

CABINET

18 June 2019

Title: Estate Renewal – Approach and Resident Offer	
Report of the Cabinet Member for Regeneration and Social Housing	
Open Report	For decision
Wards Affected: All	Key Decision: Yes
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Summary	
<p>A key part of the Council’s ambition for growth in the borough is to enable 50,000 new homes to be built over the next 20 years. The Be First programme from 2019–2024 will deliver nearly 3,000 new homes, around 75% of which will be affordable. Some of the new homes will be delivered through estate renewal schemes, where existing Council homes are demolished so that more high quality, new homes can be built. The majority of the new homes will be for rent, and these will be retained by the Council and managed through Reside, the Council’s wholly-owned municipal housing company.</p> <p>This report sets out the Council’s approach to developing estate renewal proposals, and to ensuring that existing residents are able to benefit from the new homes and wider improvements brought by estate renewal schemes. In particular the report covers the criteria the Council will use to assess potential estate renewal schemes; the way in which it will consult residents on the proposals before final decisions are made; and the offer that will be made to residents who need to move house because of estate renewal.</p> <p>The offer to residents who need to move because of estate renewal proposed in this paper can be summarised as:</p> <ul style="list-style-type: none">• Tenants will have top priority to bid for an alternative Council home in the borough• Tenants will have a Right to Return to one of the new homes within Reside – at a Council target rent and on an Assured tenancy• A homeloss payment of £6,300 (uprated annually) and disturbance payments to cover the cost of moving• Help to move out of the borough, if they want to• Resident leaseholders will get market value for their home plus a 10% home loss payment• No resident leaseholder will need to move away from the local area if they don’t want to – the Council will give assistance if they can’t afford a suitable property on their own• Resident leaseholders will have a Right to Return to one of the new homes – with assistance if they can’t afford on their own• Non-resident leaseholders will get market value for their property plus a statutory basic loss payment of 7.5%.	

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve the criteria for considering estate renewal, as set out in paragraph 2.1 of the report;
- (ii) Note the proposed approach to consultation on estate renewal proposals, and approve the proposed arrangements for statutory section 105 consultation as set out in paragraph 2.5 of the report;
- (iii) Approve the rehousing offer for tenants and leaseholders as set out in paragraph 2.8 of the report;
- (iv) Note and approve the financial assistance that may be offered to resident leaseholders to enable them to stay in the local area, or to enable them to take up the Right to Return as set out in paragraphs 2.9 and 2.10 of the report;
- (v) Note and approve the proposed Help to Move offer, as set out in paragraphs 2.11 and 2.12 of the report;
- (vi) Agree that the rehousing offer be made to tenants and leaseholders of the four estate renewal schemes currently subject to consultation (Rainham Road South, Rectory Road, Roxwell Road and Oxlow Lane) and note that further reports on those schemes would be presented to Cabinet later in the year following resident consultation; and
- (vii) Delegate authority to the Director of Inclusive Growth to extend the terms of the rehousing offer to any other tenant(s) or leaseholder(s) on a discretionary basis.

Reason(s)

The recommendations are intended to ensure that existing tenants and leaseholders of blocks that undergo estate renewal benefit from the improvements the projects bring, and as such are aligned to the Council's strategy for inclusive growth in the borough.

1. Introduction and Background

- 1.1 A key part of the Council's ambition for growth in the borough is to enable 50,000 new homes to be built over the next 20 years. Be First has been established to accelerate the delivery of these new homes, both by building new homes itself and by working with partners to enable – and shape – their contribution to growth in the borough. The Be First programme from 2019 – 2024 will deliver nearly 3,000 new homes.
- 1.2 A number of the schemes proposed within Be First's programme to 2024 would require the demolition of existing council blocks before new homes are built, and as such the rehousing of council tenants and leaseholders. Cabinet approved two of these schemes – Rainham Road South and Rectory Road – in principle in April and agreed that officers should consult on the proposal. Consultation is also due to start soon on two further schemes – Oxlow Lane and Roxwell Road, which were added to the Council's Estate Renewal programme in January 2015. All four of these

schemes are due to come back to Cabinet for further decisions later this year following consultation.

- 1.3 Because approximately 184 tenants and leaseholders would need to be rehoused as part of the current Be First programme if all the proposed schemes are approved later this year, the Council has reviewed its approach to estate renewal and its offer to those residents who are affected. This has also taken into account changes in the wider policy context and the Council's emergent strategy for Inclusive Growth. This report seeks Cabinet approval for the offer that will be made to residents impacted by estate renewal.
- 1.4 LBBDD has a strong track record of delivering estate renewal programmes, and over the last 10 years has rehoused around 1,300 households as part of delivering major redevelopment schemes on estates including the Gascoigne, the Leys and Sebastian Court. There is therefore already significant experience and knowledge on the practicalities of delivering these types of schemes, within the Council and Be First.
- 1.5 However, there have been a number of changes in the regional policy context relating to estate renewal schemes through changes made by the GLA. These changes include:

GLA Good Practice Guide

- 1.6 In February 2018, the GLA published 'The Mayor's Good Practice Guide to Estate Regeneration'. This is guidance and does not have a direct impact on the council's policies in the way that the further two changes described below do. The main principles for estate renewal set out in the guide are:
 - an increase in affordable housing
 - full rights to return or remain for social tenants
 - a fair deal for leaseholders and freeholders

- 1.7 The proposals in this report are designed to be aligned with the GLA's Good Practice Guide.

GLA Resident Ballot Requirement for strategic estate regeneration schemes

- 1.8 In July 2018, the GLA introduced a rule that it would only provide affordable housing grant funding for 'strategic estate regeneration schemes' if there had been a ballot of residents living on the estate in favour of the proposals. The GLA defines strategic schemes as those involving the demolition of any existing home owned by a local authority/housing association on an existing social housing estate *and* the construction of at least 150 new homes regardless of tenure. The ballot does not apply to schemes where GLA funding was committed prior to July 2018.
- 1.9 As such, the current Be First programme to 2024 does not contain any schemes that require a ballot as a condition of GLA funding. This would be a consideration for any future estate renewal proposals that are brought forward that meet the criteria outlined above and where GLA grant funding is sought.

Emerging London Plan policy relating to the reprovion of homes as part of estate renewal schemes

- 1.10 A new draft London Plan was published in August 2018 and is currently undergoing Examination in Public (EiP) ahead of submission to the Secretary of State. As a substantially advanced published draft, the emerging London Plan is already a material consideration with considerable weight when it comes to making planning decisions. The new London Plan is likely to be finalised and published in late 2019. The general principle is that the Local Plan would need to be in general conformity with the emerging London Plan and that there should not be a departure from the Local Plan on strategic policies.
- 1.11 The emerging London Plan policy on the redevelopment of existing housing estates is that affordable housing that is demolished should be replaced by equivalent or better quality accommodation, providing at least an equivalent level of affordable housing floorspace. Where a tenant has a right to return, the housing should be replaced on an identical basis. Where there is no right to return, housing must be replaced on an identical or equivalent basis.
- 1.12 The new London Plan therefore expects that where the Council offers a Right to Return to existing council tenants, this should be to a home with the rent set in an identical way to their current property. In practice, this means a rent set in accordance with the government formula for setting social rents (often referred to as a 'Target Rent').

Council delivery structures

- 1.13 The Council's structures for delivering and managing new homes also mean that it is important that there is clarity about roles and responsibilities. While Be First will manage and deliver all day-to-day activities associated with carrying out estate renewal – and Reside will in most cases manage the new homes – where estate renewal is proposed the Council is the landowner, and the landlord of the residents affected by the proposals. Decisions on the policies relating to estate renewal and whether to proceed with specific schemes remain with the Council (even if Be First carry out some of the engagement/consultation on the Council's behalf). As such, Be First act as the Council's agent, and are commissioned to deliver on Council strategies and with the appropriate democratic oversight.

Comparison of rents

- 1.14 This report discusses existing average Council rents, Council target rents and London Affordable rents. The tables below are intended to provide an indication of these types of rent to allow comparisons to be made.

Average Existing Rent and service charge – HRA:

- 1.15 The table below shows the average charge to existing Council secure tenants – inclusive of rent and service charges. The figure for the average service charge used is £19.21 a week – a breakdown is provided in Appendix 1.

Property size	1 bed	2 bed	3 bed	4 bed
Weekly charge - rent and service charge	£102	£ 117	£127	£132

Average Target Rent and service charge in Reside for Right to Return tenants:

- 1.16 Where tenants take up a Right to Return, they will pay a target rent and a Reside service charge. It is existing Council policy to re-let homes at target rents. Target rents are set via a government formula. Reside service charges may be slightly higher than current Council service charges (around £20 a week – though this will vary from scheme to scheme), as the buildings will be new and may have more services.

Property size	1 bed	2 bed	3 bed	4 bed
Weekly charge - rent and service charge	£108	£124	£136	£151

London Affordable Rent benchmarks – inclusive of any service charges:

- 1.17 Households who are allocated from the waiting list into a new home in Reside will pay a London Affordable Rent. The weekly charge for London Affordable Rent is set by the GLA, and these rents can be fully covered by housing benefit if needed. The figures below are for 2019/20. The policy in Reside to date has been to not charge service charges on top of Reside 50% rents.

Property size	1 bed	2 bed	3 bed	4 bed
Weekly charge - rent and service charge	£155	£164	£173	£182

Market rents – borough median:

- 1.18 The table below shows borough median rents, for reference. These figures do not include any service charges.

Property size	1 bed	2 bed	3 bed	4 bed
Weekly charge - rent	£219	£277	£323	£375

2. Proposal and Issues

- 2.1 The proposals in this report can be grouped as:

- The criteria the council will use to decide when to proceed with estate renewal proposals.
- The Council's approach to consultation and engagement with residents who are impacted by the proposals, in particular regarding statutory section 105 consultation
- The rehousing offer for council tenants and leaseholders who need to be rehoused.

Criteria for considering estate renewal

As the Council considers its approach for providing additional homes for residents of the borough, it needs to be clear on the criteria it will use to determine which estates will be proposed for redevelopment. These criteria will help to determine which schemes are put forward to Cabinet to seek approval for consultation with affected tenants. Clearly, such criteria need to closely align with the Council's aims for the regeneration of the borough and achieving inclusive growth. As such, the following criteria are proposed:

1. More homes

- An increase in the number of homes on the site, *and*
- A net increase in the number of affordable homes (i.e. at below market prices) on the site *and*
- A net increase in the number of homes dedicated to local households on the housing register (i.e. let at London Affordable Rent, or Target Rent for those with a Right to Return)

2. Better homes

- Replacing poorer quality, more expensive to maintain homes with high quality new homes that meet the standards of the kind of homes we want to provide for local residents – including energy efficiency
- Providing homes that better meet existing and emerging housing need, including more family-sized homes and housing to meet the needs of vulnerable groups

3. Better places

- Providing other benefits from intervening in the built environment – better design, improved public realm, new schools/parks and other types of social infrastructure
- Overcoming existing social or design problems which make the estate an unpopular place to live or where there are high levels of crime, ASB or other problems.

2.2 Within these broad criteria, a number of other considerations arise:

- Sustainability considerations – such as whether the same regeneration goals can be achieved by refurbishment if this is more economically more viable and sustainable
- That the scheme is financially viable within the funding and policy constraints set out in this paper
- A high ratio of additional homes to those that are lost, to justify the proposal to demolish existing homes
- Local support for the proposals – as set out above, for larger estate renewal schemes, a positive ballot would be a funding requirement.

Consultation and engagement

2.3 The expectations the Council has regarding consultation and engagement on estate renewal proposals needs to be understood in the context of the different roles the Council has throughout the process of delivering an estate renewal scheme:

- **Developer:** Be First acts as the developer on the Council's behalf, and will seek to present information and engage residents in a way that brings them along with the vision for the estate and in line with Be First's Community Engagement Strategy. If a scheme goes ahead, this will also include involvement in designing the proposals for the estate.
- **Landlord and landowner:** in the vast majority of cases, the Council is the landlord of the residents affected (tenants and leaseholders) and the freeholder of the land in question. Where council tenants are affected, the Council has a statutory duty to consult them on proposals affecting them before any final decisions are made (Section 105 consultation). The Council's duty as a landlord also covers its formulation of policies relating to how residents will be rehoused.
- **Local Planning Authority (LPA):** as the LPA, the Council will need to carry out consultation on any planning application ahead of decisions made by Planning Committee. If an estate renewal proceeds to a planning application, this will require consultation ahead of being considered by Planning Committee. Be First will lead on this, and the principles for this engagement are set out in the Statement of Community Involvement. The Statement of Community Involvement is currently being drafted and is due for Cabinet approval later this year.

Section 105 consultation

2.4 As a landlord of secure council tenants, the Council has a statutory duty to make and maintain such arrangements as it considers appropriate to consult with its secure tenants who are "likely to be substantially affected by a matter of housing management". A matter is one of housing management if, in the Council's opinion, it relates to "the management, maintenance, improvement or demolition of dwelling-houses" let by it under secure tenancies. Clearly, therefore, proposals that involve the demolition of existing homes on secure tenancies triggers the section 105 duty. Be First will organise section 105 consultations on behalf of the Council. As a piece of formal consultation, the section 105 process also needs to follow the general principles for fair consultation, ie:

- Consultation must be at a time when proposals are still at a formative stage
- Sufficient reasons must be given for any proposal to permit intelligent consideration and response
- Adequate time must be given for consideration and response
- The results of consultation must be taken into account before final decisions are made

2.5 It is proposed that the Council's arrangements for section 105 consultation are as follows:

- Proposals for estate renewal will be considered by Cabinet, and Cabinet will agree to consult with tenants. Usually this will be on a preferred option, ie the Council will state that it is proposing to demolish homes as part of an estate renewal proposal and tenants' views will be sought before a decision is made. However the consultation cannot be narrowed down with viable options dismissed without these being identified and clearly explained.
- Following the Cabinet decision, consultation materials will be sent to tenants affected which explains what the Council is proposing and why. While leaseholders are not covered by section 105, it is proposed that they are included as non-statutory consultees.
- The materials will be provided in alternative languages or formats such as braille as needed
- The materials will set out how consultees can respond and will include an email address, a postal address and a phone number
- The materials will set out the date by which responses must be received. This will usually be at least 28 days after the date the consultation launches.
- The results of the consultation will be presented to Cabinet as part of a report that proposes the next steps on the estate renewal scheme.

2.6 The Cabinet decision on whether to proceed with the estate renewal proposals will take into account the findings of the consultation, alongside other relevant considerations. This will include evidence of how the proposals could help to increase the supply of homes in the borough and meet housing need, financial considerations and the wider benefits the proposals could bring in line with the criteria for estate renewal proposals set out earlier in this report.

Engagement on Rehousing Options

2.7 As a landlord, the Council also needs to support residents who may need to be rehoused as part of any proposals, in line with the offer set out later in this report. While detailed discussions based on their circumstances will wait until formal decisions have been made on whether to proceed, early conversations on the proposals are an opportunity to talk to people about their preferences, and give reassurances about how they would be rehoused if a decision is taken to proceed with the proposals.

Rehousing offer to tenants and leaseholders

2.8 If a decision is taken to proceed with an estate renewal proposal, existing council tenants will need to be rehoused and leaseholders bought back. The proposed offer for residents is as set out below:

Tenants will be given:

- The highest priority under the Allocations Policy to bid for an alternative council home (i.e. the top band in the allocations criteria) based on their assessed needs, such as for bedroom size or any specific adaptation.
- A Right to Return to one of the new homes, at a Council target rent and on an Assured tenancy
- A homelessness payment, which is an amount set by government and is currently £6,300

- Disturbance payments, which cover the costs associated with moving home including removals, reconnecting services, post redirection and any other reasonable costs arising from the need to move home
- If they want to move out of the borough, help to do so. This will include practical help and may include assistance in the way described in paragraphs 2.10 – 2.11 below.

Resident leaseholders will be offered the following:

- Resident leaseholders will be offered full market value for their property, and are eligible for a home loss payment of 10% of the value of their property – with a minimum payment of £6,300 and a maximum of £63,000. Market value is determined by a qualified RICS valuer.
- No leaseholder will need to move away from the local area if they don't want to – and the Council will give assistance if they can't afford a suitable property on their own (in the manner set out in 2.8 below)
- A Right to Return to one of the new homes, which may include financial assistance to provide gap funding if a resident leaseholder is unable to afford to buy a new home outright (in the manner set out in 2.9 below).

Non-resident leaseholders will be offered the following:

- If a leaseholder is non-resident (eg they are letting the property out) they will be offered market value. Market value is determined by a qualified RICS valuer.
- Non-resident leaseholders will receive a statutory basic loss payment of 7.5% of the property's value.

Financial assistance for resident leaseholders

- 2.9 It is expected that most resident leaseholders will be able to find new accommodation that meets their needs themselves on the open market. If they are not able to do so, the Council may give assistance via an equity loan to make up the gap between what the leaseholder can afford and the amount they need to pay for their new home. No interest has to be paid on this equity loan and it only has to be repaid when the property is sold (with any increase or uplift in the value of the property split proportionally). Equity loans are offered at the discretion of the Council and based upon a resident leaseholder's specific financial circumstances. If for any reason the Council is unable to offer a resident leaseholder an equity loan large enough to provide gap funding, it will consider offering shared ownership as a means of assisting the resident leaseholder to stay in the area. In the very rare occasions that a leaseholder's financial circumstances mean that they are not able to buy a new home even with financial help from the Council, the Council may by discretion offer them a secure council tenancy to enable them to remain in stable accommodation in the borough.
- 2.10 Where resident leaseholders wish to take up their Right to Return to one of the new homes, the Council may offer financial assistance in cases where the leaseholder cannot afford to buy outright on their own, in line with the mechanisms outlined in 2.8 above.

Help to Move

- 2.11 While the Council is clear that all tenants and resident leaseholders who want to stay in the borough will be able to do so – and all will have a right to return to the new homes that are built as part of estate renewal – it also recognises that some residents may wish to move out of the borough to move closer to family, to be closer to their job, for retirement etc.
- 2.12 Where a resident expresses an interest in this, the Council and Be First will work with the resident to provide practical assistance to help them move. The Council may also provide financial assistance in the form of an equity loan or shared ownership to a tenant or resident leaseholder to enable them to move to a new home out of the borough. Such assistance will be given by discretion on a case by case basis depending on a tenant or resident leaseholder's specific circumstances.

Steps towards gaining vacant possession and demolition

- 2.13 One of the aims of the rehousing offer is to rehouse all residents and buyback all land interests voluntarily, without the need to resort to any of the Council's legal powers for securing vacant possession. If this does become necessary, there are two main mechanisms the Council may need to use.
- 2.14 The Council can seek possession of a secure tenant's property under Section 84 of the Housing Act 1985 and using Ground 10 of Schedule 2 of the Housing Act 1985 (where "*the landlord intends, within a reasonable time of obtaining possession of the dwelling-house, to demolish or reconstruct the building or part of the building*"). Ground 10 requires that alternative accommodation is offered to the secure tenant. Although the notice period for Ground 10 is 28 days, re-possession of a home will be subject to court proceedings which may take up to 6 months to conclude.
- 2.15 If any leaseholders refuse to sell voluntarily, the Council may need to consider using its compulsory purchase powers. Compulsory purchase should be considered a last resort following concerted efforts to buy back leaseholders by negotiation over a reasonable period. The government's CPO guidance states that "*a compulsory purchase order should only be made where there is a compelling case in the public interest*". This is not to say that the Council cannot plan for a CPO on estate renewal schemes and doing so can make clear that the Council is serious about the scheme and encourage leaseholders to enter into negotiations. If the Council does need to pursue a Compulsory Purchase Order, this will go to an inquiry and a decision need to be made by the Secretary of State. As such, the whole process can take two years or longer.
- 2.16 Once Cabinet has agreed to an estate renewal scheme following section 105 consultation, the Council can serve Initial Demolition Notices (IDNs) under Section 138A of the Housing Act 1985 on all secure tenants. The effect of the IDN is to inform the secure tenants that their right to buy is suspended. The effect of the FDN is to stop the right to buy; IDNs can last for a period of 7 years. A Final Demolition Notice (FDN) must be served when a date has been set for the demolition to take place. Before any physical demolition can be carried out, the Council must submit a Demolition Notice and Demolition Method statement to the Local Planning Authority, which considers the impact on surrounding properties in terms of dust, noise etc.

Equalities and human rights

- 2.17 Because the decisions regarding estate renewal inevitably lead to the relocation of existing residents (potentially by legal order and compulsory purchase) and demolition of existing blocks, the equality impacts of the decisions need careful consideration. The need to move home may disrupt existing support networks, and this may have a greater impact on households who have members with particular protected characteristics. There may be impacts on households with links to local hospitals, and on children's journeys to school. The aim will be that this can be mitigated through support and advice from rehousing staff, but this will need to be assessed in detail for each estate renewal scheme through a robust equalities impact assessment once the needs and characteristics of the households affected are understood, and this will need to be reviewed throughout the project. Specifically, equalities need to be considered at each stage of the proposals, and an Equality Impact Assessment completed as part of the Cabinet report giving approval to the scheme.
- 2.18 If the Council needs to proceed with a Compulsory Purchase Order for any estate renewal scheme, it will need to be satisfied that any such decision is compatible with tenants' and leaseholders' human rights under the European Convention. The demolition of each block – and the compulsory ending of any tenancies and leases – will impact upon the following Convention rights in particular: Article 8 (right to respect for private and family life) and Article 1 Protocol 1 (protection of property). Government CPO guidance states that “*an acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected*”.

3. Options Appraisal

- 3.1 The alternative would be to not review the Council's approach to estate renewal and the associated resident offer, but this would mean that the Council would not have a clear position on which to base future decisions. As such, this option was discounted.

4. Consultation

- 4.1 Officers from Inclusive Growth have produced this report, and have incorporated feedback from officers across the relevant Council departments and entities, and Members. The report has been discussed at officer level in line with the agreed governance arrangements.

5. Financial Implications

Implications completed by David Dickinson, Investment Fund Manager

- 5.1 This report sets out the proposed rehousing offer to Council tenants and leaseholders affected by future estate renewal schemes, including those currently subject to consultation.
- 5.2 If the recommendations are agreed, the financial modelling of the estate renewal schemes within the Be First programme will need to be updated to reflect the homes set at Council target rent for those tenants offered a Right to Return. These

updated appraisals will be presented as part of the Cabinet reports on these schemes following consultation.

- 5.3 The report also covers the ways in which the Council might provide financial assistance to resident leaseholders to enable them to stay in the local area, to enable a Right to Return, or as part of the Help to Move. The costs of this offer will also need to be considered as part of refining the financial models of the estate renewal schemes.

6. Legal Issues

Implications completed by Dr Paul Feild, Senior Governance Solicitor

- 6.1 This report sets out the proposed arrangements for resident offers in relation to estate renewals. It explains that the GLA, in line with its policy Better Homes for Local People in February 2018 has changed its Capital Funding Scheme to require a ballot of those tenants affected and that the draft London Plan Policy H10 (which is a material consideration in planning decisions) will now seek a condition that displaced tenants should be offered the opportunity to have a dwelling on the regenerated estate. The report explains the proposed offer to residents and the need for consultation.

GLA's Position

- 6.2 As a local planning authority the Council's Local Plan must be in general conformity with the London Plan (including the emerging London Plan), which forms part of the statutory development plan in accordance with which the Council, as local planning authority makes its decisions. The Council is therefore required to have regard to the London Plan. The requirement that a developer should offer tenants displaced by the development the opportunity to return on the same or equivalent terms including rent levels, the policy effectively requires developments to re-provide such accommodation along with any additional density to achieve this policy aim. Furthermore, if larger schemes are, as is generally the case, GLA funded or supported it is essentially a requirement.
- 6.3 The GLA has also changed its GLA Capital Funding criteria and will now require strategic schemes (exceeding 150 new homes) residents' ballots organised by the developer, whether a local authority and / or potential investment partner who seeks funding for estate regeneration. The consequences are that unless the ballot complies with the GLA's requirements it will either cancel funding or terminate and reclaim funding. The key point is that a ballot will require a positive vote in favour of redevelopment.
- 6.4 The consequence of the changes wrought by the GLA is that future offers of tenancies to tenants who may be affected by estate regeneration must reflect their current terms and conditions. Otherwise the development will be contrary to the London Plan and unlikely to be consented or receive capital funding.

The Council's Position

- 6.5 The Council acts in three capacities with regard to estate regeneration: being the Local Housing Authority, the Local Planning Authority (thus policy and decision

maker on planning applications) and thirdly it is a developer promoting development schemes either directly or via the agency of its companies, such as Be First and Reside (or other joint ventures which may be used for specific projects).

- 6.6 It will be highly beneficial to develop clear policies on the effect of estate renewal schemes on the community, the offer to residents and the protocols through which the Council will discharge the legal requirement to consult secure tenants under the Housing Act 1985, which is considered below. As per commentary on the GLA's position above, if funding is needed from the GLA a ballot will be required. The ballot will be organised by the local housing authority as the landlord and will form an integral and early part of the community engagement dimension of estate renewal.
- 6.7 In terms of the Council as Local Planning Authority, the following implications should be noted:
- (i). given the emerging London Plan is in an advanced stage and supports the offer of return on equal terms, the Council must have regard to the twin statutory requirements that the Local Plan must be in general conformity with the London Plan and the local planning authority must make its decisions in accordance with the development plan which includes the London Plan.
 - (ii). To ensure general conformity and legal soundness of its Local Plan, the Council would need to adopt the principle and incorporate it as policy into its own Local Plan, thus making it a condition in estate renewal planning permissions.
- 6.8 The position of the Council as Developer is that it must carry out estate regeneration in compliance with relevant offer of return policies. These revised policies will have social and community benefits by maintaining existing communities and social networks, improving the prospects of a positive ballot response and easing decanting.

Consultation

- 6.9 Estate renewal will require consultation with existing tenants and leaseholders. The legal framework is set out in the Housing Act 1985. Landlord authorities are required to consult those of its secure tenants who are likely to be affected by a matter of housing management including the management, maintenance improvement or demolition of dwelling-houses let by the authority under secure tenancies. The Mayor for London observes in his Capital Funding Guide that he expects the ballot and consultation to be integrated with consultation commencing before the ballot and continuing after a ballot to ensure there is ongoing input from residents into the process. In other words, the consultation process must be genuine and iterative.
- 6.10 The Supreme Court's decision in *Moseley v London Borough of Haringey* [2014] sets out the key considerations in respect of Section 105 housing consultation which must be complied with in any policies and protocols for consultation:
- In terms of who must be consulted, the demands of fairness are expected to be somewhat higher when an authority contemplates depriving someone of an

existing benefit or advantage than when the claimant is a bare applicant for a future benefit. If a person is likely to lose something or be worse off, then they should be specifically identified and consulted. In Haringey, all those affected were written to and the letters were hand delivered. This is considered to be sound practice.

- In terms of when consultation should take place,
 - Firstly, the position is that consultation must be at a time when proposals are still at a formative stage.
 - Secondly, that consultation must give sufficient reasons for any proposal to permit a person to “give an intelligent consideration and response” (in the Court’s words).
 - Thirdly, that adequate time must be given for consideration and response and,
 - Finally, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

6.11 The implications of the Supreme Court decision are that the consultation must be at an early enough stage that those who are affected will be informed of the proposals, be able to make their views known and that the Council will take account of the representations made to it.

6.12 This means that all affected should be informed in terms that enable them to understand what is being proposed and this could take the form of hand delivered letters together with details of the options being contemplated. Section 105 requires that the Council shall publish details and provide copies to be inspected free of charge to members of the public at their principal office.

6.13 Furthermore, as it is highly likely there will be a ballot on future schemes, the response to the consultation should be used to both provide further information and address any concerns and queries arising during consultation. In this way the prospect of negative ballots could be reduced. It would be recommended that the Council should only organise a ballot when it is confident that a positive ballot has a strong prospect of success. As the decision maker will be the Cabinet the response to the consultation exercise will need to form part of any final report endorsing the scheme or ballot and should be given sufficient weight to demonstrate that it received due consideration.

Assured Tenancy

6.14 Assured Tenancies are considered in the body of this report. Considering the emerging policy requirements that tenants affected by estate renewal should be offered a right of return to the regenerated estate on the same or equivalent terms, determining the mechanisms and vehicles for delivering, holding and managing affordable housing become of the utmost importance. Therefore, in developing the proposals of a right of return further, consideration must be given to whether this can be best achieved through the HRA or Reside Registered Provider. It is also recommended that the options appraisal and any financial modelling for a Reside Registered Provider should factor in the financial and policy implications of the right of return to which most estate regeneration will be subject to. This may have implications for both the proposals for a registered provider and the future viability (and certainly scale and density) of schemes.

Human Rights Act 1998 Considerations

- 6.15 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.
- 6.16 The decision to select an estate for regeneration and the consequential chain of events which may ultimately lead to a decision to give notice of possession proceedings, service of a Demolition Notice on existing secure tenants and notice of compulsory purchase on freeholders and leaseholders engages and impacts 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.
- 6.17 The rights that are of significance in the context of estate renewal are those contained in Article 8 (right to respect for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions) – there may be others on a case by case basis (e.g. the loss or creation of a school may engage the right to an education etc). 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 1st 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.
- 6.18 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.
- 6.19 Therefore, in reaching decisions about how it will proceed with estate renewal (including any offer to residents), the Council needs to have regard to the extent to which its decisions may impact upon the Human Rights of the residents and to balance this against the overall benefits to the community, which the proposed redevelopment would bring. The Cabinet 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.
- 6.20 The new proposed arrangements will go beyond the mandatory S.105 Housing Act consultation considering that a GLA compliant ballot will be taken as part of the overall consultation process. As the intention will be to secure a positive response to a ballot, there will need to be early, and close iterative community engagement with an opportunity to hear all shades of opinions and reflect in the final proposals

the result of consultations. This will enable proper consideration of the human rights implications at an early stage and a chance to hear individuals and the community's views and concerns. Ultimately, the contents of this paper will need to evolve into a suitable strategy, alongside the requisite revisions to policies of the Local Plan. The Council as developer or in partnership with others will need to comply with such strategy or policies on the right of return in a consistent manner. The delivery vehicles: HRA, Reside RP or otherwise will also need to be determined as part of these proposals and appropriate options appraisals/financial modelling needs to be undertaken. It will be imperative for Be First and Reside to factor these considerations into any financial modelling and viability appraisals as schemes are developed.

Other Implications

- 7.1 **Risk Management** – There are a number of risks associated with the delivery of estate renewal projects. The recommendations in this report are designed to help ensure delivery of these projects.
- 7.2 **Safeguarding Adults and Children** – Specific estate renewal proposals and rehousing programmes will need to take into account safeguarding considerations.
- 7.3 **Property / Asset Issues** – Specific estate renewal proposals will need to take into account relevant asset issues.

Public Background Papers Used in the Preparation of the Report:

- GLA Good Practice Guide to Estate Regeneration:
<https://www.london.gov.uk/sites/default/files/better-homes-for-local-people-the-mayors-good-practice-guide-to-estate-regeneration.pdf>
- Draft new London Plan:
https://www.london.gov.uk/sites/default/files/draft_london_plan_-_showing_minor_suggested_changes_july_2018.pdf

List of appendices: None