

CABINET

13 November 2012

Title: Governance Arrangements for Barking and Dagenham Reside and Associated Proposals for the Housing Allocations and Lettings Policy	
Report of the Cabinet Members for Housing and Regeneration	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
Report Author: Ken Jones, Divisional Director of Housing Strategy Andrew Sivess, Group Manager Programmes and Projects	Contact Details: Tel: 020 8227 5703 E-mail: ken.jones@lbbd.gov.uk E-mail: andrew.sivess@lbbd.gov.uk Tel: 020 8227 5732
Accountable Divisional Director: Ken Jones, Divisional Director of Housing Strategy	
Accountable Director: Darren Henaghan, Corporate Director of Housing and Environment	
Summary: Cabinet received a report on 14 December 2011 (William Street Quarter and Eastern End Thames View Disposal and Delivery Option) and approved the entry into the contractual arrangements to deliver the project including the acquisition of all of the shares in Thames Partnership for Learning Regeneration 2 Limited (TPFLR 2 Limited) so that it would become a wholly owned subsidiary of the Council accounted for within the General Fund to facilitate the regeneration of land at King William Street and Eastern End Thames View. The subsidiary company is now to be called Barking and Dagenham Reside Limited (the Company), and is registered at Companies House with the Council being the sole shareholder. Construction of the 477 homes across both sites has commenced and handover of units will be on a phased base as follows: EETV: December 2013 – June 2014 King William Street: December 2013 – May 2014 The company (as landlord of the dwellings once constructed) is responsible for the letting, management and maintenance of the 477 dwellings to be constructed. The Council has entered into a guarantee with the external private funder (Atlantic) to guarantee the performance of the Company's obligations including the repayment to the funder through the lease payments from the company to the funder. This report seeks approval for the proposed governance and lettings arrangements of the company to enable the effective management of the sites. The role of the company's board will be to undertake all activities required to fulfil the Council's contractual obligations particularly with respect to: <ul style="list-style-type: none">• Effective letting and management of the homes and estates• Discharge the contractual obligations of the company and Council to the funder in	

respect of lettings, maintenance and rent payment guarantees

- Effective risk management.

It is vital that these contractual obligations are fully adhered to so that the Council's guarantee need not be called on. Effective governance in the company is therefore crucial.

This report also proposes a policy change in relation to the allocations and lettings arrangements for the supply of new Barking and Dagenham Reside and Council homes which will be let at above social rent levels. The objective is to target these properties to local people who are in employment.

Recommendations

The Cabinet is recommended to:

- (i) Approve the following nominations to the governing board of Barking and Dagenham Reside:
 - a. Cabinet Member for Housing
 - b. Cabinet Member for Regeneration
 - c. Cabinet Member for Finance
- (ii) Approve the following additions to the Council's "More Choice in Lettings" Housing Allocations and Lettings Policy, in accordance with the Homes and Communities Agency affordable housing policy:
 - a. That new Council and Barking and Dagenham Reside homes to be let at social rent level or at 50% of local market rent be made available for tenancy in line with the current, standard Housing Allocations policy;
 - b. That new Council and Barking and Dagenham Reside homes to be let at levels above social rent or 50% local market be made available for tenancy in line with the criteria set out in paragraphs 2.3.2 and 2.3.3 of this report.
- (iii) Note that the Annual Business Plan of Barking and Dagenham Reside will be presented to Cabinet each year as part of the budget setting process and will be part of the process to allow the Council to exercise its role as the sole shareholder of the company; and
- (iv) Agree the change of name of the company to Barking and Dagenham Reside Limited and authorise the Corporate Director of Housing and Environment to sign the sole member's written resolution to that effect.

Reason(s)

To assist the Council in meeting the Policy House aim regarding Housing and Regeneration and in particular the objective regarding "a borough with more affordable housing for local residents".

1. Introduction and Background

- 1.1 Cabinet approved (see Cabinet minute: 84, 14 December 2011) contract terms negotiated by officers and the acquisition of all the shares in a wholly owned subsidiary company. The structure involved the establishment of a special purpose vehicle structure for the construction of 477 new homes to be built at King William Street and Eastern End Thames View. In addition, the Company will be the landlord of all of the constructed dwellings.
- 1.2 The Company has now been established and is registered at Companies House. Construction of the 477 units across both sites has commenced. Of these just over 20% will be let at 50% of the local market rent (Council current rents are about 45% of a market rent), just over 6% will be let at 65% of the local market rent and just under 74% will be let at 80% of a local market rent. All of these would be considered to fall within the Government's definition of an affordable rent.
- 1.3 The 50% market rent properties will be let as Assured Shorthold Tenancies on a 10 year fixed term with a policy presumption that a new tenancy will be granted upon termination of the 10 year fixed term. The remainder will be let as Assured Shorthold tenancies and tenants will be given the option of letting on a 5 year basis (normal private rented sector properties would be let as assured shortholds on a 6 month basis). Assured shorthold tenants of the 65% and 80% rented homes will be required to be in employment and have sufficient income so that the rent will take up no more than 35% of their net joint household income. All the properties will be managed by the Council's Housing Service and this is achieved through a housing management contract between the Company and the Council.
- 1.4 The table below summarises the strategic objectives of the Council that were met by the Council entering the project.

No	Strategic Outcome
1	Maximise proportion of social rent homes and affordable tenures
2	Ensure speed and certainty of delivery
3	Maintain design, sustainability (code level 4) quality and space standards
4	Ensure local accountability and developing capacity within the community
5	Maximise long-term returns to the Council and community

- 1.9 This report also proposes a policy change in relation to the allocations and lettings arrangements for the supply of new Barking and Dagenham Reside and Council homes which will be let at above social rent levels. The objective is to target these properties to local people who are in employment.

2. Proposal and Issues

2.1 Barking & Dagenham Reside - scope of business

- 2.1.1 The table below summarises the scope of activity of Barking and Dagenham Reside.

No.	Function	Legal context
1	Housing Management. Allocations and lettings	<ul style="list-style-type: none"> • Barking and Dagenham Reside will be responsible for all lettings arrangements • Barking and Dagenham Reside will be responsible for all housing management functions • Barking and Dagenham Reside will be responsible for agreeing and implementing all landlord related policies and key performance indicators (KPIs) • Barking and Dagenham Reside will report on business plan performance to Cabinet
2	Responsive repairs	<ul style="list-style-type: none"> • Barking and Dagenham Reside will be responsible for all responsive repairs, including estate caretaker services
3	Cyclical repairs	<ul style="list-style-type: none"> • Barking and Dagenham Reside will be responsible for all cyclical maintenance, e.g. gas servicing
4	Major works repairs	<ul style="list-style-type: none"> • Barking and Dagenham Reside will be responsible for all major works repairs e.g. new kitchens and new windows

2.2 Barking and Dagenham Reside Board activities

2.2.1 The directors of the Board will be responsible for setting the strategy and framework under which the following activities and programme of work will be delivered.

Business Plan	<ul style="list-style-type: none"> • Business plan formulation, adoption, management and reporting
Financial management	<ul style="list-style-type: none"> • management and financial management within project financial model • rent setting • rent collection • payments to Funder
Housing management	<ul style="list-style-type: none"> • policy • lettings and marketing • tenancy management • repairs and maintenance
Risk management	<ul style="list-style-type: none"> • identification, management and mitigation of all business and project risks
Reporting	<ul style="list-style-type: none"> • performance reporting to Cabinet • audit, signing of accounts and filing of accounts with companies house

2.2.2 Although the Company is a separate and distinct legal entity from the Council, it is wholly owned by the Council and would therefore not be regarded as an 'outside body' for the purposes of the Council's constitution and so the nomination of representatives to the board of the company is not a matter reserved to the Assembly.

2.2.3 It is proposed that the directors of the Board are the Cabinet Members for Housing, Regeneration and Finance. The Corporate Director of Housing and Environment and other officers including the Divisional Director of Housing Strategy and the Divisional Director of Finance would be advisors to the Board.

- 2.2.4 The nominees will become directors of the company and as such they will have a number of duties as company directors, including the duty to promote the success of the company. In a commercial company it is normally the success of the company for the benefit of its members that should guide board directors. As the Council is the sole shareholder of the company it is unlikely that there will be any practical distinction between a board director acting to promote the success of the company and at the same time acting in the best interests of the Council as sole shareholder.
- 2.2.5 It is necessary to put in place arrangements for exercising the Council's functions as sole shareholder of the Company. . The reason for this is that although the Cabinet is nominating members to become directors of the company it is the Council as a corporate member who is the sole shareholder of the Company. Decisions taken at general meetings therefore need to be passed by the Council as shareholder.
- 2.2.6 This role will be carried out by the Cabinet who will receive an annual report describing the Business Plan for Barking and Dagenham Reside. Any decision required to be taken by the Council as sole shareholder will be exercisable by the Cabinet.

2.3 **Allocations and Lettings Policy**

- 2.3.1 The houses and flats with rents at 50% market rent will be advertised in the Choice Homes magazine and on the website. Housing waiting list applicants will have the option to bid for these properties and they will be considered in accordance with the Council's Housing Allocations Policy.
- 2.3.2 For homes with rents at 65% and 80% of market levels it is proposed that the following cascade of priorities for letting the 65% and 80% rented homes is adopted:
- Employed tenants of the Council and tenants of housing associations living in the Borough
 - Employed Housing waiting list applicants living in the Borough
 - Employed residents of the Borough
 - People in employment in the Borough but who are not currently resident
 - People in employment from outside the Borough
- 2.3.3 In addition the following criteria will be used to assess applicant eligibility in the categories above:

Income ceiling	It is important to ensure that the homes are affordable for tenants. In view of this all lettings of the 65% and 80% homes will be to applicants in employment whose joint household net income is such that the rent represents a maximum of 35% of the net income. There will also be a maximum income level for each type of let.
Employment	Each successful applicant will need to demonstrate that they are employed and have sufficient income to cover the rent. There are no concessions for LBBB staff.
Residential qualifications	In the first instance, aside from existing Council tenants, applicants for the 65% and 80% homes will be required to live in the Borough for 5 years. If there is insufficient demand then resident in the borough without time constraint will be considered followed by non residents.
Deposit	A rent deposit will be taken at time of application in respect of the 65% and 80% homes, together with a non returnable administration fee. Financial references will also be required.

2.3.4 National research has shown that two-thirds of potential first time buyers have no realistic prospect of owning their own home in the next 5 – 10 years and lack the long term saving potential needed to get on to the housing ladder (“Generation Rent,” Halifax Building Society, National Centre for Social Research, 2011). In Barking and Dagenham this position is not only reflected but actually accentuated by key socio-economic conditions, particularly low wages and a relatively high affordability gap. With the average house price at £208,927 and average monthly rent for a two bedroom property at £884 per month (Land Registry HPI), the affordability of housing for local residents is a real challenge - the average property costing over six and a half times the average household income for the borough, £32,200 (CACI PayCheck data).

2.3.5 By re-focussing our allocations policy we are therefore in a position to deliver tangible and long lasting community benefits including social rent and a much wider range of housing options for local people in work. This approach allows us to deliver a key Housing Strategy target of genuinely mixed income communities living in truly affordable and sustainable housing.

2.4 Future Council Housing developments

2.4.1 In future Council Housing HRA developments there will also be homes let at levels above the 50% of local market figure, as was agreed by Cabinet in the HRA Business Plan. It is proposed that the criteria for the Barking and Dagenham Reside lettings set out above, will also apply to these new Council homes to be let at higher affordable rents.

2.4.2 This will ensure that local people in employment will have increased housing options at a time when accessing home ownership in the Borough and across London is very difficult for households on average incomes.

3. Options Appraisal

3.1 A full options appraisal was presented in the report to Cabinet on 14 December 2011.

3.2 In terms of the allocations proposals contained in this report, an alternative option would be to let 65% and 80% rented homes to applicants from the housing waiting list and homelessness applicants. However, this would not achieve the Council's objective of creating mixed income sustainable communities. In addition if these homes were let at higher rent levels and were let to people in receipt of housing benefit, with the introduction of housing benefit caps and Universal Credit these households could experience financial hardship.

4. Consultation

4.1 The Cabinet Members for Housing and Regeneration have been involved in this project and formulation of the report. There has been consultation with Members via the Housing Asset Management group which is convened by the Cabinet Member and the Barking and Dagenham Housing Forums, comprising tenants, leaseholders and Ward Members.

4.2 The following have also been consulted in the preparation of this report:

- Head of Legal and Democratic Services
- Corporate Director of Housing and Environment
- Divisional Director of Finance

5. Financial Implications

Implications completed by: Jonathan Bunt, Divisional Director of Finance

5.1 Financial model summary and key assumptions

5.1.1 The board of Barking and Dagenham Reside will be responsible for managing the business within the project financial model negotiated for the project. The model was audited independently and is considered robust. It will form the financial basis of Barking and Dagenham Reside's business plan.

5.1.2 The key financial aspects of the Barking and Dagenham Reside business plan were detailed in the Cabinet of 14 December 2011, which covered the viability and funding assumptions.

5.2 Accounting Requirements

5.2.1 As a subsidiary of London Borough of Barking & Dagenham, the subsidiary company will need to prepare its own set of audited accounts to comply with the Companies Act, but also form part of the consolidated group accounts of the parent organisation.

6. Legal Implications

Implications verified by: Eldred Taylor-Camara, Legal Group Manager

- 6.1 The Council has been advised throughout this project by Trowers & Hamlins LLP who have provided the following comments on the legal implications of this proposal.
- 6.2 **Powers**
 - 6.2.1 As confirmed when the Cabinet approved entry into the transaction, the Council has the power to enter into the proposed transaction.
 - 6.2.2 At the time Cabinet approved entry into the transaction and on the actual date of entry (17 February 2012) the two principle sources of Council power were Section 2 of the Local Government Act 2000 (the well-being power) and Section 111 of the Local Government Act 1972. On the 18 February 2012 section 2 of the Local Government Act 2000 was repealed and replaced with the general power of competence in section 1 of the Localism Act 2011. The general power of competence is considered wider than the well-being power.
 - 6.2.3 Although the Company is a separate and distinct legal entity from the Council, it is wholly owned by the Council and would therefore not be regarded as an 'outside body' for the purposes of the Council's constitution and so the nomination of representatives to the board of the company is not a matter reserved to the Assembly.
 - 6.2.4 The nominees will become directors of the company and as such they will have a number of duties as company directors, including the duty to promote the success of the company. In a commercial company it is normally the success of the company for the benefit of its members that should guide board directors. As the Council is the sole shareholder of the company it is unlikely that there will be any practical distinction between a board director acting to promote the success of the company and at the same time acting in the best interest of the Council as sole shareholder.
 - 6.2.5 The Local Authorities (Indemnities and Officers) Order 2004 provides the Council with the power to provide an indemnity for members and officers when nominating them as directors to the Company. This includes the power to pay for directors' indemnity insurance. On a practical basis the company already has in place such directors' indemnity insurance to provide the appropriate protection for the nominated members and officers so no separate insurance policy would be required.
 - 6.2.6 Cabinet is recommended to receive an Annual Business Plan that will include matters where decisions need to be taken by Cabinet for the purposes of exercising the Council's functions as sole shareholder of the Company. The reason for this is that although the Cabinet is nominating councillors to become directors of the company it is the Council as a corporate member who is the sole shareholder of the Company.

6.3 Allocations Policy

6.3.1 In agreeing the Allocations and Lettings policy (which would be a local lettings policy for certain types of accommodation) the Council needs to be satisfied that it can continue to meet its statutory obligation to ensure that reasonable preference in the allocation of accommodation is awarded to the categories of persons set out in Section 167(2) of the Housing Act 1996. These are:

- (a) people who are homeless (within the meaning of Part 7);
- (b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);
- (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
- (d) people who need to move on medical or welfare grounds [(including grounds relating to a disability)]; and
- (e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

6.3.2 The scheme may also be framed so as to give additional preference to particular descriptions of people within this subsection (being descriptions of people with urgent housing needs).

6.3.3 However local lettings policies are permissible under section 167(2E) provided the reasonable preference categories can still be met in the allocation generally of accommodation. This section provides that:

Subject to subsection (2), the scheme may contain provision about the allocation of particular housing accommodation—

- (a) to a person who makes a specific application for that accommodation;*
- (b) to persons of a particular description (whether or not they are within subsection (2))*

7. Other Implications

7.1 **Risk Management** - The Barking and Dagenham Reside board will adopt a comprehensive risk management strategy to help deliver the objectives of the business. The risk management strategy will be adopted by the board and will form an integral part of the Barking and Dagenham Reside business plan.

7.2 **Contractual Issues** - Construction of the sites has been procured by the BSF LEP on the basis of fixed price turnkey contracts and construction underway.

As part of the proposals the Council has entered a development agreement with the wholly owned subsidiary of the BSF LEP which imposes step-in rights and obligations on the Council that, in the event of irremediable default or insolvency, will allow the Council to step in and complete the development. This means that the Council would need to appoint another contractor for one or both sites from the Council's own contractor Frameworks. In this eventuality the project funding would be made available directly to the Council by the Funder under the terms of the project agreements.

- 7.3 **Staffing Issues** - A cross-departmental project team has been established to ensure an integrated approach to the delivery of the developments ensuring that the needs of the residents and wider stakeholders are fully met and that all legal, financial and property issues continue to be considered.
- 7.4 **Customer Impact** - Consultation was undertaken as part of the planning process for both sites. Consultation was widely undertaken on the Lintons Estate before its demolition and these results were used to shape the design proposals submitted for planning permission at King William Street Quarter. Consultation was also carried out at Thames View for the Thames View master plan process and this also helped shape the design proposals submitted for planning permission.

In April 2009 an Equalities Impact Assessment was undertaken for Thames view. The main aim of this was to understand the impact of regeneration and renewal in the Thames View estate area. The new housing development will play an important and fundamental role in the regeneration of Thames View and, along with the anticipated investment programme to the existing estate under Housing Revenue Account self-financing proposals, will enhance the estate and help return a lost sense of community in this once thriving estate. The master plan consultation also raised future aspirations by the local community for more modern community facilities, youth activities, and place of worship for the Muslim community, possible leisure facilities and better shops, cafes etc for Farr Avenue.

Community facilities were identified as being important for both sites. As both sites have been vacant for some time, new residents moving in will put extra pressure on existing resources, however both sites lack access to community facilities. In the original master plan for both sites, floor space for community space has been identified to provide such facilities and that these are accessible for those groups identified as requiring the facilities as part of the EIA process.

The scheme provides 95 properties that are close to a social rent and will help assist with relieving the pressure on the Council's housing waiting list. In addition there will be households on the Council's waiting list who will be able to afford the 80% rent units should they so choose.

The scheme provides high quality lettings at both 65% and 80% of market rent for those who would not normally be able to gain access to housing as housing list applicants. Again this allows us to tackle the problems of "Generation Rent" head-on by providing aspirational housing for those in work but who are shut out of the local housing market. A significant customer impact of the Barking Reside scheme is therefore the creation of truly mixed income and sustainable communities. With wider choice and more options we are supporting and helping local working people

move into the housing market and helping them on their way to a permanent housing solution and a permanent stake in the local community.

- 7.5 **Safeguarding Children** - The schemes being constructed have taken into consideration the needs of local communities with a focus on creating accessible spaces that allow for freedom of movement that benefits local people including children. In particular, the designs have addressed the provision of providing new and improved play facilities in the two areas of development.

Development of the sites will increase the pressure on school places in the Barking area. As part of the planning consent a tariff of £2,500 per unit was agreed, this funding will go towards the provision of new school places.

- 7.6 **Health Issues** - The development of these two sites will have a positive impact on residents by providing high quality residential accommodation at both social and sub-market rents. In particular, it will have a positive impact on ill health attributed to poor housing conditions and overcrowding due to a lack of housing in the Borough. The redevelopment of the sites will provide a safer and more secure environment where opportunities for crime are reduced and a host of public realm improvements make the area safer and more legible. General health and well being will be improved as a result of improved visual appearance of the sites thereby increasing civic pride. Overall, the development proposals will be expected to result in a benefit upon local well being and an improvement in the quality of life.

- 7.7 **Crime and Disorder Issues** - Section 17 of the Crime and Disorder Act 1998 places a responsibility on local authorities to consider the crime and disorder implication of any proposals.

Levels of crime and disorder vary between the sites and have been taken into consideration in the design of both schemes. Housing management policies will be developed in consultation with residents at both schemes to minimise and address crime and community safety issues.

- 7.8 **Property / Asset Issues** - There are no new land issues that need to be considered in this report.

Background Papers Used in the Preparation of the Report:

- Cabinet report and minute: William Street Quarter and Eastern End Thames View Disposal and Delivery Option, 14 December 2011
- "More Choice in Lettings" Housing Allocations and Lettings Policy

List of appendices: None