

CABINET

12 November 2019

Title: Development of Land adjacent Padnall Lake, Marks Gate, Chadwell Heath	
Report of the Cabinet Member for Regeneration and Social Housing	
Open Report	For Decision
Wards Affected: Chadwell Heath	Key Decision: Yes
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Accountable Director: Ed Skeates, Development Director, Be First	
Accountable Strategic Leadership Directors: Claire Symonds, Chief Operating Officer, and Graeme Cooke, Director of Inclusive Growth	
Summary	
<p>This report proposes the development of the land shown in Appendix 1 (referred to as 'Padnall Lake') to provide 200 new affordable homes, as well as wider community benefits including a community centre and improvements to the public realm.</p> <p>The Padnall Lake site has been identified for development in the Be First Business Plan 2019-24, which has been approved by Cabinet and forecasts completion of the development in financial year 2022/23.</p> <p>Feasibility work has been undertaken, which has identified that Padnall Lake is suitable for development to provide new housing and community space, supported by good quality and more diverse open space in order to encourage greater recreational use of the site.</p> <p>It is proposed that the site is redeveloped to provide a minimum of:</p> <ul style="list-style-type: none">a) 200 affordable homes comprising a mix of<ul style="list-style-type: none">- 50% Affordable Rent (100 units)- 35% London Affordable Rent (70 units)- 15% Shared Ownership (30 units);b) c.250m² of community space; andc) High quality open space and public realm improvement <p>The proposals have been reviewed by the Investment Panel and approved as a viable investment proposition.</p> <p>The estimated total project costs of delivering the proposals are £63,940,000. It is intended that £46,900,000 would be met via borrowing within the General Fund from the Public Works Loan Board.</p> <p>The intention is to meet the remaining costs through GLA Grant and/or Right to Buy</p>	

Receipts.

The funding is proposed to be provided through a loan agreement between the Council and the appropriate Reside entities 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 1985, an appropriation of the land shown in Appendix 2 to this report, from the Housing Revenue Account to the General Fund, will be needed in accordance with S.32 of the Housing Act 1985 and as a local authority the Council will in due course need to appropriate the land in question for planning purposes pursuant to s. 227 of the Town and Country Planning Act 1990.

Recommendation(s)

The Cabinet is recommended to:

- i. Approve that the site is redeveloped to provide, subject to planning:
 - a. 200 affordable homes comprising a mix of
 - 50% Affordable Rent (100 units)
 - 35% London Affordable Rent (70 units)
 - 15% Shared Ownership (30 units)
 - b. c.250m² of community space; and
 - c. High quality open space and public realm improvement;
- ii. Agree the estimated Total Scheme Development costs of £63,940,000;
- iii. Approve that, subject to the grant of an acceptable Planning Permission and receipt of satisfactory construction tender prices, this project will be financed and held within the residential asset class of the Investment and Acquisition Strategy;
- iv. Agree to allocate up to £6,781,000 from the Investment & Acquisition Budget to fund the pre-development costs;
- v. Agree to the principle of borrowing up to £46,900,000 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 the affordable rent Special Purpose Vehicle;
- vi. Delegate authority to the Director of Inclusive Growth, in consultation with the Director of Law and Governance, the Chief Operating Officer and the Cabinet Members for Finance, Performance & Core Services and Regeneration and Social Housing, to negotiate terms and agree the contract documents to fully implement and effect the project;
- vii. Authorise the Director of Law and Governance, or an authorised delegate on their behalf, to execute all the legal agreements, contracts and other documents on behalf of the Council; and
- viii. Approve in principle the appropriation of the land, as shown edged red in the plan at Appendix 2 to the report, from the Housing Revenue Account to the General

Fund, pursuant to Section 122 of the Local Government Act 1972 and S.227 of the Town and Country Planning Act 1990 for planning purposes.

Reason(s)

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

- Regeneration and development of the borough
- Provision of affordable housing
- Community and social benefits.

1. Introduction and Background

- 1.1 Padnall Lake has been identified as suitable for development, delivering new quality affordable housing, community space and improved public realm. The site is wholly owned by the London Borough of Barking and Dagenham (LBBD) and is currently vacant. A site plan aerial photo is provided in Appendix 1.
- 1.2 The site is a narrow strip of open grassland, designated as local open space, south of Marks Gate Estate and adjacent to the A12 carriageway. The site is largely flat with a long mound to the western end of the site and several mature and semi-mature trees across the site. Towards the centre of the site, but outside the site boundary, is a pedestrian subway running under the A12 serving as a main crossing point for current residents. There is a large diameter Thames Water main located within the site boundary, which must be accommodated in this development.
- 1.3 The site also includes Padnall Lake itself, which is under the ownership and management of LBBD. The lake is a balancing pond servicing the A12 carriageway, and has walking routes around it and a footbridge crossing.
- 1.4 There is an opportunity to develop the site in order to deliver new good quality affordable homes, and new community space. Through enhancing the ecological value of the site and providing shielded courtyard spaces, there is an opportunity to mitigate the impact of the A12 in order to improve the public realm, including the lake, for the benefit of new and existing residents.

2. Proposals

Options Analysis

- 2.1 Feasibility work has been undertaken assessing a range of design and tenure mix options, including private units. However, due to the relatively low values in the area, and the priority to deliver affordable homes, the inclusion of private units has been discounted.
- 2.2 A range of densities were assessed from 150 units to 300 units. Given the site characteristics, design and planning considerations, particularly in relation to balancing the need for car parking and open space to support the new and existing homes, it is considered that the site could accommodate at least 200 new homes, subject to planning.

- 2.3 The development would include a variety of open landscaped areas, improving the biodiversity and ecology of the open spaces. The open spaces will be sheltered from the A12 in order to try to increase the recreational use of the site, and create a valuable local amenity, encouraging activity in a currently under-used part of the estate.
- 2.4 It is therefore proposed that the council owned land is developed to provide a minimum of 200 new affordable homes and c.250m² of community space, together with improved open space and public realm.

Financial Summary

- 2.5 The investment metrics for the proposals are summarised as follows:

Year 1 surplus	£409k
Year 6 surplus	£22k
Internal Rate of Return	6.4%
Net Present Value (3.5% discount rate)	£17,160k
Yield on Cost	4.1%

- 2.6 The total development costs are estimated at £63,940,000, of which c.£6,781,000 would be incurred to secure planning permission and procure the contractor, prior to works commencing on site.

Planning Policy Considerations

Public Open Space

- 2.7 The site comprises designated Local Public Open Space, meaning that local planning policies strongly resist its loss. We understand that the existing open space is underused, largely given its location next to the A12 and the lack of facilities. Any redevelopment of the site should, therefore, consider how to address the site's constraints and justify the loss in area by re-providing higher-quality open space for public use.

Environment

- 2.8 There are a number of environmental considerations which will need careful analysis and a robust design solution, notably acoustic and air quality issues resulting from the A12 and flood risk management to the western part of the site adjacent the lake.

Transport

- 2.9 Car parking will be a sensitive issue in this location, as public transport access to Marks Gate is limited (PTAL 0-2 where 0 is the lowest). Any parking provision will need to be balanced against the need to deliver sustainable development, high quality local open space and high-quality residential amenity.

Residential

- 2.10 CS Policy CC1 expects residential development of 10+ units to provide a minimum of 40% family accommodation, subject to site specifics. In relation to tenure mix, the Draft London Plan policy stipulates 30% rented (social rent or LAR), 30% intermediate, and 40% as being flexible, subject to Local Planning Authority requirements.

Recommendation

- 2.11 The recommended option is to develop Padnall Lake to deliver:

- a minimum of 200 affordable homes based on 50% AR, 35% LAR and 15% SO
- c. 250m² of community space (use to be defined)
- enhancements to the quality of open space and residential amenity

- 2.12 This option is recommended as it:

- Optimises the affordable housing offer, whilst delivering a financial return to the Council.
- Delivers the Client Brief for Padnall Lake, in terms of housing (specifically affordable housing) and community space.
- Delivers enhancements to the quality of public realm for the benefit of existing and new residents.
- Meets planning policy requirements, particularly in relation to the requirement for a minimum of 50% affordable housing on public sector land (including a minimum of 30% LAR units)
- Meets programme requirements in accordance with Be First's Business Plan targets.

3. Delivery Arrangements

- 3.1 It is proposed the scheme is delivered by Be First, who will progress the project through the planning process, and manage the delivery of the works. It is proposed that a contractor for the works is procured through the Be First construction framework. Opportunities will be explored with the contractor to deliver the scheme through modular off-site construction methods in order to speed up delivery and mitigate the impact of the construction works on nearby residents.
- 3.2 All procurement that is required to be conducted under this project will be carried out in compliance with EU and UK Legislation.

Programme

3.3 The key dates are summarised in the following table:

Gateway Progress Dates	Date
Planning Submission	April 2020
Contract Award	August 2020
Start on Site	September 2020
Practical Completion	December 2022

Funding

3.4 The estimated development costs are £63,940,000 to be funded through a combination of GLA Grant funding/Right to Buy receipts and borrowing, broken down as follows:

Grant funding (Right to Buy or GLA grant)	£17,040,000
Council borrowing	<u>£46,900,000</u>
Total	£63,940,000

3.5 It is proposed that the development and ownership of the new affordable homes is financed through borrowing up to £46,900,000 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.

4. Consultation

4.1 During the feasibility study, feedback was gained from planning officers to the proposals. Pre-application discussions and public consultations will commence in December 2019, subject to Cabinet approving the proposals.

Stakeholder Engagement

4.2 There is a Stakeholder Engagement Strategy in place to ensure local residents and stakeholders are kept informed of the proposals and have the opportunity to shape the design of the new homes and open spaces. This will include a design workshop with local stakeholder groups at the beginning of the design process in order to inform the design brief.

4.3 Further stakeholder workshops, and public consultation events will be held through the design development process, prior to submission of a planning application. As part of this process ideas will be sought from local people to identify potential uses for the new community space.

4.4 Residents will also be able to view and provide comments on the proposals online through a dedicated website.

5. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 5.1 Padnall Lake will require borrowing of up to £46.9 (net development cost) within the General Fund and an estimated total development cost of £63.9m. The borrowing requirement is higher than the IAS business plan amount of £37.2m. The impact of increasing the borrowing requirement by £9.7m is that there will need to be an increase in the interest payable budget of £0.3m to accommodate this spend.
- 5.2 A pre-development budget of £6.78m has been requested.
- 5.3 Currently £5.0m in contingency has been included in the total development costs and there is an expectation that the total development costs will come within the proposed costs.
- 5.4 Based on current assumptions the cashflows for year 1 to 5 achieve a cumulative operating surplus of £1.248m. The year 6 operating surplus is only £22k from long term borrowing of £46.9m, which equates to a return of 0.05% for the year. The estimated cashflows are significantly below the amounts included in the IAS business plan as a Gateway 1 option.
- 5.5 The LAR properties would need to go into a Registered Provider and as there are negative annual net returns for the LAR options this will need to be improved and agreed by the Registered Provider. Reside have been made aware of this matter and work is under way between Reside and council officers to address this for the purposes of Reside's business plan, including exploring options for incorporating higher income generating tenures into the Registered Provider to cross subsidise the LAR units.
- 5.6 Overall, the scheme is aiming to deliver at least 200 homes, with additional council tax and new homes bonus.
- 5.7 The proposal also includes the enhancement of the lake on site and existing surrounding green spaces. There are potential other options of including the funding of enhancement to the Lake through other grants. These options should be explored as part of Gateway 3.

6 Commissioning Implications

Implications completed by: Graeme Cooke, Director of Inclusive Growth

- 6.1 Commissioners support the proposals set out here, which have the potential to contribute a significant number of new affordable homes in the borough while improving amenity space in the development area for the benefit of current and future residents.
- 6.2 The development of the Padnall Lake site can be delivered in phases, thereby retaining the potential to further increase the density of the later phases, which could deliver additional housing on this site to meet housing need in the borough.

- 6.3 It is also noted that there is a proposal to include a community space in this development. This is supported in principle and Be First should work with the council to consider appropriate use/s of this space.
- 6.4 Careful consideration will need to be given to the detailed design of the proposed new housing and its relationship to current housing in the proposed development area, including the impact on existing residents through the construction phase
- 6.5 While the use of Modern Methods of Construction is supported and its inclusion here is seen as a positive element of the proposal, Be First will need to work closely with the Council and Reside as the programme develops, so the implications of this approach to construction are fully understood for long term asset management purposes.

7. Legal Implications

Implications completed by: Paul Feild, Senior Governance Lawyer, Legal

- 7.1 The current proposal is for a 200-home new build development on open land in Chadwell Heath identified as Padnall Lake. It is understood that the site which makes up the is open amenity land [to identify titles]. The key legal issues will be:
- Power to carry out development
 - Planning
 - GLA guidance
 - Existing interests
 - Land remediation
 - Human Rights

Council Powers

- 7.2 The Council has power 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:

1. Compliance with the Statutory Guidance on Local Government Investments;
2. Fulfilling its fiduciary duty to taxpayers;
3. Obtaining best consideration for any disposal;
4. 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);
5. Compliance with any other relevant considerations such as state aid and procurement;

GLA

- 7.5 As set out in the Report proposal a potential source of funding is from the GLA. The benefit with the GLA funding is that the Council will not increase its indebtedness but will be subject to the conditions of the GLA funding.

Development Risks

- 7.6 The report confirms that advice is being sought from the Council's planners with regard to compliance with the Council's Local Plan and necessary considerations of planning law, the Mayor's London Plan and potential objections to the development of open amenity land.

Land Risks and Considerations

- 7.7 There will be the imperative to ensure that all land, development and environmental risks are identified and managed through feasibility studies to ensure the preferred development option is deliverable before significant pre-development expenditure, and mitigation strategies put in place. Potential risk arising include, but are not limited to, any third-party rights or restrictions or incumbrances which may frustrate or prevent the Council's regeneration objectives and development of the land. In terms of environmental risks, caution must be exercised in site close to a major arterial highway and historical uses in the area may raise risks of land contamination and if so, any remedial action and the costs of such remediation would need to be factored into the feasibility and viability considerations. Specifically, there should be early due diligence before substantial investment and contractually committing to the project to ensuring that the site is suitable for the construction of dwellings and is without risk of historical contamination, or in the alternative that any contamination is capable of being remedied and costs are both factored into the acquisition price and do not compromise the viability of any residential development. A full environmental survey, development appraisals and sound understanding will be a necessity if the Council seek to pursue mixed use or residential development on the site.

State Aid

- 7.8 As local government is an emanation of the state, the Council must comply with European Law regarding State Aid. This means that local authorities cannot

subsidise commercial undertakings or confer upon them an unfair economic advantage. This report does not identify any specific aspect of the proposed acquisition, which is other than a commercial transaction, thus this arrangement satisfies the requirement it is on market terms. Furthermore, certain grants to remediate contaminated land are excluded from the State Aid Regime.

Human Rights

- 7.9 As the scheme as described does not seek the use of compulsory purchase powers or displacement of any residents there does not appear to be critical risks associated with a Human Rights Act challenge, nevertheless, matters should be kept under review in case such considerations should arise.

Other Claims

- 7.10 There may be a prospect that the development could be subject to claims and other incumbrances such as easements and claims for same such as right to light. To a degree the effect of such incumbrances will be dependent upon the masterplan and how the sites fit in. However, as a local authority the Council can appropriate the land in question planning purposes pursuant to s. 227 of the Town and Country Planning Act 1990. In doing so the Council can utilise the power given by s.203 of the Housing and Planning Act 2016 override any private rights subject to compensation payments. This power would normally be exercised after planning permission had been obtained, thus there would be time to negotiate the extinguishment of incumbrances beforehand which will enable swifter resolution.

Appropriation to General Fund

- 7.11 It is understood that the site is currently held with the Housing Revenue Account. As set out in the Report the Reside housing is outside the span of the Housing Act 1985. It will need to be appropriated to the General Fund. This must be carried out in accordance with Ministerial Guidance and Consents issued under S.32 Housing Act 1985 with appropriate valuation adjustment.

8. Other Implications

8.1 Corporate Policy and Equalities Impact

- 8.1.1 An Equalities Impact Assessment Screening Report has been produced for this project, 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.
- 8.1.2 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.

- 8.1.3 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.
- 8.1.4 The Padnall Lake project seeks to respond to these priorities by diversifying and improving the quality of the housing offer in the area, supported by enhancements to the public realm and provision of new modern community space in order to provide a sustainable community.
- 8.1.5 The development will also contribute towards the Councils' health and wellbeing priorities for example by:
- Improving the quality of housing, specifically affordable 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, green roofs and ecology enhancements to the site.
- 8.1.6 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.

8.2 Risk Management

Planning Permission not being granted

- 8.2.1 There is a risk of refusal of planning permission due to objection from residents. The site is an open space, albeit under-used, which could be seen as a local amenity. Therefore, proposals may be met with a negative response. In order to mitigate this, the engagement strategy ensures early, thorough public consultations and workshops will take place to ensure residents do not feel isolated from development proposals.
- 8.2.2 Regular discussions with Development Management Officers will be held to ensure the proposal is compliant with key planning policies in relation to affordable housing, open spaces and community uses.

Not securing RtB Receipts and/or GLA Grant

- 8.2.3 As set out above, the project will need around £17.04m of subsidy through either the Council's RtB allocations or GLA grant. The project is currently not included within Council RtB allocations, nor was it included in the Council's initial bid for GLA grant. Discussions have been held with the Council's finance department to ensure RtB funding is available for the project. The Council is in regular dialogue with the GLA around grant and will seek to bid for additional grant for the Padnall Lake project. If this is not possible, additional RtB receipts may be required to deliver the desired tenure mix.

Cost increases above the project budget

- 8.2.4 The current costs are based on the initial design concept and desktop site analysis. Given the early stage of the project a high level of contingency has been allowed for in the project costs provided by the QS.
- 8.2.5 This will be continuously monitored as the project progresses through detailed design and procurement. Further intrusive site investigation will be carried out prior to submission of the planning application so that a robust cost estimate of the scheme, reflecting the site constraints, is undertaken prior to seeking planning permission. There will be continuous dialogue with the Client to ensure that Client Brief requirements are reflected within the design and costs.
- 8.2.6 Furthermore, costs will be reviewed with the Client prior to entering into contract at the various stages of the development process, including at the appointment of the design team and the contractor.

Site constraints inhibiting/delaying scheme delivery

- 8.2.7 A desktop and intrusive ground condition study, risk assessment and remedial method statement have been produced which conclude that there is a contamination risk identified to the eastern end of the site. The remedial method statement identifies the necessary strategies to mitigate this through design and construction. There are existing services within the site that will need to be considered through design and construction, and a new transformer may be required to service the new homes.
- 8.2.8 Current site access is through the existing estate. The A12 serves as a good transport link; however, within the estate, roads are narrow and tight. A robust logistics and construction management plan will be implemented to ensure minimal disruption to existing residents.

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

List of appendices:

- Appendix 1: Site Plan and Aerial Photo
- Appendix 2: Land Appropriation Plan