CABINET

18 June 2024

Title: Redevelopment of Trocoll House, Wakering Road, Barking - Proposed Amendments to Lease Agreement	
Report of the Cabinet Member for Finance, Growth and Core Services	
Open Report with Exempt Appendix 1 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972 as amended)	**For Decision**
Wards Affected: Northbury	**Key Decision:** Yes
Report Author: Rebecca Ellsmore, Strategic Head of Place and Development and Nigel Pickup, Strategic Asset Investment Advisor	**Contact Details:** Rebecca.ellsmore@lbbd.gov.uk Nigel.pickup@lbbd.gov.uk
Lead Commissioner: Rebecca Ellsmore, Strategic Head of Place and Development	
Accountable Executive Team Director: Jo Moore, Strategic Director of Resources	

Summary

By Minute 97 (16 March 2021), Cabinet agreed proposals relating to the entering into of an agreement with Railpen for a lease for 198 residential units and 650 sqm of commercial space at Trocoll House, adjacent to Barking Station. Due to redevelopment factors outside of their control, the original terms are no longer viable for Railpen, the funder, to proceed with the development.

Railpen approached the Council with a request to increase the starting annual lease payment by approximately 21%. Officers modelled the impact of this increase and determined that, at this level, the scheme would present too great a risk to the Council's General Fund and could not be recommended to Cabinet for approval. In recognition of the key role this redevelopment scheme has to play in the regeneration of the Town Centre, all parties engaged in transparent negotiations to establish whether there was an increased starting lease payment that could be mutually acceptable.

As a result of these discussions, Railpen have offered a compromise proposal that would involve a higher starting lease payment of approximately 15% alongside additional incentives/benefits for the Council. Officers responded to that offer seeking a further reduction to the revised lease payment level offer. However, Railpen provided visibility of their own viability modelling and advised that the circa 15% increase to the original lease payment was the lowest level that would allow them to proceed with the scheme.

Based on the Council's metrics for investments under its Investment and Acquisition Strategy, Railpen's revised proposal still presents too greater level of risk to the Council's General Fund in the future for officers to make a clear recommendation for approval.

However, officers note the following:

- The scheme is a key regeneration site and ensuring its delivery would bring new homes, commercial space and improved vibrancy to the Town Centre.
- The modelling contains a range of assumptions that are very difficult to reliably predict over a 50-year period. The financial performance of the scheme could improve or deteriorate significantly depending on many factors including inflationary/CPI levels, growth or decline of rental values and the ability of Reside (or another managing agent) to manage the scheme efficiently. Whilst many of these variables are outside of the direct control of the Council, it is noted that rental growth has outperformed the modelling that was undertaken when this scheme was initially approved in 2021. Whilst agreeing an increased starting lease payment would erode this benefit, reviewing the previous performance demonstrates the limitations of financial modelling and that deviations from the modelled assumptions can have both positive or negative consequences.
- There are mitigation options that could reduce the risk profile of the scheme. These include efficient levels of operating expenditure and a high-quality lettings and rent collection service that effectively control levels of voids and bad debt.

Full financial information, including detailed options analysis and financial modelling, is contained within Appendix 1 which is in the exempt section of the agenda as it relates to 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.

Whilst officers would typically make a clear recommendation to Cabinet, in this instance balancing the risk profile of the scheme with the implications attached to the existing agreement failing and the opportunity presented by ensuring delivery of the scheme, a clear direction from the Cabinet is required.

Recommendations

Cabinet is recommended to

(i) Consider the terms of the revised offer from Railpen as detailed in the report and the financial information, including detailed options analysis and financial modelling, as set out at Appendix 1 to the report;

(ii) Indicate a preferred way forward and delegate authority to the Strategic Director of Resources to progress that course of action; and

(iii) Subject to Railpen accepting the terms of any revised offer made by the Council, to delegate authority to the Strategic Director of Resources, in consultation with the Cabinet Member for Finance, Growth and Core Services and the Head of Legal, to enter into all necessary and ancillary agreements to fully implement and effect the proposals.

Reason(s)

Delivery of the scheme offers clear regeneration benefits in line with the Council's priority of "Residents benefit from inclusive growth and regeneration". However, the revised proposals present a risk to the Council's General Fund Revenue Account.

1. Introduction and Background

1.1. In March 2021 Cabinet approved a series of recommendations which provided the necessary authority for LBBD to enter into an agreement for lease with Railpen to secure the delivery of 198 homes and 650 sqm of commercial floor space at Trocoll House, adjacent to Barking Rail station. The transaction was structured on the basis that upon practical completion of the scheme LBBD will take a head leasehold interest of the entire property for a term of 50 years. At the end of the 50-year period the freehold would transfer to the Council for £1.

1.2. The agreement for lease was entered into in January 2022 and Railpen appointed a contractor to construct the development. Unfortunately, this contractor entered into administration in July 2023 and Railpen have subsequently had to retender the scheme. As the revised tender price was significantly higher than the original price, Railpen approached LBBD to renegotiate the initial lease payment by LBBD.

1.3. The existing terms of the agreement for lease put all construction price risk with Railpen, with LBBD retaining only the letting risk. LBBD is therefore under no obligation to renegotiate these terms. However, Railpen have indicated that without an increased starting lease payment they are not able to proceed with the scheme. In this event LBBD has no contractual mechanism to oblige Railpen to construct the development and it is likely that the site would remain undeveloped in the short to medium term.

1.4. Clearly any increase to the initial lease payment decreases the ability of the Council to secure a rental income from tenants that is above the lease payment payable to Railpen and therefore the financial risk to the Council is increased. Should the lease payment payable to Railpen consistently outstrip the rent secured from letting the units (after operating costs are accounted for) this variance would represent a future pressure to the Council's General Fund budget. There are numerous variables and assumptions that are difficult to forecast but prudent modelling suggests that the higher starting lease payment requested by Railpen, which represented an approximately 21% increase on the originally agreed figure, is not financially viable for the Council.

1.5. In order to maintain progress on a key regeneration opportunity in the borough, officers have carefully considered the request from Railpen, the viability of the scheme and the potential cost and income scenarios that may arise over the lifetime of the lease. Whilst significant due diligence has been applied to this exercise it is impossible to predict with total certainty the future costs and incomes and Members should therefore be aware that in any scheme of this nature, the Council will have a fixed liability set against income which will always have an element of uncertainty attached.

2. Proposals and Issues

2.1. As a result of Railpen's original contractor entering administration, construction activity has not progressed on site and Railpen had to re-tender the build contract for the scheme to identify a replacement contractor. Substantial construction cost inflation in the intervening period, along with revisions to the scheme design to accommodate a 2nd staircase to comply with revised safety measures announced in the Building Safety Act 2022 and updated Building Regulations, has resulted in a substantial increase in costs, inclusive of all build costs and related fees. Railpen have identified a new contractor and revised costs for the scheme have been subject to due diligence and review by LBBD/BeFirst to confirm their validity.

2.2. The contractor procured by Railpen to develop the site, HG Group, have tendered on the basis of a commencement of construction works in 2024. Without confirmation of the ability to proceed there is the risk that they withdraw from the project or seek to revise their price once the current tender process has expired.

2.3. Under the terms of the original Agreement to Lease, Railpen are responsible for the construction and all associated build costs. However, they have confirmed that, as a result of the increased build costs, the scheme is no longer viable for them and they cannot proceed with the development at the agreed initial lease payment. LBBD have no mechanism within the Agreement to Lease to oblige Railpen to complete the construction of the scheme and are therefore unable to contractually enforce performance. In the absence of a revised agreement with Railpen, the development would therefore not proceed at present.

2.4. Officers assessed Railpen's initial revised offer, which sought an increase to the starting annual lease payment of approximately 21%. The offer did not meet the metrics for investments under the Council's Investment and Acquisition Strategy and, as a result, Railpen were notified that the Council could not proceed on those terms. However, in recognition of the key role this redevelopment scheme has to play in the regeneration of the Town Centre and the commitment of all parties to find a solution, the parties engaged in transparent negotiations to establish whether there was an increased starting lease payment that could be mutually acceptable.

2.5. As a result of those discussions, Railpen offered a compromise proposal that would involve a higher starting lease payment of approximately 15% alongside additional incentives/benefits for the Council, which included acceptance of a lower return from their investment with a reduced investment hurdle rate and a capital payment to the Council on practical completion of the scheme. The Council responded to that offer seeking a further reduction to the revised lease payment level offer. However, Railpen shared their own viability modelling and advised that the circa 15% increase to the original lease payment was the lowest level that would allow them to proceed with the scheme.

2.6. Since the Agreement for Lease was entered into, the rental value of the private market units has benefitted from rental growth in the intervening period (i.e. the rental income LBBD would now achieve from the apartments has grown considerably between 2021 and 2024). Whilst this is the case, there has also been increases in projected costs for operating expenditure and life cycle costs to manage the completed scheme over the lease term.

2.7. In considering any revision to the initial lease payment to Railpen, the Council needs to consider a range of scenarios including reviewing the impact of changes to CPI forecasts to assess future lease liabilities and the impact of changes to current rental values, rental growth and operational costs from operating the building. The growth in rental values for leasing the residential units is more closely correlated to wage growth and not directly to CPI and hence changes in the value of each may vary. These forecast rental costs and incomes will determine the level of net rental income derived from the residential units in the context of the current economic environment and assess changes from the original assumptions when entering the agreement for lease in 2021.

2.8. A detailed financial assessment of the revised Railpen offer, including detailed options analysis and financial modelling taking into account the factors referred to above, is contained within Appendix 1 in the exempt section of the agenda. Based upon LBBD cashflow assumptions the projected performance based upon an initial lease payment at Railpen's requested £2.5m level will result in a negative cashflow for LBBD and does not present a viable commercial proposition.

2.9. In order to identify a solution which enables LBBD to meet its regeneration and investment targets a lower initial lease payment will have to be agreed to enable the scheme to progress. A revised commencing lease payment will need to be at a mutually acceptable level between that contained in the existing agreement and Railpen's proposal of £2.5m to meet both parties' requirements. Railpen have indicated that they will consider a lower figure. However, any final figure will be subject to Railpen Board approval.

2.10. If the Council still wants to support the scheme to proceed as a key regeneration opportunity in Barking town centre, the principal assessment is over the risk a higher lease payment generates compared to the potential rental income surplus achieved. A summary of the options considered which do not expose LBBD to unacceptable financial risk along with the financial analysis and the sensitivity of these assumptions along with mitigation measures is contained in Appendix 1.

3. Options Appraisal

3.1. **Option 1: Do Nothing - Maintain commencing lease payment as per existing agreement .**

3.1.1 The Council is under no obligation to amend the commencing lease level payable to Railpen on completion of the scheme. However, Railpen have confirmed they will not proceed with the development without an adjustment. The scheme will therefore not be delivered at present without a material reduction in construction costs. In this scenario, c. £1.6m in capital costs already incurred by LBBD to progress the scheme would need to revert to revenue and would represent a pressure to the General Fund in 2024/25.

3.2. **Option 2: Agree to Railpen proposal to increase lease payment, with a capital payment to the Council from Railpen to cover initial financial deficits.**

3.2.1 Railpen initially proposed increasing the initial lease payment by approximately 21%. That offer has now been revised to an increase of approximately 15% with an additional capital payment on practical completion of the scheme to mitigate negative cashflows in early years. However, this offer continues to expose the Council to significantly higher lease payments over 50 years and cannot be recommended in the context of the metrics for investments under the Council's Investment and Acquisition Strategy.

3.3. **Option 3: Abort the scheme.**

3.3.1 The Council could withdraw from the scheme. However, the site is unlikely to be delivered in its present form without Council intervention. There will also be no control over its future delivery as the site is in private ownership. Furthermore, the potential for additional homes and any revenue potential to LBBD will be in considerable doubt. As with option 1, if LBBD withdraw from the agreement for lease, c. £1.6m of capital costs already incurred by LBBD in progressing the scheme to date would need to revert to revenue and would represent a pressure to the general fund in 2024/25.

3.4. **Option 4: Propose a counter-offer to Railpen which further mitigates LBBD financial risks.**

3.4.1 Railpen has advised that the proposed terms of its revised offer, which sets a higher starting lease payment of approximately 15% with the initial lease payment by the Council commencing 12 months after practical completion of the scheme, represents its best and final offer. However, in view of all the factors outlined in this report, the Council may consider it appropriate to make a counter-offer to Railpen which would mitigate the level of risk to an acceptable level in order to achieve the development of a major regeneration project in the heart of the Town Centre. Any such offer would need to be made and accepted within the timescale set by Railpen when it tendered for the redevelopment project, as the contractor's tender price would have an expiry date. If agreement could be reached without further undue delay, Railpen could appoint their contractor to enable delivery of the scheme in 2027.

4. Consultation

4.1. The revised proposals have been discussed in length at the Council's internal Investment Panel. Whilst the Panel has concerns about the increased risks that are set out in the body of the report, they understand the clear regeneration case to pursue the scheme.

5. Commissioning Implications

Implications completed by: Rebecca Ellsmore, Strategic Head of Place and Development

5.1. Delivery of this scheme is key to increasing the residential and commercial offer in Barking town centre. As a gateway site adjacent to Barking station, the proposals would not only improve the area aesthetically but would bring increased footfall into the town centre supporting local businesses and making best use of the excellent accessibility that the station brings.

5.2. Railpen have stated that they cannot continue at the current lease payment level set out in the agreement for lease. Whilst the proximity of the railway line and station provide great benefits in terms of accessibility it also makes construction of the scheme very complex. Should this agreement fail and Railpen put the site on the market it is unlikely that the Council would wish to take on a scheme with such a high level of complexity. The scheme may be of interest to another private sector partner but the Council may then lose the opportunity to participate in the scheme.

5.3. As the report notes, there is risk attached to proceeding with an increased lease payment. Optimising the operating costs will be key to managing these risks. B&D Reside, who would potentially take on the management responsibility for the site, are already on a transformation journey that aims to reduce operating costs in the coming years - this will benefit all schemes that are operated by Reside not just this one. At the point that this scheme is due to complete, Reside aim to have moved most of the operating costs into an in-house model and have stabilised their delivery. Whilst implementation of this strategy is not yet complete there is sufficient time to either deliver this transformation or to test whether an alternative provider is better placed to manage the operational risks on this scheme.

6. Commercial Implications

Implications completed by: Nigel Pickup, Strategic Asset Investment Advisor

6.1. Following previous Cabinet approval, the Council has entered into an existing legal agreement related to the site and delivery of the development. The commercial implications of the transaction will therefore remain as existing subject to any amendments required to the commencing lease payment and amending legal documentation to reflect the timing and revised delivery of the project.

7. Financial Implications

Implications completed by: Jahangir Mannan, Strategic Housing & Commercial Finance Advisor

7.1. The financial implications for this report are contained in Appendix 1 (exempt appendix).

8. Legal Implications

Implications completed by: Dr Paul Feild, Principal Governance Solicitor

8.1. This report relates to a regeneration opportunity for the Council to take a headlease 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 in the exempt Appendix 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.

8.2. It was previously agreed by the Cabinet in March 2021 on terms which as explained in the body of this report are no longer viable to the Developer due to change in circumstances principally the building inflation costs and the contractor Henry Construction has gone into liquidation. Furthermore, there has change in the building design to accommodate a second staircase. This was a precautionary measure as while the planning permission when granted did not require it, following recommendations post Grenfell Tower it is now a Building Regulation requirement for tall buildings over 30m and will be amended to 17m shortly. As the scheme provides for the Council to take ownership at the end of the lease. This change is in the Council's interests otherwise it would be getting a lease for a building already out of date in terms of contemporary building design before practical completion.

8.3. The proposed development will be a 198 homes tower. The actual process will be that the construction will be commissioned by the Developer who has entered an Agreement for Lease with the Council. Completion of the Lease is set 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, though Railpen can sell their freehold. The Council will receive an underlease rent from the SPV designed to deliver a return after the headlease lease payment has been paid to the headlease holder. Essentially the scheme is in return for the lease the Council for a premium is guaranteeing an income for the freeholder for 50 years the price is taking the operational risk. The Council institutional lease payment 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). Prior to the demolition work there was at the site a Pub run by JD Wetherspoons. On completion it is 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

8.4. 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.

8.5. 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

8.6. 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).

8.7. The Council in exercising section 120 may acquire land within or outside its area. The Trocoll site is of course in Barking.

8.8. 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

8.9. 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.

8.10. 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.

8.11. 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 affordable housing will have an impact of its overall commercial investment viability.

8.12. In this example it appears that the general competence power of section 1 of the Localism Act 2011 is available to be utilised to regenerate the locality by entering a leasing arrangement to provide housing.

8.13. As the scheme is designed to ensure that the lease is financially viable, then 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 section of this report considers how the proposals assist the prudent management of the Council finances.

8.14. The Ministry of Housing Communities and Local Government at the time (Now called Ministry of Levelling Up, Housing and Communities) issued statutory guidance under section 15 of the Local Government Act 2003 on local authority investments on 1 April 2018. In approving the proposals both officers and decision makes should have regard to relevant aspects of the Guidance.

8.15. 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.

8.16. 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'.

8.17. 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. Relatively the actual investment sum by the Council is small being about setting up, the risk is wrapped in the obligation to pay the lease rent because the freeholder Railpen is taking the construction risk. It is crucial that the SPV and Opex perform at an efficient and effective level or there is a risk that the income received fails to cover the lease liability.

Power to grant a Lease to the Underleasee

8.18. 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 Wetherspoons Pub business.

The Council's Fiduciary Duties

8.19. 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 taxpayers. 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. In a nutshell, the arrangement is that the Council takes the risk of tenant non-payment as it will guarantee an income to Railpen. Clearly under occupancy, rent arrears, nuisance tenants are risks as are the risks of being a landlord of a tall building.

8.20. 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

8.21. 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.

Subsidy Control Act 2022

8.22. Under the proposals the Council will be entering into the arrangements for investment finance 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 Subsidy Control Act 2022 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.

8.23. Because the original decision was made in March 2021 and documentation completed before the said Subsidy Control Act 2022 coming into effect, a check should be made that the chosen revised option is compliant.

Risk Management

8.24. 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.

8.25. As the Council carries the risk of paying guaranteed rent (lease payments) under a headlease, it is imperative to carry out due diligence checks 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. It cannot be overstressed that the Council should not take possession of the premises until it is completely satisfied that the building is snag-free and that the correct construction process and materials have been used and properly installed throughout.

Human Rights and Third-Party Interests

8.26. 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.

8.27. 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. In addition, the proximity to a major rail transport hub will have its own unique characteristics in terms of construction safety including the issue of oversailing functioning railway lines and any interference in the operation of the rail network must be avoided.

Development / Land Risks and Considerations

8.28. 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.

Taxation

8.29. 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 and that includes the various Council controlled entities.

Future Regulatory Issues

8.30. 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 will place further obligations on landlords. Furthermore, additional legislation may follow post the completion 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 its growing expertise to such challenges.

9. Other Implications

9.1. **Risk Management** – Appendix 1 sets out the mitigation options that are available to the Council.

9.2. **Contractual Issues -** Gowlings LLP, who worked on the existing Agreement for Lease for LBBD, would be instructed to draft the necessary amendments to the Agreement for Lease for the Council, the cost of which would be met by Railpen.

9.3. **Corporate Policy and Equality Impact –** An Equality Impact Assessment has been carried out for the proposal identifying neutral or positive impacts on different groups within the community.

Public Background Papers Used in the Preparation of the Report:

- Cabinet Report - 16th March 2021.
  Redevelopment of Trocoll House, Wakering Road, Barking - Agreement for Long Headlease Trocoll House Report (lbbd.gov.uk)

List of appendices:

Appendix 1 – Financial Information, including detailed options analysis and financial modelling (exempt document)