18/504
EXEMPT
Appendix A
&
EXEMPT
Appendices
1, 2 & 3
DECISION TO BE MADE

Havering
LONDON BOROUGH

Notice of KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendices A is not available for public inspection as it contains or relates to exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it refers to financial iand commercially sensitive information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Subject Heading:	**Proposed Purchase Option for Mercury Land Holdings Ltd to acquire Quarles Campus, Tring Gardens, Harold Hill, Romford.**
Cabinet Member:	**Councillor Roger Ramsay – Cabinet Member for Finance and Property**
SLT Lead:	**Steve Moore – Director Neighbourhoods**
Report Author and contact details:	**David Houghton – Property Valuation Officer,** **oneSource Property Services, 2 River Chambers, High Street, Romford. RM1 1HR** **T: 0203 373 9811** **E: david.houghton@onesource.co.uk**
Policy context:	• **Havering Housing Strategy** • **Havering Economic Development Strategy.** • **Havering Proposed Submission Local Plan 2017**
Financial summary:	**The Proposed Purchase Option**

	would, if exercised by MLH, result in a capital disposal with a receipt to the Council of at least £6.75m. Additionally, the Council would not - under the arrangement proposed - have to incur initial expenditure on pre-planning development proposals and planning permission, which is expected to have a cost in excess of £500k. if the option were not exercised by MLH planning and holding costs would be incurred by the Council.
Reason decision is Key	Indicate grounds for decision being Key: (a) Expenditure or saving (including anticipated income) of £500,000 or more
Date notice given of intended decision:	11th May 2018
Relevant OSC:	Overview & Scrutiny Board
Is it an urgent decision?	*This applies only where the month's notice of intended decision has not been, or cannot be, given. Please consult Committee Administration before proceeding.*
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering [x]
Places making Havering [x]
Opportunities making Havering []
Connections making Havering []

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

That the Council grant an Option to Purchase to Mercury Land Holdings in respect of the Quarles Campus, on the terms and conditions set out in the Proposed Purchase Option Heads of Terms attached to this decision.

AUTHORITY UNDER WHICH DECISION IS MADE

The decision is made by the Director of Neighbourhoods under the delegation of Cabinet which at its meeting of 15th November 2017, which at Agenda item 4 – Mercury Land Holdings Business Plan Update – agreed at Recommendation 6:

6. Agreed in principle to the disposal of assets (land/buildings) to MLH for best consideration except where it is possible for the Council to accept less than best consideration in which case the sum to be paid will be not less than market rate and delegate to the Director of Neighbourhoods, following consultation with the Director of Asset Management, the Director of Legal and Governance, and the Section 151 officer, authority to determine the principles and processes by which the said assets shall be disposed of and the terms of disposal.

STATEMENT OF THE REASONS FOR THE DECISION

This approval to Mercury Land Holdings Limited (MLH) Business Plan for 2017 was agreed by Cabinet on 15th November 2017. It builds on Cabinet's decision to create a wholly owned arm's length company of the Council, the purpose of which was to develop a portfolio of homes for market rent (its prime focus) and sale. It was proposed that the Council will dispose of assets (land/buildings) to MLH at market value for this purpose, for which it will receive a market payment. The Council will provide finance to MLH through a combination of equity investment and loans.

Cabinet also agreed, in principle, to the disposal of assets to MLH at best consideration and to provide further capital funding to MLH up to a maximum of £58.45m in respect of North Street and Quarles projects through a combination of equity investment and loans. It was delegated to the Director of Neighbourhoods, following consultation with the Director of Asset Management, the Director of Legal and Governance, and the Section 151 officer, authority to determine the principles and processes by which the said assets shall be disposed of and the terms of disposal.

This report now deals with a specific asset, the Quarles Campus, which was recently acquired from the Havering College of Higher & Further Education.

The background to the Council's joint working with the College is set out in a report to Cabinet of 18 January 2017. This report outlined a proposed loan from Havering Council to Havering College of Higher & Further Education for the purposes of facilitating proposed improvements to the College's Rainham Campus in New Road, Rainham.

Additionally, it was agreed in principle for the Council to be granted an option from Havering College to acquire the Quarles Campus site.

It had been agreed at that time that the Council would be granted an Option to Purchase the freehold interest of the Quarles Campus.The Option to Purchase was to be permitted to be assignable to Mercury Land Holdings Limited (Co. Num. 09878652), a wholly owned L.B. Havering company.

Subsequently, in April 2017, it was formally announced that the Barking & Dagenham College (B&DC) and HCF&HE were considering a possible merger. This potentially altered the position of the College in being able to proceed with the option arrangement as proposed in the January report to Cabinet.

It was necessary for the College to propose a different approach to this transaction that would involve the Council acquiring their Quarles Campus immediately rather than having an option to do so.

At its meeting of 13th June 2017 the Council's Cabinet agreed:

1. the Council will immediately purchase outright HCF&HE's freehold interest in the Quarles Campus at Tring Gardens, Harold Hill and would acquire and hold the property for 'planning purposes' under the Town & Country Planning Act 1990; and

2. the Council will simultaneously lease back the site to HCF&HE for a term up to September 2019 at a peppercorn rent, contracted outside of the security of tenure provisions of the Landlord & Tenant Act 1954.

3. that the possible involvement of the Council's wholly owned company, Mercury Land Holdings Limited (MLH), in seeking planning permission and/or acquiring and redeveloping the site to be the subject of a future decision.

It was agreed that the Council would immediately purchase the freehold interest in the College's Quarles Campus at a price of £6m, with £5.5m payable immediately. The outstanding sum of up to £500k would only be paid after the Council's costs in removing or relocating telecom equipment on the site had been offset from this amount.

Additionally, it was agreed to lease the site back to the College up to September 2019 at a peppercorn rent on a lease contracted outside of the security of tenure provisions of the Landlord & Tenant Act 1954. It is currently envisaged that the Quarles Campus will be vacated over the summer 2019 recess.

The acquisition of the Quarles site and the simultaneous leaseback to Havering College completed on 24th July 2017.

This Decision now deals with the involvement of the Council's wholly owned company, Mercury Land Holdings Limited (MLH), in seeking planning permission and/or acquiring and redeveloping the site.

The originally proposed arrangement was for the Council to take an option to acquire the Quarles site and to novate that to Mercury, which would then use its own resources to obtain planning for residential redevelopment. This option was on the conditional basis that the Council/MLH would determine the planning potential of the site before calling the option.

For the reasons set out in this report the Council has since purchased the site and accepted the planning risk going forward. On this basis the purchase price was £5.5m with top-up of up to £500k after the Council's costs in removing/relocating telecoms equipment is offset from this amount. The price reflects the planning risk.

With the passing of time since the original Option terms were agreed with the college, and with possible changes in market conditions and values moving forward until the Option might be called by Mercury, it is considered inappropriate to allow for a fixed purchase price within the proposed Option to Mercury.

Accordingly, as shown in the Heads of Terms, the price payable under the Option is to be independently determined at the point of Call-off, and on the basis of the terms of the planning consent available at that time. The price determination process will provide that the value assessed represents not less than best consideration, in compliance with S123 of the Local Government Act 1972.

It would not be appropriate for MLH to benefit from a price lower than the Council`s costs of acquiring the property, and holding it in the interim and the intent is it that the option only capable of being called should the determined Purchase Price be in excess of the baseline value of £6,750,000, this figure representing the Council`s maximum price payable to the college, together with its associated costs of purchase and holding costs over its period of ownership (MLH will not have an additional SDLT liability as transfers to a wholly owned Company are exempt).

Mercury would be under an obligation to proactively pursue a residential development planning permission for the site in readiness for when the College intend to vacate, in September 2019. The cost of doing this is expected to exceed £500k and Mercury would fund this from working capital, in accordance with its loan arrangements with the Council, as funder, It would seek to manage VAT liabilities by using its Design and Build Company to procure and pay for all external consultancy requirements.

The option arrangements between the Council and Mercury need to cover the possibility of abortive planning costs for Mercury and/or additional value that may arise as an outcome of the planning process.

To deal firstly with possible abortive planning costs for Mercury, it is reluctant to use its own resources to maximise the value of the site through expensive planning processes, only to then find it is not able to call the option and proceed with the development. In these circumstances it would through its efforts and expenditure have increased the value of the site but with no return. By contrast, the Council would have the benefit of a site enhanced with a planning permission but without making any contribution to the cost of enhancing the site value.

The Council – in granting the option – needs to be protected that in the event of a planning outcome that provides a development land value below its costs of acquiring the property, and that is reflected in the baseline price restriction provisions. In the, anticipated, event that the planning consent achieved, produces an enhanced development land value, the Council will benefit from that through the price determination provisions, while application of those provisions will ensure that Mercury does not pay in excess of fair value for the site.

The Council should also ensure it shares in any further enhancements in value, following disposal of the site, that may arise by way of planning permisssions, and that it has legal arrangements in place to ensure it will receive a fair share of any additional value arising, through overage arrangements.

In this case it is recommended the position on possible abortive planning costs and possible additional land value be balanced between the Council and Mercury. This would be on the basis that the Council shall underwrite the Company its planning and pre-development costs up to £500k but that any additional value arising above the total of the original determined purchase price and the Company's actual planning and pre-development costs, be shared equally by the parties, if the area of saleable development exceeds the base case by more than 1,000 sq ft, all as set out in the Appendix to the Heads of Terms. The underwriting is made on the basis that the council will benefit from any planning permission if MLH do not exercise that the option.

OTHER OPTIONS CONSIDERED AND REJECTED

This proposed disposal is in keeping with the Council's agreed approach to offer this development site to MLH at market value. In arriving at that approach, other options that were considered included consideration of the Council effecting the development in its own right, or with a suitable partneut after due analysis and assessment, it was considered that the benefits arising from the proposed sale to Mercury outweighed the possible benefits of those other options.

The proposal to grant an option to purchase has been selected to allow the development potential of the site to be crystallised through a planning application process without cost to the Council. The arrangement proposed here would mean that MLH would use its working capital to obtain planning permission. MLH requires an option to purchase to protect this initial investment. This is considered the most appropriate option for both the Council and MLH.

PRE-DECISION CONSULTATION

Section 151 Officer
Director of Legal & Governance – oneSource
Director of Asset Management - oneSource

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER	
Name: David Houghton	
Designation: Property Valuation Officer, oneSource – Property Services	
Signature:	Date:14th September 2018

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

DIRECTORATE LEGAL AND GOVERNANCE ONE SOURCE (Momtaz Begum & Siobhan Fry) AND TROWER & HAMLINS LLP (Victoria Thornton) COMMENTS

Section 123 of the Local Government Act 1972 gives the Council power to dispose of land held in its general fund (which includes an option to acquire a legal interest) (without consent of the Secretary of State) providing it does so for a price which is not less than the best it could reasonably obtain. [The Council will ensure compliance by obtaining a market valuation of the site which will determine the purchase price of the site under the terms of the proposed option agreement]

The Quarles site was purchased by the Council pursuant to Section 203 Housing and Planning Act 2016 which provides that where the Council acquires land and planning consent has been obtained to allow maintenance, building work or a change of use for the purposes for which it has been acquired by the Council then any restriction on carrying out the development or using the land for that purpose will be overridden, allowing the new development or the change of use of the land to proceed. The benefit of this provision extends to subsequent owners of the land and will therefore extend to MLH in the event it proceeds with the purchase.

Landowners affected by any interference with their rights or interests in this way are entitled to receive compensation. In the event of any such interference, under Section 204 of the Housing and Planning Act 2016, MLH as owner of the site would be liable to pay such compensation. If it failed to do so, that liability would be enforceable against the Council. The Council would be entitled to recover any amount it pays out from MLH.

FINANCIAL IMPLICATIONS AND RISKS

DIRECTORATE OF FINANCE) ONE SOURCE (Dave Baldock) COMMMENTS

The report proposes a purchase option be provided to Mercury Homes Limited to be exercised at a base value of no less than £6.75 million, with a final price subject to controlled valuation arrangements and a with a clawback arrangement to protect the Council's interest if the site were to be resold for a greater amount.

Should MLH not exercise the option the Council would be obliged to pay for planning costs and any holding costs to a maximum of £500k. There is currently no provision for this amount within the Council medium term financial strategy. The Council would need to make allowance for this within the revenue budget, as should the scheme not proceed these would be abortive costs, The Council may then seek to sell the site on the open market .

Mercury would need funding in order to exercise the option proposed in the report. The Council would provide funding via loans and equity to MLH on commercial and State Aid compliant terms subject to a viable business case and suitable due diligence.

The Council would need to be satisfied that the sale of the site and related development were on commercial terms and will seek external advice on this at the point the transaction moves forward.

Under changes to the capital finance regulations effective from 1st April 2018, the Council is not permitted to borrow in order to generate a profit. The proposed Quarles development would see the regeneration of the college site, and subject to Planning approval would see the provision of additional housing. The project therefore has a wider objective that generation of a surplus..

PLANNING RISKS

TROWER & HAMLINS LLP (Victoria Thornton) COMMENTS

The site is within the green belt and previously had the status of a Major Developed Site in the Green Belt, effectively allowing replacement footprint development. Whilst planning rules have changed the principle remains intact although it is now necessary to show that a replacement development has no greater impact on the green belt. In part this is a subjective judgement which does mean that at this stage in the process it is difficult to be absolute on the precise amount of development that may be permitted as part of a planning application.

Whilst therefore it may be a legitimate planning risk for a development company to bear in conventional 'arms-length' circumstances and the risk a developer may take for the benefit of the option and potential future development profit on investment, in the circumstances of this specific property it is considered that both parties (the Council and Mercury) need some downward and upward price protection dependent on the planning outcome.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

DIRECTORATE OF HUMAN RESOURCES ONE SOURCE COMMENTS

There are no specific human resource implications for the Council arising from this Report.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

DEPARTMENT OF COMMUNITY SAFETY & DEVELOPMENT, LBH COMMENTS

No specific implications are considered to arise from this report

BACKGROUND PAPERS

None

APPENDICIES

Appendix A Agreed Heads of Terms - ***Exempt***

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed

Name: **Steve Moore**

Director of Neighbourhoods

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on 19/09/2018

Signed