CABINET

21 May 2019

Title: Be First Business Plan 2019 - 2024	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report with Exempt Appendices (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

This report seeks Cabinet approval of the Business Plan for Be First in line with the requirements of their Shareholder Agreement. This Business Plan has been scrutinised by the Shareholder Panel, the advisory body created to monitor and to report to Cabinet on the performance of Companies that Council has a shareholding interest in.

The creation of Be First was an integral part of Barking and Dagenham's New Kind of Council transformation programme. Launched in 2016 this programme has seen a radical re-shaping of services of which commercialisation and income generation via the creation of new independent commercial companies was a key strand. Be First, as well as the other commercial companies have been designed to facilitate a sustainable financial position for the Council as well as improve service delivery and outcomes for the residents of the Borough.

This Business Plan highlights that performance during the first year of trading has been positive, that relationships both internal and external to the Council have been strengthened and that Be First has made a positive impact on the regeneration aspirations of the Borough.

The positive impact can be seen in the improved trading position as illustrated by;

- An improved financial position with Be First projecting to be £2.85m better off than forecasted in the 2018-2023 Business Plan
- An improvement in the forecasted number of new homes being built during the plan period with Be First now forecasting to deliver from 2,208 in the 17/18 plan to 3,088 over the new 5 year plan period (2019-2024)
- Be First forecasting to deliver £49m return to the Council over the next 5 years.

The substantive Business Plan contained within the appendix which 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
Recommendation(s) The Cabinet is recommended to: (i) Approve the Be First 5 Year Business Plan (2019-2024) at Appendix A to the report; and (ii) Approve Be First entering into any procurement related agreement or commitment required to enable the delivery of the Business Plan in accordance with its Company scheme of delegation subject to: a). compliance with relevant procurement regulation b). compliance with relevant procurement law c). Be First's compliance with its own scheme of delegation d). Compliance with state aid rules, and e). Any other relevant approvals by the Council which may be relevant or required for the specific project
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 In line with their Shareholder Agreement Be First are required to annually review their 5 Year rolling Business Plan which can be found in Appendix A and is attached for Cabinet approval as outlined in the recommendations.

1.2 This paper requests approval for the activities described in the plan but recognises that some activities such as specific investment and development activity proposals will require subsequent approvals in line with the Council's Constitution or the exercise of delegated powers which were set out in the recommendations contained within the first Be First Business Plan (2018-2023) (minute 100, 19th February 2018 refers)

1.3 This report highlights the key objectives to be delivered and the period by which the returns, either financial or social are expected with the detail behind the assumptions being shown in the exempt Appendix.

1.4 The Business Plan has been approved by the Be First Board.

1.5 The Business Plan been reviewed and revised following Shareholder Panel scrutiny in February and April 2019.

2. **Business Plan Summary**

2.1 This new 5-year Business Plan (2019-2024) highlights there have been positive financial and strategic developments in the past year, with the company forecasting to generate a surplus in 18/19 instead of the £2.8m deficit forecasted in the 2018-23 Business Plan.

2.2 The surplus has been created predominantly from progress being made by Be First in delivering the Council's Investment and Acquisition programme. This surplus has been generated by Be First reviewing schemes to increase the number of new homes that can be delivered as well as bringing forward the number of development schemes being worked on to bring the development of new homes forward. 29 out of the 41 schemes Be First inherited from the Council are now actively being brought to delivery which is 8 more than originally expected.

2.3 The Business Plan focuses on Be First's objective to deliver more new homes and forecasts an increased being built up to 2024 with 3,088 new Council funded homes expected to be built during the next 5 years. The majority of these new homes will be affordable including all of the 112 units to be completed in 2019.

2.4 The Plan outlines that Be First have delivered 132 new homes in 17/18 with 118 being moved to later years in order to deliver more overall units on those sites. Expected completion of these 118 new homes is now due between 2019/2021.

2.5 Be First have outlined in the Plan an ambitious programme for 19/20 which will see 12 new development schemes commence construction. These schemes, which all have start on site dates in 19/20 will deliver 1,233 new homes which is over a third of the new homes expected to be delivered over the next 5 years.

2.6 Be First anticipate that 6,814 units will be delivered by the private sector over to generate a total number of new homes (Council/Be First and external developers) over the next five years of 9,770. Be First will be appointing to a role specifically to track the development progress of the private sector led units to ensure more accurate forecasting of progress and completions and therefore Net New Homes Bonus income

2.7 Be First forecasts to deliver a total return to the Council of £49m over the plan period. This figure is driven by a £27m operational surplus from delivering core services such as planning, regeneration and building control as well as fees derived from development and construction management services provided to the Council as well as external clients. A further £19m is expected to be achieved from the New Homes Bonus with only £2m being driven by commercial development activity. As a result, Be First is forecasting to be on track to deliver the £10.3 net financial contribution to the Council by 2021.

2.8 Be First anticipate that £777m of development funding will be required to deliver the Council funded pipeline of development activity which is an additional £148m than outlined in the 17/18 plan. This additional sum is required primarily due to the increased number of units being delivered over the plan period.

2.9 Cabinet has already approved funding additional to this sum for Be First to deliver loan book deals for three regeneration schemes which are Abbey Sports Centre, Vicarage Fields, and London Road. Be First have indicated that other speculative investment and development schemes could be considered which would be additional to this. All new development and investment proposals will require Investment Panel approval of the detailed viability appraisal as well as Cabinet approval before any funding is approved.

2.10 Be First also intend to make a social contribution to the Borough, for instance by employing 5 apprentices during the Business Plan period as well as developing a sustainable local employment programme. This programme would see developers being required to employ 25% of people working on their schemes to be local residents. Be First will be requiring developers to supply an 'Employment, Skills and Suppliers Plan' to set out how they will deliver on this objective.

2.11 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:

- Cherishing local history, using it to inform high quality, safe and locally distinctive design.
- Promoting well connected, accessible places with an emphasis on active travel and public transport
- Enhancing the boroughs natural environment and encourage sustainability through planning and development
- Celebrating the boroughs vibrant and diverse community, empowering and enabling residents and workers.
- Encouraging innovative, high quality design that optimises site potential

2.12 Be First recognise that good community engagement can add value by improving community cohesion, developing skills and generating community activity. Be First are committed to getting this right by:

- Embedding the commitment to high quality community engagement through the organisation
- Working with the Council to agree principles to be adopted for estate renewal schemes
- Agreeing community engagement plans for each project on a scheme by scheme basis
- Appointing a full-time engagement co-ordinator.

3. **Consultation**

3.1 The Business Plan has undergone the following consultations:

- Approved by the Be First Board in February 2019
- Endorsed subject to agreed revisions by Corporate Strategy Group on the 17th January 19
- Endorsed by the Shareholder Panel subject to agreed revisions on 29th April 2019

4. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

4.1 Be First Financial Return to the Council

4.1.1 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 target surplus of £5.6m for 2019/20 and £10.8m for 2020/21. Further financial details are contained in the Appendix A.

4.1.2 The business plan demonstrates Be First is well placed and able to deliver the strategic ambitions the Council has set out which are captured in the MTFS, approved February 2019. The Business Plan confirms Be First's ability to deliver its target of £10.3m to the Council each year from 2021 onwards. The target includes additional new homes bonus which in 2020/21 is planned to be £1.3m due from the expected growth in supply of new homes within the borough.

Table A - the target net position of Be First over a 6-year period:

Plan Comparisons	18/19	19/20	20/21	21/22	22/23	23/24	Total
18/19 Plan	528	5,622	10,835	11,070	10,710	10,328	**49,093**

4.1.3 Development and Construction income which delivers part of the surplus is driven predominantly by fees from the Councils Investment Programme projects. The Council is responsible for funding the Investment Programme and therefore this income is reliant on the Council providing funding. It is essential that this is factored into Be First's future strategy as there will be a limit to the level of funding the Council can provide.

4.1.4 A large driver of the increase in Development and construction income is bringing forward a number of schemes that were originally scheduled for later on in the Business Plan. This acceleration, although welcome, does raise issues around capacity both for Be First to manage each of the schemes and also for the Council to fund the schemes. An increase in the Council's interest budget has not been agreed and it is unlikely that there will be sufficient revenue budget to fund an increase. It is therefore essential for Be First to work closely with the Council to ensure that the schemes acceleration is affordable, both in terms of funding but also in terms of Be First achieving their £10.3m target.

4.1.5 A concern within the BFBP is the delay in a number of the schemes that were due to be completed, as outlined below.

Land rear of 134 Becontree Avenue	19/20	20/21
Limbourne Avenue	18/19	20/21
Stour Road 90	18/19 and 19/20	22/23
Weighbridge	18/19	19/20
Wivenhoe Container	18/19	19/20
Sacred Heart	18/19 and 19/20	20/21

4.1.6 The impact of these delays means that the income to the Council from Reside is delayed. In addition, the costs for these schemes remains within the development stage rather than being repaid, both in terms of interest and debt repayment, as an operational scheme.

4.1.7 The Be First business plan is based on data as at 30 September 2018 and this predates the Greater London Authority: Building Council Homes for Londoners Programme Allocations grant of £25.3m the Council was awarded in October 2018. In addition, it does not take into account revisions and movements within a number of investments that have taken place as planning and architect designs change some of the investments.

4.2 **Loan Facility**

4.2.1 A loan facility agreement of up to £3.5m working capital up to the point where Be First is self-financing was agreed in September, with a further £0.7m made available from February 2018 which took 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.

4.3 **Be First Contribution to the Investment Strategy**

4.3.1 Be First will help to accelerate the delivery of the Council-led development schemes which will be integral to 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 Firsts target return of £10.3m and is predominantly generated when each scheme is operational and managed within Reside.

4.4 **BFBP Funding Requirements**

4.4.1 The Be First report outlines a significant increase in net development costs of £148m. This will require a significant increase in borrowing by the Council to fund this. The delays in some of the schemes becoming operational will also have a negative impact on the borrowing costs as income from the schemes will be delayed.

4.4.2 Each £100m of additional borrowing will require an interest budget of £3.25m based on borrowing costs of 3.25% and this will be a cost per year until schemes become operational. Based on the net development costs provided this will require approximately £5m of funding by the Council to fund this increased cost.

4.4.3 The £777.41m 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.

4.4.4 In addition, Members should be aware that the interest budget does not include provision for any additional borrowing requirements and is based on schemes becoming operational according to the BFBP dates. Slippage in schemes becoming operational will impact the ability to fund future schemes and may require schemes to be delayed until funding is available to support the borrowing costs.

4.4.5 New proposals for funding put forward by Be First will need to be either self-financing or a replacement of any schemes that are currently budgeted for but potentially are not progressed with or are delayed. It is important to outline that the Council does not have unlimited borrowing powers and each scheme proposed will need to provide a return and fit within the funding budget.

4.4.6 It is therefore essential that Be First work closely with the Capital and Investments section to ensure that future investment proposals fit within the current funding available.

4.4.7 In addition to working closely with the Capital and Investments section, 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.

4.5 **Risks**

4.5.1 There are a number of risks that have the potential to impact on Be First financial performance including risks attached to capital programme delivery; supply chain costs; and, general economic performance and activity including the potential impact of Brexit. These are assessed as part of the business plan and mitigations and monitoring arrangements in place. Corporate risks are monitored through the Shareholder Panel.

4.5.2 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 to produce the interest budget but there is still the risk that borrowing rates could increase to higher than the 4.5% top assumption in year 5.

4.6. In considering the BFBP, it is incumbent on the Council to ensure the activity of Be First is strategically aligned with the Council and Reside priorities to deliver long term outcomes for the borough. These include understanding the quality of schemes as well as the delivery of financial returns. To do this the Council has put in place governance arrangements through the Investment Panel and associated gateway processes.

5. **Legal Implications**

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

5.1 Cabinet is requested to approve the Business Plan for Be First, for the five-year period 2019-2024. The Council is a 100% shareholder of Be First, which was set up by the Council to accelerate delivery of regeneration in the area. The relationship between the Council and Be First is regulated through a shareholder agreement dated 29 September 2017, albeit this is not a legal requirement. Shareholder agreements make provision to ensure accountability to the Shareholder and form part of both the governance of the companies and the contractual documents setting out the course of business, accounting for dividends, and reserved activities over which only the shareholder has control. Via its shareholder controls (exercised through Cabinet and Shareholder Panel) the Council can set the strategic direction for Be First and monitor its performance of the companies. It is a condition of the agreement that an update on the business plan is presented to the Council on an annual basis, albeit the Business Plan for Be First is prepared for a rolling give year period.

Relevant Statutory Powers

5.2 The Council has a number of relevant powers regarding its establishment of trading companies, borrowing and investment activities. 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.

5.3 Section 4 of the Localism Act 2011 adds a proviso that if the GPC power is exercised for an activity which may be deemed 'for a commercial purpose' that is more than incidental to other functions or purposes of the Council, such activity must do so through a company. Therefore, there may be circumstances where commercial activity carried out by the Council's companies may necessitate that a company limited by shares is utilised and may require further approvals by Cabinet whether the projects have been identified in the proposed Business Plans or not.

5.4 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 or only for profit 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 with a view to promoting regeneration will fall within the power to invest.

5.5 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. In instances, where there may be commercial reasons for borrowing or investment further scrutiny and approval by Cabinet will be necessary as to whether the proposed activity is within the powers to invest and borrow, the CIPFA Prudential Code and relevant statutory guidance will be necessary (among other matters).

Other Legal and Commercial Considerations

5.6 The Council's fiduciary duties can be summarised as the Council acting as a trustee in respect of taxes collected 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 rates and council tax payers.

5.7 In making approving the business plan, Cabinet should consider the risks and benefits of approving the recommendations, i.e. whether a prudent investor, shareholder or borrower would undertake the activity or risks proposed; whether the Council will achieve an appropriate outcomes and return for the risk it is taking, and that the risks and potential costs involved in approving the planned business activity have been appropriately mitigated in the event of the company (or any subsidiaries) becoming insolvent and/or defaulting on outstanding loan(s). It should be borne in mind that in instances where loan book activity references in the report and business plans is funded by PWLB borrowing, a default by the borrower/s (whether the Council's entities or other third parties) could leave the Council exposed to repaying loans and interest notwithstanding default by its borrowers. The Chief Operating Officer should also consider these risks in approving the terms of any relevant legal agreements.

Funding and Borrowing

5.8 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 (3rd Edition, issued on 1 April 2018). 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:

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

5.9 It is noted that matters associated with credit / risk management and borrowing / lending activity are expected to be addressed in the next iteration of the Council's Investment Strategy.

5.10 Appraisal and consideration will need to be given to the mechanisms and entities through which specific developments (whether referenced in the Business Plans or not) are to be delivered or how assets are to be held in future. Individual schemes and projects will have potential implications under the Public Contracts Regulations 2015 and state aid rules, which will need to be complied with by the Council or the company undertaking such activity for the Council. The Council should put in place appropriate assurance protocols for checks and balances to ensure that its companies are compliant.

Procurement Implications

5.11 Be First's business arrangements are structured to ensure that it can provide services to the Council without being subject to the compliance with the European procurement rules, embodied in the UK's Public Contract Regulations 2015 (PCR), by virtue of the 'Teckal' exemption set out in Regulation 12 of the PCR. CIPFA advise that compliance requires a local authority (the Council) must control all the shares in a company (Be First), and also exercise effective control over the company's affairs in a manner similar to its own directorates, and finally that there is no direct private capital participation. Regulation 12 (3) of the PCR sets out the meaning of "control" as exercising a "*decisive influence over both strategic objectives and significant decisions of the controlled legal person*."

5.12 To benefit from the Teckal exemption, the PCR require that at least 80% of Be First's business turnover must be for its public sector owners. Be First is able to undertake 20% trading with third parties in a manner which is still compliant with its 'Teckal' arrangements with the Council. The turnover is calculated based on three years of turnover – therefore allows for some smoothing over these years. It must be borne in mind that as a Teckal company Be First is an emanation of a public body, therefore, a contracting authority. As the financial position to date demonstrates, Be First primarily act as development / construction manager for contracts in respect of which the Council is employer. Therefore, in procuring works, services or other supplies from third parties, the company must tender in a manner compliant with procurement legislation. Whilst the Council has and is delegating to Be First procurement of contracts which facilitate the delivery of the Business Plan, it should be noted that as the parent body and often contracting party, the Council would also bear the risk of any non-compliance. Therefore, it is recommended that the Council in its shareholder capacity should undertake appropriate assurance measures from time to time to ensure overall compliance with procurement law and good practice by Be First.

State Aid Implications

5.13 As a public body, the Council cannot provide state resources or other forms of support on a selective basis to any organisations or undertaking in a manner that could potentially distort competition and trade in the European Union. This principle is binding in law on the Council and is applicable for all three companies featured in this report. This means that the Business Plans must be compliant in design and execution. The Council is aware of its duty not to breach state aid law and in this regard, will continue to monitor and seek reassurance from the companies that their activities and support from the Council (including its terms, finance rate and security offered) satisfies the Market Economy Investor Principle and any loans and facilities are state aid compliant. Legal due diligence will be carried out to confirm this to the Chief Operating Officer before entering into any agreements or permitting draw-downs.

Governance Implications

5.14 The approval of the Be First business plan is reserved to the Council as shareholder under the Shareholder Agreement. This is an executive function exercised by the

Cabinet on behalf of the Council as shareholder.

5.15 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 decisions in respect of specific schemes forming part of the Business Plan, subject to established parameters, such as the need to consult other officers or Cabinet Members prior to making a final decision. It is noted that the Chief Operating Officer has such delegations (e.g. in respect of investment decisions) under the Constitution or expressly given by Cabinet on specific plans or schemes.

6. **Other Implications**

6.1 **Contractual Issues** - Development of a Business Plan is a contractual commitment for all of the Companies and is designed to set the framework by which the strategic direction of each Company is considered and approved or endorsed by the Council as either a major or minor Shareholder

6.2 **Staffing Issues** – To deliver the plan Be First may be required to employ more staff.

6.3 **Corporate Policy and Customer Impact** – The outcomes noted within the Business Plan are expected to have a positive impact on residents, by supporting the Council's aim to become self-sustainable as well as improving service outcomes and creating great places to live and work for residents and children.

6.4 **Health Issues** - The proposed Business Plan will have a positive impact on the local community, particularly in relation to the provision of more new accommodation and more local employment,

6.5 **Property / Asset Issues –** Most of the new homes will sit within the Reside portfolio.

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

List of appendices:

- Appendix A: Be First Business Plan (2019-2024) [exempt document]