

## CABINET

17 October 2023

<b>Title:</b> Gascoigne East Phase 3A (Block J) – Approval of Disposal, Head Lease and Loan Facility Agreement	
<b>Report of the Cabinet Member for Regeneration and Economic Development</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> Gascoigne	<b>Key Decision:</b> Yes
<b>Report Author:</b> Uju Eneh, Programme Manager – Place and Development, Inclusive Growth	<b>Contact Details:</b> Uju.Eneh@lbbd.gov.uk
<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>  Following two reports presented to Cabinet (June and July 2023) that secured approvals for loans and leases to allow 960 new homes to transfer into the Reside portfolio, this report lists a further 124 new homes, on Gascoigne East Phase 3A Block J, that are proposed to also transfer to Reside.  The properties have been delivered within the Council’s Investment and Acquisitions Strategy (IAS) which was most recently presented to Cabinet in November 2022.  This report seeks delegated approval to complete the documents required to dispose of the properties by way of a lease to the appropriate Reside entities, alongside a loan to enable this disposal.	
<b>Recommendation(s)</b>  The Cabinet is recommended to:  (i) Approve, in principle, the disposal of the scheme below by the granting of long leases to the appropriate Reside entity (either Barking and Dagenham Homes Ltd (company no. 12090374) or B&D Reside Weavers LLP (registered no. OC416198);  <b>Gascoigne East Phase 3A Block J</b> <ul style="list-style-type: none"><li>• Farrimond House, 1 St Mary’s, Barking, IG11 7SN</li><li>• Farrimond House, 6 St Mary’s, Barking, IG11 7PH</li><li>• Farrimond House, 10 St Mary’s, Barking, IG11 7PH</li><li>• Farrimond House, 13 King Edwards Road, Barking, IG11 7ZZ</li><li>• 2, 4, 6 and, 8 Fisherman Street, Barking, IG11 7AA</li></ul>	

- (ii) Approve, in principle, the draft Heads of Terms and loans for Gascoigne East Phase 3A Block J to the appropriate Reside entity, as set out in section 2 of 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 Head of Legal Services, 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 Gascoigne East Phase 3A Block J to the relevant B&D Reside companies, helping to meet the Council’s aim to increase the supply of affordable housing options for residents and to ensure efficient property management.

**1. Introduction and Background**

- 1.1 Since June 2023, Cabinet has approved arrangements for 960 new homes built across the borough to transfer to Reside entities. Reports presented to Cabinet on 20 June 2023 (Minute 8) and 18 July 2023 (Minute 24) advised that similar reports would follow in the future. This report seeks approval for a further 124 new homes that are being built by Be First – the regeneration arm of the Council.
- 1.2 Gascoigne East Phase 3A Block J is part of the Gascoigne Estate Renewal Programme and the Council’s Investment and Acquisitions Strategy. It is anticipated that Block J will achieve Practical Completion in November 2023. The block is entirely made up on affordable tenures - demonstrating the Council’s commitment to building new, affordable homes. We anticipate a further 63 new homes will be delivered in the remainder of this financial year.
- 1.3 In order to ensure the efficient management of the new properties the Council set up several 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 section 3 below.
- 1.4 This report updates Members on the estimated practical completion and handover to the Council of scheme Gascoigne East Phase 3A (Block J) which was approved by Cabinet as part of the Gascoigne Estate Renewal Programme in various reports between 2010 and 2016. 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 paragraphs 2.5.

## 2. Proposal and Issues

- 2.1 The Investment and Acquisition 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 final 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 To comply with section 123 of the Local Government Act 1972, the scheme in this report must be disposed of at best consideration reasonably obtained evidenced by professional valuation. To ensure that we comply with this legislation, we will obtain a Red Book valuation and the recommendations will only be enacted should the S151 Officer be satisfied that Best Consideration has been achieved.

### Subsidy Control

- 2.3 Work is ongoing to ensure that the implications of the Subsidy Control Act 2022 is understood, and that this disposal is compliant with this new legislation. This report requests delegated authority to the S151 Officer to proceed with the recommendations once they are satisfied that compliance has been demonstrated.

### Scheme and proposed lease

- 2.4 The disposal of Gascoigne East Phase 3A Block J will happen by the way of long leases and linked loans. The following sections set out the proposals for the loans, headlease and loan facility agreement:

#### 2.5 Block J (London Affordable Rent homes)

Unit and tenures	66 London Affordable Rent units
PC date	Estimated November 2023
Reside entity	Barking & Dagenham Homes Ltd (Company No:12090374)
<b>Draft Heads of Terms</b>	
Lease commencement date	TBC
Lease Length	150 years
Lease Premium	£26,368,674 subject to final accounts on costs
Grant Funding and Amount:	GLA: £6,600,000 Private Wire Network Income: £209,830 HRA: £4,950,132
Loan	£14,608,712 subject to final accounts on costs

## 2.6 Block J (Affordable Rent homes)

Unit and tenures	58 Affordable Rent units
PC date	Estimated November 2023
Reside entity	B&D Reside Weavers LLP (OC416198)
<b>Draft Heads of Terms</b>	
Lease commencement date	TBC
Lease Length	130 years
Lease Premium	£21,526,274 subject to final accounts on costs
Grant Funding:	Right to buy
Grant Amount:	£8,610,509
Loan:	£12,915,764 subject to final accounts on costs

### 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 LLP 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 completed developments by granting long leases to Barking and Dagenham Homes Ltd, Company Number: 12090374 and B&D Reside Weavers LLP, Registered number: OC416198 as set out in the body of the report.

6.2 The total development cost has been used to produce the lease premiums, 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 as a local authority 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 Company detailed as 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 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 terms should reflect that.
- 7.3 The Council 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 be contractually binding for the life of the lease and any sub-leases in due course will also be so bound.
- 7.5 As a long leasehold is an interest in land and more than seven years the sites must be disposed in accordance with the Local Government Act 1972 Section 123(2) at best consideration reasonably obtained. This is to be 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>)

**List of appendices:** None