken down as follows:

HRA	£1,101,000
GLA Grant	£2,100,000
Right to Buy	£2,080,000
Council borrowing	<u>£10,203,000</u>
Total	£15,484,000

- 4.12 HRA funding is required to purchase the leasehold interests and fund the decant costs for the tenants. The remaining funding covers professional fees and construction costs.
- 4.13 It is proposed that the development and ownership of the new affordable homes is financed through borrowing up to £10,203,000 within the General Fund from the Public Works Loan Board. The funding is proposed to be provided through a loan agreement between the Council and Reside.
- 4.14 The pre-development costs are estimated at £2,243,000, including acquisition costs, demolition and enabling works, and professional fees. It is proposed that these costs are funded through the Investment and Acquisition Budget.

## **5. Financial Implications**

Implications completed by: David Dickinson, Investment Fund Manager

- 5.1 263-285 Rainham Road North and 291-301 Oxlow Lane, forms part of the 44 schemes agreed as part of the Acquisitions and Investment Strategy. The report proposes to redevelop the site to deliver 60 affordable units, including 21 London Affordable Rent units. The scheme provides a positive yield on cost. Based on the information included in the report finance would support the development proposal.
- 5.2 The proposed costs of £15.48m (borrowing of £10.2m) are reflected in the Be First Business Plan approved by Cabinet. Financing the construction will include interest rate risk and cost of carry and these risks will be mitigated by close monitoring of the cashflows and through securing borrowing within the borrowing costs within the schemes' model of 3%.

- 5.3 The decant costs funded through the HRA will require full oversight and should be linked to HRA Business Plan and incorporated into the financial appraisal for the scheme.
- 5.4 The proposal will provide additional residential units and provides both a positive return over year one and year six and is therefore an investable scheme.

## **6. Commissioning Implications**

Implications completed by: Graeme Cooke, Director of Inclusive Growth

- 6.1 There is significant potential to increase and improve the quality of affordable housing through the redevelopment of 263-285 Rainham Road North and 291-301 Oxlow Lane.
- 6.2 This proposal provides a net gain of 42 affordable homes, which represents a significant increase in the number of affordable homes on the site and as such will help to meet the need for more homes that are affordable to local residents on low to median incomes.
- 6.3 There are 12 tenants and 5 leaseholders who would need to be rehoused if Cabinet approves the scheme. Consultation has been undertaken, which has found clear support for the proposals from those tenants who live in the block. The engagement has also helped the Council to begin to understand the housing needs and preferences of the residents who live on the site before the re-housing process begins in line with the Council's re-housing offer.
- 6.4 The new homes will be held and managed by Reside and prioritised for local residents in line with the Council's Allocation Policy. Residents currently living in the block will be given a right to return to one of the new homes if they want to, and a number have already indicated they would like to. These households will be prioritised for the new homes and be given an assured tenancy and a council target rent within Reside, which is the tenancy and rent which most closely matches their current council tenancy and rent. The other homes for London Affordable Rent will be allocated to households on the Council's housing register in line with the Allocations Policy, and homes at Affordable Rent will be allocated to local working households in line with Reside's allocations criteria.
- 6.5 Given the above, ongoing engagement with existing residents and the wider community, is essential so that they have the opportunity to be involved in the design of the site.

## **7. Legal Implications**

Implications completed by: Paul Feild, Senior Governance Lawyer, Legal

- 7.1 The site is currently occupied by tenants and leaseholders of the Council who have a legal right under Section 105(1) and (2) of the Housing Act 1985 to be consulted on matters of housing management which include any development proposal resulting in potential displacement of tenants or relocation of demolition. The proposal contemplates that that the housing development comprising 60 affordable units will be delivered by Be First (as development manager) and will ultimately be

held by a suitable Reside vehicle (being either a new Registered Provider which may be registered by the Council/Reside or an existing entity within the Reside structure). The land needs to be appropriated from the Housing Revenue Account, which is considered further below. Consultation has been carried out with residents and leaseholders affected by the proposals in accordance with s.105 of the Housing Act 1985. Cabinet is presently requested to approve the recommendations in this report.

### **Council Powers**

- 7.2 The Council has power to deliver the development scheme by virtue of the general power of competence under section 1 of the Localism Act 2011, which provides the Council with the power to do anything that individuals generally may do. 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.
- 7.3 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 relevant project documents 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.
- 7.4 In exercising the power of general competence and in making any investment decisions, the Council must also have regard to the following:
- i. Compliance with the Statutory Guidance on Local Government Investments;
  - 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.

### **Consultation with tenants**

- 7.5 Section 105 of the Housing Act 1985 requires the Council to consult with all secure (and demoted) tenants who are likely to be substantially affected by a matter of housing management, which includes development proposals and demolition of dwellings by the housing authority. Such consultation must inform the tenants of the proposals, provide an opportunity to make their views known to the Council within a specified period and consider the representations made to the Council.

7.6 The courts have determined that to be effective consultation must be carried out at a formative stage of any proposals; sufficient reasons must be given for the proposals, together with adequate time, to allow intelligent consideration and response any responses must be taken into account when making a final decision.

### **Achieving Vacant Possession**

7.7 The development site has existing residents, being tenants and leaseholders. In due course, negotiations will be necessary to acquire vacant possession through voluntary sale/buybacks. As a last resort Compulsory Purchase Orders can be considered under the Land Compensation Act. A decision to proceed with a Compulsory Purchase Order will require formal resolution by Cabinet and future report will need to make a compelling case in the public interest and fully demonstrate the grounds for proceeding with a CPO are met. Impacts on equalities and human rights implications for existing tenants/leaseholders and any other affected parties are key considerations which will factor into decision making (this is considered further below).

7.8 Demolition Notices, which are proposed to be utilised to enable delivery of the scheme, would preclude Council tenants who are within the site boundary exercising their right to buy within sites earmarked for regeneration under the provisions of the Housing Act 2004. At the time of a demolition notice there must be a clear and firm intention to redevelop, therefore, care needs to be taken about the timing and service of Demolition Notices (consideration of which has been delegated to the Director of Inclusive Growth). The Council is empowered to serve *Demolition Notices* where areas have been identified for estate renewal, regeneration and redevelopment. There is a prescribed notification process:

- firstly, the service of an Initial Demolition Notice which is valid for up to five years and can be extended to a maximum of seven years, an Initial Demolition Notice will prevent named properties from being acquired from the Council through Right-to-Buy as the Council is not obliged to sell the properties to the tenants. If, exceptionally, the proposals to redevelop or demolish or the relevant boundary change following the service of a Demolition Notice, the Council can withdraw a notice by service of a revocation notice;
- followed by the Final Demolition Notice which is valid for up to two years (with possible extension subject to Government permission).

7.9 The Council is required to notify tenants affected by the decision to demolish, and to give reasons and the intended timetable for demolition. Furthermore, it must inform tenants of the right to compensation and publicise decisions by placing a notice in a newspaper local to the area in which the property is situated, in any newspaper published by the landlord, and on the Council's website.

7.10 Final Demolition Notices cannot be served until the arrangements for acquisition and demolition scheme are finalised (i.e. a date is set). Typically planning permission is also obtained before the service of a Final Notice. This means that Compulsory Purchase issues for leasehold premises must also have been resolved before a Final Demolition Notice can be served.

- 7.11 The Council can make an application to the Secretary of State during the 24-month period for that period to be extended, but if no application is made, it will be unable to serve any further demolition notice in respect of these properties for five years without the Secretary of State's consent. On receipt of an application, the Secretary of State can direct that the period be extended, but he may specify further notification requirements that the Council must comply with in order for the exception to the Right to Buy to continue.
- 7.12 Finally, if the Council subsequently decides not to demolish the property, it must serve a revocation notice upon affected tenants as soon as is reasonably practicable. If it appears to the Secretary of State that a landlord has no intention of demolishing properties subject to a Final Demolition Notice, he may serve a revocation notice on affected tenants.

### **Human Rights Act 1998 Considerations**

- 7.13 The Human Rights Act 1998 ('the HRA 1998') effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions officers and members, therefore, need to have regard to the Convention.
- 7.14 The service of a Demolition Notice on existing secure tenants potentially engages certain human rights protected under the HRA 1998. The HRA 1998 prohibits unlawful interference by public bodies with European Convention rights. The term 'engage' simply means that human rights may be affected or relevant.
- 7.15 The Demolition Notices should contain specific information relating to the Right to Buy to clarify any compensation that may be payable for certain reasonable expenditure, if incurred in respect of pre-existing Right to Buy claims/applications, but also to protect the Council from unnecessary compensation claims in the event that tenants incur unnecessary costs once notices have been served.
- 7.16 The rights that are of significance to the decision in this matter are those contained in Article 8 (right to respect for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions). Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic wellbeing of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1<sup>st</sup> Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 7.17 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the legitimate aim of regeneration. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation is relevant in assessing whether a fair balance has been struck.

7.18 Therefore, in reaching a decision, the Council needs to have regard to the extent to which the decision may impact upon the Human Rights of the residents who may have a demolition notice served upon them and to balance this against the overall benefits to the community, which the proposed redevelopment would bring. The committee will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.

### **Funding and Borrowing**

7.19 Section 15 of the Local Government Act 2003 requires that the Council have regard to statutory guidance in relation to exercising its borrowing and investment powers. The relevant Statutory Guidance on Local Government Investments (3<sup>rd</sup> Edition, issued on 1 April 2018). The Guidance is relevant to the extent that a loan may be necessary to the Reside Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) in order to facilitate delivery of the development. In accordance with the Guidance (paragraphs 33 and 34), A local authority may choose to make loans to local enterprises, local charities, wholly owned companies and joint ventures as part of a wider strategy for local economic growth even though those loans may not all be seen as prudent if adopting a narrow definition of prioritising security and liquidity provided that the overall Investment Strategy demonstrates that:

- i. The total financial exposure to such loans is proportionate;
- ii. An expected 'credit loss model' has been adopted to measure the credit risk of the overall loan portfolio;
- iii. Appropriate credit controls are in place to recover overdue re-payments; and
- iv. The Council has formally agreed the total level of loans by type and the total loan book is within self-assessed limits.

### **Loan and Grant Agreements**

7.20 As observed in the body of the report is an intention to access loans and grants from the GLA. The power to do so has been identified above. Such arrangements will need to be examined to ensure that the terms are compliant with the aims of this project and as mentioned the terms will need to reflect commercial market terms to ensure that there are no State Aid implications.

### **State Aid**

7.21 As local government is an emanation of the state the Council must comply with European law regarding State Aid. Therefore, local authorities cannot subsidise commercial transactions such as for example low cost finance or financial assistance to its own companies if such transactions are capable of distorting competition in the EU. In this transaction, State Aid law is relevant in the context of the funding being provided and the price at which the Council's land interest is disposed of to the Reside Registered Provider (see below). For the loan not to

amount to State Aid, it must be made on 'market terms' in order to satisfy the "Market Economy Investor Principle".

### **Appropriation of HRA Land & Use of RTB Receipts**

- 7.22 It is envisaged in the report that ownership of the completed development / units will be within the Reside structure which is outside the Housing Act. There will need to be an appropriation of the land under Section 122 of the Local Government Act 1972 from the Housing Revenue Account to the General Fund. and then in due course to Reside. It is necessary for the Council to use a power to appropriate the land upon which those units are to be situated from the HRA into the General Fund ("GF"). Any disposal of s.9 HA land would normally require SoS consent under s.32 of HA85. However, s.122 of Local Government Act 1972 ("LGA 1972") provides power to appropriate superfluous land to other statutory purposes:
- If the land is 'vacant' i.e. no housing on it, s.122 LGA 1972 allows for appropriation together with general wellbeing powers and general power of competence could be used to authorise appropriation from HRA to the General Fund if the land is no longer needed for that s.9 HA 85 purposes but is being appropriated for any purpose which the Council is able to acquire land.
  - It would need to be demonstrated that the "vacant" land was no longer needed for the purposes of Part II HA. The Council would need to appropriate it for another purpose i.e. not to meet housing need under Part II HA 1985.
- 7.23 By appropriating land into the General Fund the HRA will be accounted due consideration for the value of that land and henceforth any receipts generated from that land or units upon it would then be accounted for in the General Fund.
- 7.24 In addition, in deciding whether a Reside vehicle is suitable, consideration must be given to the impact of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) which from April 2013 placed restrictions on the use of Right to Buy receipts in conjunction with other funding provided by the GLA for the purposes of building affordable housing. In other words, Right to Buy receipts cannot be combined with funds provided by the GLA to build the required replacement unit/s if those funds have come from the GLA to build affordable housing. Officers and decision makers must be satisfied that combining funds in the manner envisaged is acceptable and within the rules. Although, consideration is given to relaxing the rules around use of RTBs this has not yet taken place.
- 7.25 Any disposal of the land to a Reside Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) must comply with the requirement for best consideration and/or within the parameters of any general consents available from the Secretary of State. This is likely to necessitate a loan on market facing terms and interest from the Council to the Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) to facilitate such a transaction. Where the Council provides financial assistance to the Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) by:
- (a) granting or loaning it money,

- (b) acquiring share or loan capital in the Registered Provider (or an existing entity within the Barking & Dagenham Reside structure),
- (c) guaranteeing the performance of any obligations owed to or by the Registered Provider (or an existing entity within the B&D Reside structure), or
- (d) indemnifying the Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) in relation to any liabilities, losses or damages and the financial assistance is in connection with the provision of housing accommodation to be let by the Registered Provider (or an existing entity within the Barking & Dagenham Reside structure), the Council must use its power under section 24 of the Local Government Act 1988 (the 1988 Act) to do so.

7.26 The exercise of this power is subject to consent by the Secretary of State. The details of such consents will need to be carefully considered to ensure any transactions and mechanisms needed to facilitate delivery of the scheme are within those parameters.

### **Other Matters**

7.27 As set out in the Risk Management section of the report there may be displacement of utilities and services, gas and water mains plus changes to highways and facilities, which may necessitate leases and licenses. These will be familiar matters in a development context, and should not, if managed, raise legal issues. Early planning and ensuring any Cabinet approvals pick up the need for any leases will minimise costs and risks of delays.

## **8. Other Implications**

### **Corporate Policy and Equality Impact**

- 8.1 An Equalities Impact Assessment (EIA) Screening Report has been carried out, which concluded that a full EIA is not required at this stage, based on the overall positive impact of the development proposals and the feedback received from residents during the consultation process. Should subsequent engagement with affected residents bring to light any further equality issues, this position will be reviewed, and a full EIA will be carried out prior to the submission of the planning application if required.
- 8.2 The Equality and Diversity Strategy identifies the need to provide new housing and sustainable growth by improving the physical environment and widening the choice of housing. In order to achieve this, it highlights that the future planning of homes, infrastructure, and business is done holistically balancing physical regeneration and social regeneration.
- 8.3 The Borough Manifesto, which sets out the long-term vision for the borough, identifies Housing as a top priority with an aspiration to be a place with sufficient, accessible and varied housing.
- 8.4 The proposed development seeks to respond to these priorities by diversifying and improving the quality of the housing offer on the site, supported by improvements to the public realm.

- 8.5 The development will provide a range of housing types and tenures, that will provide an opportunity local people to own their own property, as well as provide rented products that will be affordable to local people.
- 8.6 The development will also contribute towards the Councils' health and wellbeing priorities for example by:
- Improving the quality of housing.
  - Improving the quality and safety of open spaces, encouraging people to make more use of outside spaces for recreational purposes, and discouraging antisocial behaviour.
  - Achieving higher sustainability standards, for example through renewable energy and green roofs.
- 8.7 If the preferred option is approved, the existing residents will experience some disturbance, as they will need to be relocated to facilitate the new development. These impacts will be sought to be mitigated through a thorough engagement process, with an opportunity being provided to these residents to return to the site once the development is complete, should they wish to do so.
- 8.8 It is therefore considered that the overall impact of the project is positive, with the benefits of the new development outweighing the impact on existing residents.

## **9. Risk Management**

### **Ground Conditions**

- 9.1 An environmental survey of the site will be undertaken to establish the level of ground contamination and remediation required to enable the site to be redeveloped for residential use.

### **Existing Services**

- 9.2 Due to the current and historic uses of the site, there are likely to be underground services that will require relocation. Early engagement with the utilities company will be carried out in order to agree a programme and cost for relocating the substation and carrying out service diversions.

### **Securing Vacant Possession**

- 9.3 The requirement to acquire the Leasehold interests required to bring forward the clearance of these sites will be delivered in accordance with the Boroughs agreed Leaseholder Buyback procedure. This procedure sets out the level of compensation in accordance with the Land and compensation Act. It centres on buy back by negotiation with use of CPO powers if necessary, to ensure that programmes are not delayed if agreement cannot be reached. A package of measures to assist Leaseholders who are unable to acquire alternative accommodation on the open market are included in the agreed procedures and on a scheme by scheme basis we would look to provide other alternatives such as equity sharing arrangements for new homes within the developments.

- 9.4 Early engagement with residents will be carried out in order to coordinate the development and decant processes and allow sufficient time to conclude negotiations on the purchase of the leasehold interests.
- 9.5 There is a risk that the secure tenants will submit Right to Buy applications. We are not aware of any live Right to Buy applications at this time. In order to mitigate the risk of future applications being made, it is proposed that an Initial Demolition Notice is served on the existing tenants.

### **Securing Planning Permission**

- 9.6 This is a sensitive site that is currently occupied by residents. However, there is planning policy justification to support intensifying the use of the site through a residentially led development. Public consultation will be carried out to ensure that the final design optimises benefits for local residents, and the scheme is delivered in a sympathetic way, responding to the needs of the existing residents on site.

### **Programme delays**

- 9.7 Due to the site constraints, particularly the need to secure vacant possession prior to development commencing, there is a risk of programme delays. The programme will be continuously monitored throughout the various stages of the project, as discussions progress to resolve the risks highlighted in this report.

### **Cost overruns**

- 9.8 An initial cost plan has been prepared based on the feasibility study. Whilst contingency has been allowed for within the cost estimate, the cost plan will be continuously reviewed as further information is gathered through site surveys and discussions with utilities companies.

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

### **List of Appendices:**

- Appendix 1 – Site Aerial Photo
- Appendix 2 - HRA Land Appropriation Plan
- Appendix 3 - Consultation responses