

CABINET

19 February 2018

Title: Be First Business Plan 2018 – 2023	
Report of the Cabinet Member for Finance, Growth and Investment	
Open Report with Exempt Appendix 1 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972)	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Strategic Director: Claire Symonds, Chief Operating Officer	
Summary <p>This report seeks Cabinet agreement to the inaugural five-year Business Plan of Be First, the Council-owned company dedicated to the delivery of the borough's regeneration agenda which was launched on 1 October 2017. The five-year Business Plan is at Appendix 1 (this document is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information).</p> <p>The Be First Business Plan includes an aim to produce a minimum of 9,700 new homes in Barking and Dagenham by 2023, of which over 2,200 homes will be created as part of the Council's core Investment and Acquisition Strategy. This will include 1,600 affordable homes. The delivery of the remainder, some 7,500 homes, will be subject to external developers building sites which currently have planning consent, with Be First and any newly created development company playing a role to help accelerate this delivery.</p> <p>The Business Plan also sets out how Be First intends to deliver the aim of accelerating the regeneration of the borough and generating increased revenues and returns to the Council by using greater flexibilities to attract specialist expert staff and implement approaches to development that would not be available to an in-house Council function.</p> <p>The report sets out Be First's plans to deliver the company's contractual obligations, including significant financial benefits to the Council such as generating an annual financial contribution of £10.3m from 2020/21 onwards. The benefits will be delivered primarily through additional dividends and New Homes Bonus (NHB). In addition, Be First will help to address some of the Council's socio-economic objectives, for example fostering business growth and job creation by promoting improved skills and productivity in the borough.</p> <p>Achieving the contractual commitments, benefits package and aims of accelerated, higher quality growth requires significant changes and a transition from previous ways of working under the Council, to an enterprising delivery company. The business plan sets</p>	

out details of operational systems and governance arrangements, including the new company Board comprising industry experts, and includes details of the organisational structure to ensure that the company is fit for purpose.

Following on from the 'in principle' approval given by Cabinet by Minute 38 (19 September 2017), the Business Plan expands on Be First's proposals to undertake development activity in addition to delivering the Council's investment projects. It is proposed that such development activity be undertaken through the creation of a new development vehicle 'Be First Developments Ltd' (BFD Ltd) which is intended to leverage commercial expertise and additional freedoms to trade in order to meet Be First's agreed financial contributions.

The Business Plan also includes an assessment of the high-level risks to the achievement of the £10.3m target, including further changes to the calculation of New Homes Bonus (NHB), an adverse economic climate and restrictions on Council funding. By undertaking direct development activities, it is the aim of Be First to mitigate, as far as possible, risk associated with development industry slowdown in the construction of new homes.

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve the Be First Business Plan 2018/19 – 2022/23, as attached at Appendix 1 to the report, subject to the appropriate legal construct for the DevCo trading vehicle Be First Developments Ltd being delegated in accordance with recommendation (ii) below;
- (ii) Agree in principle to the formation of a trading vehicle 'Be First Developments Ltd' and to delegate authority to the Director of Law and Governance, in consultation with the Chief Operating Officer and the Cabinet Members for Finance, Growth and Investment and Economic and Social Development, to agree with Be First the appropriate legal construct and the terms of all the requisite legal documents and agreements (including a shareholder's agreement);
- (iii) Agree that the Council provides a state aid compliant facility of up to £100m of development funding to Be First Developments Ltd (and/or Be First, to be decided by the Chief Operating Officer in line with recommendation (iv) below) subject to it being within the agreed parameters of investment activity as outlined in paragraphs 3.18 and 3.19 of the report and subject to ensuring that adequate security is provided for the funding;
- (iv) Delegate authority to the Chief Operating Officer, advised by Investment Panel, to:
 - a). agree the appropriate source(s) of funding for each individual approved development proposal;
 - b). approve the draw-down of development funding from the £100m facility) subject to:
 - (i). a positive recommendation to proceed with each individual development proposal by the Investment Panel; and

(ii). that the funding for the facility, any drawn downs and borrowing costs are provided for in the Council's Medium Term Financial Strategy and the Chief Operating Officer is satisfied that the funding is in line with statutory guidance on local authority investments and is state aid compliant.

c). agree, in consultation with the Director of Law and Governance:

(i). the terms and form of such legal agreements (as are necessary) to give effect to the £100m development facility and to enter into such agreements on behalf of the Council;

(ii). the terms and form of legal agreements to give effect to the draw-downs as referred to above, including instruments providing security to the Council, and to enter into such agreements or security documents on behalf of the Council.

(v) Approve the allocation of an additional £700,000 funding to Be First, to be made available in the form of an extension of the Working Capital Facility agreement, subject to the Chief Operating Officer being satisfied that it is financially prudent to do so;

(vi) Delegate authority to the Chief Operating Officer, in consultation with the Director of Law and Governance, to approve the entering into (by Be First or the Council) of any agreement or commitments required to enable the delivery of the Council's capital programme as commissioned subject to:

- a). compliance with relevant procurement and state aid law;
- b). being satisfied as to the appropriate terms and financial implications;
- c). being satisfied that the terms of such agreements or commitments would not cause the Council to be in breach of its Constitution.

(vii) Delegate authority to the Chief Operating Officer, in consultation with the Director of Law and Governance, to approve the entering into (by Be First or the Council) of any agreement or commitments required to enable the delivery of any approved schemes within the Council's Investment and Acquisition programme subject to:

- a). the endorsement of the Council's Investment Panel;
- b). compliance with relevant procurement and state aid law;
- c). being satisfied as to the appropriate terms and financial implications;
- d). being satisfied that the terms of such agreements or commitments would not cause the Council to be in breach of its Constitution.

Reason(s)

To assist the Council in achieving its Inclusive Growth priorities. This proposal is in line with Recommendation 8 of the independent Growth Commission's report published in February 2016 and is therefore aligned to both the 'Growing the Borough' and 'Well run organisation' objectives.

1. Introduction and Background

- 1.1 By Minute 73 (15 November 2016), the Cabinet agreed to the creation of Be First, the Council's wholly owned regeneration company which has a primary objective to accelerate the regeneration of the borough through bringing forward construction and delivery of housing, commercial space and infrastructure thereby providing more effective services and attracting external investment into the Borough.
- 1.2 It was noted that Be First would be the main vehicle through which the Council's Investment and Acquisition Strategy will be delivered. This strategy has a double bottom line of generating a return on investment for the purposes of securing the sustainable financial management of the Council and the regeneration and economic development of the borough. This Business Plan therefore also outlines the Investment and Acquisition outcomes that Be First will deliver over the next five years.
- 1.3 By Minute 38 (19 September 2017), the Cabinet agreed a proposal in principle for Be First to act as a developer in its own right, in order to achieve the long-term financial contribution to the Council. The report and Business Plan explain the rationale to take this proposal forward through the creation of Be First Developments Ltd.
- 1.4 This Business Plan has been developed by Be First in collaboration with an internal LBBD stakeholder working group.
- 1.5 The Be First 5 Year Business Plan is contractually required to be updated and circulated for Shareholder approval by the Council on an annual basis.
- 1.6 Be First is also contractually required to produce a performance report against the outcomes listed within the Business Plan for consideration by the Shareholder Panel on a quarterly basis. The Shareholder Panel has committed to producing an annual update report for Cabinet on the performance of all the companies it has a shareholder interest in.

2. Rationale for Be First

- 2.1 Previous Cabinet reports noted that the rationale for Be First has its origins in the Growth Commission 2015 Report – "No-one left behind: in pursuit of growth for the benefit of everyone". This recommended the establishment of a Borough-wide regeneration vehicle that would be an early statement of the Council's intent to increase the pace of regeneration of the borough.
- 2.2 The achievement of the Council's long term strategic goals, in particular to build 35,000 – 50,000 new homes over the next 20 years, requires a step change in delivery performance that will require substantial increases in both capacity and capability. Be First has been created to provide increased flexibility and focus, to attract the staff to deliver the Council's Investment Strategy and to establish development vehicles with the private sector to accelerate the wider regeneration of the borough.
- 2.3 The business case for Be First was based on the premise that a continuation of historic regeneration structures and performance would not deliver the Council's

regeneration and financial goals. A different approach was needed that placed priority on regeneration and placed clear accountability for delivery on a defined, new, organisation with the flexibility and freedom to deliver within defined governance parameters.

- 2.4 Be First is charged with delivering long-term strategic regeneration objectives, including enhancing economic growth and prosperity for the people of Barking and Dagenham. In addition, Be First is charged with delivering significant financial benefits to the Council by bringing forward returns in New Homes Bonus, Council Tax and NNDR, and by delivering dividends to the Council. Be First will also contribute to delivering the vision and aspirations for the borough as set out in the Borough Manifesto, in particular Housing, Environment and Employment.
- 2.5 Be First is a 100% Council-owned company that is operationally independent of the Council, operating in the same way as a commercial organisation but being accountable to the Council for its performance and conduct through a Shareholder Panel. It will encompass all aspects of regeneration and place-shaping for the borough, including housing, commercial buildings and infrastructure.
- 2.6 Be First is designed to provide greater focus and clarity of purpose, build capacity and capability for effective delivery and inject dynamism and pace through more efficient and effective ways of working whilst maintaining public sector community focus.

3. Business Plan Proposal

- 3.1 The Business Plan provides a framework for the Council, as Shareholder, to review and approve the strategic direction of the company and its priority areas of business growth and development through its first five years of trading. By approving the Business Plan, the Council will either:
 - 3.1.1 be deemed to have consented to any matters for which Be First must seek Shareholder consent (under its Shareholder Agreement with the Council) in order to implement the activities contained within the Business Plan, or
 - 3.1.2 Cabinet will delegate authority to the Chief Operating Officer or other specified officers (in accordance with the recommendations) to implement the activities contained within the Business Plan.
- 3.2 Thereby providing Be First with the flexibility and freedom to successfully deliver the Council's regeneration aspirations while ensuring appropriate levels of oversight and approval by the Council. Specific development or acquisition proposals will continue to be appraised, monitored and implemented in accordance the Gateway Appraisal process (internal to Be First) and the Council's Investment Panel making recommendations to the Chief Operating Officer as detailed in the Governance and Assurance section in this report.
- 3.3 The 5 Year Business Plan sets out how Be First will deliver the strategic requirements outlined within the Shareholder Agreement, as well helping to address some of the Council's socio-economic objectives, primarily through place shaping and the development of new homes within the borough.

BUSINESS PLAN BENEFITS

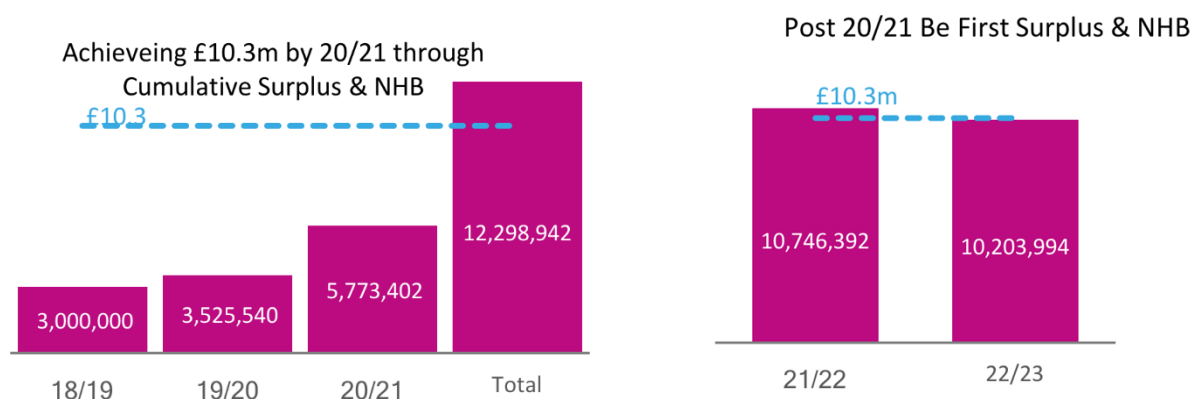
- 3.4 Delivery of the Be First Business Plan includes an aim to produce a minimum of 9,700 homes in Barking and Dagenham by 2023 of which over 2,200 homes will be created as part of Barking and Dagenham's core Investment and Acquisition Strategy including 1,600 affordable homes. The delivery of the remainder, some 7,500 homes is subject to external developers building sites which currently have planning consent.
- 3.5 Be First will deliver its **regenerating and place-shaping** agenda by using its resources and commercial expertise to drive further transformation, making it a more attractive and thriving place to live, work and play. It will achieve this by:
- Delivering innovative Masterplans for major areas of the Borough, including Creekmouth, Thames Road, Chadwell Heath and the Gascoigne Estate
 - Work with partners in the GLA, TfL and Public Health to secure funding for neighbourhood transformation, major cycling initiatives, and "Healthy Town" developments
 - Reinvigorating the Borough through delivery of the Artist Enterprise Zone, Film Studios, and Townscape Heritage schemes
 - Delivering a substantial Capital Programme, involving projects related to schools, parks, transport infrastructure, cultural and leisure facilities
 - Marketing and promoting Barking and Dagenham in compelling ways, attracting visitors, investors and businesses based on Borough-wide regeneration, unparalleled investment opportunities, affordable housing and job opportunities
 - Working closely with LBBD (including Employment & Skills, Culture and Housing) to ensure that LBBD's plans such as Culture Everywhere are incorporated into the plans for the Borough
 - Supporting cross-Borough plans such as the Parks and Open Spaces Strategy to support more local events for residents
 - Prioritising opportunities for development of sites with high levels of visibility to visitors, such as the station and town centre
- 3.6 Be First will **lever the broader socio-economic benefits** of physical regeneration to transform community outcomes in the Borough. To do this, Be First will:
- Ensure that over 1,600 of the 2,200 homes built by March 2023 through the Investment Programme are affordable homes
 - Deliver schemes which create substantial employment opportunities (e.g. Film Studios) and work with contractors committed to local job creation
 - Deliver over 600 private rental and sale properties to attract and retain higher-income earners, enhancing the overall wealth of the Borough
 - Deliver extensive regeneration of housing estates across the Borough
 - Enhance the skills and employability of residents by encouraging the use of local labour, and drive creation of employment opportunities in growth sectors
 - Embed a strategic focus on "inclusive growth"
 - Work with the Council to develop further socio-economic strategies

FINANCIAL BENEFITS

3.7 The £10.3m per annum **financial return** from 2020/21 Be First will deliver to the Council will be a combination of:

- dividends from Be First's surplus and proceeds from development activity
- contributions from the New Homes Bonus, following the creation of housing in the Borough
- income generated by the delivery of key functions (e.g. planning services, services to support development, land charging)
- income generation from smarter and more commercial use of Frameworks (including procurement frameworks)

Figure 1: Financial returns delivered by Be First 2018/19 – 2022/23



3.8 The table below sets out the estimated revenues across the business plan period to 2022/23 in £000's:

	18/19	19/20	20/21	21/22	22/23	TOTAL
Core Services	(3,820)	(4,776)	(4,486)	(4,042)	(4,000)	(22,343)
Non-Core Services	(3,056)	(4,341)	(4,980)	(5,146)	(4,795)	(23,832)
New Homes Bonus	0	(741)	(2,655)	(4,925)	(7,796)	(16,116)
Development Activity Profit	(3,000)	(3,000)	(3,000)	(6,000)	(3,000)	(18,000)
Total	(9,876)	(12,858)	(15,121)	(20,113)	(19,591)	(80,291)

INVESTMENT REQUIRED TO ACHIEVE THE OUTCOMES

3.9 **Be First requires significant investment**, particularly in its early years of operation, to deliver the entirety of its key objectives including the homes and financial return on investment. The gross level of investment funding required over the life of the Business Plan is estimated to be c. £790m. The financial implications are set out in section 6 of this report. This investment sum includes:

- Be First initial operating costs, including structural overheads and staffing costs

- the amount required for delivery of the Investment Programme and housing schemes (including substantial projects such as the Barking Town Centre Housing Zone and Barking Riverside Gateways Housing Zone)
- investment in development activity
- interest costs on borrowing

FIT FOR PURPOSE ORGANISATIONAL STRUCTURE

- 3.10 The **organisational structure** of Be First has been designed to ensure the company can deliver the maximum possible social benefits with the minimum amount of public investment. It is designed to ensure that the company can operate efficiently and effectively. Be First's operations are structured in three main areas:
- 3.11 The Commercial Division is responsible for financial management and organisational operation; management of support services; project and performance management of services delivered to the Council including the Capital Programme, Decent Homes Programme and the build out of the Investment Programme projects.
- 3.12 The Development Division (and Development Team within in it) is responsible for: developing a pipeline of development opportunities; acquiring sites; obtaining planning permissions; bringing forward development or disposal of assets; ensuring the Council's Investment Programme projects are site-ready; delivering of affordable housing and Estate regeneration; advising on affordable housing elements of S106 negotiations with third party developers; and Borough-wide Regeneration, including catalysing third party development activity, enhancing employment and skills and delivering positive socio-economic outcomes and "inclusive growth"
- 3.13 The Planning Division is responsible for: delivering of core planning services on behalf of the council (with the Council retaining its duty as Local Planning Authority); ensuring the highest standards of design and place-shaping are achieved; and creating of a consultancy arm to provide planning and architectural services to third parties.

PROACTIVE WORKING WITH STAKEHOLDERS

- 3.14 Be First's business plan recognises that it has many stakeholders, inside and outside the Council and that it will need to work effectively with the stakeholders to achieve the maximum impact. Be First My Place and Reside will work together to ensure that developments and refurbishment of Council assets are delivered to a high standard, and that there is the clear and optimum division of responsibilities and labour in relation to management of the Council's property portfolio.
- 3.15 Groups external to the Council such as the GLA and TfL have a critical role to play in enabling Be First to succeed and deliver against its key objectives. Creating a successful working partnership with these groups will be fundamental to ensuring that Be First has the appropriate permissions and resources to deliver. The Planning Division will play a key role in attracting, supporting and enabling developers to help drive delivery and a socially inclusive transformation of the Borough.

- 3.16 Partnerships with residents and local businesses will be key to ensuring that local communities are fully engaged in how their Borough transforms in the coming years.

UNDERTAKING DEVELOPMENT ACTIVITY

- 3.17 In line with the 'in principle' approval given in the Cabinet report in September 2017, Be First have proposed to undertake development activity through **the creation of a new development vehicle** 'Be First Developments Ltd' (BFD Ltd) which is intended to leverage commercial expertise and additional freedoms to trade and deliver developments in order to meet its agreed financial contribution of £10.3 million by 2020/21.
- 3.18 The Business Plan outlines that the BFD Ltd vehicle will undertake the types of development activity listed below, primarily within the Borough, identifying and creating development opportunities that the council would previously have been unable to access: -
- Buying and selling land – land trading of development sites, assembling sites for sale or its own development
 - Adding value through planning – securing value through planning permissions and trading sites with deliverable planning consents acceptable to the market
 - Serviced sites – acquiring sites and securing planning will create a pipeline of deliverable sites. On larger and/or more complex sites Be First will remediate sites and install services
 - Construction – building its own private and affordable homes for sale and rent, Be First will contribute directly to the supply of housing across the Borough
 - Joint ventures – opportunities to bring sites forward with other parties will be attractive to developers where Be First also carries out the planning function
- 3.19 The Business Plan suggests the following parameters within which the development activity will be undertaken namely;
- Within the LBBD investment portfolio: Be First will aim to deliver a Return On Capital Employed of greater than 10%, whilst maintaining an overall affordable housing allocation of greater than 35%. This plan assumes delivery of 2,208 homes of which 1,600 are intended to be affordable and therefore represents a return on affordable homes within this Business Plan of 72%.
 - Within the Be First Development portfolio: Be First will aim to deliver a Return On Capital Employed of greater than 20%, whilst maintaining an overall affordable housing allocation of greater than 25%,
- 3.20 In both cases above, the ultimate quantum and tenure of housing to be delivered are subject to planning policy and matters for determination by the local planning authority.
- 3.21 It is noted that, whilst the Business Plan discusses the structure and construct of the BFD Ltd entity, Cabinet is requested to approve the formation of the entity in principle. The approval of the detailed construct, the scope of business and terms of any legal agreements are being delegated to the Chief Operating Officer and Monitoring Officer and to be agreed with Be First.

- 3.22 The percentage of affordable housing expected to be delivered through each portfolio is in line with the current levels of affordable housing that third party development schemes achieve. Although the recently published London Plan policy aims to increase levels of affordable housing across London to the levels noted below, ultimately it recognises that this will be subject to viability which must be considered on a scheme by scheme basis.

Affordable Housing Levels in the London Plan

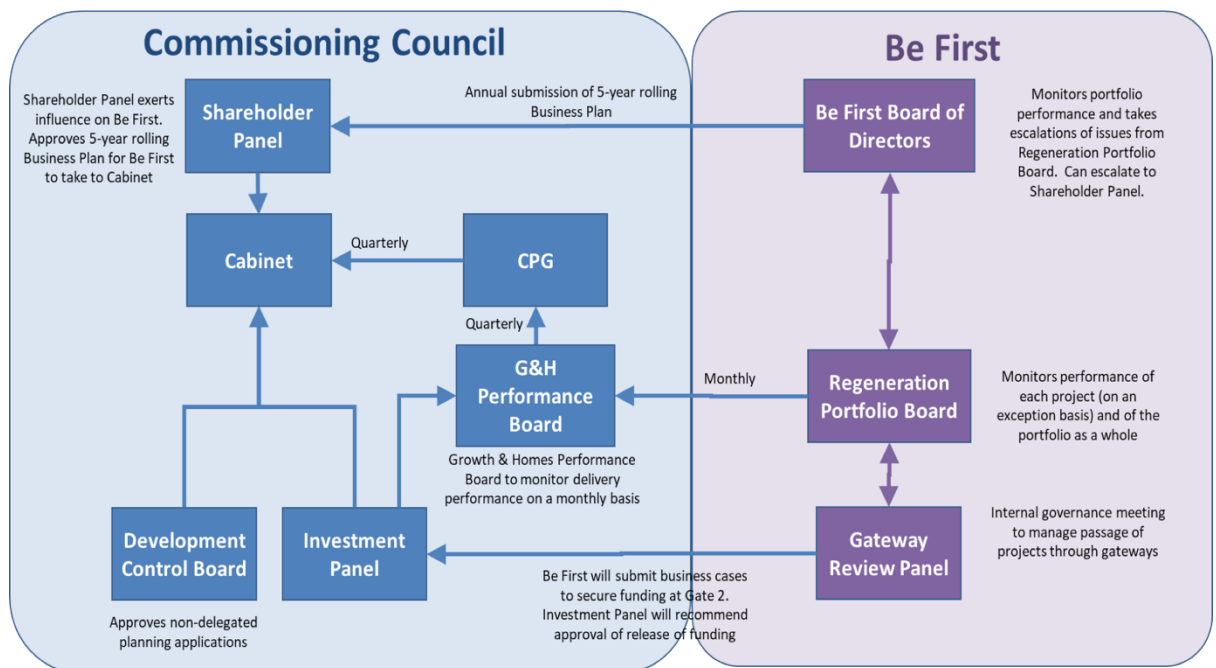
Maximise affordable housing subject to viability with expectation of:

- 50% on public land
 - 50% on industrial land
 - 35% elsewhere
 - For estate renewal projects no net loss of existing affordable housing and existing tenures re-provided
 - Where less than the above is achieved due to viability and an all estate renewal projects early, mid and late stage review mechanisms are required
- 3.23 The Council, will be developing revised affordable housing targets in the Local Plan which will be presented to Cabinet in June 2018 for approval. However, all schemes will have to demonstrate, through the planning process that they deliver the maximum reasonable amount of affordable housing capable of being delivered but this will be subject to each individual scheme viability appraisal.
- 3.24 Be First outline that gross investment funding of approximately £790m will be required to deliver the Business Plan, of which £690m has already been approved by Cabinet through its Investment and Acquisition Strategy. Be First will therefore require additional capital funding of approximately £100m subject to sufficient security against any assets or land of BFD Ltd, to be secured primarily through the Council in order to deliver the agreed return within the required timescale.

GOVERNANCE & ASSURANCE

- 3.25 Be First is a wholly owned subsidiary of the Council with an independent Board of Directors, comprised of unconnected representatives from the private sector and chaired by Lord Kerslake. LBBD exerts strategic control over Be First via a Shareholder Panel. The Shareholder Panel recommends for Cabinet approval strategic objectives for Be First as outlined in the Business Plan, monitors achievement of these on a regular basis, as well as any reserved matters. The statutory relationship is therefore between the Be First Board and Cabinet as advised by the Shareholder Panel. All other elements set out below are operational to support the working relationship between Be First and the Commissioning Council. These are designed to achieve the objectives of accelerating delivery, providing quality assurance and protecting the council's investment by actively managing risk:

Figure 2: The relationship between Be First and the Commissioning Council



- 3.26 As part of the suite of measures designed to accelerate project progression and give professional assurance on project delivery Be First has developed a bespoke methodology. It has implemented a Gateway Appraisal system (in accordance with previous Office of Government Commerce best practice) and uses an expert Gateway Panel to provide technical assurance during stages of regeneration, investment and acquisition projects. The Gateway Appraisal system was developed jointly by the Council Commissioning function and Be First and appraises scheme viability, quality and deliverability. Be First's Board also review each project as it is developed and prior to presentation to the Council for investment. This process ensures that each project proposed in the business plan is appraised on its own merit.
- 3.27 All decision on investments and acquisitions reside with Cabinet unless delegated. It is part of the recommendations of this report to delegate investments decisions to the Chief Operating Officer. As well as Be First's internal assurance processes it is proposed that the projects will be reviewed by the Council's Investment Panel, which is now in place to advise the Chief Operating Officer on the development of the Council's Investment Strategy (as approved by Cabinet in October 2016) and oversee its implementation. This provides an additional layer of assurance while increasing the speed of decision-making to allow swift progress during project design and construction phases.
- 3.28 Investment Panel have committed to providing an update to Cabinet on the progress of the Investment and Acquisition strategy at six-month intervals, and all future updates will provide detail on the current level of portfolio performance against the parameters noted above.
- 3.29 The Shareholder Panel will also receive regular updates on all matters covered by the business plan.

4. Options Appraisal

- 4.1 **Structure:** Options for the structure of Be First were set out in a paper that was considered by Ambition 2020 Board in August 2016 and then subsequently by Cabinet in November 2016. Those papers evaluated a wide range of alternative models deployed in other local authorities and the Board endorsed the conclusion that the model described above would be the most advantageous option for Barking and Dagenham to adopt.
- 4.2 The main alternative to the Be First model would have been an 'enhanced in-house' approach where the in-house arrangements continued but with known improvements in efficiency and working practices to address the challenges of the forward regeneration programme. This would not have enabled the step change required to meet the Council's objectives articulated in the Corporate Plan.
- 4.3 **Business Activities:** Options about the balance of business activities necessary to achieve the financial and non-financial targets have been considered by Be First's Board.
- 4.4 **Be First's Development Management:** Be First will be managing the delivery of Council investment schemes that will accelerate the supply of new homes in accordance with the Council's Investment Strategy and approach to housing supply. This proactive approach is considered an important step to accelerate housing completions and addressing the systemic underperformance of the housing market. This requires Be First to develop an expert team. It will be possible to leverage those skills to supply consultancy services to other developers and public sector bodies undertaking development to generate additional income. The business plan indicates that this strategy will be pursued but will not form the primary focus of activity as was previously envisaged when the original Be First Business Case was considered. The management team and Board consider the in-house expertise could better be deployed on a range of direct Development Activity within the Borough to secure higher returns (see next option below).
- 4.5 **Be First's Development Activity:** Development activities beyond the current investment programme is proposed to play a fundamental role in enabling Be First to maximise the regeneration and financial contribution to the Council. Leveraging its commercial expertise and freedom to trade, the business plan states that Be First will identify and create development opportunities that the Council could not previously have accessed. Without these activities, Be First would not be able to give the Council as Shareholder assurance it could reach its targets.
- 4.6 **Working with Third Party Developers:** By itself, the Council is not able to resource all the housebuilding required. Externally funded homes will make up the majority of new homes built in the Borough and by association the proportion of New Homes Bonus generated. To assist in achieving these targets, Be First's business plan sets out approaches to attracting new developers to the Borough. To catalyse interest, Be First will focus some of its efforts on strategic regeneration opportunities with high visibility to external developers, such as Barking Station and Barking Town Centre. Be First will proactively engage with developers to ensure that planning consents translate into building and delivery.

5. Consultation

5.1 The Business Plan has undergone the following consultation

- Internal working group of officers – iterative to January 2018
- Agreed by the Be First Board on 11 January 2018
- Shareholder Panel for endorsement on 18 January 2018
- Informal Members' Briefing on 19 January 2018

6. Financial Implications

Implications completed by: David Dickinson, Group Manager – Treasury and Pensions

6.1 Be First Financial Return to the Council

6.1.1 The Be First Business Plan (BFBP) outlines an ambitious programme of development and regeneration of the Council. The BFBP shows that Be First will generate savings of £5.77m by 2020/21, including £2.7m of New Homes Bonus (NHB), and a cumulative deficit of £0.1m from Be First's operating loss, which includes the write off their pre-incorporation and set up costs of £2.4m. Table A below shows the target net position of Be First by unit over a 5-year period:

Table A: Be First net position FY 2018/19 – FY 2022/23

	18/19	19/20	20/21	21/22	22/23	TOTAL
	£000s	£000s	£000s	£000s	£000s	£000s
Core Services	(1,116)	(2,129)	(1,833)	(1,382)	(1,333)	(7,793)
Non-Core Services	1,124	(158)	(795)	(959)	(605)	(1,393)
Overheads	2,781	2,503	2,510	2,519	2,530	12,843
Be First Net	2,789	216	(119)	179	592	3,656
New Homes Bonus	0	(741)	(2,655)	(4,925)	(7,796)	(16,116)
Be First Net with NHB	2,789	(526)	(2,773)	(4,746)	(7,204)	(12,460)
Development Activity Profit	(3,000)	(3,000)	(3,000)	(6,000)	(3,000)	(18,000)
Total	(211)	(3,526)	(5,773)	(10,746)	(10,204)	(30,460)
Less Covered by LBBD	2,789	-	-	-	-	2,789
Be First Returns to LBBD	(3,000)	(3,526)	(5,773)	(10,746)	(10,204)	(33,249)

6.1.2 Be First will achieve a total cash return of £12.27m by 2020/21 against their target of £10.3m. This is made up of development activity profit of £5.77m in 2020/21 with the previous two years profit of £3.0m in 2018/19 and £3.5m in 2019/20.

6.1.3 Section 2.3 of the BFBP provides sensitivity analysis of the impact of achieving the £10.3m return. The scenarios outlined include:

- i. reduction in the number of homes built compared to the current forecast;
- ii. the impact of reduced NHB compared to the current forecast; and

iii. Be First's contribution to the Council as a result of these scenarios.

- 6.1.4 Each scenario provided results in a reduction in either the number of units built or the NHB obtained and ultimately in Be First achieving the £12.3m return to the Council. Scenario 2 and especially scenario 3 highlight significant risks and it will be important in future reports and monitoring that any issues around these risks are highlighted as soon as possible.
- 6.1.5 A facility for the draw-down of up to £3.5m for working capital up to the point where Be First is self-financing was agreed by Cabinet in February 2017. The impact of a range of assumptions on Be First's requirements for working capital, including their proposals for increased revenue generation, is continuing to be evaluated. This report requests a further £700k is required, which will take the total working capital loan to Be First to £4.2m. This loan will not be repayable until Be First are fully self-financing with the first repayment no earlier than 31st March 2020. The accounting treatment of this loan has yet to be agreed with the Council's auditors.
- 6.1.6 The BFBP outlines the traditional net expenditure that the Council incurred when it provided the core services now covered by Be First, highlighting that there was a net cost of 0.52m in 2016/17 (see table B below). Be First is now financing this core service resulting in a saving to the Council. Be First is also looking to change the scope of activities, previously undertaken by the Council, through its commercial expertise to identify and create development opportunities that the Council would previously not have been able to access. This includes via the Council or alternative third-party investors/financial institutions, subject to the Council's governance arrangements.

Table B: Traditional net Council expenditure on functions now covered by Be First

		15/16	16/17	17/18
		£000s	£000s	£000s
Expenditure	Management	144	151	147
	Development Planning	1,458	1,618	1,562
	Economic Regeneration	1,076	771	£733
	Capital Commissioning & Delivery	2,380	2,811	2,778
	Total	5,057	5,351	5,219
Income (including recharges)	Management	(92)	(48)	(101)
	Development Planning	(1,094)	(1,293)	(1,499)
	Economic Regeneration	(668)	(725)	(732)
	Capital Commissioning & Delivery	(2,448)	(2,765)	(3,029)
	Total	(4,301)	(4,832)	(5,361)
Net Expenditure	757	519	(141)	

6.2 Be First Contribution to the Investment Strategy

- 6.2.1 Be First will help to accelerate the delivery of the Council-led development schemes which will be integral the Council's ability to achieve its £5.1m investment strategy returns by 2020/21. The £5.1 investment return is in addition to Be First's target

return of £10.3m and is predominantly generated when each scheme is operational and managed within Reside.

6.3 BFBP Funding Requirements

- 6.3.1 The BFBP requires funding for projects which necessitates a gross borrowing requirement of £786.8m, to be funded by March 2023. Funding this will require a significant increase in borrowing by the Council over a period of 5 years.
- 6.3.2 The £786.8 m comprises most of the schemes agreed in the Acquisitions and Investment Strategy (AIS) but excludes some of the large schemes that have already been built, such as Abbey Road 2, Gascoigne East Regeneration and the Street Purchases schemes. The size of the borrowing is significant and careful treasury management is required to manage the interest cost of carry during the construction phase.
- 6.3.3 In addition to treasury management, there needs to be close working between the Council, Be First, Reside and My Place to ensure that appropriate schemes are built, at the right time and within agreed budgets, to ensure that the Council's plans are met within agreed timescale but that are also Value for Money.
- 6.3.4 Currently the borrowing requirement outlined in table 5 is based on estimates and still require a significant amount of work to confirm the actual expenditure required. It is possible that there will be some slippage in the first few years as schemes are worked on, but that completion of the schemes is accelerated towards the end of the 5-year period.
- 6.3.5 Overall modelling of the BFBP forecasts that borrowing will increase the interest payable costs from £4.2m for 2017/18 to £25.2m in 2022/23. Interest income, resulting from treasury management, interest income from current schemes and from schemes within the BFBP is also forecast to increase significantly to £25.7m, based on schemes being operational and producing income as per the BFBP. The forecast gross borrowing costs, interest income, the net requirement and then comparison to the current MTFS provision is provided in the table below:

Model Compared to MTFS	18/19	19/20	20/21	21/22	22/23
Total Borrowing Costs	9,491	12,487	17,378	21,214	25,241
Total Interest Income	(7,028)	(9,292)	(12,243)	(15,801)	(25,671)
Net Requirement	2,463	3,195	5,136	5,412	(429)
MTFS Net Interest Budget	2,434	4,134	4,134	4,134	4,134
Total Shortfall (Surplus)	29	(939)	1,002	1,278	(4,563)

- 6.3.6 The model used to forecast the borrowing costs is dependent on Be First completing each project within the timescales outlined in their cashflow forecast and then handing them to Reside to fund and manage. As these forecasts are still estimates, further work will need to be carried out to ensure that the borrowing costs can be contained within the MTFS limitations. Part of the additional work will be identifying funding sources and borrowing options around duration.
- 6.3.7 The cash generated when each scheme is operational will be required to cover the borrowing costs and Minimum Revenue Provision (MRP) if applicable, with any additional income generated contributing to the £5.1m Investment Strategy return

target. The Council will decide its approach to MRP based on the specific schemes brought forward. However, the prudent assumption will initially always be that MRP should be made to safeguard the Council's position against any future devaluations

6.3.8 Given the scale and timing of the borrowing, the interest rate risk (i.e. the risk that interest rates will be higher than currently forecast) will be significant. An interest rate margin has been included in the model but there is still the risk that borrowing rates could increase to higher than the 4.5% top assumption in year 5.

6.3.9 The model also relies on the current schemes, i.e. Abbey Road 2, Gascoigne East and Street Purchases, generating sufficient interest to cover the borrowing costs they have incurred. Street Purchases will need to be closely monitored as income generated needs to be sufficient to cover the interest and MRP costs.

6.4 DEVCO Funding

6.4.1 The BFBP includes the requirement to provide £100m of funding to a DEVCO company. There is still a significant amount of work around defining the purpose of the DEVCO and its legal structure.

6.4.2 Depending on what structure is agreed and what activities the DEVCO will provide, there may be a requirement that any funding will be at a commercial rate due to State Aid requirements. Providing financing at a commercial rate will impact any return a discussion around the implications of this will need to be discussed and agreed prior to the DEVCO being set-up.

6.4.3 Subject to Cabinet's approval of this report, the £100m will be added to the Capital Programme presented to Assembly in late February. Initially it will be profiled into 2018/19 but this will be kept under review and is likely to be amended once the plans become more developed.

6.5 BFBP Risks

6.5.1 The BFBP outlines several key risks including:

- i. Lack of cash – availability from the government
- ii. Lack of cash – availability from LBB
- iii. Inability to attract and retain high quality staff
- iv. Economy and Housing Market
- v. Changing government policies (national or regional)

6.5.2 Each of these risks includes several underlying factors that could adversely impact the BFBP. Careful monitoring of these risks will be required with early reporting of adverse impacts on any of the schemes.

6.5.3 A significant risk around the BFBP is its aim to deliver unprecedented levels of housing quickly. While this will help to improve Barking and Dagenham it does not provide scope to significantly reduce the development programme due to adverse market conditions. Adverse market conditions include:

- i. an oversupply of property leading to reduced occupancy and reduce rents;
- ii. a significant economic downturn / recession;

- iii. regulation and legislation changes that adversely affect home building; and
- iv. a significant increase in construction costs.

6.5.4 During periods of significant negative market conditions, Be First's competitors can react quickly by delaying construction, reducing rents and focusing on other geographical locations. While Be First can adjust to market conditions, there will be a direct impact on the Council's revenue budget as delays in construction and reduced rents will impact both Be First's profits but also the cashflows and profits produced by Reside when the schemes are operational

6.6 Long Term Investment Strategy Implications

6.6.1 The BFBP covers the development part of the Council's overall AIS. The development part includes planning, regeneration and construction of the Council's property strategy and is relatively short-term in nature. Once a property is developed it is transferred to Reside to hold and for My Place to manage. It is therefore essential that the Be First Business Plan is aligned with the long-term requirements of Reside, both from the specifications required to the resulting cashflows required finance debt.

6.6.2 There is the potential for decisions around development to not fully consider the longer-term requirements of Reside as efforts are made to achieve the target return of £10.3m for the Council. Examples include:

- i. develop a scheme in the wrong location, of the wrong type or specification that is difficult for Reside to rent;
- ii. cutting costs in areas that need to be maintained, such as lifts, resulting in additional maintenance costs;
- iii. overpaying to ensure developments are completed quickly, resulting in rents being insufficient to cover interest and debt repayment;
- iv. not including all assumptions in financial models that results in additional costs being met by Reside.

6.6.3 The impact of the above examples could be that Be First achieves its development return target to the detriment of the long-term sustainability and income generation requirements of Reside.

7. **Legal Implications**

Implications completed by: Suzan Yildiz, Deputy Head of Legal Services (Commercial) supported by External Advisers at Trowers and Hamblins

7.1 The Council has a number of relevant powers concerning the formation of trading companies, borrowing and investment activities. Cabinet is requested to: -

- a) Approve the five-year Business Plan for Be First;
- b) approve 'in principle' the formation of a trading development company, Be First Limited (BFD Ltd) and to delegate approval of the legal construct and any agreements/documents to specified officers;
- c) to approve a development loan facility of £100 million and to delegate the agreement of the terms and security documents for the loan to specified officers; and

- d) approve additional working capital for Be First of £700,000.

Relevant Statutory Powers

- 7.2 Section 1 of the Localism Act 2011, the general power of competence (“GPC”) empowers local authorities to do anything that an individual can lawfully do provided that the activity is not expressly prohibited by other legislation. Activities authorised by the GPC can include investment, trading or charging decisions which may be undertaken through commercial (corporate) vehicles with the primary aim of benefiting the authority, its financial management, its area or its local communities. The power is wide and provided that the specific activity is not expressly restricted or proscribed by other legislative provisions, it will be within the parameters of the GPC power. The GPC enables the Cabinet to agree the £100m facility and to delegate to appropriate officers’ approval of the final terms and entering into a loan facility agreement (for capital to fund development).
- 7.3 In advising upon the loan arrangements, the Council’s external legal advisers will need to take into account of Section 4 of the Localism Act 2011 which adds a proviso that if the GPC power is exercised for an activity which may be deemed ‘for a commercial purpose’, then it must do so through a company.
- 7.4 Section 12 of the Local Government Act 2003 (“Power to Invest”) enables a local authority to invest for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial affairs. Consequently, borrowing to invest primarily for profit only would not be deemed directly relevant to fulfilling the authority’s functions and will not, therefore, be authorised under this power. However, investment in development, land or property, for example with a view to promoting regeneration is likely to fall within the power to invest.
- 7.5 Section 1 of the Local Government Act 2003 (“Power to Borrow”) provides local authorities with the power to borrow for any purpose relevant to their functions under any enactment or for the purpose of the prudent management of its financial affairs. The Power to Borrow has similar constraints to the investment power under the 2003 Act. Borrowing primarily to achieve a return is unlikely to be deemed connected to the functions of the Council or to be prudent financial management. Caution should be exercised in making decisions to ensure that any investments or loans financed with borrowing further the functions of the Council and are consistent with the prudent management of the Council’s financial affairs and associated prudential guidance.

Other Legal and Commercial Considerations

- 7.6 The Council’s fiduciary duties could be briefly summarised as it acting as a trustee of tax and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and council tax payers.
- 7.7 Cabinet in making the decision concerning the facility for Be First Development Limited/Be First should give due consideration to the risks and benefits of approving the recommendations. In practice Cabinet will want to consider whether the Council will achieve an appropriate return for its risk and that the Council has minimised the risk and potential cost to it if Be First Development became insolvent and/or

defaulted on its loan(s). The Chief Operating Officer should also consider this in approving the terms of the relevant legal agreements.

- 7.8 Consideration should also be given to whether the Council's funding in this arrangement is proportionate and properly balanced against the anticipated benefit (taking into account) the wider interests of its local business rate and tax payers. On a practical basis this means that the Cabinet Members should consider whether the monies they are requested to approve for lending to the Be First companies could be better used by the Council for the wider interests of its local tax payers.
- 7.9 The Ministry of Housing Communities and Local Government (MHCLG) has issued for consultation a draft statutory guidance which is likely to classify the proposed facility as 'an investment'. CIPFA has also updated its guidance in relation to local authority loans and investments.
- 7.10 In exercising the delegation of authority to agree the terms of the Facility Agreement the Chief Operating Officer should be satisfied that there is provision within the Council's budget/MTFS to fund the facility/borrowing costs associated with it and to ensure that it complies with the Council's relevant investment strategy.
- 7.11 Appraisal and consideration will need to be given through the Governance and Assurance protocols outlined in the body of this report as to the mechanisms and entities through which specific developments (whether referenced in the Business Plan or not) are to be delivered in future, whether directly by the Council, Be First or the new development company (BFD Ltd) or through joint ventures is sought to deliver the scheme in future and whether this has potential implications under the Public Contracts Regulations 2015 and state aid rules.

State Aid Implications

- 7.12 As a public body, the Council cannot provide state resources or other forms of support on a selective basis to any organisations or body in a manner that could potentially distort competition and trade in the European Union. The Council is aware of its duty not to breach state aid law and in this regard, will seek reassurance from Be First and professional advice from external professionals that the terms of the overall Facility Agreement (including its terms, finance rate and security offered) satisfy the Market Economy Investor Principle. The Facility Agreement and loans made under it are required to be state aid compliant and legal due diligence will be carried out to confirm this to the Chief Operating Officer before entering into any agreements or permitting draw-downs.
- 7.13 Consideration will need to be given as to the way a third-party developer is sought to deliver the scheme in future and whether this has potential implications under the Public Contracts Regulations 2015.

Working Capital Facility

- 7.14 The Council entered into a Working Capital Facility (revenue) with Be First Ltd (the extant company) in 2017. Under the terms of that agreement the Council may upon receipt of a written request from Be First agree to increase the amount which Be First may borrow under it. The decision authorises the Chief Operating Officer to

confirm the increase this facility by £700,000 if satisfied that it is financially prudent to do so.

Governance Implications

- 7.15 Section 9D(2) of the Local Government Act 2000 (as amended) establishes the functions of Executive Cabinets. This enables Cabinet to make decisions on any function unless reserved by order of the Secretary of State. Decisions concerning the formation of trading companies, borrowing or investments are not reserved functions. Therefore, Cabinet is entitled to make all of the approvals detailed in the recommendations.
- 7.16 The approval of the Be First business plan is reserved to the Council as shareholder under a shareholder agreement entered into with Be First in September 2017. This is an executive function exercised by the Cabinet on behalf of the Council as shareholder.
- 7.17 Under part 3 Chapter 1 paragraph 1.2 of the Council's Constitution, the Cabinet can in turn delegate its functions to an officer or authorise the officer to take investment decisions subject to established parameters, such as the need to consult other officers or Cabinet Members prior to making a final decision. In this instance, further financial, commercial or legal due diligence and assessment of prudential implications is pending in respect of both the creation of Be First Limited and the development facility of £100m. Such further due diligence and legal advice, will impact upon the final decision as to the appropriate legal construct for Be First Limited and whether the Council (acting by an officer) enters into the Facility Agreement and on what terms. Therefore, it is appropriate for Cabinet to authorise the Chief Operating Officer/the Section 151 Chief Financial Officer to: -
- a) Agree with Be First the final legal construct for Be First Development Ltd and any associated legal agreements or documents and
 - b) Negotiate and enter into final terms for the Facility Agreement (and any security documents connected with the development facility of £100m, subject to considering all due diligence reports/advice

in consultation with the Director of Law and Governance, the Cabinet Members for Finance, Growth and Investment and Economic and Social Development and in discussions with Be First (as necessary).

8. Other Implications

- 8.1 Risk Management: Be First's corporate risk table is below

Risk	Mitigation
Change in Government Policy reducing income A change in government policy, especially New Homes Bonus, could fundamentally affect the profitability of Be First.	Test implications of reduced Public Works Loan Board funding or New Homes Bonus changes. On-going monitoring of policies, proactive lobbying as appropriate

<p>Lack of funding – availability from LBBB Be First’s business model is dependent upon the availability of LBBB investment.</p>	<p>Make clear the funding requirements on LBBB in the Business Plan</p>
<p>Inability to attract and retain high quality staff A buoyant job market restricts Be First in recruiting key staff. This is particularly challenging for Be First which needs to recruit development expertise. The organisation is also vulnerable to the loss of key staff which could restrict Be First’s ability to operate.</p>	<p>Understand resourcing needs.</p> <p>Develop attractive employment offer (consider pay, accommodation, marketing and graduate targeting).</p>
<p>Economy & Housing Market Deterioration of economic conditions or the housing market would directly impact Be First’s business.</p>	<p>Regular reporting on developer context to Be First Board.</p> <p>Stress test various impacts on the business model, including falling values & sales, gearing and interest coverage.</p>
<p>Changing government policies (national or regional) Changes in planning, housing (including mortgage financing), and energy policy may deter developers, reduce revenues or impact on Be First’s ability to deliver the housing targets.</p>	<p>Stress test various scenarios to understand the impact.</p> <p>On-going monitoring of policies</p>

- 8.2 **Contractual Issues** - Development of a five-year Business Plan is a contractual commitment for Be First and is intended to set the framework by which the strategic direction of the Company is considered and approved by the Shareholder. The Business Plan also sets out how Be First intends to deliver against the commitments and strategic objectives outlined within the Be First contract.
- 8.3 **Staffing Issues** - Implementation of the business plan will include the addition of new staff into Be First. These staff will be employed on Be First Terms and Conditions.
- 8.4 **Corporate Policy and Customer Impact** - The proposal to establish Be First is in line with the independent Growth Commission’s recommendations and the Ambition 2020 strategy. Be First will contribute to delivering the vision and aspirations for the borough as set out in the Borough Manifesto, in particular around Housing, Environment and Employment. An Equalities Impact Assessment (EIA) was attached to the November 2016 Cabinet paper. Additional EIAs will be drawn up for schemes within the regeneration programme as they are brought forward for planning approval.
- 8.5 **Health Issues** - The proposals within the Business Plan are intended to have a positive impact on the local community, particularly in relation to the provision of more local accommodation.
- 8.6 **Property / Asset Issues** - As noted in the body of the report

Public Background Papers Used in the Preparation of the Report:

- Proposal to establish a Barking and Dagenham Regeneration Company:
<https://modgov.lbbd.gov.uk/internet/documents/s107350/Be%20First%20Report.pdf>

- Update on implementation of Be First:
<https://modgov.lbbd.gov.uk/internet/documents/s115807/Be%20First%20Report.pdf>
- Investment and Acquisition Strategy Update:
<https://modgov.lbbd.gov.uk/internet/documents/s115784/Investment%20Strategy%20Report%20final.pdf>

List of appendices:

- Appendix 1: Be First Business Plan 2018 – 2023 (exempt document)