



## Notice of KEY Executive Decision containing exempt information.

This Executive Decision contains appendices which are not available for public inspection as it contains or relates to exempt information within the meaning of paragraph 3 of Schedule 12A of the Local Government Act 1972. It is exempt because it refers to confidential commercial information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

<b>Subject Heading:</b>	<b>Crow Lane - Acquisition of land and dwellings</b>
<b>Cabinet Member:</b>	<b>Cllr Damian White Leader of the Council</b>
<b>SLT Lead:</b>	<b>Neil Stubbings Director of Regeneration</b>  <b>Patrick Odling-Smee Director of Housing</b>
<b>Report Author and contact details:</b>	<b>Paul Walker Assistant Director - Regeneration 01708 434282 <a href="mailto:paul.walker@havering.gov.uk">paul.walker@havering.gov.uk</a></b>
<b>Policy context:</b>	The context of this decision is requested in the promotion of the policy to increase affordable family housing for the Council in a partnership with the Council's wholly owned subsidiary, Mercury Land Holdings that will also deliver new private rented properties.
<b>Financial summary:</b>	Costs, funding and associated risks/issues are set out in the exempt financial implications and exempt MLH Business Case.

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<b>Reason decision is Key</b>	The decision involves: (a) Expenditure or saving (including anticipated income) of £500,000 or more, and (b) Significant effect on two or more Wards
<b>Date notice given of intended decision:</b>	3 <sup>rd</sup> September 2019
<b>Relevant OSC:</b>	Overview & Scrutiny Board Towns & Communities OSC
<b>Is it an urgent decision?</b>	Yes
<b>Is this decision exempt from being called-in?</b>	Yes

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

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

To approve taking all necessary steps to complete the purchase of and addressing any conditions on the purchase and development of the Crow Lane/Sandgate Close housing scheme in Romford.

This report details the outcome of extensive negotiations with the owner and developer of the site at Crow Lane/Sandgate Close, Romford and recommends that the Council in partnership with Mercury Land Holdings Limited (MLH) purchases the site and associated development at Crow Lane/Sandgate Close.

#### **Recommendations (For the Leader):**

1. That the Council together with MLH acquires the land and construction arrangements at Crow Lane/Sandgate Close comprising 82 properties on the basis of the Heads of Terms provided at Exempt Appendix B from Crow Lane (Romford) Limited.
2. That the use of the Council's Housing Revenue Account, supported by retained Right to Buy receipts, to fund the purchase of land and 38 family homes for affordable rent, inclusive of all associated fees and costs, as shown on the proposed Housing Ownership Plan at Exempt Appendix B and outlined in Exempt Appendix A, be approved.
3. That the Business Case for MLH, provided at Exempt Appendix E, which includes the provision of a state aid compliant loan and equity by the Council, to acquire 34 apartments and 10 houses for either sale on the open market or to use as additional private-rented accommodation, be approved.
4. That the Council places MLH in funds via a Loan Facility Agreement to the level required by the MLH Business Case provided at Exempt Appendix E.
5. That the involvement of the Council's wholly owned company, Mercury Land Holdings Limited (MLH), in acquiring the assets as part of a joint venture/collaboration agreement with the Council on acquisition and forward funding, outlined as referred to in Recommendations 1, 3 & 4, be agreed.
6. That the Council and MLH contemporaneously with, or as soon as possible after, the acquisition of the land comprising the 82 properties, enter into a Joint Venture/Collaboration Agreement on the basis of the Heads of Terms, as agreed by both parties, provided at Exempt Appendix G.
7. That the Director of Regeneration, acting in consultation with the Monitoring Officer and Section 151 Officer, be authorised to enter into all necessary legal agreements, incorporating any associated minor adjustments, to bring into effect the proposed arrangements in Recommendations 1, 2, 3, 4, 5 and 6, as soon as practicable.

### **AUTHORITY UNDER WHICH DECISION IS MADE**

The decision is made by The Leader of The Council under Part 3 Responsibility for Functions, Paragraph 2, of the Havering Council Constitution.

The proposal that is the subject of this report has timescales that require the Council to act quickly in order to secure the scheme before the developer disposes of the development to another party. For this reason an Executive Decision is the most appropriate basis to ensure that the necessary timescales can be met.

### **STATEMENT OF THE REASONS FOR THE DECISION**

This report arises from the outcome of extensive negotiations between the owner and developer of the site, Crow Lane (Romford) Limited and the Council/MLH.

Crow Lane (Romford) Limited acquired the site at Crow Lane/Sandgate Close, Romford and is developing 82 units of accommodation and associated works. The development comprises:

- 34 flats
- 48 houses.

The units being provided by bedroom size are as detailed below:

- 5 x 1 bed 2 person flats
- 10 x 2 bed 3 person flats
- 9 x 2 bed 4 person flats
- 10 x 3 bed 4 person flats
  
- 5 x 3 bed 5 person house
- 43 x 4 bed 7 person house.

Initially Crow Lane (Romford) Limited approached MLH, the wholly owned subsidiary of the Council, to agree terms for an “off plan” purchase of the flatted part of the development. These units would be added to the Private Rented Sector (PRS) portfolio of MLH and thus provide a revenue benefit to the Council.

In addition, discussions were being conducted relating to the Council acquiring the affordable housing provision of the development. A planning condition is in place for the development to provide 16 units of intermediate housing. An initial appraisal of the proposals from Crow Lane (Romford) Limited, for both PRS and Affordable Housing, did not however represent value for money and did not meet the controlling assumptions required.

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In order to seek alternative proposals, a series of modelling exercises were undertaken with a position being reached which increased the affordable housing provision significantly and adhered to the controlling assumptions. The proposal is that the Council will purchase the following for use as affordable housing, let at the London Affordable Rent, through the Housing Revenue Account (HRA):

- 5 x Three bedroom properties;
- 33 x Four bedroom properties.

The gain in this number of larger family affordable housing units is unusual and will have a significant impact on the households in housing need on the Housing Register. These are as follows:

**Table 1: Housing Register by bedroom size required**

Bedrooms required	ER	CCR1	CCR2	H	RP	Total	%
1	116	41	75	207	45	485	24.2%
2	31	153	75	397	110	766	38.3%
3	27	171	77	291	78	644	32.2%
4	11	16	22	41	10	100	5%
5	1	1	0	3	0	5	0.25%
<b>Total</b>	<b>186</b>	<b>382</b>	<b>249</b>	<b>923</b>	<b>243</b>	<b>2000</b>	<b>100%</b>

The purchase will also result in a saving to the General Fund through a reduction in the number of households in temporary accommodation. The reduction in overcrowding associated with this proposal should also have a positive impact on the educational achievement of children.

The property negotiations with Crow Lane (Romford) Limited, having regard to the re-modelling exercise, resulted in more beneficial acquisition terms than those initially offered. These are contained within Exempt Appendix A.

In the interests of completeness it should be noted that the land to be acquired once formed a part of a Gas Works site but has since been remediated to an appropriate standard. An environmental consultants report says that appropriate measures should be taken in building and landscaping. Relevant matters were considered through the planning process, where after due process, the grant of permission for the current residential scheme was given with conditions, subject to the completion of a S106 Planning Agreement. None the less any environmental liabilities, should they arise in the future, would reside with the Council and MLH after completion of the proposed purchase.

Continued...

**OTHER OPTIONS CONSIDERED AND REJECTED**

Based on the reasoning associated with the benefits to the Council on increasing its affordable stock, particularly in regards to a gain in larger family units and MLH's rental portfolio, not proceeding with the purchase was rejected.

Partial acquisition of the site by either MLH or LBH was rejected as the vendors preference was for a comprehensive sale of the site. Joint acquisition of the whole site allows a comprehensive estate management programme to be implemented and also creates a more blended and sustainable development with private and affordable properties available, with all units controlled and managed by either LBH or MLH.

Allowing the scheme to be purchased by a third party, or individuals was rejected. A joint acquisition of the site avoids fragmented ownership of buy to let landlords and registered providers and allows priority of the units to be given to local residents.

**PRE-DECISION CONSULTATION**

None

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Paul Walker

Designation: Assistant Director - Regeneration

Signature:

Date:

February 2020

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

The Council has powers contained within section 120 Local Government Act 1972 to acquire land for the purposes of the performance of its function or for the benefit, improvement or development of its area. The delivery and promotion of housing and in particular affordable housing in a local authority's area is a function. The Council's primary or main purpose in acquiring the freehold of the Site is to secure the outcome of the development in progress. Further, the Council also has powers under Section 17 Housing Act 1985 to acquire land for housing purposes, pursuant to its housing function.

The Council is working in partnership with its wholly owned housing company Mercury Housing Limited (MLH) in respect of the proposed development. The Council and MLH will enter into a joint venture agreement to:

- Secure the acquisition of the built dwellings on a joint basis;
- Regulate the relationship between the parties;
- Regulate how their respective interests are held in the land.

There is no specific legal power to enter into such an arrangement, however, on the basis there is no pre-existing statutory prohibition on doing so, the power to proceed on this basis will fall within the ambit of Section 1 Localism Act 2000.

It is intended that MLH will acquire 44 of the completed dwellings which in due course will be used for private sector housing and the Council will acquire 38 dwellings relying on funds provided by the Council's Housing Revenue Account, these properties will be subject to the provisions of the Housing Act 1985 and form part of the Council's council housing stock.

The Public Contracts Regulations 2015 provide that where the Council procures, services, supplies or works they must follow the procedures set out in the Regulations. In the context of works the Regulations only apply to procurements where the estimated value exceeds £4,73m. Certain types of procurement are exempt under the Regulations in particular "*the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property*". Public works contracts are defined as having as their "object" the execution, or both the design and execution, of works related to one of the activities listed in the Regulations (i.e. construction, demolition, civil engineering works, plumbing and glazing); or the execution, or both the design and execution of a work; or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work. In this instance the Council is purchasing a form of development designed and built to the Seller's requirements in advance of its completion rather than at completion, In the circumstances the main object of the arrangement is that of a land transaction and therefore it is exempt from the provisions of the Regulations.

From a Real Estate perspective the principal legal risks are any significant title issues. As part of the due diligence exercise being undertaken on behalf of the Council a

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comprehensive and detailed full title report addressing all title issues has been provided to the Council provided at Appendix H. Additionally, given that it is understood that in effect the transaction will proceed as a "joint purchase" the legal report has been jointly addressed to both the Council and MLH so that both parties are entitled to have reliance upon the report which has been produced.

Freeths are advising the Council on this transaction and owe professional responsibilities to the Council in that respect. Freeths have completed their due diligence and the position is fully set out in the detailed legal report previously referred to. As part of the legal input undertaken by Freeths the Developer is obliged to deliver warranties from the contractor/professional team involved in the construction and design of the development and additionally that NHBC insurance or equivalent is procured prior to the various units being handed over.

The Council as funder of the scheme will have a charge placed on the properties to the value of the senior debt. As shareholder it will have control over the company to protect its equity investment.

### **Finance Arrangements**

Section 24 Local Government Act 1988 (**LGA 88**) provides the Council with the power to provide a wide range of financial assistance to MLH (in respect of privately let housing) including making a grant or loan to it and as MLH is a body corporate the Council may under Section 24 (2)(d) also acquire share or loan capital in it. Privately let housing means any form of rented accommodation provided this is not let by a local authority.

If the Council exercises its powers under section 24 LGA then under Section 25 of the LGA 88 it must obtain the consent of the Secretary of State to do so. The Secretary of State has set out pre-approved consents in the "General Consents 2010" (July 2011 update). If the circumstances of financial assistance meet one of the criteria in the General Consents then the Secretary of State's consent is given.

The current version of the General Consents 2011 contains Consent C. This permits financial assistance to be provided to any person (which includes MLH). The only form of financial assistance which may not be given under Consent C is support through the transfer of land – i.e. at nil or a reduced consideration).

In relation to entering into the financial arrangements the Council may also rely on Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do subject to a number of limitations (this is referred to as the **General Power**). Together with section 111 Local Government Act 1972, which provides the Council with the power to do anything whether or not involving the expenditure, borrowing or lending of money or the acquisition of property rights which is incidental, conducive or calculated to facilitate the exercise of any of their functions. This would include the exercise of functions under section 24 and 25 LGA together with section 1 Localism Act 2011. The Council could rely on this power to provide the company with loans and other support such as providing staff and the use of premises. Any support provided must be state aid compliant (see below) and will be the subject of agreements between the Council and MLH.



If the Council intends to borrow to lend to MLH, Regulation 25 Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) treats the giving of a loan by a local authority to a third party (such as MLH) towards expenditure (e.g. works on a new buildings) as capital expenditure providing that if the local authority itself incurred that expenditure (it borrowed to undertake the works itself) it would treat that expenditure (under proper accounting practices) as capital expenditure. It should be noted that the Council borrowing to lend to MLH in connection with revenue funding is not permitted. Any Council borrowing must comply with prudential borrowing code under Part 1 Chapter 1 Section 1 Local Government Act 2003, a local authority may borrow for any purpose relevant to its functions or for "the prudent management of its financial affairs".

### **State Aid**

Following the United Kingdom's exit of the European Union as of 31st January 2020, the Council is required to continue to comply with EU laws including those relating to Procurement and State aid detailed below during the transition period and possible beyond (subject to the details of any trade agreement negotiated between the UK and the EU).

The European Union (Withdrawal) Act 2018 incorporates most 'EU state aid law' until the expiry of the transition period (31<sup>st</sup> December 2020 unless extended). This effectively requires that the Council provides funding and ensure it and MLH operates in accordance with the state aid requirements.

It is important that any loans/credit or other support provided to MLH are state aid compliant. Loans/credit which the Council generally makes available to MLH for market housing must be made on commercial terms and at a commercial interest rate. A detailed report is provided at Appendix F. If the Council subsequently chooses to make an equity investment into MLH its must ensure this is done on commercial terms as a market investor. It will be necessary for the Council to obtain independent confirmation that such arrangements have been made on commercial terms prior to them being entered into.

### **Fiduciary Duties**

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 rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and Council tax payers.

In making the decisions concerning MLH, the Council considers whether making investment and or extending loans to that body (and similar activities) should give proper consideration to the risks and rewards of approving the recommendations. In practice Members will want to consider whether the Council will achieve an appropriate return for its risk and that the Council has minimised the risk and potential cost to it if MLH became insolvent and/or defaulted on its loan(s).

Consideration should also be given to whether the Council's involvement in this

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arrangement is proportionate and properly balanced against the anticipated benefit as well as the wider interests of its local business rate and tax payers. On a practical basis this means that Members should consider whether the monies they are requested to approve for investment/lending, could be better used by the Council for the wider interests of its local tax payers. This should include considering the impact on the Council (and therefore its local tax payers) if MLH became insolvent or otherwise defaulted on loans it had taken from the Council.

### **FINANCIAL IMPLICATIONS AND RISKS**

The financial implications including details of the cost and funding of the purchase and associated issues are provided at Exempt Appendix A.

The Council will apply retained Right to Buy Receipts of 30% to the purchase of the HRA affordable family homes. Under existing Government regulations these receipts would otherwise have to be returned to HM Treasury if they were not spent. The application of the RTB receipts also serves to reduce the estimated payback period.

The LBH/MLH Payment Profile is provided at Appendix C, whilst the MLH Business Case is provided at Appendix E.

A Red Book valuation undertaken by a third party valuation agency supports the proposed acquisition which it considers represents 'good value'; this is provided at Exempt Appendix D.

As the Council and MLH are proposing to purchase both land and development under construction, it is possible that the price of the works could increase. This risk is being mitigated by the use of an Employers Agent, Calfordseadon, who have a duty of care to both the Council and MLH. But it may be necessary to apply a level of contingency if the final works price were to exceed the estimated price, for reasons permitted in the works contract.

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

This decision will, amongst other things, require the utilisation of Council Officers to assist in the development of the Loan Facility Agreement, the release of funds to Mercury Land Holdings and on-going monitoring.

The Council/MLH will be employing an Employers Agent to monitor the scheme.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010

requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

In relation to the proposed decision to acquire a total of 82 properties there are no risks or implications associated with the Council's statutory duty. Not with standing this, in the interests of completeness, an Equalities Impact Assessment will be completed.

Beyond the narrow decision itself, the new homes to be to be acquired all conform to the appropriate Building Regulations, including those for access, and with planning requirements. The purchase of additional 3 & 4 bedroom properties for families via the HRA could benefit those with larger families who are existing tenants requiring larger homes or those on the waiting list who need the size of properties that this proposal will provide.

#### **BACKGROUND PAPERS**

MLH Financial Model for Crow Lane	Exempt
MLH Sensitivity Analysis	Exempt
Audit of MLH Financial Model	Exempt

#### **APPENDICIES**

Appendix A	Financial Implications and Risks	Exempt
Appendix B	Heads of Terms - Acquisition	Exempt
Appendix C	LBH-MLH JV Payment Profile	Exempt
Appendix D	Independent Valuation Report	Exempt
Appendix E	MLH Business Case	Exempt
Appendix F	State Aid Report	Exempt
Appendix G	Heads of Terms – Joint Venture	Exempt
Appendix H	Legal Due Diligence Report	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

*Delete as applicable*

Proposal NOT agreed because

**Details of decision maker**

Signed

Name:

Cabinet Portfolio held: Leader of the Council

CMT Member title:

Head of Service title

Other manager title:

Date: February 2020.

**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 13/02/2020

Signed 