CABINET

16 March 2021

Title: Redevelopment of Trocoll House, Wakering Road, Barking - Agreement for Long Headlease	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report with Exempt Appendices (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972 as amended)	**For Decision**
Wards Affected: Abbey	**Key Decision:** Yes
Report Author: Daniel Brooks, Assistant Development Manager, Be First	**Contact Details:** E-mail: daniel.brooks@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

The Council has an ambitious vision for regenerating the borough and delivering up to 50,000 new homes over the next twenty years. Trocoll House sits in one of the most key regeneration areas within Barking Town Centre. As the most prominent gateways in the Borough, the regeneration of this site will contribute as a catalyst for further redevelopment in this area.

Be First has been approached with the opportunity to bring forward the Trocoll House redevelopment opportunity, on an Agreement for Lease basis, in partnership with the development funder Rail Pen. The Development will be a single new building on the Trocoll House site. This is proposed to be based on the development funder (Rail Pen) taking on all of the development risk, with no payment from LBBD until practical completion. At practical completion LBBD will take a head leasehold interest in the building for a 50 year period, with an initial lease cost of £2.0675m per annum. At the end of the 50 year period, the freehold will transfer to the Council for £1.

The proposal is that the building will contain 198 homes and ground floor commercial use. LBBD are proposed to take an interest in the building on the above terms (subject to necessary legal and technical due diligence).

Be First, on behalf of the Council would manage the transaction and monitor the development process to practical completion in 2023/2024. The scheme would then be held and operated by BD Reside as part of their residential portfolio with any financial surplus made being paid back to the Council. It is proposed currently that My Place manage the commercial element of the development.

Planning permission for the overall development site has been fully secured.

There are significant financial benefits for the Council in entering into an agreement for lease and an extremely large benefit in the site achieving its regeneration potential in a key location in Barking town centre. The site will be one of the largest regeneration schemes in the town centre and is of strategic importance to the borough's growth.

Recommendation(s)

The Cabinet is recommended to:

(i) Agree the proposal to enter into an agreement for a long Headlease interest in up to 198 homes, comprising 35% affordable housing and approx. 650sqm of commercial floor space, subject to legal and technical due diligence;

(ii) Agree to enter into an Agreement for Lease with the Freehold owner of the site to deliver these units on an agreement to lease, subject to acceptable legal due diligence and the Council agreeing that the proposed specification is suitable for the intended purpose;

(iii) Agree to the borrowing of up to £2,620,264 within the General Fund to finance the entire development period. This will cover development management fees and required professional fees;

(iv) Note the scheme meets the Investment and Acquisition Strategy financial performance metrics delivering a positive net present value of £14.2m;

(v) Agree to the use of an existing or the establishment of a Special Purpose Vehicle(s) as required within the Barking & Dagenham Reside structure to develop, own, let, sell and manage and maintain the homes in accordance with the funding terms in a loan agreement between the Council and Special Purpose Vehicle;

(vi) Allocate up to £50,000 to allow the necessary initial legal and technical due diligence work to be undertaken prior to entry into contract;

(vii) 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; and

(viii) Delegate authority to the Finance Director, in consultation with the Cabinet Member for Finance, Performance and Core Services and the Chief Operating Officer, to agree the funding and finance arrangements to fully implement the project.

Reason(s)

This project primarily helps deliver on the Council's priorities of 'Inclusive Growth' and 'Well Run Organisation' by providing high quality regeneration to a key gateway site into the Borough and, in doing so, supports the social and economic regeneration of the area, contributes to growing the Council's residential portfolio and delivers a financial return to the Council through a long-term income stream.

1. Introduction and Case for Action

1.1 The council has an ambitious vision for regenerating the borough, and delivering up to 50,000 new homes over the next twenty years. While developments will happen across the borough, Barking Town Centre, where this development is situated, is a key focus for this housing growth. Plans are in place to deliver 8,000 homes in the town centre, a mixture of delivery by private developers and through the council's own new build programme which are being delivered by Be First.

1.2 The delivery of high quality housing is also a key element of the ambitious strategy which the council has agreed for the future of Barking town centre. The development which has been offered to Be First and the Council forms part of a wider number of schemes which are been delivered within the town centre. These developments not only provide new housing, but will also contribute to the strategic aims of the council to improve the station area as a key gateway site into Barking town. It is also hoped that by improving this general area, the Trocoll House redevelopment may act as a catalyst to encourage other developments in the vicinity, such as Vicarage Fields.

1.3 The site known as Trocoll House is a premier plot located at the heart of Barking Town Centre adjacent to Barking station. It has laid vacant above the ground floor for a number of years and is a prime redevelopment opportunity to help continue the regeneration of Barking Town Centre. The Barking Town Centre Regeneration Strategy 2020-30 adopted by Cabinet in October 2020 identified the Gateway into the town centre around the station as a key priority for intervention.

1.4 Historically there have been a number of stalled attempts to redevelop this building. A scheme to provide a hotel on the site was granted planning consent in 2010, however due to viability issues the scheme did not progress. A new planning application was submitted in 2015 for a residential led scheme. This application was refused for number of reasons, which included a lack of affordable housing. This application was called in by the GLA with The Mayor resolving to grant planning permission. The permission (for 100% private BTR) expired in 2019 without being implemented.

1.5 The current planning application was approved summer 2020 with 35% affordable housing. It is on this basis that Rail Pen are proposing to bring forward the development for LBBD to acquire on a long leasehold basis. This equates to 70 affordable homes and 128 private rent homes.

1.6 The site is constrained and complex and development will involve an extremely technical build out process due to its direct proximity to the station and multiple trainlines. The recommended option of proceeding with the long leasehold deal means that the development programme and cost risk will be entirely taken by the developer and will not fall upon LBBD.

1.7 Rail Pen, the development funder, are currently part of an agreement with the vendor to purchase the site, which will take place prior to LBBD entering into the agreement, and have appointed a developer to project manage the build out of Trocoll House. The council will enter an agreement to lease with RailPen when it takes control of the site.

1.8 It is proposed that the Council will take a Head lease interest for 50 years of the entire building, including the structure. The lease to the commercial space (including the Wetherspoons pub) will sit underneath this lease. The Council will then grant separate leases out to Reside and MyPlace as they see appropriate.

2. Proposal and Issues

2.1 The Council, via Be First, has been presented with the opportunity to bring forward the Trocoll House redevelopment opportunity on an Agreement for Lease basis in partnership with the development funder Rail Pen.

2.2 The site was acquired from Coplan Estates by Patrizia AG in 2016. The purchase was part of Patrizia's decision to develop, acquire and manage a portfolio of large scale, high quality BTR investments in the UK. Due to this site no longer being in Patrizia's development plans, Rail Pen have negotiated a purchase of the site. Rail Pen will take control of the site prior to the development commencing.

2.3 Be First have been introduced to Rail Pen to bring forwards this site. It is proposed that LBBD will enter into the agreement with Rail Pen prior to start on site with the developer and funder taking on all of the development risk.

2.4 At practical completion LBBD will take a Head leasehold interest of the entire building for a 50 year period, with an initial lease cost of £2.0675m per annum. At the end of the 50 year period, the freehold will transfer to the council for £1. The units will be rented out via Reside and it is intended that the income from tenants rent will cover the annual lease cost payment which the council makes to RailPen.

2.5 A full breakdown of the proposed structure is contained in Appendix 1 which is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2.6 The planning permission has already been granted (subject to s106), and the proposal is for the development to be delivered as set out below planning permission and LBBD are proposed. The approved mix is set out below:

Unit size	BTR	DMR (80% MR)	LLR	Total
1 bed/1P	16	4	6	10 (5%)
1bed/2P	37	16	8	73 (37%)
2 bed/3P	54	24	4	71 (36%)
2 bed/ 4P	21	5	3	44 (22%)
Total	**128 (65%)**	**49 (25%)**	**21 (10%)**	**198 (100%)**

2.7 This bedroom and tenure mix are not typical of the wider Council / Be First housing delivery programme. On the council's own schemes we deliver approximately 75% affordable housing; and typically provide a larger proportion of family sized properties.

2.8 However given the location and the proposed specification of this development it is considered that the tenure mix and bedroom size mix is appropriate, due to its potential appeal to people who need to travel easily into Central London and Essex. Reside, who will manage the completed development on behalf of the council, will need to develop a marketing and management strategy that will appeal to this segment of the housing market.

2.9 All units are London Plan internal space standards compliant and all have private and communal amenity space that meets the Mayor's guidance.

2.10 All units have been designed with the aim of providing equally sized bedrooms and open plan living spaces.

2.11 Specification and finishes will be in line with the standing LBBD/Be First requirements and external private amenity space via a balcony. Be First are working with the Council, My Place and Reside to review and sign off the specification including any divergencies.

2.12 In addition to the housing the development will also re-provide the commercial space on the ground floor (A3 use class). This is proposed to be managed by the Council following practical completion

- Bar (A4 use): 325 sqm
- High Street shop (A1 / A3 use) 325 sqm)

2.13 The Bar unit is currently occupied by JD Wetherspoons and at practical completion they will be moving back into the space with a fit out contribution from the developer. This lease to Wetherspoons will sit underneath the headlease that will be taken on by the council. As part of the terms of the lease Wetherspoons will be responsible for internal repairs, with the council responsible for wider structural issues. Appropriate management arrangements will be put in the place by the council to ensure the asset is well managed and that the rent levels are achieved.

3. Finance and Funding

3.1 The detailed financial arrangements and implications are set out in Appendix 3, which is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

4. Options Appraisal

4.1 The following options have been assessed.

Option	Advantages	Disadvantages
Do Nothing	• No cost to the Council • No risk	• Site unlikely to be delivered without council intervention • Homes not added to Council's residential portfolio • Loss of revenue income • No delivery control
As set out in recommendation	• Delivery of homes (market and affordable)	• More risk than doing nothing – however risk can be

	• Income generation • Support the regeneration the Barking station / key gateway area	managed given fixed price deal • Cost of finance to council

5. Consultation

5.1 The development has planning consent and has therefore been subject to community consultation through the planning process.

5.2 The Council's Investment Panel considered and endorsed the proposals at its meetings on 27 January 2021 and 24 February 2021.

6. Commissioning Implications

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

6.1 The regeneration of Barking Town Centre is critical in terms of delivering the Council's Inclusive Growth agenda. The site's prominent location adjacent to the train station, places it at the key gateway for people arriving in the borough on a daily basis. Improving this area around the station forms a key element of delivering the Town Centre strategy. Taken together with proposed improvements to the station and public realm around it, and ongoing progress towards the delivery first phase of the Vicarage Field redevelopment, there is the potential to transform the gateway to the borough. Therefore the successful delivery of this development provides the opportunity not only to provide new homes, but also to unlock other town centre developments and help contribute towards changing perceptions of the town centre.

6.2 As the report sets out over recent years there have been a number of attempts to redevelop the site, which have stalled for a variety of reasons. The proposal set out here to deliver a build to rent development, provides a sustainable solution for the long-term use of the site. The tenure mix is not typical of our own directly delivered or turn key developments, which typically contain at least 50% affordable housing on turn key and closer to 75% on council developments which are being delivered by Be First. However, the location, bedroom mix and specification of these flats is deemed appropriate for a more market led scheme, that will assist in delivering the council's wider housing strategy.

6.3 Improving the standards and quality of the provision for residents living in the private rented sector is an important part of the council's housing strategy. Approximately 21% of Barking Dagenham residents rent in the private sector, and in some circumstances struggle with high rents and poor service from their landlord. The council and its wholly-owned housing company Reside are intervening to address these issues. The agreement to lease will contribute to Reside's portfolio of market rent properties, many of which will be concentrated in Barking Town centre. This provides Reside with the opportunity to develop their service for this portion of the local housing market, and ensure that high customer service standards are offered to differentiate Reside in the market.

7. Commercial Implications

Implications completed by: Hilary Morris, Commercial Director

7.1 This proposal is requesting approval to proceed with entering into an agreement for lease with an institutional funder in order to bring forward the development of a complex but strategically important development site in the middle of Barking Town Centre. Trocoll House was considered a key strategic regeneration opportunity as far back as 2017 and the original 2018 Be First Business Plan set it out as a key development site which Be First were already in negotiations to purchase. However, despite ongoing negotiations in the years since and a subsequent stalled planning application the development of this site had not been able to be achieved until the proposal set out in this paper was brought forward.

7.2 The current proposal will offer an almost immediate start on site providing the opportunity to deliver the regeneration and the surplus income much quicker. The proposal is a more expensive option than the Council delivering the development directly but the actual cost of the transaction over 50 years will depend on the prevailing market conditions outlined in annual CPI increases as set out within the lease terms.

7.3 The total financial exposure is capped at 4% meaning the total inflationary increase that can be applied to the Headlease rent at each renewal period cannot be above 4% even if CPI tracks at a greater rate. Since 1989 CPI has tracked at an average of 2.55% per annum however that masks historically large variations from year to year with CPI at 7.5% in 1991 but 0% in 2015. Over the course of the next 50 years it is difficult to predict with any accuracy what the future average CPI level with track at, but it will be important for the tenant rent levels to track as near as possible to CPI each year to ensure the surplus income does not get eroded over time. Reside will need to ensure this is considered and reflected within its rent setting processes.

7.4 The Council will not own the Freehold of the site until the end of the Headlease period but the site will generate an expected surplus rent level provided tenant rent levels are inflated at the same inflationary uplift levels. This means the Council will carry more trading risk and operational rent increase exposure over the 50 year period than it would do if it were to borrow the money and develop itself as direct borrowing carries more certainty (although these do fluctuate) than inflation linked assets.

7.5 The paper outlines the Council will become the Landlord of the commercial units with one of these to be under an existing Agreement for Lease to Wetherspoons which will be managed within the Council. Effective management of these assets and any Landlord obligations will be critical to ensuring the rental income from those maintains similar levels throughout the Head lease period.

7.6 The Council will not be a party to the construction contract or development agreement with the contractor and carries no risk during this period including no risk regarding cost or time over-runs or difficulties in the building process. However, as the Council will be the tenant it will expect to receive a full set of construction warranties and indemnities prior to the building being handed over. These documents will form part of a complex set of due diligence activities that will need to be undertaken by Be First’s legal team to ensure the form of warranties, indemnities and insurances are acceptable and adequately covers the risk the Council is taking in relation to building defects, snagging works or other property related issues that might arise within the warranty period.

7.7 It will be important for the Council to ensure a property qualified professional represents the Council's interests at any Practical Completion inspections to ensure the building has met the Council's standards and requirements and the costs for these activities have been build into the financial assumptions. The due diligence associated with concluding this transaction in terms of obligations set out within the Headlease is also important and will need to be undertaken through a robust legal process prior to agreement.

8. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

8.1 The financial implications for this report are contained in Appendix 3 – Financial Information (exempt appendix).

9. Legal Implications

Implications completed by: Dr Paul Feild, Senior Governance Solicitor

9.1 This report relates to a commercial investment opportunity for the Council to take a lease as an investor in a multilevel housing development to be constructed at the Trocoll House, 101 Wakering Road, Barking, IG11 8PD site. The description of the arrangements is taken from the Heads of Terms documentation at Appendix 2, which is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

9.2 The proposed development will be a 198 homes tower with 35% affordable housing. The actual process will be that the construction will be commissioned by the Developer who will enter an Agreement for Lease with the Council. Completion of the Lease is to take place ten working days after the issue of Practical Completion pursuant to the building contract. Then the Council will take a 50-year head lease of the building and will in turn be underlet to a Council Special Purpose Vehicle (a company owned by the Council and "SPV" for short) for an under lease term of 50 years from Practical Completion. The SPV will let the dwellings and the commercial lettings too. The Head Lease is apparently not to be assignable. The Council will receive an underlease rent designed to deliver a surplus profit after the headlease rent has been paid to the headlease holder. Essentially the Council for a premium is guaranteeing an income for the freeholder for 50 years. The Council institutional lease rent is to be based on the Base Scheme and is payable irrespective of any changes the Council SPV may decide in terms of tenure of the residential units. At the end of the Head Lease duration the Council will have the option to acquire the freehold for a nominal sum (suggested £1). There is currently at the site a Pub run by JD Wetherspoons. It will cease trading during construction and then on completion to be re-instated for trading and that it will be under let from the proposed Head lease held by the Council.

Council's powers to enter the proposed arrangements.

9.3 The Council has a variety of powers to enable it to enter into the proposed transaction. These are subject to the Council also complying with its fiduciary duties to its taxpayers/residents.

9.4 The actual powers which the Council relies on is to an extent governed by its purpose/intention in entering into the arrangements and whether any of the limitations or restrictions of those powers conflict with the proposals made by the fund.

Entering the Lease with the Institutional Investor

9.5 Section 120 of the Local Government Act 1972 (section 120) gives the Council the power to acquire land (including a leasehold interest) for a purpose relating to any of its functions or pursuant to duties under any enactment (other purpose).

9.6 The Council in exercising section 120 may acquire land within or outside its area.

9.7 This means that the Council is required to identify another function (power or duty) which it seeks to exercise/rely on. Two powers which may be available include the general power of competence under Section 1 Localism Act 2011 and its investment power under Section 12 of the Local Government Act 2003.

The general power

9.8 The general power is set out in section 1 of the Localism Act 2011 and permits the Council to do anything which an individual may do. The general power is subject to several limitations which include that it cannot be used to circumvent any prohibition or restriction which exists in legislation which precedes the general power.

9.9 The general power is also subject to the limitation under section 4 of the Localism Act 2011, namely that if it is used for a commercial purpose then the Council must do that thing through a company or society registered or deemed to be registered.

9.10 Should the Council rely on the general power to directly enter the head lease (rather than using a Council-owned company to do so) the Council would have to satisfy itself that it was not acting predominantly for a commercial purpose. In doing so it would have to analyse whether the letting of the building (in terms of the arrangements) was commercial. As there is an element of risk in that it is a commercial arrangement for the purposes of generating an investment income (‘profit rent’), the proposal has a badge of commercial activity about it and the utilisation of a corporate special purpose vehicle i.e., a limited liability company may be required for compliance. Nevertheless, the presence of 35% affordable housing will have an impact of its overall commercial investment viability.

9.11 In this example it appears that the arrangement is to provide an investment return if that is the purpose then rather than the general competence power of section 1 of the Localism Act 2011 the following power is available.

Section 12 – the Local Government Act 2003 (LGA 2003) (Power to invest)

9.12 The Council's power to invest (Section 12, LGA 2003) may be exercised for any purpose relevant to its functions or for the purposes of the prudent management of its financial affairs. In exercising this power, the Council would rely on the second limb, namely that the proposals aid prudent financial management and to have regard to relevant statutory guidance. The financial implications consider how the proposals assist the prudent management of the Council finances.

9.13 The Ministry of Housing Communities and Local Government (MHCLG) issued new statutory guidance (attached to the email) under section 15 of the Local Government Act 2003 on local authority investments on 1 April 2018 (MHCLG Guidance). In approving the proposals both officers and decision makes should have regard to relevant aspects of the MHCLG Guidance.

9.14 Local Authorities are required to adopt an updated investment strategy as is required in that guidance. The Council's Investment Strategy contains provision for commercial investments. The report and accompanying financial reports (which are confidential and exempt) address how the proposals are aligned with the investment parameters for the commercial asset class.

9.15 The Guidance references 'non-financial assets' which includes certain property portfolios: 'non-financial assets that the organisation holds primarily or partially to generate a profit; for example, investment property'.

9.16 There are specific requirements for non-financial investments, and property portfolios, set out in paragraphs 37 to 40 of the Guidance. The Guidance requires local authorities to consider whether the asset retains enough value to provide security of investment using the fair value model in International Accounting Standard 40: Investment Property as adapted by proper practices.In exercising the section 12 Investment power it would need an evidential basis to support compliance with new statutory guidance on local authority investments on 1 April 2018 (MHCLG Guidance).

Power to grant a Lease to the Underleasee

9.17 The Council has a power to grant a leasehold interest in the property to the operator under section 123 of the Local Government Act 1972. The SPV would be so enabled in its company objects. The Council in making the underlease should ensure that it receives the best consideration which reasonably could be obtained. A valuation report confirming this should be obtained. By the same power it could grant an underlease to the Weatherspoons Pub business.

The Council's Fiduciary Duties

9.18 The Council's fiduciary duties could be briefly summarised as it is acting as a trustee of tax and public sector income on behalf of its residents' rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its residents' business rate and council tax-payers.

9.19 The Cabinet in agreeing the recommendations should consider the risks and rewards of approving them and the proposed arrangements. In practice the Cabinet should consider whether the proposals are on market normative terms which a prudent investor on the open market would enter into, whether the Council will achieve an appropriate return for the risk it is taking and whether the risk and potential cost to it of entering into the arrangements can be appropriately mitigated these principles apply throughout the whole process to completion.

Procurement structuring

9.20 The primary purpose of the transaction appears to be one of investment landlord and tenant. Advice should be obtained with regard to the impact of the Public Contract Rules 2015 as amended and the post Brexit level playing field emerging public contracts regime to ensure that any risk of procurement challenge is mitigated and minimised.

State aid compliance

9.21 State Aid - As local government is an emanation of the state, the Council must comply with UK Law regarding State Aid. This means that local authorities cannot subsidise commercial undertakings or confer upon them an unfair economic advantage. While the UK has left the European Union (EU), issues regarding state aid have not ceased. For example the UK membership of the World Trade Organisations agreement on trade also has requirements regarding State Aid albeit somewhat less prescriptive than the EU. Nevertheless, under the proposals the Council will be entering into the arrangements mainly for financial purposes. The leasing and letting of the development are market activity and in agreeing final terms for both the Institutional Investor and operator leases, the Council should be satisfied they are state aid compliant. To do this the Council should ensure it acts as a market operator would, meaning the terms it agrees should be such that an operator or investor in the private sector would agree to those terms in the same or similar circumstances.

9.22 As a potential option the Council could seek evidence from a commercial adviser whether in their opinion market/private sector parties in the same circumstances would be likely to do agree to the same or broadly comparable terms which constitute the market norm. Such a report (confirming that private/market sector parties will do so) will evidence state aid compliance.

Risk Management

9.23 Investment transactions of this nature carry a range of risks which are effectively detailed below. A number of risk factors, including planning, title investigations, commercial terms and construction, warrant early due diligence, with the aim of determining whether any of those risk factors have adverse implications on the transaction, including impact on future capital value and income yields. For example, if planning permissions regulating the development in terms of scale, nature/use class and restrictions do not materially align with the proposal pitched or valuation assumptions, the associated risks may impact on usage of the completed development and consequently income.

9.24 As the Council carries the risk of paying guaranteed rent under a headlease, it is imperative to carry out due diligence to appraise the risks. Furthermore, the current heads of terms require the Council /SPV to take responsibility for the upkeep of the building and the headlease will contain a full repairing and insuring covenant in respect of the whole property, subject to the repairing covenants in the occupational leases. This repairing covenant shall include the repair and maintenance of all the structure and common parts located at the development and to keep all plant, machinery and equipment located at the property (the "Plant") in good working order and to replace such Plant when beyond economic repair. LBBD will be required to insure the property itself or procure that this is done by an undertenant. Furthermore, LBBD will not benefit from either a rent suspension or option to terminate its lease if the property is damaged or destroyed by either an insured risk or uninsured risk. There will be a right to buy-out the Funder following such damage for a price equivalent to the gilt investment value of the income that is payable for the remainder of the term plus a spread of 20 base points.

Human Rights and Third-Party Interests

9.25 As there are no persons residing on the site, there do not appear to be any direct human rights implications, nevertheless the situation should be monitored and reviewed.

9.27 Third party interests need to be established. With construction of a tall building there is a risk regarding established easements, principally rights of light which needs to be fully understood.

Development / Land Risks and Considerations

9.28 Apart from the requirement to acquire an interest in the development 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 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 development of the land. In terms of environmental, construction and operational risks, extreme caution must be exercised in a location so close to a major railway station. The rail operator will be vigilant to any possibility of construction works affecting services and swift to resort to legal action if there are risks or actual interference with rail operations or passenger safety. Being so close to the long existing rail use site may raise risks of historical 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 the development 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 investment and acquisition price and do not compromise the viability of any residential development.

Taxation

9.29 As a commercial enterprise the proposal will be subject to a variety of taxation issues including SDLT, VAT and Corporation taxes. Specialist advice will need to be procured to ensure the most tax efficient structure is identified before any binding commitment is entered into.

Future Regulatory Issues

9.30 As currently structured the arrangement means that the Council / SPV will have overall responsibility for the building for the life of the head-lease (50 years). New legislation regulating tall building operators is in draft form (Fire Safety Bill and Building Safety Bill) these will place further obligations on landlords. Furthermore, additional legislation may follow post the publication of the Grenfell Public Inquiry Report. These obligations are inevitably going to have cost implications and forward anticipation of the risks and liabilities and costs of such measures do need to be factored into the evaluation model of this development and its viability. Having said that the Council as an operator of tall building housing ought to be well placed to apply it's growing expertise to such challenges.

10. Other Implications

10.1. Risk Management

Risk/Issue	Description/Mitigation
Risk (1)	Risk: • Lease payment linked to CPI which will be at risk of being higher than rental inflation. Mitigation: • Careful sensitivity testing has been undertaking with CPI and rental inflation modelled at different levels
Risk (2)	Risk: • Rental uptake and value Mitigation: • Full sales and market report conducted by Savills (Appendix 4)
Risk (3)	Risk: • Unit specification Mitigations: • Be First will be agreeing a robust set of employers requirements between the Developer, LBBD and Be First that will form part of the developers contract with the building contractors. These will then be used as the ER that will be within the development agreement between the contractor and RailPen. • An employers agent / CoW will be appointed throughout the development period to ensure that all items of the ER's are met to our satisfaction.
Issue (1)	Ongoing impact of Covid 19 Response • Development teams are working as normal with leading the pre-planning and pre-contract work stages which take the project through to end of the current year. • Anticipated that Construction teams will begin to operate at capacity before the anticipated start on site date of Q1 2021. To be monitored closely by Be First. • Impact on housing market is and will continue to be monitored by Savills with any changes in current values to be flagged immediately.

10.2 **Staffing Issues** – The proposal will be delivered by Be First on behalf of the Council.

10.3 **Health Issues** – The proposal is for 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.

10.4 **Crime and Disorder Issues** – The development makes use of a currently vacant, brownfield site. The development proposals will therefore have a positive impact on the local community. 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.

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

List of appendices:
Appendix 1 – Development, Funding and Ownership Structure (exempt document)
Appendix 2 – Draft Head of Terms (exempt document)
Appendix 3 – Financial Information (exempt document)
Appendix 4 – Savills Market report (exempt document)