

CABINET

23 January 2024

Title: Oxlow Lane Redevelopment – Approval of Disposal, Head Lease and Loan Facility Agreement	
Report of the Cabinet Member for Regeneration and Economic Development	
Open Report	For Decision
Wards Affected: Heath	Key Decision: Yes
Report Author: Uju Eneh, Programme Manager – Place and Development, Inclusive Growth	Contact Details: Uju.eneh@lbbd.gov.uk
Commissioning Lead: Rebecca Ellsmore, Strategic Head of Place and Development	
Accountable Executive Team Director: James Coulstock, Interim Strategic Director of Inclusive Growth	
Summary <p>This report follows a series of reports presented to Cabinet in 2023 that secured approvals for loans and leases to allow 1084 new homes to transfer into the Reside portfolio. This report lists a further 63 new homes relating to the Oxlow Lane redevelopment scheme that are proposed to also transfer to Reside.</p> <p>The properties have been delivered within the Council’s Investment and Acquisitions Strategy (IAS) which was most recently presented to Cabinet in November 2023.</p> <p>This report provides an update on the state aid and subsidy control workstreams and asks Cabinet to note the requirement to declare previous schemes on the Subsidy Database or to make a referral to the Subsidy Advice Unit.</p> <p>The report also seeks delegated approval to complete the documents required to dispose of the Oxlow Lane scheme by way of a lease to the appropriate Reside entities, alongside loans to enable the acquisition of the said properties.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Note that the Strategic Director, Resources, shall declare on the subsidy database the schemes included in Appendix 1 to the report and shall make the referrals to the Subsidy Advice Unit for the schemes included in Appendix 2 to the report;(ii) Delegate authority to the Strategic Director, Resources, in consultation with the Strategic Director, Inclusive Growth, to subsequently take any remedial action necessary resulting from such declarations or referrals provided that such action does not materially affect the approvals granted by Cabinet;	

- (iii) Approve, in principle, the disposal of the Oxlow Lane redevelopment scheme by the granting of long leases to the appropriate Reside entity identified in the report;

Oxlow Lane

- Castle House, Rainham Road North, Dagenham, RM10 7YW
- Petticoat House, Rainham Road North, Dagenham, RM10 7YY

- (iv) Approve, in principle, the indicative draft Heads of Terms for leases and loans for the Oxlow Lane redevelopment scheme as set out in section 2 of the report;

- (v) Delegate authority to the Strategic Director, Resources, in consultation with the Strategic Director, Inclusive Growth, to agree and finalise the terms of the loan, lease 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

- (vi) Delegate authority to the Head of Legal, 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 ensure that state aid and subsidy control legislation is complied with and to enable the disposal of the Oxlow Lane scheme to the relevant 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. In 2023, Cabinet approved arrangements for 1084 new homes built across the borough to transfer to Reside entities. Reports presented to Cabinet on 20 June 2023 (Minute 8), 18 July 2023 (Minute 24) and, 17 October 2023 (Minute 48) gave similar delegated authorities to those contained in this report to allow leases and loans to be entered into for other new build properties. It was noted in the reports that before these leases and loans can be executed best consideration and subsidy control matters need to be satisfied. Red book valuations have been completed and we are compiling a report to sign off the best consideration workstream. The state aid/subsidy control matters require declarations or referrals which are outlined in section 2 and the appendices. We have commissioned external advice to quantify the value of the subsidies and the output of this commission is expected shortly. Once we have received this we can move towards making the required declarations/referrals. As these workstreams are still in progress, the previous delegated authorities have not yet been implemented and the leases and loans relating to those properties have therefore not yet been entered in to. Further information on the position with respect to state aid and subsidy control legislation is included in sections 2.2-2.5.
- 1.2. The previous reports advised that similar reports would follow in the future for new build schemes that are to be transferred to Reside. This report now seeks approval

for 63 new homes at Oxlow that are being built by Be First, the regeneration arm of the Council, to also transfer into the Reside portfolio.

- 1.3. The Oxlow Lane redevelopment obtained planning permission in 2020. This development consists of 63 affordable homes and is estimated to achieve practical completion in March 2024.
- 1.4. 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.
- 1.5. This report updates Members on the estimated practical completion and handover to the Council of the Oxlow Lane development. 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 2.9 and 2.10.

2. Proposal and Issues

Best Consideration

- 2.1. To comply with section 123 of the Local Government Act 1972, the scheme must be disposed of at best consideration reasonably obtainable evidenced by professional valuation. To ensure that we comply with this legislation, we will obtain a Red Book valuation and the proposed leases and loan will only be executed should the S151 Officer be satisfied that Best Consideration has been achieved. The Red Book valuation will be undertaken as close to disposal of the units as is reasonably possible to ensure that it is based on an up-to-date market valuation.

Subsidy Control

- 2.2. As detailed in previous reports, in order to ensure that the schemes offering affordable tenures can be held within the Reside structure in a viable way, the interest rate charged on the loan is below a commercial market rate. Under the terms of the Subsidy Control Act 2022 (or the previous State Aid legislation) this represents a subsidy to the Reside company that holds the loan. Legal and commercial advice has been obtained and we believe the proposed subsidies are in line with the principles that Local Authorities are required to consider when giving a subsidy. Nevertheless, the subsidies will need to be declared in the relevant way as set out below:

Completion Date	Legislation	Requirement
Before 4 January 2023	State Aid legislation	Declaration on the Subsidy Database
On or after 4 January 2023	Subsidy Control Act 2022	Referral to the Subsidy Advice Unit (SAU)

- 2.3. Legal advice suggests that one declaration or referral to the SAU should be made per Reside company and that schemes can be included in an SAU referral prior to achieving practical completion.
- 2.4. In order to make the subsidy declaration or referral a range of evidence needs to be established including:
- The value of the subsidy
 - Evidence that the subsidy is required to remedy an identified market failure or address an equity rationale
 - Evidence that the subsidy is necessary and proportionate
 - Evidence that the subsidy does not distort competition.

This information is currently being collated and it is envisaged that declarations will shortly be made as set out in Appendix 1 and Appendix 2.

- 2.5. Members should note that the Subsidy Advice Unit (SAU) will provide a report giving an assessment of the scheme's compliance with the legislation. Loans cannot be entered into until the Council has considered the information within this report and satisfied itself that the loan is compliant with the Act.

Scheme and proposed lease

- 2.6. 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 this scheme.
- 2.7. The lease premium and loan amount is directly related to the final cost of the scheme. As the Oxlow Lane scheme has not yet completed the figures included in this report are based on the forecasted final account. Members should therefore note that there may be some minor changes to the premium and loan amounts when practical completion is achieved, and final account is agreed. To ensure that the units can be let as soon as possible after completion the recommendation seeks delegated authority to the Strategic Director Resources to finalise the loan terms, including the final lease premium and loan amount, to reflect this (rather than waiting for final account to be confirmed before commencing the governance process).
- 2.8. The disposal of Oxlow Lane will happen by the way of granting long leases and linked loans. The following sections identify the relevant Reside entity and set out the proposals for the headlease and loan facility agreement:
- 2.9. **Oxlow Lane (London Affordable Rent homes)**

Units and tenures	22 London Affordable Rent units
Estimated PC date	25 th March 2024
Reside entity	Barking & Dagenham Homes Ltd (Company No.: 12090374)
Draft Heads of Terms	
Lease Start date:	TBC
Lease Length:	130 Years

Lease Premium:	£8,277,417 (includes £1,559,430 HRA costs)
Grant Funding:	GLA Grant
Grant Amount:	£2,200,000
Loan:	£4,517,987

2.10. Oxlow Lane (Affordable Rent homes)

Units and tenures	41 Affordable Rent units
Estimated PC date	25 th March 2024
Reside entity	B&D Reside Weavers LLP (Company No.: OC416198)
Draft Heads of Terms	
Lease Start date:	TBC
Lease Length:	130 Years
Lease Premium:	£15,051,184
Grant Funding:	Right to Buy Receipts
Grant Amount:	£5,699,000
Loan:	£9,352,184

*The split between Right to Buy Receipts and the Lease Premium is 38% compared to 40% for most schemes due to limited availability of Right to Buy receipts and the relative viability of this scheme compared to others. This will be reviewed at the completion date.

3. Company / LLP information

3.1. The Reside collection of companies and Limited Liability Partnerships (LLPs) exist to support local people to access high quality, affordable housing. It was established by the council to create an independent but complementary service to the council's own housing services and currently consists of six limited liability partnerships and limited companies with differing financial arrangements. The Reside entities mentioned above are part of a larger scheme of Reside companies and Limited Liability Partnerships (LLPs). The relevant information regarding each entity is detailed below:

3.2. **Barking and Dagenham Homes Ltd (BDHL)** (Co No:12090374) is a company Limited by guarantee with one member, the Council, which wholly owns it. It is in the process of becoming a Registered Provider with the Regulator of Social Housing.

BDHL is wholly owned by the Council and is the proposed Registered Provider. In order to comply with regulatory requirements it has an independent board that consists of two Reside Directors, one Council Officer and two totally independent directors.

BDHL takes on the ownership of affordable rented homes that are developed by the Council and supported by GLA grant, including London Affordable Rent and target rent. This entity has Cabinet approval to receive 56 shared ownership homes, this has not yet been implemented and is being reviewed at present.

GLA grant conditions stipulate that the affordable rented homes must be managed

by a Registered Provider, which for the Council means Barking and Dagenham Homes Ltd or the Council's Housing Revenue Account. The GLA is aware that BDHL is not yet a registered provider but is comfortable that progress is being made to resolve this.

- 3.3. **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).

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 but it can provide funding from Right to Buy receipts into this vehicle.

B&D Reside Weavers LLP holds affordable rented homes (currently a mix of 50%, 65% and 80% of market rent, London Living Rent and London Affordable Rent) on a long lease from the Council. Weavers LLP pay a premium under the lease to the Council. This premium is partly financed by a documented loan (with security) from the Council and partly financed using right to buy receipts given to Weavers LLP by the Council.

- 3.4. **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 and directed by the Reside Board under the terms of the shareholder agreement.

Shared Ownership homes built using GLA grant currently go into this LLP. The Council additionally plans to use this LLP for any future affordable / sub-market rented homes that do not receive any form of grant / Right to Buy 141 funding.

- 3.5. **Barking and Dagenham Reside Regeneration Ltd** (Co No: 09512728) acts as the employing company for Reside staff and incurs Reside specific running costs which are then passed onto the individual Reside entities.

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 lease 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 two schemes that are nearing completion by granting long leases to a number of Reside companies, 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 allocated 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.
- 6.6. When the Reside Group structures were established, and prior to the transfer of any schemes into Reside entities, LBBD took appropriate external advice on which schemes (based on tenure and grant requirements) would go into which entity.

- 6.7. The proposals above now include transferring some shared ownership units into a different Reside entity than originally envisaged. This is because the LAR units, despite attracting subsidy, make the portfolio in this entity financially unviable. The inclusion of shared ownership schemes in this entity allows an element of cross subsidy which supports overall viability of the portfolio.
- 6.8. The s.151 Officer has requested for a review of the proposed transfer arrangements to ensure that they are still in line with the original external advice given.

7. Legal Implications

- 7.1. Implications completed by: Dr Paul Feild Principal Standards & Governance Solicitor
- 7.2. This report seeks Cabinet approval to agree to delegated authority to take action to transfer new homes on Oxlow Lane, to the following entities B&D Reside Weavers LLP and Barking & Dagenham Homes Ltd. This will be achieved by granting long leases to the companies and they will finance the acquisition through loans made to them by the Council.
- 7.3. As observed in the body of this report the construction of the new homes is as part of the Councils Investment and Acquisition Strategy developments of new homes have been sponsored by the Council. The intention being on practical completion an interest by means of a long lease be granted to the entities which will in turn grant underleases to tenants. The entities which will hold the housing blocks do not have financial resources in themselves to acquire the stock so will need to take out borrowing to acquire the leasehold interest by means of a loan agreement with the Council. The duration of the leases proposed are being of such length that they must be disposed of by the Council for the best consideration as required by section 123 Local Government Act 1972. It is understood a valuation has been carried out to the surveying standard 'Red Book valuation' which will set the value of the loan(s). It is the intention the leases will be at market value and not discounted. This approach will mean there is not the question of unfair competition and will be in accordance with the fiduciary duty to the ratepayer in the sense not being disposed of at an undervalue. As explained in this report the loans are at differing rates of interest depending upon the development. Where the loans are discounted, at a lower rate than current market rate, they will need to be compliance with the recent legislation which governs competition being the Subsidy Control Act 2022.
- 7.4. Because the timeline of practical completion of the various new home developments has been over a period of time, the legal landscape post Brexit has changed including different regimes of law relating to competition treatment. As this is a new regime the understanding on what arrangements are compliant with the new competition regime is not yet an exact science. For this reason, the earlier recommendation to Cabinet in Reports on 23 June 2023, 18 July 2023 and 17 October 2023 recommended that the final decision to grant the loan terms be delegated to the Director of Finance and Investments after advice was obtained from property experts and legal advisors.
- 7.5. As the loan and lease will be completed post 4 January 2023 the arrangements will be within the curtilage of the Subsidy Control Act 2022 and any loan which is not a

market rate prevailing from that time will need to comply with the 2022 Act including declarations on the National Subsidy Database.

- 7.6. As the leases and loans are to third party entities notwithstanding the Councils interest in being shareholders, it is beholden on the recipient companies as future property holders that they satisfy themselves as to the legality and regulatory compliance of the arrangements they enter into.

Public Background Papers Used in the Preparation of the Report:

- Treasury Management and Investment and Acquisition Strategy 2023/24 Mid-Year Review, 14 November 2023 Cabinet report (<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=12958&Ver=4>, Minute 60)

List of appendices:

- **Appendix 1** – Proposed declarations to the Subsidy Database (for compliance with State Aid legislation)
- **Appendix 2** – Proposed referrals to the Subsidy Advice Unit (for compliance with the Subsidy Control Act 2022)