

CABINET

19 March 2024

Title: Woodward Road and 12 Thames Road Developments - 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: Mayesbrook and Thames	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 Inclusive Growth	
Summary <p>This report follows multiple reports of this nature presented to Cabinet between June 2023 and February 2024. In total, these reports have secured approvals for loans and leases to allow 1705 new homes to transfer into the Reside and Barking and Dagenham Homes Ltd (BDHL) portfolios. 1253 homes have been transferred into Reside and 452 homes into BDHL. This report lists a further 212 new homes relating to the following developments: Woodward Road and 12 Thames Road.</p> <p>These properties have been delivered within the Council’s Investment and Acquisitions Strategy (IAS) which was most recently presented to Cabinet in November 2023.</p> <p>The report also seeks delegated approval to complete the documents required to dispose of the new build schemes mentioned above by way of a lease to the appropriate Reside or Barking and Dagenham Homes Ltd entity, alongside loans to enable the acquisition of the said properties.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <p>(i) Approve, in principle, the disposal of the New Build schemes below by the granting of long leases to the to the appropriate Reside or Barking and Dagenham Homes Ltd (BDHL) entity identified in the report;</p> <p>Woodward Road</p> <ul style="list-style-type: none">- Flat 1 – Flat 4, 1 Centenary Road, Dagenham, RM9 4DA- Flat 1 – Flat 4, 2 Centenary Road, Dagenham, RM9 4DA- 1, 3 – 14, 16, 18, 20, 22, 24, 26 and 28 Centenary Road, Dagenham, RM9 4DA- Flat 1 - Flat 19, 22 Centenary Road, Dagenham, RM9 4DA- Flat 1 – Flat 11, 28 Centenary Road, Dagenham, RM9 4DA	

12 Thames Road

- Flat 1 – 87 Woolmore Court, Thames Road
 - Flat 1 - 35 Blackaby Court, Crossness Road
 - Flat 1 – 24, Fewell Court, Crossness Road
- (ii) Approve, in principle, the indicative draft Heads of Terms for leases and loans for the Woodward Road and 12 Thames Road developments to the appropriate Reside or Barking and Dagenham Homes Ltd entity, as set out in section 2 of the report;
- (iii) Delegate authority to the Strategic Director, Resources (S151 Officer), 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 provided that such action does not materially affect the approvals granted by Cabinet; and
- (iv) Delegate authority to the Head of Legal, in consultation with the Strategic Director, Resources (S151 Officer), to execute all the legal agreements, contracts, and other documents on behalf of the Council in order to implement the arrangements.
- (v) Approve the application of a service charge to all new London Affordable Rent (LAR) properties and to existing Reside LAR properties as they come up for renewal.

Reason(s)

The decisions are required to ensure that state aid and subsidy control legislation is complied with and to enable the disposal of the new build schemes mentioned in this report to the relevant Reside and Barking and Dagenham Homes Ltd 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. Since June 2023, Cabinet has approved arrangements for 1253 homes to be transferred into Reside and 452 homes into BDHL. Reports presented to Cabinet between June 2023 and February 2024 gave similar delegated authorities to those contained in this report to allow leases and loans to be entered into for other new build properties.
- 1.2 Previous reports have noted that before these leases and loans can be executed, best consideration and subsidy control matters need to be satisfied and in January 2024 (Minute 12), Cabinet noted that the Strategic Director, Resources, would be declaring various schemes on the national subsidy database and making referrals to the Subsidy Advice Unit. As noted in January the two schemes included in this report will also be included in the referral to the Subsidy Advice Unit.

- 1.3 Similar reports presented to Cabinet have advised that reports of this nature would follow for new build schemes that are to be transferred to Reside entities. This report now seeks approval for the Woodward Road and 12 Thames Road developments with a total of 212 new homes that are being built by Be First, the regeneration arm of the Council, to also transfer into the Reside and BD Homes portfolios.
- 1.4 The Woodward Road redevelopment obtained approval for the redevelopment of land at the former Woodward library and surrounding area to deliver 56 affordable homes and a new community space. Woodward Road is part of a programme approved by Cabinet through a series of reports between August 2019 and October 2019. The affordable homes on this redevelopment are estimated to achieve practical completion in July 2024.
- 1.5 The 12 Thames Road development will include 156 affordable built-to-rent homes across four multi-level residential buildings ranging between seven to sixteen storeys. The 156 homes will consist of one, two and three bedroom units, with 50% at affordable rent and 50% at London affordable rent. Planning consent was achieved in December 2020 and the development is estimated to achieve practical completion in June 2024.
- 1.6 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 Ltd, 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, or to Barking and Dagenham Homes Ltd by way of leases, with the specific 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 entities is contained in section 3 below.
- 1.7 This report updates Members on the estimated practical completion and handover to the Council of the three developments mentioned in this report. 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 2.10 and 2.13.

2. Proposal and Issues

- 2.1. The Investment and Acquisition 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 schemes have not yet completed and the lease premium and loan amount is directly related to the final cost of the scheme, the figures included in this report are based on the forecasted final account.
- 2.2. Members should note that there may be some minor changes to the premium and loan amounts when practical completion is achieved, and final account is agreed. To ensure that the units can be let as soon as possible after completion the recommendation seeks delegated authority to the Strategic Director, Resource (151 Officer) to finalise the loan terms, including the final lease premium and loan

amount, to reflect this (rather than waiting for final account to be confirmed before commencing the governance process).

Best Consideration

- 2.3. To comply with section 123 of the Local Government Act 1972, the schemes in this report must be disposed of at best consideration reasonably obtainable evidenced by professional valuation. To ensure that we comply with this legislation, we will obtain a Red Book valuation and the proposed leases and loan will only be executed should the S151 Officer be satisfied that Best Consideration has been achieved. The Red Book valuation will be undertaken as close to disposal of the units as is reasonably possible to ensure that it is based on an up-to-date market valuation.

Subsidy Control

- 2.4. In order to ensure that the schemes offering affordable tenures can be held within the Reside structure in a viable way, the interest rate charged on the loan is below a commercial market rate. Under the terms of the Subsidy Control Act 2022 this represents a subsidy to the Reside entities. Legal and commercial advice has been obtained and we believe the subsidy is in line with the principles that Local Authorities are required to consider when giving a subsidy. Nevertheless, as noted in the January 2024 Cabinet report, subsidies for these schemes will need to be declared to the Subsidy Advice Unit (SAU) who will provide a report giving an assessment of the scheme's compliance with the legislation. Members should note that the loan cannot lawfully be entered into until the Council has considered the information within this report and satisfied itself that the loan is compliant with the Act.
- 2.5. Work is ongoing to quantify the level of subsidy that is being transferred to Reside and to collate the required evidence on market failure, viability, proportionality and necessity that will support this referral. It is essential that this information is comprehensive and accurate to ensure that the SAU understand the proposals.

Applying Service Charge to London Affordable Rent (LAR) homes

- 2.6. By Minute 34 and 35 (19 September 2023), Cabinet approved proposals to apply a service charge to LAR homes on the Beam Park and Gascoigne East Phase 3B developments. Furthermore (having reviewed the new build portfolio), it is recommended that a service charge is added to all new LAR rents and existing Reside LAR rents as they come up for renewal. For residents in receipt of benefits, it is estimated that the rent and service charge cost combined are likely to be covered by the Local Housing Allowance. Applying service charge to LAR homes will improve the cashflow and viability of new build schemes. Also, it is the standard across most other Boroughs and Housing Associations. Reside's rent policy is a matter reserved for the Council and any proposals are for Cabinet to approve. However, as Reside LAR homes are generally held in BDHL, rent policy for these homes can be considered by the Board of BDHL.
- 2.7. Current Reside LAR rents per week as at 1st April 2024 are shown in the table below. Service charges will vary from scheme to scheme but are likely to cost anywhere from £20 - £30+ per week.

Year	Bedsit and 1B	2B	3B	4B
2024-25	£201.43	£213.26	£225.11	£236.95

Scheme and proposed lease

- 2.8. The Investment and Acquisition 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 this scheme.
- 2.9. The lease premium and loan amount is directly related to the final cost of the scheme. As these new build schemes are not yet completed the figures included in this report are based on the forecasted final account. Members should therefore note that there may be some minor changes to the premium and loan amounts when practical completion is achieved, and final account is agreed. To ensure that the units can be let as soon as possible after completion the recommendation seeks delegated authority to the Strategic Director, Resources to finalise the loan terms, including the final lease premium and loan amount, to reflect this (rather than waiting for final account to be confirmed before commencing the governance process).
- 2.10. The disposal of Woodward Road and 12 Thames Road will happen by the way of granting long leases and linked loans. The following sections set out the proposals for the loans, headlease and loan facility agreement:

2.11. Woodward Road (Affordable Rent homes)

Units and tenures	55 Affordable Rent homes
Estimated PC date	3 rd July 2024
Reside entity	B&D Reside Weavers LLP (Company No.: OC416198)
Draft Heads of Terms	
Lease Start date:	TBC
Lease Length:	130 Years
Lease Premium:	£25,011,260
Grant Funding:	Right to Buy
Grant Amount:	£10,004,504
Loan:	£15,006,756

2.12. Woodward Road (London Affordable Rent home)

Units and tenures	1 London Affordable Rent home
Estimated PC date	3 rd July 2024
Reside entity	Barking & Dagenham Homes Ltd (Company No.: 12090374)
Draft Heads of Terms	
Lease Start date:	TBC
Lease Length:	130 Years
Lease Premium:	£555,681

Grant Funding:	GLA
Grant Amount:	£100,000
Loan:	£455,681

2.13. 12 Thames Road (London Affordable Rent homes)

Units and tenures	77 London Affordable Rent homes
Estimated PC date	28 th June 2024
Reside entity	Barking & Dagenham Homes Ltd (Company No.: 12090374)
Draft Heads of Terms	
Lease Start date:	TBC
Lease Length:	130 Years
Lease Premium:	£32,498,845
Grant Funding:	GLA Grant
Grant Amount:	£11,550,000
Loan:	£20,948,845

2.14. 12 Thames Road (Affordable Rent homes)

Units and tenures	79 Affordable Rent homes
Estimated PC date	28 th June 2024
Reside entity	B&D Reside Weavers LLP (Company No.: OC416198)
Draft Heads of Terms	
Lease Start date:	TBC
Lease Length:	130 Years
Lease Premium:	£29,638,984
Grant Funding:	GLA Housing Zone
Grant Amount:	£3,450,000
Grant Funding:	Right to Buy
Grant Amount:	£8,837,518
Loan:	£17,351,466

3. Company

3.1. The Reside collection of companies and Limited Liability Partnerships (LLPs) exist to support local people to access high quality, affordable housing. It was established by the council to create an independent but complementary service to the council's own housing services and currently consists of six limited liability partnerships and limited companies with differing financial arrangements. The Reside entities mentioned above are part of a larger scheme of Reside companies and Limited Liability Partnerships (LLPs). The relevant information regarding each entity is detailed below:

3.2. **Barking and Dagenham Homes Ltd (BDHL) (Co No:12090374)** is a company Limited by guarantee with one member, the Council, which wholly owns it. It is in the process of becoming a Registered Provider with the Regulator of Social Housing.

BDHL is wholly owned by the Council and is the proposed Registered Provider. In order to comply with regulatory requirements, it has an independent board that

consists of two Reside Directors, one Council Officer and two totally independent directors.

BDHL takes on the ownership of affordable rented homes that are developed by the Council and supported by GLA grant, including London Affordable Rent and target rent. This entity has Cabinet approval to receive 56 shared ownership homes, this has not yet been implemented and is being reviewed at present.

GLA grant conditions stipulate that the affordable rented homes must be managed by a Registered Provider, which for the Council means Barking and Dagenham Homes Ltd or the Council's Housing Revenue Account. The GLA is aware that BDHL is not yet a registered provider but is comfortable that progress is being made to resolve this.

- 3.3. **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).

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, but it can provide funding from Right to Buy receipts into this vehicle.

B&D Reside Weavers LLP holds affordable rented homes (currently a mix of 50%, 65% and 80% of market rent, London Living Rent and London Affordable Rent) on a long lease from the Council. Weavers LLP pay a premium under the lease to the Council. This premium is partly financed by a documented loan (with security) from the Council and partly financed using right to buy receipts given to Weavers LLP by the Council.

- 3.4. **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 and directed by the Reside Board under the terms of the shareholder agreement.

Shared Ownership homes built using GLA grant currently go into this LLP. The Council additionally plans to use this LLP for any future affordable / sub-market rented homes that do not receive any form of grant / Right to Buy 141 funding.

- 3.5. **Barking and Dagenham Reside Regeneration Ltd (Co No: 09512728)** acts as the employing company for Reside staff and incurs Reside specific running costs which are then passed onto the individual Reside entities.

4. Options Appraisal

- 4.1. **Do nothing:** The Council's IAS 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 lease 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.
- 5.2. The proposals in this report were considered and approved by the Executive Management Team at its meeting on 22nd February 2024.

6. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 6.1. This report seeks Cabinet approval for the disposals of completed developments by granting long leases to Barking and Dagenham Homes Ltd, Company Number: 12090374 and B&D Reside Weavers LLP, Registered number: OC416198 as set out in the body of the report.
- 6.2. The total development cost has been used to produce the lease premiums, with the loan amount then reduced by any grant to produce the loan amount. Each loan will 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 allocated from its revenue budget to cover the net development costs for each scheme.
- 6.3. A fixed interest rate for the 52-year 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.
- 6.6. 12 Thames Road contains a mix of social housing, affordable housing and light industrial. While most schemes contain an element of commercial, retail or parking that is retained by the Council, 12 Thames Road has roughly a third of the net borrowing costs allocated to the commercial costs of the scheme (£21.3m). The industrial units in 12 Thames Road will not be transferred to Reside or B&D Homes but will be managed and retained within the General Fund. Financing costs for the industrial units will be covered by rents paid directly by the Council and reported as part of the Investment and Acquisition Strategy.

7. Legal Implications

Implications completed by: Dr Paul Feild Principal Standards & Governance Solicitor

- 7.1. This report seeks Cabinet approval to agree to delegate authority to take action to transfer 55 Affordable Rent Homes at the Site at Woodward Road to B&D Reside Weavers LLP and 1 London Affordable Rent Homes at the same Site at Woodward Road to Barking & Dagenham Homes Ltd plus 79 Affordable Rent Homes at the site at 12 Thames Road Barking to B&D Reside Weavers plus 77 London Affordable Rent homes at the said site at 12 Thames Road Barking to Barking & Dagenham Homes Ltd. This will be achieved by granting long leases to the entities and they will finance the acquisition through loans made to them by the Council.
- 7.2. As observed in the body of this report the construction of the new homes is as part of the Council's Investment and Acquisition Strategy developments of new homes have been sponsored by the Council. The intention being on practical completion an interest by means of a long lease be granted to the companies which will in turn grant underleases to tenants. The corporate entities which will hold the housing blocks not having financial resources in themselves will need to take out borrowing to acquire the leasehold interest by means of a loan agreement with the Council. The duration of the leases proposed are being of such length that they must be disposed of by the Council for the best consideration as required by section 123 Local Government Act 1972. It is understood a valuation has been carried out to the surveying standard 'Red Book valuation' which will set the value of the loan(s). It is the intention the leases will be at market value and not discounted. This approach will mean there is not the question of unfair competition in terms of the lease and will be in accordance with the fiduciary duty to the ratepayer in the sense not being disposed of at an undervalue. As explained in this report the loans are at differing rates of interest depending upon the development. Where the loans are discounted, at a lower rate than current market rate, they will need to be compliance with the recent legislation which governs competition being the Subsidy Control Act 2022.

- 7.3. Because the timeline of practical completion of the various new home developments has been over a period of time, the legal landscape post Brexit has changed including different regimes of law relating to competition treatment. As this is a new regime the understanding on what arrangements are compliant with the new competition regime is not yet an exact science. For this reason, the earlier recommendation to Cabinet in Reports in June 2023, July 2023, October 2023 and January 2024 recommended that the final decision to grant the loan terms be delegated to the Director of Finance and Investments after advice is obtained from property experts and legal advisors.
- 7.4. As the loan and lease will be completed post 4 January 2023 the arrangements are within the curtilage of the Subsidy Control Act 2022 and any loan which is not a market rate prevailing from that time will need to comply with the said 2022 Act including a referral to the Subsidy Advice Unit.
- 7.5. As the leases and loans are to third party entities notwithstanding the Councils interest in being shareholders, it is beholden on the recipient companies as future property holders that they satisfy themselves as to the legality and regulatory compliance of the arrangements they enter into.

8. Other Implications

Corporate Policy and Equality Impact

- 8.1. The Equality Impact Assessment Screening Tool has been completed; a full assessment will not be required.

Public Background Papers Used in the Preparation of the Report:

- Treasury Management and Investment and Acquisition Strategy 2023/24 Mid-Year Review, 14 November 2023 Cabinet report (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CIId=180&MIId=12958&Ver=4>, Minute 60)

List of appendices:

None