

## CABINET

20 June 2023

<b>Title:</b> New Build Schemes: Approval of Disposals, Head Leases and Loan Facility Agreements	
<b>Report of the Cabinet Member for Regeneration and Economic Development</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> Goresbrook, Becontree, Abbey, Eastbury, River, Northbury and Gascoigne	<b>Key Decision:</b> Yes
<b>Report Author:</b> Uju Eneh, Programme Manager – Place and Development, Inclusive Growth	<b>Contact Details:</b> <a href="mailto:Uju.Eneh@lbbd.gov.uk">Uju.Eneh@lbbd.gov.uk</a>
<b>Commissioning Lead:</b> Rebecca Ellsmore, Strategic Head of Place and Development	
<b>Accountable Executive Team Director:</b> James Coulstock, Interim Strategic Director of Inclusive Growth	
<b>Summary</b> <p>This report relates to 377 new homes across seven new build schemes that have been built by Be First, the regeneration company owned by the Council. This underlines the Council's commitment to addressing housing needs in the borough and providing high quality, affordable housing for residents.</p> <p>The schemes are a part of the Council's Investment Programme. The Investment and Acquisitions Strategy (IAS) was most recently presented to Cabinet in November 2022. These schemes are also included within the Be First Business Plan which was approved by Cabinet on 22 March 2022.</p> <p>Following completion of the homes, this report seeks delegated approval to complete the documents required to dispose of the properties by way of leases to the appropriate Reside entities, and a series of loans to enable these disposals.</p> <p>The schemes for which approval is sought are as follows:</p> <ul style="list-style-type: none"><li>• Sacred Heart (Convent Court and Convent Mews), Dagenham, RM9 6FT</li><li>• 200 Becontree Avenue, Dagenham, RM8 2TR.</li><li>• A House for Artists, Barking, IG11 8SE.</li><li>• Sebastian Court (Block A and Block B), Barking, IG11 9FE.</li><li>• Chequers Lane (Block Kerwin House), Barking, RM9 6FR.</li><li>• Challingsworth House (Block A), Barking, IG11 8TF.</li><li>• Gascoigne East (Block C), Mizzen Street, Barking, IG11 7RQ</li></ul>	

## **Recommendation(s)**

The Cabinet is recommended to:

- (i) Approve, in principle, the disposal of the schemes listed below by the granting of long leases to the appropriate Reside entity (either Barking and Dagenham Homes Ltd (company no. 12090374), B&D Reside Weavers LLP (registered no. OC416198) or Barking and Dagenham Reside Regeneration Ltd (company no. 09512728));
  - Sacred Heart (Convent Court and Convent Mews), Dagenham, RM9 6FT
  - 200 Becontree Avenue, Dagenham, RM8 2TR.
  - A House for Artists, Barking, IG11 8SE.
  - Sebastian Court (Block A and Block B), Barking, IG11 9FE.
  - Chequers Lane (Block Kerwin House), Barking, RM9 6FR.
  - Challingsworth House (Block A), Barking, IG11 8TF.
  - Gascoigne East (Block C), Mizzen Street, Barking, IG11 7RQ
- (ii) Approve, in principle, the draft Heads of Terms and loans for each of the listed schemes to the appropriate Reside entity, as set out in section 2 and the appendices to the report;
- (iii) Delegate authority to the Strategic Director, Finance and Investment, in consultation with the Strategic Director, Inclusive Growth, to agree and finalise the terms of the loans, leases and any other associated documents, and to take any steps necessary to ensure compliance with s123 of the Local Government Act 1972 and the Subsidy Control Act 2022; and
- (iv) Delegate authority to the Chief Legal Officer, in consultation with the Strategic Director, Inclusive Growth, to execute all the legal agreements, contracts, and other documents on behalf of the Council in order to implement the arrangements.

## **Reason(s)**

The decisions are required to enable the disposal of seven New Build schemes to the relevant B&D Reside companies, helping to meet the Council's aim to increase the supply of affordable housing options for residents.

## **1. Introduction and Background**

- 1.1 This report highlights the ongoing, successful collaboration of the Council, Be First and Barking and Dagenham Reside Regeneration Ltd to deliver new and affordable homes to residents. This report lists 377 new homes that have been built by Be First - the regeneration arm of the Council. The schemes are all part of the Council's Investment Programme and are included within the Be First Business Plan approved by Cabinet on 22nd March 2022.
- 1.2 The Investment Programme is continuing to deliver more new homes and a further report will come forward in the Summer of 2023 detailing 583 new homes on the Gascoigne Estate.

- 1.3 Delivery of this volume of new homes underlines the Council's commitment to addressing housing needs in the borough and providing high quality, affordable housing for residents. These new homes will offer residents a varied supply of housing with 100% of the new homes in this report to be let on Affordable Housing tenures.
- 1.4 In order to ensure the efficient management of the new properties the Council set up a number of companies and limited liability partnerships (LLPs) under the 'Reside' banner, together with Barking and Dagenham Homes, which is a company limited by guarantee and owned by the Council. It is intended that properties delivered by the Investment and Acquisition Strategy will be transferred into Reside companies and LLPs by way of leases, with the specific Reside vehicle being identified for each site depending on the type of units and tenures included in the scheme. Details on the legal status and ownership of each of the Reside entities is contained in paragraph 3.4.
- 1.5 This report updates Members on the practical completions and handover to the Council of seven new build schemes that were approved by Cabinet between 2010 and 2020. It then seeks approval for the disposal of these properties by granting long leases to companies within the group of Reside entities. The length of the leases and loan amounts are set out in paragraph 2 below with further detail contained in the draft Heads of Terms at the stated appendices.

## **2. Proposal and Issues**

- 2.1 The Investments and Acquisitions Strategy funds development and recovers borrowing costs from the income generated. The combination of grants, lease premiums and the repayment of the loans set out below will cover the Council's borrowing on the schemes. As the lease premium and loan amount is directly related to the cost of the scheme there may be some minor changes to the premium and loan amounts. The recommendation therefore seeks delegated authority to the Strategic Director Finance and Investment to finalise the loan terms, including the final lease premium and loan amount, to reflect this.

### **Best Consideration**

- 2.2 In accordance with the Local Government Act 1972 Section 123 these schemes must be disposed of at best consideration reasonably obtained evidenced by professional valuation. To ensure that we comply with this legislation, we will obtain Red Book valuations and the recommendations will only be enacted should the S151 Officer be satisfied that Best Consideration has been achieved.

### **Subsidy Control**

- 2.3 To meet the key requirements for public authorities under the Subsidy Control Act 2022, officers are seeking Counsel's opinion on whether the financial modelling of the loans set out below would constitute any form of a Subsidy. This work is underway therefore the report requests delegated authority to the S151 Officer to proceed with the recommendations above if they are satisfied that either there is no Subsidy or that approval has been obtained from the Subsidy Advice Unit.

## Schemes and proposed leases

2.4 The disposal of each scheme will happen by the way of long lease and a linked loan. The following sections set out the proposals for the loans, headleases and loan facility agreements for each of the seven schemes mentioned in the summary:

### 2.5 Sacred Heart

Context	On 20 March 2018 ( <a href="#">Minute 112</a> ); Cabinet approved the redevelopment of the former Sacred Heart Convent site to provide circa 9 apartments and the construction of circa 17 new build houses in the surrounding grounds with associated car parking and amenity areas. It was also agreed to use an existing entity within the Barking and Dagenham Reside structure to hold the properties at the former Sacred Heart site.
Unit and tenures	29 Affordable Rent units
PC date	31 March 2022
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)
<b>Draft Heads of Terms</b>	
Lease commencement date	16 May 2022
Lease Length	130 years
Lease Premium	£13,614,934.00
Grant	Funding: Right to Buy Grant
	Amount: £5,445,973.60
Loan	£8,168,960.40

### 2.6 200 Becontree Avenue

Context	On 17 January 2017 ( <a href="#">Minute 90</a> ); Cabinet approved the purchase of land and existing buildings at the former Barking and Becontree Synagogue site, 200 Becontree Avenue, Dagenham. The initial redevelopment plans were approved by Cabinet as part of the Be First business plan on 19 February 2018 ( <a href="#">Minute 100</a> ).
Unit and tenures	19 Affordable Rent units
PC date	31 March 2022
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)
<b>Draft Heads of Terms</b>	
Lease commencement date	3 August 2022
Lease Length	130 years
Lease Premium	£7,246,486.00
Grant	Funding: Right to Buy Grant
	Amount: £2,898,594.40
Loan	£ 4,347,891.60

## 2.7 A House for Artists

Context	The development of A House for Artists was approved by Cabinet as part of the Council's IAS on 15 November 2016 ( <a href="#">Minute 72</a> ).
Unit and tenures	12 Affordable Rent units
PC date	16 December 2021
Reside entity	B&D Reside Weavers LLP (Company Registered No - OC416198)
<b>Draft Heads of Terms</b>	
Lease commencement date	1 April 2022
Lease Length	130 years
Lease Premium	£ 4,740,037.00
Grant	Funding: Right to Buy Grant Amount: £ 1,896,014.80
Loan	£ 2,844,022.20

## 2.8 Sebastian Court (Block A and B)

Context	Cabinet approved the redevelopment of the Sebastian Court site as part of the Estate Renewal programme, following a high-level review of Estates across the borough. On 18 October 2016 ( <a href="#">Minute 53</a> ); Cabinet approved proposals relating to the demolition and redevelopment of the Sebastian Court site. Cabinet also approved the use of an existing entity within the Barking and Dagenham Reside structure to develop, sell, own and procure the construction, management and maintenance of common parts and structure of both the affordable rent units and the shared ownership units on the Sebastian Court site.	
Block Name	Block A (Martin Peter's Court)	Block B (Sir Alf Ramsey Court)
Unit and tenures	29 London Affordable Rent units	33 Affordable Rent units
PC date	27 February 2023	12 April 2022
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)	B&D Reside Weavers LLP (Registered No - OC416198)
<b>Draft Heads of Terms</b>		
Lease commencement date	27 February 2023	25 May 2022
Lease Length	130 years	130 years
Lease Premium	£ 7,741,168.00 (includes £1,653,000.00 of HRA costs)	£8,976,316.00
Grant	Funding: Right to Buy Grant Amount: £3,096,467.20	Funding: Right to Buy Grant Amount: £3,590,526.40
Loan	£2,991,700.80	£ 5,385,789.60

## 2.9 Chequers Lane (Block Kerwin House)

Context	On 19 May 2020 ( <a href="#">Minute 3</a> ); Cabinet approved the development on the site of the former Job Centre in Chequers Lane, Dagenham.	
Unit and tenures	62 Affordable Rent units	28 London Affordable Rent units
PC date	28 April 2022	
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)	Barking and Dagenham Homes Ltd (Company No - 07706999)
<b>Draft Heads of Terms</b>		
Lease commencement date	14 November 2022	15 February 2023
Lease Length	130 years	150 years
Lease Premium	£ 17,859,771.00	£ 8,164,677.00
Grant	Funding: Right to Buy Grant	Funding: GLA Grant
	Amount: £7,143,908.40	Amount: £ 2,800,000.00
Loan	£ 10,715,862.60	£ 5,364,677.00

## 2.10 Challingsworth House (Block A)

Context	Cabinet approved proposals relating to the redevelopment of the former Crown House site, Linton Road, Barking on 21 July 2015 ( <a href="#">Minute 26</a> ) and 19 July 2016 ( <a href="#">Minute 25</a> ).	
Unit and tenures	57 Affordable Rent units and 56 London Living Rent units	
PC date	16 May 2022	
Reside entity	B&D Reside Weavers LLP (Registered No - OC416198)	
<b>Draft Heads of Terms</b>		
Lease commencement date	8 November 2022	
Lease Length	130 years	
Lease Premium	£ 43,393,182.00	
Grant	Funding: Right to Buy Grant	
	Amount: £ 17,357,272.80	
Loan	£ 26,035,909.20	

## 2.11 Gascoigne East (Block C)

Context	The Gascoigne Estate Renewal Programme was approved by Cabinet through a series of reports between July 2010 and July 2016. Block C, the first development completed in Phase 2, consists of family apartments and townhouses arranged around a central courtyard, which is shared by the wider community.	
Unit and tenures	28 Affordable Rent	24 London Affordable Rent
PC date	31 March 2022	
Reside entity	B&D Reside Weavers LLP (Company Registered No - OC416198)	Barking and Dagenham Homes Ltd (Company No. 07706999)
<b>Draft Heads of Terms</b>		

Lease commencement date	5 December 2022	19 December 2022
Lease Length	130 years	150 years
Lease Premium	£11,081,083.00	£8,906,163.00 (includes £1,647,462.00 HRA costs)
Grant	Funding: Right to Buy Grant	Funding: GLA Grant
	Amount: £ 4,590,000.00	Amount: £2,400,000.00
Loan	£ 6,491,083.00	£ 4,858,701.00

### 3. Company / LLP information

- 3.1 The Reside entities mentioned above are part of a larger scheme of Reside companies and LLPs. The relevant information regarding each entity is detailed below:
- 3.2 Barking and Dagenham Homes Ltd (Co No:12090374) is a company Limited by guarantee with one member, the Council, which wholly owns it.
- 3.3 Barking and Dagenham Homes Ltd is in the process of becoming a Registered Provider with the Regulator of Social Housing. It is anticipated that this process will be complete by the end of 2023.
- 3.4 B& D Reside Weavers LLP (OC416198) is a limited liability partnership owned by (1) Barking and Dagenham Giving, which is a company limited by guarantee and a registered charity (Co No: 09922379, charity:1166335) and (2) B&D Reside Regeneration LLP (OC400585).
- 3.5 B&D Reside Regeneration LLP is jointly owned by (1) Barking and Dagenham Reside Regeneration Ltd (Co No: 09512728) and (2) London Borough Of Barking And Dagenham.
- 3.6 B&D Reside Weavers is owned 90% by Barking and Dagenham Giving and 10% by B&D Reside Regeneration LLP. The Council does not wholly own or control B&D Reside Weavers LLP; it is controlled by the charity Barking and Dagenham Giving. The Council cannot therefore make any decisions as member or partner to give direction to it in the way that it can direct its wholly owned vehicles.

### 4. Options Appraisal

- 4.1 **Do nothing:** The Council's Investment and Acquisitions strategy highlights the importance of collaborating with Be First and Barking & Dagenham Reside to ensure the correct mix of tenure is agreed and built. If the Council does not now dispose of these completed homes to the stated entities the Council will need to manage and let the properties directly.
- 4.2 **Dispose to a third party:** If the Council decides to dispose of these new homes to a third party there is a risk the Council could lose control of new housing stock which has been built to benefit local residents and address the borough's housing needs.

- 4.3 **Dispose to the entities stated in the report as per the recommendations:** By disposing of these new homes by the way of a leases to the proposed entities, the Council will see the benefit of rental income as the turnover will come back to the Council from the homes held in B&D Weavers LLP. In addition to this, this option will enable transparency and the ability of the Council to influence how homes are let and managed in B&D Homes Ltd and B&D Weavers. Finally, B&D Homes Ltd have charitable objectives in place post registration which ensure that the surplus that they generate are used to benefit the residents of the London Borough of Barking and Dagenham.

## 5. Consultation

- 5.1 These proposals are in line with the Council's Investment and Acquisitions Strategy. The decision to approve the IAS was taken in public by Cabinet in November 2022. All relevant stakeholders are in agreement with the terms set out in this report.

## 6. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 6.1 This report seeks Cabinet approval for the disposals of a number of completed developments by granting long leases to a number of Reside companies, including Barking and Dagenham Homes Ltd, Company Number: 12090374 B&D Reside Weavers LLP, Registered number: OC416198 or Barking and Dagenham Reside Regeneration Ltd, Company number: 09512728 as set out in the body of the report.
- 6.2 For each scheme the total development cost has been used to produce the lease premium, with the loan amount then reduced by any grant to produce the loan amount. Each loan will be for 52 years, with the first two years being interest only followed by a 50-year debt repayment schedule. At the end of the 52 years the net costs to build each property will be fully paid off. The repayment schedule matches the Minimum Revenue Provision that the Council needs to be allocate from its revenue budget to cover the net development costs for each scheme.
- 6.3 A fixed interest rate for the 52-year loan period has been set for each loan based on tenure type. The loan rates were agreed by Cabinet in April 2022 as part of the Investment and Acquisition Strategy report. A lower rate has been agreed for social housing, which reflects the viability pressure of this much lower rent tenure. Interest rates are fixed at the time of construction and confirmed at handover to allow certainty over the schemes costs and ensure they remain viable when they are transferred to Reside. When rates are agreed then borrowing is allocated to the scheme and is linked to long term borrowing, predominantly from the Public Works Loan Board (PLWB).
- 6.4 Interest rates have increased significantly over the past year and the interest rate for pre-gateway 4 schemes and schemes agreed in 2022, are at a higher rate than these schemes and reflect the increased borrowing cost to the Council.
- 6.5 As part of finalising the loan agreements, advice on the valuation and Subsidy will be sought. In addition, the figures in this report are subject to minor amendments as final costs for some of the schemes are still being confirmed but it is expected that changes will be minimal.



## **7. Legal Implications**

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

- 7.1 The general power of competence in section 1 of the Localism Act 2011 provides sufficient power for the Council to participate in the transactions 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.
- 7.2 The Council participating in the proposals being as local government is an emanation of the state, and as such the Council must comply with the Subsidy Control Act 2022. This means that local authorities cannot subsidise commercial undertakings or confer upon them an unfair economic advantage. The report does not identify any specific aspect of the proposed disposals by lease to the Councils Companies detailed at other than as a commercial transaction and it is understood a valuation will take place. The situation regarding the loan agreements is that if the lending is to be on other than on a commercial basis it must be compliant with the UK Subsidy Control Regime. Being new legislation while guidance has been issued there is no case law yet established setting out the application in real circumstances. For this reason, professional advice in the form of legal opinion is being procured as obviously the council needs to get this transaction right first time. Nevertheless, as there is no intention in the structure of the Investment and Acquisition Scheme to operate other than on a commercial going concern, then the lease disposals should reflect that.
- 7.3 The companies proposed to take the leasehold interests are detailed in paragraph 3 above.
- 7.4 The leases will be on commercial terms for the periods set out in paragraph 2 above. The reason for the use of leases rather than outright disposal is that the head lease will give the Council greater control over the stewardship of the site than would be the case with freehold disposal because obligations on the leaseholder will contractually binding and any sub-leases in due course will also be bound.
- 7.5 The sites must be disposed in accordance with the Local Government Act 1972 Section 123 at best consideration evidenced by professional valuation. Furthermore, appropriate due diligence should be carried out regarding title and that the necessary appropriation steps be carried out with each site as may be required.

### **Public Background Papers Used in the Preparation of the Report:**

- Treasury Management 2022/23 Mid-Year Review, November 2022 Cabinet report (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=12608&Ver=4>)

**List of appendices:**

- **Appendix 1:** Draft Heads of Terms (Sacred Heart)
- **Appendix 2:** Draft Heads of Terms (200 Becontree Avenue)
- **Appendix 3:** Draft Heads of Terms (A House for Artists)
- **Appendix 4:** Draft Heads of Terms (Sebastian Court – Block A and Block B)
- **Appendix 5:** Draft Heads of Terms (Chequers Lane – Kerwin House)
- **Appendix 6:** Draft Heads of Terms (Challingsworth House – Block A)
- **Appendix 7:** Draft Heads of Terms (Gascoigne East – Block C)