

CABINET

18 July 2023

Title: New Build Schemes – Approval of Disposals, Head Leases and Loan Facility Agreements	
Report of the Cabinet Member for Regeneration and Economic Development	
Open Report	For Decision
Wards Affected: Gascoigne	Key Decision: Yes
Report Author: Uju Eneh, Programme Manager – Place and Development, Inclusive Growth	Contact Details: Uju.Eneh@lbbd.gov.uk
Commissioning lead: Rebecca Ellsmore, Strategic Head of Place and Development	
Accountable Executive Team Director: James Coulstock, Interim Strategic Director of Inclusive Growth	
Summary <p>Following a report to Cabinet in June 2023 that secured approvals for loans and leases to allow 377 new homes to transfer into the Reside portfolio, this report lists a further 583 new homes (across three new build schemes) that are proposed to also transfer to Reside. The schemes included in this report are all part of the Gascoigne Estate Renewal Programme.</p> <p>The properties have been delivered within the Council’s Investment and Acquisitions Strategy (IAS) which was most recently presented to Cabinet in November 2022.</p> <p>This report seeks delegated approval to complete the documents required to dispose of the properties by way of leases to the appropriate Reside entities, alongside a series of loans to enable these disposals.</p> <p>The schemes for which approval is sought are as follows:</p> <ul style="list-style-type: none">• Gascoigne West Phase 1 (Block Cargo IG11 7DE, Block Carrier IG11 7NE, Block Forge IG11 7NH)• Gascoigne East Phase 2, Block E2 (Herring Court IG11 7YT, Leleu Court IG11 7YW, Mather Court IG11 7YX, Shuckford Court IG11 7YY, Tide Street IG11 7NJ, Ketch Street IG11 7RY)• Gascoigne East Phase 2 Block F1 and F2 (Fifeshire Court IG11 7YP, Cutter Court IG11 7XB, Sailor Court IG11 7YR, Ewars Marsh Court IG11 7WZ, Mizzen Street)	

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve, in principle, the disposal of the schemes listed below by the granting of long leases to the appropriate Reside entity (either Barking and Dagenham Homes Ltd (company no. 12090374), B&D Reside Weavers LLP (registered no. OC416198) or Barking and Dagenham Reside Regeneration Ltd (company no. 09512728)):
 - **Gascoigne West Phase 1** (Block Cargo IG11 7DE, Block Carrier IG11 7NE, Block Forge IG11 7NH)
 - **Gascoigne East Phase 2, Block E2** (Herring Court IG11 7YT, Leleu Court IG11 7YW, Mather Court IG11 7YX, Shuckford Court IG11 7YY, Tide Street IG11 7NJ, Ketch Street IG11 7RY)
 - **Gascoigne East Phase 2 Block F1 and F2** (Fifeshire Court IG11 7YP, Cutter Court IG11 7XB, Sailor Court IG11 7YR, Ewars Marsh Court IG11 7WZ, Mizzen Street)
- (ii) Approve, in principle, the draft Heads of Terms and loans for each of the listed schemes to the appropriate Reside entity, as set out in section 2 of the report;
- (iii) Delegate authority to the Strategic Director, Finance and Investment, in consultation with the Strategic Director, Inclusive Growth, to agree and finalise the terms of the loans, leases and any other associated documents, and to take any steps necessary to ensure compliance with s123 of the Local Government Act 1972 and the Subsidy Control Act 2022; and
- (iv) Delegate authority to the Chief Legal Officer, in consultation with the Strategic Director, Inclusive Growth, to execute all the legal agreements, contracts, and other documents on behalf of the Council in order to implement the arrangements.

Reason(s)

The decisions are required to enable the disposal of three New Build schemes to the relevant B&D Reside companies, helping to meet the Council's aim to increase the supply of affordable housing options for residents and to ensure efficient property management.

1. Introduction and Background

- 1.1 By Minute 8 (20 June 2023), the Cabinet approved arrangements for 377 new homes built across the borough to transfer to Reside entities. That report advised that similar reports would follow in the future and this report lists a further 583 new homes (across three new build schemes) that have been or are being built by Be First – the regeneration arm of the Council. These three schemes are all part of the Gascoigne Estate Renewal Programme and are also part of the Council's Investment and Acquisition Strategy (IAS) .

- 1.2 Gascoigne Estate is the largest housing estate in Barking Town Centre, as such the regeneration of this estate is crucial to the overall placemaking objectives of the Council. The Gascoigne Estate Renewal Programme was approved by Cabinet through a series of reports between July 2010 and July 2016. Since 2022, a total of 412 new homes have been built as part of the programme with a further 223 new homes to be completed this year. This demonstrates the Council's commitment to providing affordable, high quality new homes. The schemes in this report will offer residents a varied supply of homes with 58.3% to be let on affordable tenures.
- 1.3 Of the three new build schemes mentioned in this report, Gascoigne West Phase 1, and Gascoigne East Block E2 have been completed. Gascoigne East Blocks F1 and F2 will be completed in two stages, Block F1 is estimated to be completed at the end of July 2023, and Block F2 is estimated to be completed at the end of August 2023.
- 1.4 In order to ensure the efficient management of the new properties the Council set up several companies and limited liability partnerships (LLPs) under the 'Reside' banner, together with Barking and Dagenham Homes, which is a company limited by guarantee and owned by the Council. It is intended that properties delivered by the Investment and Acquisition Strategy will be transferred into Reside companies and LLPs by way of leases, with the specific Reside vehicle being identified for each site depending on the type of units and tenures included in the scheme. Details on the legal status and ownership of each of the Reside entities is contained in section 3 below.
- 1.5 This report updates Members on the practical completions and estimated handovers to the Council of three new build schemes that were approved by Cabinet between 2010 and 2016. It then seeks approval for the disposal of these properties by granting long leases to companies within the group of Reside entities. The length of the leases and loan amounts are set out in paragraphs 2.5 - 2.15 below.

2. Proposal and Issues

- 2.1 The Investment and Acquisitions Strategy funds development and recovers borrowing costs from the income generated. The combination of grants, lease premiums and the repayment of the loans set out below will cover the Council's borrowing on the schemes. As the lease premium and loan amount is directly related to the cost of the scheme there may be some minor changes to the premium and loan amounts. The recommendation therefore seeks delegated authority to the Strategic Director Finance and Investment to finalise the loan terms, including the final lease premium and loan amount, to reflect this.

Best Consideration

- 2.2 To comply with section 123 of the Local Government Act 1972, the schemes in this report must be disposed of at best consideration reasonably obtained evidenced by professional valuation. To ensure that we comply with this legislation, we will obtain Red Book valuations and the recommendations will only be enacted should the S151 Officer be satisfied that Best Consideration has been achieved.

Subsidy Control

- 2.3 Officers are seeking Counsel's opinion on whether the financial modelling of the loans set out below meet the key requirements for public authorities under the Subsidy Control Act 2022 - or if they would constitute any form of a subsidy. This work is underway therefore this report requests delegated authority to the S151 Officer to proceed with the recommendations above if they are satisfied that either there is no Subsidy or that approval has been obtained from the Subsidy Advice Unit.

Schemes and proposed leases

- 2.4 The disposal of each scheme will happen by the way of long lease and a linked loan. The following sections set out the proposals for the loans, headleases and loan facility agreements for each of the three schemes mentioned in the summary:

2.5 Gascoigne West Phase 1 (Block Cargo)

Units and tenures	16 London Affordable Rent units
PC date	31 st March 2022
Reside entity	Barking & Dagenham Homes Ltd (Company No - 12090374)
Draft Heads of Terms	
Lease Start date:	8/11/2022
Lease Length:	130 Years
Lease Premium:	£5,252,632
Grant Funding:	GLA
Grant Amount:	£1,600,000
Loan:	£3,652,632

2.6 Gascoigne West Phase 1 (Block Cargo)

Units and tenures	12 Target Rent units	14 Target Rent units
PC date	31 st March 2022	
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)	Barking & Dagenham Homes Ltd (Company No - 12090374)
Draft Heads of Terms		
Lease Start date	21/11/2022	21/11/2022
Lease Length	130 Years	130 Years
Lease Premium	£6,315,465	£4,650,285
Grant Funding:	GLA and RTB	GLA
Grant Amount:	£2,790,186	£1,400,000
Loan	£3,525,279	£3,250,285

2.7 Gascoigne West Phase 1 (Block Carrier)

Units and tenures	80 Affordable Rent units
PC date	31 st March 2022
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)
Draft Heads of Terms	
Lease Start date	15/08/2022
Lease Length	130 Years
Lease Premium	£33,925,790
Grant Funding:	RTB
Grant Amount:	£13,570,316
Loan	£20,355,474

2.8 Gascoigne West Phase 1 (Block Forge)

Units and tenures	79 Market Rent units
PC date	31 st March 2022
Reside entity	Reside Regeneration Ltd (Company No: 09512728)
Draft Heads of Terms	
Lease Start date	01/04/2023
Lease Length	25 Years
Lease Premium	£33,349,179
Grant Funding:	None
Grant Amount:	None
Loan	£33,349,179

2.9 Gascoigne East Phase 2 Block E2 (Herring Court, Mather Court & Ketch Court)

Units and tenures	72 Market Rent units
PC date	28 th February 2023
Reside entity	Reside Regeneration Ltd (Company No: 09512728)
Draft Heads of Terms	
Lease Start date	01/04/2023
Lease Length	25 Years
Lease Premium	£31,242,869
Grant Funding:	None
Grant Amount:	None
Loan	£31,242,869

2.10 **Gascoigne East Phase 2 Block E2 (Shuckford Court, Leleu Court & Ketch Street)**

Units and tenures	80 London Affordable Rent Units
PC date	28 th February 2023
Reside entity	Barking & Dagenham Homes Ltd (Company No - 12090374)
Draft Heads of Terms	
Lease Start date	20/03/2023
Lease Length	130 Years
Lease Premium	£20,331,170
Grant Funding:	GLA
Grant Amount:	£ 8,000,000
Loan	£12,331,170

2.11 **Gascoigne East Phase 2 Block E2 (Shuckford Court and Leleu Court)**

Units and tenures	7 Affordable Rent Units
PC date	28 th February 2023
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)
Draft Heads of Terms	
Lease Start date	20/03/2023
Lease Length	130 Years
Lease Premium	£3,131,162
Grant Funding:	GLA
Grant Amount:	£1,260,264
Loan	£1,870,898

2.12 **Gascoigne East Phase 2 (Block F1 – Fifeshire Court and Cutter Court)**

Units and tenures	92 Market Rent units
PC date	Estimated end of July 2023
Reside entity	Reside Regeneration Ltd (Company No: 09512728)
Draft Heads of Terms	
Lease Start date	TBC
Lease Length	25 Years
Lease Premium	£44,905,917
Grant Funding:	None
Grant Amount:	None
Loan	£44,905,917

2.13 Gascoigne East Phase 2 (Block F1/F2 – Sailor Court and Mizzen Street)

Units and tenures	48 Affordable Rent Units
PC date	Estimated end of July 2023
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)
Draft Heads of Terms	
Lease Start date	TBC
Lease Length	130 Years
Lease Premium	£22,861,209
Grant Funding:	RTB
Grant Amount:	£9,145,937
Loan	£13,715,272

2.14 Gascoigne East Phase 2 (Block F1 – Ewars Marsh Court)

Units and tenures	79 Shared Ownerships
PC date	Estimated end of July 2023
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)
Draft Heads of Terms	
Lease Start date	TBC
Lease Length	130 Years
Lease Premium	£37,031,641
Grant Funding:	RTB
Grant Amount:	£3,002,000
Loan	£34,029,641

2.15 Gascoigne East Phase 2 (Block F2 – Mizzen Street)

Units and tenures	4 London Affordable Rent units
PC date	Estimated end of August 2023
Reside entity	Barking & Dagenham Homes Ltd (Company No - 12090374)
Draft Heads of Terms	
Lease Start date	TBC
Lease Length	130 Years
Lease Premium	£2,332,181
Grant Funding:	GLA
Grant Amount:	£400,000
Loan	£1,932,181

3. Company / LLP information

- 3.1 The Reside entities mentioned above are part of a larger scheme of Reside companies and LLPs. The relevant information regarding each entity is detailed below:

- 3.2 Barking and Dagenham Homes Ltd (Co No:12090374) is a company Limited by guarantee with one member, the Council, which wholly owns it.
- 3.3 Barking and Dagenham Homes Ltd is in the process of becoming a Registered Provider with the Regulator of Social Housing. It is anticipated that this process will be complete by the end of 2023.
- 3.4 B& D Reside Weavers LLP (OC416198) is a limited liability partnership owned by (1) Barking and Dagenham Giving, which is a company limited by guarantee and a registered charity (Co No: 09922379, charity:1166335) and (2) B&D Reside Regeneration LLP (OC400585).
- 3.5 B&D Reside Regeneration LLP is jointly owned by (1) Barking and Dagenham Reside Regeneration Ltd (Co No: 09512728) and (2) London Borough Of Barking And Dagenham.
- 3.6 B&D Reside Weavers LLP is owned 90% by Barking and Dagenham Giving and 10% by B&D Reside Regeneration LLP. The Council does not wholly own or control B&D Reside Weavers LLP; it is controlled by the charity Barking and Dagenham Giving. The Council cannot therefore make any decisions as member or partner to give direction to it in the way that it can direct its wholly owned vehicles.

4. Options Appraisal

- 4.1 **Do nothing:** The Council's Investment and Acquisitions strategy highlights the importance of collaborating with Be First and Barking & Dagenham Reside to ensure the correct mix of tenure is agreed and built. If the Council does not now dispose of these completed homes to the stated entities the Council will need to manage and let the properties directly.
- 4.2 **Dispose to a third party:** If the Council decides to dispose of these new homes to a third party there is a risk the Council could lose control of new housing stock which has been built to benefit local residents and address the borough's housing needs.
- 4.3 **Dispose to the entities stated in the report as per the recommendations:** By disposing of these new homes by the way of a leases to the proposed entities, the Council will see the benefit of rental income as the turnover will come back to the Council from the homes held in B&D Weavers LLP. In addition to this, this option will enable transparency and the ability of the Council to influence how homes are let and managed in B&D Homes Ltd and B&D Weavers. Finally, B&D Homes Ltd have charitable objectives in place post registration which ensure that the surplus that they generate are used to benefit the residents of the London Borough of Barking and Dagenham.

5. Consultation

- 5.1 These proposals are in line with the Council's Investment and Acquisitions Strategy. The decision to approve the IAS was taken in public by Cabinet in November 2022. All relevant stakeholders are in agreement with the terms set out in this report.

6. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 6.1 This report seeks Cabinet approval for the disposals of a number of completed developments by granting long leases to a number of Reside companies, including Barking and Dagenham Homes Ltd, Company Number: 12090374 B&D Reside Weavers LLP, Registered number: OC416198 or Barking and Dagenham Reside Regeneration Ltd, Company number: 09512728 as set out in the body of the report.
- 6.2 For each scheme the total development cost has been used to produce the lease premium, with the loan amount then reduced by any grant to produce the loan amount. Each loan will generally be for 52 years, with the first two years being interest only followed by a 50-year debt repayment schedule. At the end of the 52 years the net costs to build each property will be fully paid off. The repayment schedule matches the Minimum Revenue Provision that the Council needs to be allocate from its revenue budget to cover the net development costs for each scheme. In a few cases, specifically for Social Housing (London Affordable Rent and Target Rent), it may be necessary for a 5-year interest only period to be agreed, with a subsequent 50 year repayment period (55 years in total) to ensure that the schemes are viable and can be transferred into Barking and Dagenham Homes Ltd.
- 6.3 A fixed interest rate for the loan period has been set for each loan based on tenure type. The loan rates were agreed by Cabinet in April 2022 as part of the Investment and Acquisition Strategy report. A lower rate has been agreed for social housing, which reflects the viability pressure of this much lower rent tenure. Interest rates are fixed at the time of construction and confirmed at handover to allow certainty over the schemes costs and ensure they remain viable when they are transferred to Reside. When rates are agreed then borrowing is allocated to the scheme and is linked to long term borrowing, predominantly from the Public Works Loan Board (PLWB).
- 6.4 Interest rates have increased significantly over the past year and the interest rate for pre-gateway 4 schemes and schemes agreed in 2022, are at a higher rate than these schemes and reflect the increased borrowing cost to the Council.
- 6.5 As part of finalising the loan agreements, advice on the valuation and Subsidy will be sought. In addition, the figures in this report are subject to minor amendments as final costs for some of the schemes are still being confirmed but it is expected that changes will be minimal.

7. Legal Implications

Implications completed by: Dr Paul Feild, Principal Standards and Governance Solicitor

- 7.1 The general power of competence in section 1 of the Localism Act 2011 provides sufficient power for the Council to participate in the transactions 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.

- 7.2 The Council participating in the proposals as a local authority is an emanation of the state, and as such the Council must comply with the Subsidy Control Act 2022. This means that local authorities cannot subsidise commercial undertakings or confer upon them an unfair economic advantage. The report does not identify any specific aspect of the proposed disposals by lease to the Councils Companies detailed at other than as a commercial transaction and it is understood a valuation will take place. The situation regarding the loan agreements is that if the lending is to be on other than on a commercial basis it must be compliant with the UK Subsidy Control Regime. Being new legislation while guidance has been issued there is no case law yet established setting out the application in real circumstances. For this reason, professional advice in the form of legal opinion is being procured as obviously the Council needs to get this transaction right first time. Nevertheless, as there is no intention in the structure of the Investment and Acquisition Scheme to operate other than on a commercial going concern, then the lease disposals terms should reflect that.
- 7.3 The companies proposed to take the leasehold interests are detailed in paragraph 3 above.
- 7.4 The leases will be on commercial terms for the periods set out in paragraph 2 above. The reason for the use of leases rather than outright disposal is that the head lease will give the Council greater control over the stewardship of the site than would be the case with freehold disposal because obligations on the leaseholder will be contractually binding and any sub-leases in due course will also be bound.
- 7.5 The sites must be disposed in accordance with the Local Government Act 1972 Section 123 at best consideration evidenced by professional valuation. Furthermore, appropriate due diligence should be carried out regarding title and that the necessary appropriation steps be carried out with each site as may be required.

Public Background Papers Used in the Preparation of the Report:

- Treasury Management 2022/23 Mid-Year Review, November 2022 Cabinet report (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=12608&Ver=4>)

List of appendices: None