

## CABINET

23 April 2019

<b>Title:</b> Development of Land at Rectory Road, Dagenham	
<b>Report of the Cabinet Member for Regeneration and Social Housing</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> Village	<b>Key Decision:</b> Yes
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<b>Summary</b>	
<p>Cabinet approval was granted on 9 March 2016 to purchase the Royal British Legion (RBL) site on Rectory Road and, to facilitate their move, grant them a 10-year lease for the former Rectory Road library building. The Cabinet report stated, <i>“Having looked at the opportunities with the site and given its adjacency to other Council owned sites, the Royal British Legion site could either be developed by the Council in isolation for around 14-18 residential units or combined into a larger scheme with neighbouring Council owned land.”</i></p> <p>Adjacent to the RBL site is 1-18 Jervis Court, which is a Housing Revenue Account (HRA) block containing 18 units of which 4 have leaseholders.</p> <p>Subsequent to the Cabinet approval of 2016, further feasibility work has been undertaken (working with architects Mikhail Riches) to assess a range of development options for the site, analysing the costs and benefits of delivering a comprehensive development encompassing both the RBL and Jervis Court sites, compared with a standalone infill development on the RBL site.</p> <p>The study concluded that additional housing and community benefits could be realised by combining Jervis Court and its associated parking area with the RBL site, delivering a higher quality comprehensive development. Combining the RBL and Jervis Court sites (Option 3) is one of a number of options being considered and will be subject to consultation with tenants under the Housing Act 1985. It would provide a more efficient layout that would enable the use of both sites to be intensified in order to deliver additional affordable homes and better-quality open space for the local community. Given the current and historic use of the site for community purposes, it is also proposed that new community space is provided.</p> <p>It is estimated at this feasibility stage that up to c.56 homes could be delivered subject to planning, together with c.468m<sup>2</sup> of new community space. This would provide an additional 38 affordable homes above the current provision in Jervis Court of 18 units (14</p>	

tenants and 4 leaseholders)). 21 London Affordable Rent units could be included within the new development, a 50% increase in the number of Council Comparative Rent homes on the site.

Whilst Jervis Court is in reasonable condition, it is considered that the additional 38 affordable homes and community benefits that can be realised by including Jervis Court within the development would outweigh the impact of relocating the existing 18 households. The options set out in paragraph 2.2 will be consulted upon with tenants of the block impacted.

To ensure that the benefits of the scheme are maximised, and the impact on existing residents is minimised, early engagement on the development options / proposals and programme will be undertaken with the existing tenants / residents on site. Information on their housing needs will be gathered, which will inform the decant strategy, so that the development and decant activities can be coordinated and sympathetically managed.

In accordance with standard Council practice for estate renewal projects, it is proposed that Initial Demolition Notices are served on the existing tenants when a clear preferred option emerges to enable vacant possession of the site to be secured for redevelopment. Information on their housing needs will be gathered, which will inform the decant strategy, so that the development and decant activities can be coordinated and sympathetically managed.

It is intended that vacant possession should be achieved through discussion and agreement with the tenants and leaseholders, although the use of the Council's compulsory purchase powers may be required as a last resort. Following consultation, a future Cabinet report will be presented on the outcomes and preferred option and, should the combined RPL and Jervis Court be approved as the preferred option, Cabinet will be asked to authorise the use by the Council of its Compulsory Purchase Order (CPO) making powers, should they prove necessary to facilitate the future redevelopment of the site.

In addition to consultation with tenants under the Housing Act 1985, existing residents and the local community would be engaged at an early stage of the design and planning process should the preferred option be approved, so that they have an opportunity to input into the scheme design, in order to seek their support for the proposals prior to the submission of the planning application.

The initial feasibility work assessing the development potential of the site was reviewed by the Investment Panel and the view was taken that option 3, which includes Jervis Court, would achieve both regeneration objectives and the Council financial metrics for such schemes. The Investment Panel will also review the developed proposals prior to a final decision being taken by the Cabinet and following the consultation with affected residents.

If approved, Be First would prepare a detailed planning application to redevelop both the RBL and Jervis Court sites to deliver a residentially led mixed use scheme comprising c.56 affordable homes and c.468m<sup>2</sup> of new community space.

The estimated total project costs of progressing option 3 are c.£19,700,000. It is intended that circa £13.402m would be met via borrowing with the General Fund from the Public Works Loan Board and the remainder through a combination of HRA funding (in respect

of the buy-back of leasehold properties at Jervis Court and decant costs for the 14 Council tenants), GLA Grant funding and Right to Buy receipts.

It is estimated that c.£978,000 of HRA funding would be required to purchase the 4 leasehold interests and fund the decant costs for the 14 tenants. This is in the HRA Business Plan capital allocation for the Estate Renewal Programme. The total allocation in 2019/20 is £11.5m, then £6m per annum in subsequent years.

The intention is to utilise both GLA Grant and Right to Buy Receipts, it should be noted that a registered provider entity will be required for schemes utilising GLA grant in order to optimise funds to deliver the new affordable homes.

The funding is proposed to be provided through a loan agreement between the Council and any Reside Registered Provider it may set up (or an existing entity within the Barking & Dagenham Reside structure) to develop and manage the new Affordable Housing units.

As it is envisaged that the ownership will be within the Reside structure, which is outside of the Housing Act, an appropriation of the land under section 122 of the Local Government Act 1972 from the Housing Revenue Account to the General Fund would be required.

### **Recommendation(s)**

The Cabinet is recommended to:

- (i) Approve in principle the proposed redevelopment of the former Royal British Legion site and Jervis Court (Option 3 in paragraph 2.2 of the report), as shown edged red in the plan at Appendix 1 to the report, subject to consideration of the outcomes of consultation with affected residents;
- (ii) Approve consultation with affected tenants and leasehold interests in respect of 1-18 Jervis Court pursuant to Section 105(1) of the Housing Act 1985 in respect of the proposed redevelopment (Option 3) and potential demolition of the premises and delegate approval of the details of any consultation to the Director of Inclusive Growth and/or a delegate on his behalf, in consultation with the Director of Law and Governance;
- (iii) Agree the service of Initial Demolition Notices on all secure tenants at the affected properties at the appropriate time having regard to the outcomes consultation, in order to suspend the requirement for the Council to complete Right to Buy applications for as long as the notices remain in force and delegate approval and timing of final notices to the Director of Inclusive Growth, in consultation with the Director of Law and Governance;
- (iv) Agree in principle that, subject to the grant of an acceptable planning permission and receipt of satisfactory construction tender prices, the project be financed and held within the residential asset class of the Investment and Acquisition Strategy;
- (v) Agree in principle the inclusion of the project in the Council's Capital Programme in the total sum of £19,700,000, subject to securing planning permission and procurement of a contractor in accordance with the project outputs and budget;

- (vi) Agree in principle the Funding Strategy set out in section 3.5 of the report, including borrowing up to £13,402,000 within the General Fund from the Public Works Loan Board, to finance the development and ownership of the affordable rent homes via a loan agreement made between the Council and any suitable vehicle that the new units may be held in (e.g. a new B&D Reside Registered Provider or other vehicle); and
- (vii) Approve in principle the appropriation of the land, as shown edged red in the plan at Appendix 2 to the report, under Section 122 of the Local Government Act 1972 from the Housing Revenue Account to the General Fund;

### **Reason(s)**

The recommendations are aligned to five elements of the new Council vision and priorities namely:

- Regeneration and development of the borough
- Housing Estate Regeneration
- Provision of affordable housing
- Community and social benefits
- Development of an asset (Royal British Legion building) bought in 2016 for the purpose of redevelopment.

## **1. Introduction and Background**

- 1.1 Cabinet approval was granted on 9 March 2016 to purchase the RBL site on Rectory Road, which is located within a 10-minute walk from Dagenham Heathway station. The site was purchased in 2016 for £700k, for the purposes of redevelopment.
- 1.2 At the time the RBL site was purchased it was acknowledged that there was an opportunity to merge this site with the adjacent Jervis Court in order to deliver a more comprehensive development encompassing a development site of 0.34 hectares. A site plan is provided in Appendix 1. However, it is recognised that this would impact on the 18 residents living in 1-18 Jervis Court, including 14 tenants and 4 leaseholders, who would need to be relocated in order to facilitate its redevelopment.
- 1.3 In order to establish whether the benefits of redeveloping Jervis Court would justify relocating the existing residents from the building, which is in reasonable condition, further feasibility work and options analysis was undertaken to assess the development potential of the RBL site in isolation, compared with a more comprehensive development encompassing both the RBL and Jervis Court sites. The options appraisal and recommendations have been considered by the Investment Panel as part of the Gateway 2 process. Further detail is provided in Section 2 of this report.
- 1.4 Jervis Court was not included in the 2015-21 Estate Renewal Programme. Therefore, Cabinet is requested to make an in-principle decision concerning the preferred option to deliver a comprehensive development comprising Jervis Court and to authorise consultation with tenants under the Housing Act 1985. In accordance with the Council's standard practice for securing vacant possession to

deliver estate renewal projects Cabinet approval is also required to serve demolition notices at the appropriate time and having regard to the outcome of consultation with tenants.

## 2. Proposals

### Options Analysis

- 2.1 Feasibility work was carried out exploring a range of design options assessing the development potential of combining the RBL and Jervis Court sites compared with an infill development on the RBL site only. In addition, the implications of including a new community facility compared with an entirely residential scheme have been considered.
- 2.2 Following a review of the design feasibility work by the Investment Panel, four options have been appraised:
1. **Option 1: Do Nothing.** Retain 18 affordable homes and community use in former RBL building. Whilst minimising disruption to existing residents' lives, this is seen as failing to deliver the potential for additional affordable homes and the other benefits stated for the preferred option.
  2. **Option 2:** Infill development on the RBL site only, to deliver 14-18 additional affordable homes, whilst retaining the 18 affordable homes in Jervis Court (32-36 units). This option would mean the loss of a community facility and failure to deliver the full benefits of option 3 but again minimising disruption to existing residents.
  3. **Option 3 (Preferred Option):** Redevelop both the RBL and Jervis Court sites to deliver c.56 affordable homes (35 Affordable Rent and 21 London Affordable Rent) and 468m<sup>2</sup> of community space. Paragraphs 2.17 to 2.18 set out the benefits of this option. This option would involve the decanting of tenants and buybacks of leaseholders and the associated disruption.

### Financial Summary

- 2.3 Option 3 represent a viable investment proposition and achieves the Council's financial return targets.
- 2.4 The investment metrics for the preferred option (Option 3) are summarised as follows:
- |  |             |
|--|-------------|
| 1 <sup>st</sup> year surplus           | £177,000    |
| Internal Rate of Return                | 6.7%        |
| Net Present Value (3.5% discount rate) | £16,371,000 |
| Yield on Cost                          | 4.6%        |
- 2.5 To pursue the preferred Option 3, HRA funding will be required to purchase the 4 leasehold interests, and fund the decant costs for the 14 tenancies, estimated at £978,000.
- 2.6 Total development costs are estimated at £19,700,000 for Option 3.

- 2.7 Consideration was given to include Private Sale and market rent units. However, this has been discounted as this was less financially viable.

## **Planning Policy Considerations**

### **Community Uses**

- 2.8 The planning history for the RBL site indicates that the property has been in community use (Class D1) since the 1950s. In the first instance, adopted planning policy seeks to protect such community uses and any loss will require robust justification, particularly given that this site is in active use. Further work would be needed to assess the need to retain the community use, in order to assess whether the loss of community use on the site can be supported in planning policy terms.
- 2.9 Specific policy criteria must be met to permit the loss of community facilities. This includes that the facility is replaced, or relocated somewhere more accessible, or that the facility is no longer needed and there are no reasonable prospect of alternative community uses (demonstrated by at least 12 months of marketing the space for community use).
- 2.10 Furthermore, planning policy encourages community uses to be provided as part of mixed-use development.
- 2.11 The proposed option responds to these policy requirements, by re-providing a community facility.

### **Existing Residential Uses**

- 2.12 Planning policy stipulates the development proposals should re-provide existing residential use, with at least equivalent residential floorspace. Emerging policy also expects existing affordable housing to be replaced by equivalent or higher quality accommodation and should generally produce an overall uplift in provision. The development proposals meet this policy requirement.

### **Design Considerations**

- 2.13 Whilst policy guidance suggests 11 – 32 units could be accommodated on the site based on its PTAL rating, the design feasibility work shows that additional development quantum is achievable, particularly along the northern boundary of the site immediately south of Church Elm Lane.
- 2.14 Proposals should limit the number of single aspect units with no north-facing single aspect units and preferably no family sized single aspect units.
- 2.15 As part of the next design phase, a transport consultant will be appointed to inform an appropriate level of car parking to be provided. Option 3 demonstrates that c.40 car parking spaces could be accommodated on the site.
- 2.16 More detailed massing and layout analysis will be undertaken as part of the next stage of the design and planning process.

## Recommended Option

- 2.17 It is recommended that Option 3 is approved in principle to progress subject to consultation with tenants as this option will:
- Deliver a comprehensive scheme that will optimise the development and regeneration benefits of the site;
  - Responds positively to the key planning policy requirements, particularly in relation to the retention of the community use;
  - Achieves the Council's financial metrics for redevelopment schemes of this nature.
- 2.18 The scheme will provide a range of benefits to residents living in the new homes, as well as the wider community, including:
- Improving the urban fabric along Rectory Road
  - Providing better frontage onto Church Elm Lane
  - Improved environmental and sustainability standards (including lower energy bills)
  - Improved public and private external space (including private balconies)
  - New community facilities in a modern building
- 2.19 Option 3 does require the leaseholder buyback of 4 properties, and the decanting of 14 tenanted households. Approval for Initial Demolition Notices is requested subject to a delegation to do so at the appropriate time and having regard to consultation responses. The ground for possession for the tenanted household will be under Housing Act 1985, Sch 2 Ground 10, i.e.
- The landlord intends, within a reasonable time of obtaining possession of the dwelling- to demolish or reconstruct the building or part of the building comprising the dwelling-house.*
- 2.20 The Council will consult with tenants on the proposals and will work with tenants to identify their housing needs and help them find a suitable alternative property including offering right to return.
- 2.21 The Council recognises that its Compulsory Purchase Order powers are among the strongest powers enabling delivery of development proposals, and that their potential to impact on the human rights of the individuals affected by the proposals. The Council will make every effort to pursue redevelopment in consultation with tenants and through voluntary agreement with owners of individual interests. Following consultation with tenants, a further report will be presented to Cabinet to consider the case for the use of compulsory purchase powers which will demonstrate;
- the policy basis for the Scheme to demonstrate that the its fits with the planning policy framework for the area;
  - Deliverability- demonstrating that the development is able to proceed and is deliverable, that the necessary resources and funding are available to achieve the purpose of the CPO within a reasonable time frame;
  - that the scheme is unlikely to be blocked by legal or physical impediments;

- the extent to which the development will contribute to the achievement of the economic, social and/or environmental wellbeing of the area;
- whether the purpose for which the land is to be acquired could be achieved by any other means.

2.22 Government guidance is clear that negotiations can, and should, continue in parallel with the preparation and making of a CPO which will be a final resort. The following section further explains the offer to leaseholders and tenants.

2.23 In summary delivering Option 3 requires further consultation with the residents of Jervis Court and the consultation responses will be reported back to the Cabinet in due course for a final determination on delivering Option 3, the funding arrangements and the use of CPO powers.

### **3. Delivery Arrangements**

#### **Decant and Leaseholder buyback offer**

3.1 Be First's portfolio of council-owned estate renewal schemes includes a large number that require the demolition and replacement of tenanted blocks. There is therefore a need to manage the development of these extremely sensitively with the early engagement of the affected residents and communities.

3.2 Should the preferred option be approved, Be First and Council staff will work with the residents of Jervis Court to enable them to find a new home that meets their housing needs. Council tenants will be given high priority to bid for alternative accommodation through the Choice Homes scheme. This will give them access to alternative council homes as well as housing association properties that become available to let through the scheme.

3.3 For leaseholders, the Council will buy back their home at market value. The Council may also give financial assistance to leaseholders to buy an alternative home. Tenants and leaseholders who need to move as result of the regeneration proposals will be eligible for a home-loss payment if they have been living in their home for 12 months or more. Tenants and leaseholders will also receive payments towards the cost of moving home, such as removal costs.

3.4 Existing tenants of Jervis Court will also have a Right to Return to the new Council Comparative Rent homes that are built. Because the new homes will be owned and managed by Reside, the tenancy terms and conditions will be different. As set out above, the rents of the new homes will be set at London Affordable Rent levels.

#### **Programme**

3.5 Subject to approval of the recommendations in this report, consultation will commence on the proposed options with the results presented to Cabinet circa June/July 2019. If the recommended option is adopted, it is proposed the scheme is delivered by Be First, who will progress the project through the planning process, manage site preparation, the delivery of the works and management of the completed scheme. It is proposed that a contractor for the works is procured through the new Be First development framework.



3.6 Subject to feedback from the consultation stage, an indicative timetable is set out below:

<b>Milestone</b>	<b>Date</b>
Planning submission	December 2019
Planning approval	March 2020
Contract Award	March 2021
Start on Site	May 2021
Practical Completion works	July 2023
Fully occupied	October 2023

## **Funding**

3.7 The estimated development costs are c.£19,674,920 to be funded through a combination of HRA funding, GLA Grant funding, Right to Buy receipts and borrowing, broken down as follows:

HRA	£978,000
GLA Grant	£2,100,000
Right to Buy	£3,220,000
Council borrowing	<u>£13,402,000</u>
Total	£19,700,000

3.8 HRA funding is required to purchase the 4 leasehold interests and fund the decant costs for the 14 tenants (estimated at £978,000). The remaining funding covers land acquisition, professional fees and construction costs.

3.9 It is proposed that the development and ownership of the new affordable homes is financed through borrowing up to £13,402,000 within the General Fund from the Public Works Loan Board. The funding is proposed to be provided through a loan agreement between the Council and the Reside Registered Provider (or an existing appropriate entity within the Barking & Dagenham Reside structure) established to develop and manage the new Affordable Housing units. Definitive funding arrangements would be made in tandem with a final decision to pursue Option 3 and any CPO.

## **4. Consultation**

4.1 There has been no public consultation on this scheme to date. Subject to Cabinet approval of the recommendations, early consultation and engagement with existing tenants and residents will be carried out, advising them of the Council's development plans and programme, and to understand their housing needs. The responses will inform the Cabinet's final decision on the proposals and the decant strategy for tenants and leaseholders, such that the development and decant activities can be coordinated and sympathetically managed. Consultation will be carried out in accordance with the Council's duties under s.105(1) of the Housing Act 1985.

4.2 If the scheme progresses, tenants, leaseholders and the wider local community will be involved in the design and planning process, working closely with the design team as the design develops prior to the planning application submission timetabled for December.

- 4.3 The Greater London Authority have a Resident Ballot Requirement (RBR) for Strategic Estate Regeneration projects benefitting from GLA funding. As Strategic Estate Regeneration projects are defined as demolition of homes on an existing social housing estate **and** construction of at least 150 new homes (of any tenure), this scheme does not require a Resident ballot as the number of homes proposed is significantly below this threshold.

## **5. Financial Implications**

Implications completed by: David Dickinson, Investment Fund Manager

- 5.1 This scheme was not on the original list of 44 Investment Schemes and will require additional PWLB borrowing of £13,402,000. If the scheme proceeds it is forecast to be operational by 2023/24.
- 5.2 Be First have confirmed that they have sufficient resources to manage the development of RBL in addition to the other schemes that have already been agreed or are in the pipeline. It is essential that this remains the case and that other schemes are not delayed as a result. If there are insufficient resources then it is essential that Be First, where possible, prioritise the development of the more profitable schemes, which may include prioritising RBL.
- 5.3 The preferred scheme (Option 3) will provide 38 additional residential units and provides both a positive return over year one (£177k) and year six (£47k) and is therefore an investable scheme. The scheme will provide 21 London Affordable Rent (LAR) units and 35 affordable rent units.
- 5.4 The scheme requires a significant amount of grant income including £3.220m Right to Buy receipts and £2.1m of GLA grant for the LAR units.
- 5.5 The predevelopment costs of c.£5.1m are significant and, prior to expenditure on enabling works and relocation/buyout costs, further work is required on addressing the issues raised in the Commissioning Implications section.

## **6. Commissioning Implications**

Implications completed by: Graeme Cooke, Director of Inclusive Growth

- 6.1 The principle of incorporating Jervis Court to at least double the development capacity of the site is supported. Previously it was estimated the redevelopment of the British Legion site could provide net 14-18 new homes.
- 6.2 This proposal provides a net gain of 38 homes taking into account the 18 homes that will be demolished. This includes a net gain of 7 Council Comparative Rented homes. However, this is a sensitive site, particularly as the condition of Jervis Court is acceptable.
- 6.3 There are 18 households who will need to be relocated. Further work is required to understand the housing needs and preferences of the residents who live in Jervis Court before the rehousing process begins in line with the Council's rehousing offer.

- 6.4 Further work is also required in relation to the future of the community centre, and establishing the new social infrastructure that will be built as part of the scheme.
- 6.5 Given the above, comprehensive and early engagement, particularly with the residents of Jervis Court, is essential and they must be involved in the design of the site.

## **7. Legal Implications**

Implications completed by: Suzan Yildiz, Deputy Head of Legal / Paul Feild, Senior Governance Lawyer, Legal

- 7.1 The preferred Option 3 proposes to include within the development land Jervis Court and the British Legion site. The Jervis Court land is currently occupied by tenants and leaseholders of the Council who have a legal right under Section 105(1) and (2) of the Housing Act 1985 to be consulted on matters of housing management which include any development proposal resulting in potential displacement of tenants or relocation of demolition. The proposal/Option 3 contemplates that the housing development comprising 56 affordable units will be delivered by Be First (as development manager) and will ultimately be held by a suitable Reside vehicle (being either a new Registered Provider which may be registered by the Council/Reside or an existing entity within the Reside structure). The Jervis Court land needs to be appropriated from the Housing Revenue Account, which is considered further below. As this scheme is at an early stage, consultation will need to be carried out with residents and leaseholders affected. Cabinet is presently requested to approve consultation with tenants and the proposed Option 3 in principle. The ultimate decision to pursue Option 3 (along with any decisions to compulsorily acquire any interests) will be the subject of a further report to and made by Cabinet having regard to consultation responses.

### **Council Powers**

- 7.2 The Council has power to pursue the preferred Option 3 to deliver the development scheme by virtue of the general power of competence under section 1 of the Localism Act 2011, which provides the Council with the power to do anything that individuals generally may do. Section 1(5) of the Localism Act provides that the general power of competence under section 1 is not limited by the existence of any other power of the authority which (to any extent) overlaps with the general power of competence. The use of the power in section 1 of the Localism Act 2011 is, akin to the use of any other powers, subject to Wednesbury reasonableness constraints and must be used for a proper purpose.
- 7.3 Whilst the general power of competence in section 1 of the Localism Act 2011 provides sufficient power for the Council to participate in the transaction and enter into the relevant project documents further support is available under Section 111 of the Local Government Act 1972 which enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of its functions, whether or not involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
- 7.4 In exercising the power of general competence and in making any investment decisions, the Council must also have regard to the following:

- i. Compliance with the Statutory Guidance on Local Government Investments;
- ii. Fulfilling its fiduciary duty to tax payers;
- iii. Obtaining best consideration for any disposal;
- iv. Compliance with Section 24 of the Local Government Act 1988 in relation to giving financial assistance to any person (which either benefits from a general consent or requires express consent by the Secretary of State);
- v. Compliance with any other relevant considerations such as state aid and procurement;

### **Consultation with tenants**

- 7.5 Section 105 of the Housing Act 1985 requires the Council to consult with all secure (and demoted) tenants who are likely to be substantially affected by a matter of housing management, which includes development proposals and demolition of dwellings by the housing authority. Such consultation must inform the tenants of the proposals, provide an opportunity to make their views known to the Council within a specified period and consider the representations made to the Council. The report endorses Option 3 (incorporating Jervis Court into the development proposals) and approves consultation of affected tenants.
- 7.6 The courts have determined that to be effective consultation must be carried out at a formative stage of any proposals; sufficient reasons must be given for the proposals, together with adequate time, to allow intelligent consideration and response and any responses must be taken into account when making a final decision. A final decision to deliver Option 3 (and associated decisions, such as pursuing a CPO) will be taken by Cabinet having regard to the representations made by tenants.

### **Achieving Vacant Possession**

- 7.7 The report and the interests plan details that at least part of the development site has existing residents, being tenants and leaseholders. In due course, negotiations will be necessary to acquire vacant possession through voluntary sale/buybacks if Option 3 is pursued. As a last resort Compulsory Purchase Orders can be considered under the Land Compensation Act. A decision to proceed with a Compulsory Purchase Order will require formal resolution by Cabinet and future report will need to make a compelling case in the public interest and fully demonstrate the grounds for proceeding with a CPO are met. Impacts on equalities and human rights implications for existing tenants/leaseholders and any other affected parties are key considerations which will factor into decision making (this is considered further below).
- 7.8 Demolition Notices, which are proposed to be utilised to enable delivery of the scheme, would preclude Council tenants who are within the site boundary exercising their right to buy within sites earmarked for regeneration under the provisions of the Housing Act 2004. At the time of a demolition notice there must be a clear and firm intention to redevelop, therefore, care needs to be taken about the

timing and service of Demolition Notices (consideration of which has been delegated to the Director of Inclusive Growth). The Council is empowered to serve *Demolition Notices* where areas have been identified for estate renewal, regeneration and redevelopment. There is a prescribed notification process:

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

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

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

7.11 The Council can make an application to the Secretary of State during the 24-month period for that period to be extended, but if no application is made, it will be unable to serve any further demolition notice in respect of these properties for five years without the Secretary of State's consent. On receipt of an application, the Secretary of State can direct that the period be extended, but he may specify further notification requirements that the Council must comply with in order for the exception to the Right to Buy to continue.

7.12 Finally, If the Council subsequently decides not to demolish the property, it must serve a revocation notice upon affected tenants as soon as is reasonably practicable. If it appears to the Secretary of State that a landlord has no intention of demolishing properties subject to a Final Demolition Notice, he may serve a revocation notice on affected tenants.

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

7.13 The Human Rights Act 1998 ('the HRA 1998') effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions officers and members, therefore, need to have regard to the Convention.

7.14 The service of a Demolition Notice on existing secure tenants potentially engages certain human rights protected under the HRA 1998. The HRA 1998 prohibits

unlawful interference by public bodies with European Convention rights. The term 'engage' simply means that human rights may be affected or relevant.

- 7.15 The Demolition Notices should contain specific information relating to the Right to Buy to clarify any compensation that may be payable for certain reasonable expenditure, if incurred in respect of pre-existing Right to Buy claims/applications, but also to protect the Council from unnecessary compensation claims in the event that tenants incur unnecessary costs once notices have been served.
- 7.16 The rights that are of significance to the decision in this matter are those contained in Article 8 (right to respect for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions). Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic wellbeing of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1<sup>st</sup> Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 7.17 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the legitimate aim of regeneration. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation is relevant in assessing whether a fair balance has been struck.
- 7.18 Therefore, in reaching a decision, the Council needs to have regard to the extent to which the decision may impact upon the Human Rights of the residents who may have a demolition notice served upon them and to balance this against the overall benefits to the community, which the proposed redevelopment would bring. The committee will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.

### **Funding and Borrowing**

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

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

### **Loan and Grant Agreements**

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

### **State Aid**

- 7.21 As local government is an emanation of the state the Council must comply with European law regarding State Aid. Therefore, local authorities cannot subsidise commercial transactions such as for example low cost finance or financial assistance to its own companies if such transactions are capable of distorting competition in the EU. In this transaction, State Aid law is relevant in the context of the funding being provided and the price at which the Council's land interest is disposed of to the Reside Registered Provider (see below). For the loan not to amount to State Aid, it must be made on 'market terms' in order to satisfy the "Market Economy Investor Principle" which means a proper valuation of the land must be

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

- 7.22 It is envisaged in the report that ownership of the completed development / units will be within the Reside structure which is outside the Housing Act. There will need to be an appropriation of the land under Section 122 of the Local Government Act 1972 from the Housing Revenue Account to the General Fund.
- 7.23 In addition, in deciding whether a Reside vehicle is suitable, consideration must be given to the impact of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) which from April 2013 placed restrictions on the use of Right to Buy receipts in conjunction with other funding provided by the GLA for the purposes of building affordable housing. In other words, Right to Buy receipts cannot be combined with funds provided by the GLA to build the required replacement unit/s if those funds have come from the GLA to build affordable housing. Officers and decision makers must be satisfied that combining funds in the manner envisaged is acceptable and within the rules. Although, consideration is given to relaxing the rules around use of RTBs this has not yet taken place.
- 7.24 Any disposal of the land to a Reside Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) must comply with the requirement for

best consideration and/or within the parameters of any general consents available from the Secretary of State. This is likely to necessitate a loan on market facing terms and interest from the Council to the Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) to facilitate such a transaction. Where the Council provides financial assistance to the Registered Provider (or an existing entity within the Barking & Dagenham Reside structure) by:

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

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

### **Other Matters**

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

## **8. Other Implications**

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

- 8.1 An Equalities Impact Assessment (EIA) Screening Report has been carried out, which concluded that a full EIA is not required at this stage. Should the engagement with affected residents bring to light any further equality issues, this position will be reviewed, and a full EIA will be carried out prior to the submission of the planning application if required.
- 8.2 The Equality and Diversity Strategy identifies the need to provide new housing and sustainable growth by improving the physical environment and widening the choice of housing. In order to achieve this, it highlights that the future planning of homes, infrastructure, and business is done holistically balancing physical regeneration and social regeneration.



- 8.3 The Borough Manifesto, which sets out the long-term vision for the borough, identifies Housing as a top priority with an aspiration to be a place with sufficient, accessible and varied housing.
- 8.4 The RBL project seeks to respond to these priorities by diversifying and improving the quality of the housing offer on the site, supported by improvements to the public realm and provision of new modern community space in order to provide a sustainable community.
- 8.5 The recommended development will provide a range of housing types and tenures, that will provide an opportunity local people to own their own property, as well as provide rented products that will be affordable to local people.
- 8.6 The development will also contribute towards the Councils' health and wellbeing priorities for example by:
- Improving the quality of housing.
  - Improving the quality and safety of open spaces, encouraging people to make more use of outside spaces for recreational purposes, and discouraging antisocial behaviour.
  - Achieving higher sustainability standards, for example through renewable energy and green roofs.
- 8.7 If the preferred option is approved, the existing residents in Jervis Court will experience some disturbance, as they will need to be relocated to facilitate the new development. These impacts will be sought to be mitigated through a thorough engagement process, with an opportunity being provided to these residents to return to the site once the development is complete, should they wish to do so.
- 8.8 It is therefore considered that the overall impact of the project is positive, with the benefits of the new development outweighing the impact on existing residents.

## **9. Risk Management**

### **Ground Conditions**

- 9.1 As the British Legion land has formerly being used for non-residential uses and is now earmarked for residential development and use, the risk of land contamination needs to be identified and managed. An environmental survey of the site will be undertaken to establish the level of ground contamination and remediation required to enable the RBL site to be redeveloped for residential use.

### **Existing Services**

- 9.2 Due to the current and historic uses of the site, there are likely to be underground services that will require relocation. In addition, there is an existing substation on the site that will need to be relocated, which could delay the construction programme and increase costs. Early engagement with the utilities company will be carried out in order to agree a programme and cost for relocating the substation and carrying out service diversions.

## **Securing Vacant Possession**

- 9.3 The requirement to acquire the Leasehold interests required to bring forward the clearance of these sites will be delivered in accordance with the Boroughs agreed Leaseholder Buyback procedure. This procedure sets out the level of compensation in accordance with the Land and compensation Act. It centres on buy back by negotiation with use of CPO powers if necessary, to ensure that programmes are not delayed if agreement cannot be reached. A package of measures to assist Leaseholders who are unable to acquire alternative accommodation on the open market are included in the agreed procedures and on a scheme by scheme basis we would look to provide other alternatives such as equity sharing arrangements for new homes within the developments.
- 9.4 Early engagement with residents will be carried out in order to coordinate the development and decant processes and allow sufficient time to conclude negotiations on the purchase of the leasehold interests.
- 9.5 There is a risk that the secure tenants will submit Right to Buy applications. We are not aware of any live Right to Buy applications at this time. In order to mitigate the risk of future applications being made, it is proposed that an Initial Demolition Notice is served on the existing tenants.

## **Securing Planning Permission**

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

## **Programme delays**

- 9.7 Due to the site constraints and issues that will need to be overcome in order to secure planning permission enable development, there is a risk of programme delays. The programme will be continuously monitored throughout the various stages of the project, as discussions progress to resolve the risks highlighted in this report.

## **Cost overruns**

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

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

## **List of Appendices:**

- Appendix 1 - Site Plan
- Appendix 2 – HRA Land Appropriation Plan