

CABINET

19 May 2020

Title: Development of Land at Chequers Lane, Dagenham	
Report of the Cabinet Member for Regeneration and Social Housing	
Open Report with Exempt Appendices 2 & 3 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972 as amended)	For Decision
Wards Affected: River	Key Decision: Yes
Report Author: Neil Double, Be First	Contact Details: E-mail: neil.double@befirst.london
Accountable Director: Ed Skeates, Development Director, Be First	
Accountable Strategic Leadership Director: Claire Symonds, Chief Operating Officer, and Graeme Cooke, Director of Inclusive Growth	
Summary <p>In July 2019, Be First were approached by developer Hollybrook Limited with the opportunity to purchase a turn-key development at the site known as Department of Employment, Chequers Lane, Dagenham, RM9 6PS. The site (shown in appendix 1) measures approximately 0.19 hectares and is located directly east of Chequers Lane, Dagenham. The site is currently vacant. The site was previously occupied by a two-storey brick building which formerly accommodated the Job Centre Plus until March 2018.</p> <p>Hollybrook Limited own the site freehold and secured planning permission in January 2020 (planning application no: 19/01724/FUL). The scheme comprises 90 homes in a nine-storey brick clad building with associated landscaping, access and parking. The unit mix approved is 49 x 1 bed flats and 41 x 2 bed flats</p> <p>The proposal is that the Council purchase the development from Hollybrook Limited on a turn-key basis via development agreement, subject to satisfactory technical and legal due diligence. Be First, on behalf of the Council would manage the transaction and development process to practical completion. The scheme would be held and operated by BD Reside as part of their affordable residential portfolio with any financial surplus made being paid back to the Council. The total development cost, inclusive of fees and interest, would be circa £25.7m.</p> <p>There are significant regeneration benefits for the Council in purchasing this site and bringing forward its development .</p> <p>The site is close to the Chequers corner local centre which has declined significantly in recent years and will generate retail footfall there. It is also close to a number of other significant sites backing on the the former Ford DTSO (stamping plant) and being close to two sites adjacent to Dagenham Dock station.</p>	

The current owner is unable to bring forward development but if the Council was to do so, delivering an affordable housing product which is not as location sensitive as private sale units or vulnerable to falling demand, this would improve the attractiveness and viability of development on the surrounding sites and act as a catalyst to get the market moving.

Buying the building as a whole from an integrated developer contractor also enables the Council to acquire units at a price below that at which we could construct them. While the fact that the units would not be delivered without Council intervention attracts a significant amount of financial support from the GLA.

Recommendation(s)

The Cabinet is recommended to:

- (i) Agree the preferred option for the project, consisting of a 100% affordable housing scheme comprising 62 Affordable Rent homes let at up to 80% of market rent and 28 London Affordable Rent (LAR) homes;
- (ii) Agree to enter into a Development Agreement with Hollybrook Developments to deliver 90 units at a total development cost of £25,714,877 on a turn-key basis for expected completion in 2021/22, subject to satisfactory due diligence;
- (iii) Agree to the borrowing of up to £17,624,877 within the General Fund to finance the entire development, subject to satisfactory due diligence;
- (iv) Agree to allocate up to £5.29m restricted Right to Buy receipts, if required, to fund the construction and professional fees to support the financial viability of the affordable housing project;
- (v) Agree to allocate £2.8m GLA LAR grant funding, subject to a successful bid, to support the financial viability of the LAR tenure;
- (vi) Agree to allocate £69k for 2020/21 and £289.5k for 2021/22 (total of £358.5k) to the Council's interest payable budget to cover the scheme's development costs;
- (vii) Note that the scheme meets the Investment and Acquisition Strategy financial performance metrics, as outlined in Appendix 3;
- (viii) Agree to the use of an existing or the establishment of a Special Purpose Vehicle(s) as required within the B&D Reside structure to develop, own, let, sale and manage and maintain the homes in accordance with the funding terms in a loan agreement between the Council and Special Purpose Vehicle; and
- (viii) Delegate authority to the Chief Operating Officer, in consultation with the Director of Law and Governance, to agree and execute any legal agreements and contract documents to fully implement the project.

Reason(s)

This project primarily helps deliver on the objectives of Inclusive Growth and A New Kind of Council

- Building affordable housing and sustainable communities
- Support the social and economic regeneration of the South Dagenham area
- Accelerate the delivery of new homes that might otherwise not be delivered as quickly
- Contribute to growing the Council's residential portfolio
- Deliver a financial return to the council through a long-term income stream

1. Introduction and Background

- 1.1 The development opportunity at Chequers Lane has been offered to Be First and the Council by Hollybrook Ltd (Registered No: 06867406) as a turn-key solution to deliver affordable homes and help Be First accelerate delivery of affordable housing within the borough.
- 1.2 Hollybrook Ltd are an established, family run developer/contractor, operating in the UK, EU and USA. They have been operating for over 30 years and have built schemes across London, including Knights Road in Silvertown and Odessa in Rotherhithe for several leading housing associations.
- 1.3 The site measures approximately 0.19 hectares and is located directly east of Chequers Lane, Dagenham. The site is broadly square-shaped and is currently vacant. The site was previously occupied by a two-storey brick building which formerly accommodated the Job Centre Plus until March 2018. The surrounding area, mainly commercial at present, forms part of the 'South Dagenham Regeneration Area' a key future housing area as identified by Mayoral and Local Planning Policy. The site has a PTAL of 3 (moderate) and is relatively well served by public transport with Dagenham Dock railway station 0.5km to the south and Dagenham Heathway station 1.5km to the north.
- 1.4 The Chequers Lane scheme was granted planning permission in January 2020. The scheme comprises 90 homes in a nine-storey brick clad building with associated landscaping, access and parking. The unit mix approved is 49 x 1 bed flats and 41 x 2 bed flats. All units are London Plan internal space standards compliant and all have private and communal amenity space that meets the Mayor's guidance. Children play space is also provided which exceeds the Mayor's policy. The development is 'car-free' except for 3 blue badge parking spaces.
- 1.5 The scheme sits within and will help support the wider regeneration area of South Dagenham / Beam Park which has and will continue to undergo significant long-term investment and regeneration over the next ten to twenty years. Investing in this area now will help accelerate regeneration efforts and may assist the Council in reaping longer-term financial benefits from an uplift in values once regeneration takes effect.
- 1.6 The developer has indicated that they would be unlikely to build out this planning permission at present without Council involvement. Therefore, there is a strong case to be made for Council involvement in order to support and accelerate the continued regeneration of this part of the borough whilst generating a modest financial return.

2. Proposal and Issues

- 2.1 The proposal is that the Council purchase the development from Hollybrook Limited on a turn-key basis via a development agreement (subject to satisfactory technical and legal due diligence) for the sum set out in the draft Heads of Terms document at Appendix 2 (this appendix is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation - paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information). Be First, on behalf of the Council would manage the transaction and development process to practical completion. The scheme would be held and operated by BD Reside as part of their affordable residential portfolio with any financial surplus made being paid back to the Council.
- 2.2 Payment terms are subject to agreement, but will include a deposit on entering into contract, a golden brick payment followed by a monthly drawdown for the duration of the development. The site is held in an SPV by the Hollybrook and ownership will transfer to LBBB/Reside following the Golden Brick payment.
- 2.3 Reside and My Place have been consulted with regards to tenure, unit mix and specification, and discussions have been held to optimise available grant funding to determine desired unit mix. Discussions with the GLA have been positive and indicated that £2.8m of grant to support the London Affordable Rent (LAR) units should be available to the Council if the decision to progress was taken.
- 2.4 Chequers Lane is not included in the Be First Business Plan list of sites that form the Council's Investment Programme, which forecasts completion of developments in financial year 2021/22. The scheme can be delivered within the financial year 2021/22 as additional units to those currently in the Be First Business Plan.
- 2.5 The development agreement will have provision for Be First to have step in rights to complete the development should the developer fail, and a full suite of warranties will be provided from all designers and sub-contractors who have design input into the scheme.
- 2.6 Subject to Cabinet approval, final technical and legal due diligence will be undertaken by Be First prior to the Council signing the development agreement. The cost of undertaking this work has been included in the Total Scheme Costs.
- 2.7 The turn-key solution provides a number of benefits to the Council, including:
- Risk - A lower risk delivery option for the Council with the Developer taking all construction cost risk in lieu of an agreed fixed price.
 - Regeneration - Offering the opportunity to unlock a development site and take a proactive role in investing in the future regeneration of the South Dagenham area.
 - Delivery certainty – the scheme has planning permission, but the developer has indicated that they wouldn't built out the scheme at present without Council involvement.
 - Quicker delivery and income - with the scheme being on site early 2020 and completed in 2021/22 resulting in operational income for Reside without the long-lead in times associated with the traditional new build schemes.

- Asset value growth – given the low base of values in the area this scheme has the potential for capital and rental growth subject to wider regeneration plans being implemented.

2.8 Key financial metrics on the proposed deal are included in Appendix 3 (this appendix is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation - paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information).

3. Options Appraisal

3.1

Option	Advantages	Disadvantages
Do Nothing	No cost to the Council	Homes are not delivered as quickly Homes not added to Council's residential portfolio Loss of revenue income No delivery control
As set out in recommendation	Delivery of affordable homes Income generation Support the regeneration of South Dagenham More control over delivery timeframes	More risk than doing nothing – however risk can be managed given fixed price deal

4. Consultation

4.1 The development was subject to community consultation through the planning process. No objections to the development were raised.

4.2 The proposals in this report were considered and endorsed by the Council's Investment Panel on 15 April 2020.

5. Commissioning Implications

Implications completed by: Darren Mackin, Head of Commissioning and Programmes, Inclusive Growth

5.1 The delivery of the development would provide a welcome contribution to meeting housing need through the delivery of 90 affordable housing units, while achieving an acceptable tenure and bedroom size mix for a development in this part of the borough. Resdie have indicated that they would be confident in renting the units as specified when they are delivered. Without this intervention is unlikely the units will be delivered in the short or medium term by the private sector, and the affordable element would be unlikely to go beyond the planning compliant minimum, unlike this proposal which will all be rented at below market level.

- 5.2 In addition to this, and as the report has set out delivering the scheme has the potential to provide a catalyst for wider development to be brought forward in this area. This could contribute considerably to our housing target and support the delivery of our wider aims for Inclusive Growth in the borough. An active role as a landlord (through Reside) will give the council a greater ability to influence and shape the way the wider area will develop in coming years.

6. Commercial Implications

Implications completed by: Hilary Morris, Commercial Lead

- 6.1 The report requests authority to purchase the Chequers Lane turn-key scheme to deliver a 90 unit development from a developer for an agreed price which has been reduced by 5% and provides summary information on the transaction. This scheme has been noted as a potential investment in the 2020/25 Be First Business Plan which is being considered by Cabinet in April 2020.
- 6.2 Although the scheme has received planning permission the report acknowledges that in the current economic climate the scheme is unlikely to be built out without intervention. Therefore, although this will not contribute any 'new' homes to the borough in planning terms, it will ensure the development of the site and therefore give certainty of delivery of the scheme.
- 6.3 The Council would take no construction risk during the build phase but as the asset would be held within an SPV, as the report outlines it will be necessary to ensure appropriate security measures are contractually agreed to safeguard the council's interest including charges, guarantees and step-in rights with the contractor. The report notes that Liquidated and Ascertained Damages (LADs) will also form part of the package with the developer. It would be recommended for the outcome of those negotiations to be presented to the Council before finalising.
- 6.4 As part of initial due diligence Be First have undertaken a credit check on the developer which indicates a low risk of business failure although it must be noted that the report highlights the company has a large sum owed on short term finance which could pose additional risk with respect to the likelihood of business failure in the current environment. Be First should ensure this and any other business failure risks are considered and mitigated as much as possible in the negotiations regarding security of the asset and any funds forwarded to it through golden brick or other advance payments.
- 6.5 Be First have outlined that they will procure their legal and technical advisors independently and from frameworks but must ensure they follow all legal and company governance in undertaking that appointment.
- 6.6 In line with other delegated decisions, Be First must ensure a delegated authority report is completed and signed by the Chief Operating Officer once the final terms have been agreed with the developer. This report should set out the detail of the final terms and note the outcome of the due diligence including how the agreement addresses the comments raised in the implications.

7. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 7.1 The report outlines a turnkey investment opportunity for the Council to invest in. Chequers is currently held in an SPV by the developer and ownership will transfer to LBBB/Reside following the Golden Brick payment. The costs to manage and maintain the SPV have not been included. Costs would include legal, accounting, treasury and administration and these still need to be resolved.

Funding

- 7.2 Turnkey schemes are new schemes to the IAS and have not been budgeted for previously. This scheme will require £22.56m of borrowing (excluding interest and GLA grant), which is reduced to £17.27m when RtB grant is utilised at the end of the development. This equates to £285k per unit.
- 7.3 It is important to note that the scheme will require an additional interest budget of £358.5k during the construction phase, with a target completion date of October 2021. This requirement is based on costs of borrowing of 1.5%. The financing proposal in the report does not include any other sources of financing.
- 7.4 Reside and My Place have been consulted with regards to tenure, unit mix and specification, and discussions have been held to optimise available grant funding to determine desired unit mix. The £2.8m of LAR grant has been formally obtained and the schemes will require £5.3m of Right to Buy receipts. The tenure mix is appropriate for both the Council's social housing provision and given the nature of the location as an untested market for new build.
- 7.5 The development agreement will have provision for Be First to have step in rights to complete the development should the developer fail. Were there a requirement for Be First to complete the development, this would likely add additional costs and there would likely be a delay in completion of the scheme. Prior to any agreement it would be essential to carry out detailed due diligence on Hollybrook to address the issues outlined in the commercial implications.

8. Legal Implications

Implications completed by: Dr Paul Feild, Senior Governance Solicitor

- 8.1 The report proposes the joint development via a Development Agreement by the Council and the owner of the site known as the former Job Centre site. The site is held in a company vehicle (Chequers Lane Dagenham Limited) by the developer and it is proposed that ownership will transfer to the Council on what is termed a 'Golden Brick payment'.
- 8.2 In 2018 planning permission was granted for the site for construction of 70 homes.
- 8.3 In January this year a revised application to the Planning Committee was made for erection of a 9-storey building to provide 90 residential flats with associated access, parking and landscaping. The tenure arrangement proposed was for 35%

affordable housing on a habitable room basis comprising 50% London Affordable Rent and 50% Shared Ownership. The application was duly granted.

- 8.4 The Council has power to deliver the development 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.
- 8.5 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.
- 8.6 In exercising the power of general competence and in making any investment decisions, the Council must also have regard to the following:
- i. Compliance with the Statutory Guidance on Local Government Investments.
 - ii. Fulfilling its fiduciary duty to taxpayers.
 - iii. Obtaining best consideration for any disposal.
 - iv. Compliance with Section 24 of the Local Government Act 1988 in relation to giving financial assistance to any person (which either benefits from a general consent or requires express consent by the Secretary of State);
 - v. Compliance with any other relevant considerations such as state aid and procurement;

Funding and Borrowing

- 8.7 The development will be held within the Reside structure. It is understood that the acquisition of an interest will be by a deposit on entering into contract, a golden brick payment followed by a monthly drawdown for the duration of the development. The 'Golden Brick' is an arrangement which seeks to establish a fiscal advantage with regard to a registered provider and its VAT status. To take advantage of this taxation position the building has to be clearly under construction hence the placing of the metaphoric 'Golden Brick' stage passing the threshold.
- 8.8 At this stage the actual costs have yet to be finalised and necessary due diligence steps to be carried out.
- 8.9 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).
- 8.10 The Guidance is relevant to the extent that a loan may be necessary in order to facilitate delivery of the development. In accordance with the Guidance (paragraphs

33 and 34), A local authority may choose to make loans to local enterprises, local charities, wholly owned companies and joint ventures as part of a wider strategy for local economic growth even though those loans may not all be seen as prudent if adopting a narrow definition of prioritising security and liquidity provided that the overall Investment Strategy demonstrates that:

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

- 8.11 Development/Land Risks and Considerations - Apart from the requirement to purchase the land at no more than the market value 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 that a post-industrial site 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 contractually committing to the transaction 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.
- 8.12 State Aid - 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.
- 8.13 Human Rights – As the acquisition 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.

9. Other Implications

9.1 Risk Management

Risk/Issue	Description/Mitigation
Risk (1)	Risk: Developer Failure Mitigation: Likelihood is considered low but step in rights and performance bond will be in place to ensure Be First are able to complete the development.
Risk (2)	Risk: Substandard quality Mitigation: Agreed specification and robust monitoring by Be First appointed Clerk of Works with regular, on-site quality inspections.
Risk (3)	Risk: GLA LAR grant is not available Mitigation: Discussions are ongoing with the GLA at a senior level and current grant outlook is positive, so risk is considered low.

- 9.2 **Contractual Issues** – Head of Terms are in progress with a fixed price agreed. These Heads will form the basis of the Development Agreement. Please refer to legal section for more information.
- 9.3 **Staffing Issues** – The proposal will be delivered by Be First on behalf of the Council.
- 9.4 **Safeguarding Adults and Children** – The proposal will provide new homes and childrens play space as part of the development.
- 9.5 **Health Issues** – The proposal is for affordable housing to be made available to borough residents in need of affordable housing. The development has acceptable levels of private and communal amenity space and childrens play area.
- 9.6 **Crime and Disorder Issues** – The scheme has been subject through the planning process to Secure by Design review to reduce any crime or disorder arising from the new development.
- 9.7 **Property / Asset Issues** – The proposal will involve purchasing the site and building from the developer for a fixed price by way of a Development Agreement. The asset will be held and owned by BD Reside.

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

List of appendices:

Appendix 1 – Site Plan

Appendix 2 - Draft Head of Terms (exempt appendix)

Appendix 3 - Key Financial Metrics (exempt appendix)