

CABINET

20 September 2022

Title: Proposed Purchase of the Edwards Waste Site, Gallions Close, Barking	
Report of the Cabinet Member for Finance, Growth and Core Services	
Open report with Exempt Appendices 1 and 3 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972)	For Decision
Wards Affected: Thames View	Key Decision: Yes
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Accountable Director: Ed Skeates, Director of Development, Be First	
Accountable Strategic Leadership Director: Philip Gregory, Strategic Director, Finance & Investment	
Summary	
<p>Authority is sought to purchase the Edwards Waste Site on Gallions Close that lies within the Thames Road regeneration area. The purchase of this site will enable the cessation of its current challenging environmental use and will assist in the delivery of housing units consistent with the emerging Thames Road development strategy on this site and adjacent land already owned by the Council. The site is at the eastern end of Thames Road, adjacent to a school site, which is allocated as entirely residential in the emerging Thames Road masterplan.</p>	
<p>Appendix 2 identifies the site which extends to approximately 1 acre and is adjacent to the former Medina Dairy, which is now owned by Inland Homes. The former dairy site extends to approximately 1.65 acres and Inland Homes have submitted an application for its redevelopment to provide up to 231 residential units. Adjoining the Inland site is 3 Gallions Close. The 1-acre Lithuanica site was acquired by Be First for LBB in 2019 and is subject to a sale and lease back in the short term.</p>	
<p>Any applications for residential use on these sites will have to demonstrate that the adjacent Edwards Waste transfer site, which creates challenging environmental issues in terms of noise and odour, will either cease operation prior to occupation or other mechanical ventilation solutions are provided capable of mitigating the environmental impact.</p>	
<p>Edwards Waste have now found a suitable relocation site in Dagenham Dock (the CSM site) and are seeking to dispose of its Gallions Close site for them to relocate to Dagenham Dock.</p>	

<p>This is a significant opportunity to remove the current use at Gallions Close without the need to invoke a compulsory purchase order where it would be necessary to pay additional statutory compensation and associated time delays.</p>
<p>Recommendation(s)</p> <p>Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Approve the purchase of the Edwards Waste site, Gallions Close, Barking, as shown edged red in the plan at Appendix 2a of the report, in accordance with the draft Heads of Terms set out in Appendix 3 to the report; and(ii) Authorise the Strategic Director, Finance & Investment, in consultation with the Chief Legal Officer, to enter into all necessary legal documents to finalise the transaction in accordance with the draft Heads of Terms.
<p>Reason(s)</p> <p>To assist the council to achieve its priorities of Inclusive Growth and Well-Run Organisation with the acceleration of housing completion units in the Thames Road regeneration area</p>

1 Introduction and Background

- 1.1 Thames Road is a well-established mixed-use regeneration area where new residential uses and intensified commercial uses are proposed to improve the environment and better link Thames View with the Barking Riverside redevelopment area further to the south. The aim is to create a more integrated community with access to improved public transport (the rail link to Barking Riverside as well as riverboat services on the Thames) and community facilities including the new Barking Riverside district centre and leisure pool.
- 1.2 The Council has prepared and consulted on a draft master plan for Thames Road. The draft master plan proposes that the Gallions Close area falls within the residential zone. Other parts of the masterplan area are proposed for mixed uses with commercial use at ground floor with residential above.
- 1.3 Inland Homes have contributed towards the cost of the draft master plan and have already purchased two sites on Thames Road namely No 7 Thames Road which benefits from a resolution to grant permission for approximately 131 residential units and 15,000 sqft of commercial floor space.
- 1.4 Inland have also purchased the former Medina Dairy and submitted a planning application for up to 231 residential units. This scheme is broadly acceptable to the Council, but there are concerns about implementation whilst the Edwards Waste site remains in operation. Whilst there may be a technical solution to control odour levels this is likely to result in a sub optimal solution having a depressing effect on residual values and the environment generally. While Inland might progress an appeal on the basis of a technical solution to the odour issue if consent is not granted, the ongoing Edwards operation will continue to have a depressing effect on values and the amenity of the area generally.

- 1.5 Edwards Waste have now found a suitable relocation site in Dagenham Dock and have outlined terms for the Council to purchase their site.
- 1.6 In combination the site together with the adjacent Lithuanica site that has already been purchased by LBBD will provide a sizeable development site that will enable the Council to provide new residential units consistent with the draft master plan. Whilst there continues to be a further commercial use nearby, the Marwood's plant depot, this use is relatively benign in terms of its environmental impact and is likely to come forward for redevelopment in due course. Therefore, it is considered that the three proposed sites (namely the Lithuanica site already owned by LBBD and the purchase of the Edwards Waste site and the Inland Homes site) will enable the earlier delivery of new housing units. Negotiations are ongoing with Inland on the purchase of the former Medina Dairy site at a price point that reflects Inland's lower construction cost and the betterment created by the removal of the Edwards Waste challenging environmental use.
- 1.7 Legal advice has been sought from lawyers GWLG to determine how a contract could be entered into with Inland for it to provide turnkey product at its lower price point at the same time as extending this arrangement to the adjacent Edwards and Lithuanica sites. GWLG advise that a solution is capable of being drafted that still satisfies the Council's public procurement and best consideration rules (land is sold to Inland and they subsequently develop the site, and the completed product is purchased back as a turnkey). This would require its own Cabinet approval. Clearly the scale of the work stream for Inland will provide an opportunity for the Council to clawback the betterment value created by removing the current Edwards usage.

2 Current Position and Proposal

- 2.1 The proposed commercial terms for the purchase are set out in Appendix 3 to the report, 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. The detailed structure of the proposed transactions is shown below.
- 2.2 Edwards Waste will relocate their paper recycling and batching operation to a site in Dagenham Dock known as the CSM site that is currently used for archive storage (Appendix 4). Whilst terms are still in negotiation it is anticipated that the purchase price of the CSM site will be in the order of up to £8.5 to included stamp duty, VAT, legal fees and other professional fees associated with the transaction. This is subject to clarification of the site status as a transfer as a going concern. The cost of the decant site determines the sale price needed by Edwards Waste to facilitate the relocation.
- 2.3 In order for Edwards Waste to relocate they will need to secure a change of use for their proposed B2/ Sui generous waste operation as well as the relevant Environment Agency licence. This is likely to take between 12 to 18 months therefore they will stay in occupation at Thames Road until the necessary consents have been obtained.as outlined in Appendix 3, Edwards would occupy the site for a rent of £1 per annum in Year 1 and £250,000 in Year 2. Edwards Waste will then vacate the site and Be First would seek to secure planning permission for a residential scheme on both Edwards

Waste and the Lithuanica sites consistent with the adjacent Inland Homes scheme. Therefore, the site is likely to be vacant for a period of one or two years whilst planning permission for the development of the Edwards and Lithuanica sites are secured. During this time the site would be let for open storage if Edwards have already vacated.

- 2.4 There is an option for planning permission to be sought at the same time as the change of use and waste licences are being sought to foreshorten the development programme. The contract with Edwards will be drafted so that they have to vacate after a pre-determined long stop date so there is no risk in securing a residential planning permission in advance of them relocating.
- 2.5 Negotiations are ongoing to determine a sale and lease back rent whilst Edwards Waste are still in occupation for the intervening 12 to 18-month period whilst the necessary statutory consents are secured.
- 2.6 Given the potential un-certainties surrounding the detailed drafting of the contract an allowance for price re negotiation, the sale and lease back rent, stamp duty and fees are summarised in Appendix 3.
- 2.7 The upper threshold for the purchase price will be dictated by statutory compensation levels that would have to be paid if the Council were pursuing a compulsory purchase of the site that would include the cost of the relocation site, stamp duty, legal fees, business disruption, moving expenses and statutory loss payments.

3 Options Appraisal

- 3.1 The following options are available to the Council:
- 3.2 **Option 1: Do nothing** - Without the removal of Edwards Waste planning permission is unlikely to be granted for the adjacent Inland Homes scheme. There is a prospect that Inland might appeal demonstrating that a technical solution can address the noise and odour issues. Whilst this might result in consent being granted the ongoing odour and appearance issues of Edwards Waste will still have a depressing effect on values which will likely impact upon the scheme's likely implementation. Moreover, this will have consequences for the Council's existing Lithuanica site ownership potentially delaying or prejudicing its subsequent redevelopment. Also, if the site is acquired by another industrial operator (including another waste operator), then this may lock the site up for some time and further delay the regeneration of this section of Thames Road coming forward. This approach is therefore not recommended.
- 3.3 **Option 2: Seek enhanced GLA funding** - So far, only £11.3m of the £30m GLA grant for land assembly has been drawn down and the GLA has indicated no further advances will be considered until there have been further housing completions. Therefore, it is highly unlikely that the GLA will provide further grant for land assembly until further housing completions taking place, however all efforts will be made to seek an enhanced grant for affordable homes delivery calling on the £18m unspent Housing Zone grant.
- 3.4 **Option 3: Cross subsidise the Edwards Waste and Inland purchases from previous GLA grant and income generating assets to improve project financials** - The Investment and Acquisition Strategy imposes a 4% hurdle rate for

commercial projects. The proposed acquisition will not meet the threshold. It may be possible to transfer some or all of the £11.3m of GLA grant into this purchase to improve its metrics and give consideration for the income generated on other Thames Road assets. However, the overall effect of a cross subsidy will be neutral as there will be an equal and opposite impact on the performance of existing assets.

- 3.5 **Option 4: Adopt a Portfolio Wide Approach** - The regeneration of Thames Road is a long-standing Council objective. 12 Thames Road is now on site and in the wider area progress has been made with the letting and sale of the Welbeck site for a film studio and the construction of the multi-level Industria scheme on Creek Road. Accordingly, the Council is already invested in Thames Road and will secure the benefit of improved income returns and the density of development (generating improved Business rates and Council Tax income) over time. These returns will come but in the longer term and forms part of the Council social and environmental regeneration agenda.
- 3.6 Not acquiring Edwards Waste will clearly have a prejudicial effect on the Thames Road strategy which forms a key element of the Local Plan and presents the risk that it might be replaced by another equally unpalatable use having negative impacts on the adjacent potential development sites and the Riverside School. Given the long-term nature of the Thames Road scheme there will be opportunities to clawback the cost of the acquisition via improved build costs by utilising turnkey solutions and seeking S106 contributions for other developers as sites come forward for redevelopment for other community infrastructure. **This is the recommended approach.**

4 Consultation

- 4.1 Given the confidential nature of the acquisition, public consultation has not been undertaken although the draft masterplan has separately been subject to public consultation.
- 4.2 The proposals in this report were discussed with the relevant Cabinet Members on 15 August 2022 and have also been considered by the membership of the Investment Panel.

5 Commissioning implications

Implications completed by: Shanaaz Carroll, Interim Head of Commissioning and Place

- 5.1 The proposed purchase lies in an established regeneration area and will assist in the implementation of the draft master plan and emerging local plan to introduce mixed uses to Thames Road. In particular the site is adjacent to other emerging mixed use proposals and land already owned by the Council. So the assembly of this site in the context of adjacent sites will facilitate a comprehensive approach. The current waste operation is prejudicial to the objectives of the draft masterplan and its continued operation will impede the speed and quality of any eventual redevelopment. Therefore the planned purchase provides a significant opportunity for the Council to have greater control in the area with the aim of securing a comprehensive treatment.
- 5.2 Therefore, the proposal is considered to be supportive of the wider Inclusive Growth

strategy.

6. Financial and Investment Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 6.1 The detailed financial implications are included in Appendix 1 of this report, 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.

7 Legal Implications

Implications completed by: Dr Paul Feild, Principal Governance & Standards Solicitor

- 7.1 This report proposes as the preferred option the acquisition of the site known as the Edwards Waste Transfer site at Gallions Close. The objective of the Thames Road master plan of regeneration of the area has the contingency of the presence and use of the waste transfer station not being conducive to a residential development. The actual acquisition will be under the heads of terms as set out in Appendix 3.
- 7.2 **Vires** - The Council has the power to acquire land for its functions by virtue of Section 120 Local Government Act 1972. by promote the delivery of the development utilising the general power of competence in section 1 of the Localism Act 2011 which provides sufficient power for the Council to participate in the transaction and enter into the various proposed agreements, 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.
- 7.3 **Investment Aspects** - In exercising the power of general competence and in making any investment decisions (to the extent that any aspect of this transaction is considered to involve investment decisions), the Council must have regard to the functions for the purpose of which it is exercising the power, must act reasonably and also have regard to the following:
- Compliance with the Statutory Guidance on Local Government Investments (the Statutory Guidance).
 - Fulfilling its fiduciary duty to taxpayers.
 - Obtaining best consideration for any disposal.
 - 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)
 - Compliance with any other relevant considerations such as state aid and procurement.

The implications are that there is a responsibility on the Council to actively management and review its investment strategy and the underlying assets themselves. As the Council is under a Best Value duty under the Local Government Act 1999 to seek continuous improvement and value for money, there will be

occasions when disposal of assets is the right investment decision, particularly where they will deliver a strong positive rate of return

7.4 Subsidy and State Aid - As local government is an emanation of the state, the Council must comply with laws and regulations regarding State Aid as now set out in the Subsidy Control Act 2022. This means that local authorities cannot subsidise commercial undertakings or confer upon them an unfair economic advantage unless within a defined exception. 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, in the event that there are harmful residues present on the Site, there are certain grants to remediate contaminated land for housing.

7.5 Human Rights - 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.

8. Other Implications

8.1 Risk Management

Risk	Description	Mitigation
Transactional	Matter do not progress, and the purchase prices increases	The contract negotiations are competed quickly with an undertaking to meet the legal costs of the third parties given the time needed to secure cabinet approval. An allowance is made for price re-negotiation to ensure that matters can be completed quickly when the terms of the CSM deal are fully understood subject to approval by the S123 officer.
Contamination	Increased cost arises from adverse ground conditions	A suitable allowance is made for site remediation based on previous experience on Thames Road with a contingency for the complexities imposed by a waste operation
Income	Construction of the proposed residential units cannot take place as the scheme is not viable	Explore turnkey opportunities to minimise build costs, optimise the tenure profile and the potential for increased commercial floorspace to improve viability. Maximise short-term letting income by clearing the site for open storage use.
Vacant possession	Edwards fail to relocate if the CSM site falls away	The contract is drafted to require Edwards to relocate after a period of 24 months either to the CSM site or another site as might be identified.

8.1.1 The key risks surrounding the planned purchases are as follows:

Speed of Transaction and Exclusivity - Edwards Waste have been searching for a decant site for some considerable time and a suitable site has now been found which is immediately adjacent to their existing facility at Dagenham Dock and larger than their current site. Therefore, this proposal is attractive to them. Whilst there is a slight price difference (18%) between the decant site and the value of the Gallions Close

site this is not significant in relation to the costs that would normally be incurred in relocating an existing operational business. If the Council were pursuing a compulsory purchase of the Edwards site it would have to pay statutory compensation as well as the cost of a new site, stamp duty, legal costs, moving costs and business disruption. If an alternative site could not be found it would have to extinguish the business and pay compensation for the loss of the business's income. The proposed acquisition will achieve the removal of the Edwards site for an overall lower cost in a shorter period.

Therefore, it is important that the transaction can be completed quickly given that the council would only be able to commit to a transaction following Cabinet approval. Therefore, it is proposed that Be First will provide an undertaking on legal fees and other transaction cost for Edwards Waste to a cap of £30,000. Moreover, to ensure that the CSM opportunity is not lost a similar undertaking will be provided to CSM so that they provide an exclusive position to Edwards Waste to complete on the purchase agreement in the period to the September cabinet.

Contamination - The ground conditions on Thames Road are well known to the council given the extensive development programme currently in hand. Accordingly appropriate allowances will be made in the future redevelopment contract sums to account for known and unknown ground conditions.

Interim income - Due diligence is being undertaken to determine if there is a valid occupational lease in place on the Edwards Waste site that will provide interim income. If this is confirmed VAT will not be paid on the purchase price. Depending upon the overall viability of the proposed redevelopment scheme (for the combined sites of Edwards Waste and Lithuancia) using either the council's existing contractor framework or via a turnkey solution there may be an opportunity to secure further short-term income by letting the site for open storage during the intervening period whilst planning permission and tendering of the construction works is undertaken.

Vacant possession - This cannot be achieved on the Edwards Waste site until they have secured planning permission on the CSM site for their planned operation. This is likely to take between 12 and 18 months and has been included in the proposed long stop date in the purchase contract. A proposal has been made by the Be First planning consultancy team to assist in securing the relevant planning permission in order that the consultation with the GLA in relocating an established waste operation is fully understood in the context of the proposals for a mixed-use regeneration on Thames Road. The sale contract will include a long stop date so that Edwards Waste would have to vacate the site even if it had not secured the relevant consents.

Public background papers used in the preparation of the report:

- Inland Homes' Gallions East Pre-Application Document (October 2021)
(<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=12606&Ver=4>)

List of appendices:

Appendix 1: Financial and Investment Implications (exempt document)

Appendix 2a & b: Site Plans

Appendix 3: Draft Heads of Terms (exempt document)

Appendix 4: CSM Site Details.