

Notice of Non-Key Executive Decision with Exempt Appendices.

This Non Key Executive Decision contains appendices which are not available for public inspection as they contain or relate to exempt information within the meaning of paragraph 3 of Schedule 12A of the Local Government Act 1972. They are exempt because they refer to confidential commercial information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

| | |
|---|---|
| Subject Heading: | Crow Lane – Estate Management Deed – Action under Delegation. |
| Cabinet Member: | Cllr Damian White Leader of the Council |
| SLT Lead: | Neil Stubbings Director of Regeneration Patrick Odling-Smee Director of Housing |
| Report Author and contact details: | Paul Walker Assistant Director - Regeneration 01708 434282 paul.walker@havering.gov.uk |
| Policy context: | 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. |

Non-key Executive Decision

| | |
|--|--|
| Financial summary: | Costs, funding and associated risks/issues are set out in the exempt financial implications and exempt MLH Business Case set out in the Key Decision taken by the Leader on 20 th February 2020 and further implications contained herein. The Council's share of costs under the proposed Estate Management Deed are modest. |
| Relevant OSC: | Overview & Scrutiny Board Towns & Communities OSC |
| Is this decision exempt from being called-in? | The decision is a non-key decision and exempt from call in. |

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"/> |

Place an X in the [] as appropriate

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

Summary

The Council, acting with Mercury Land Holding Limited (MLH), has recently purchased land and property at Crow Lane, Romford. When complete the development will comprise 82 homes, 34 flats and 48 houses. The Council has agreed to acquire 38 of these properties for affordable housing to be managed by the Housing Department.

Although the completion of the development has been delayed by Covid-19, it is now approaching practical completion and that being the case it is necessary to take steps to ensure that the MLH and the Council can manage the estate properly as we go forward, particularly in relation to open space and highways. It is proposed to do this via an Estate Management Deed between the Council and MLH.

This approach has been discussed and endorsed by the Housing Department, Regeneration Department and Mercury Land Holdings Limited.

Recommendation

That the Director of Regeneration in consultation with the Monitoring Officer and s151 Officer approves and authorises the completion of the Estate Management Deed provided at exempt Appendix A, and the Estate Services Agreement provided at exempt Appendix B, at an estimated annual cost of approximately £12,000.

Previous Consideration

The Leader took a key decision on 20th February 2020:

“

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 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.

Non-key Executive Decision

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 as referred to in Recommendations 1, 3 & 4, be agreed and implemented.
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 & 6, as soon as practicable."

The Director of Regeneration in consultation with the Monitoring Officer and Section 151 Officer, using the delegation provided under Recommendation 7 subsequently entered into the following agreements, which all comprise exempt information, to give effect to the Leader's Executive Decision:

1. Land Sale Agreement;
2. Development Agreement;
3. 2 Deeds of Covenant relating to Overage/Positive Covenants in the Title;
4. Transfer Document;
5. Self-Lay Agreement (Water)
6. Collaboration Agreement;
7. Loan Facility Agreement & Instrument.

Proposed Estate Management Arrangements

Following the completion of the above agreements MLH and the Council are now joint freehold owners of land to the West of Sandgate Close, Crow Lane, registered at HM Land Registry (Title No. BGL 148895).

Amongst other things, the Collaboration Agreement made provision for both parties to make appropriate arrangements for the maintenance of highways and common areas prior to the transfer of land to individual MLH and Council ownerships at practical completion.

Following on from this an Estate Management Deed has been drawn-up, provided at exempt Appendix A.

Non-key Executive Decision

It is intended that from the date that the Certificate of Practical Completion is issued in respect of each Section that an Estate Services Provider will be responsible for providing the Estate Services to the relevant Section in accordance with the terms of the Deed (see exempt Appendix A).

It is further intended that the role of the Estates Services Provider will be fulfilled by MLH, the Council or a third party service provider in accordance with Clause 3 of the Management Deed.

The Council, MLH and their successors in title shall agree to pay the Estate Services Provider the Estate Charge (as defined in Clause 1 of the Management Deed)

If the Council and/or MLH dispose of any Unit on the Estate it/they shall procure that the purchaser of such Unit enters into a Deed of Covenant (as defined in Clause 1) to pay the Estate Charge in so far as it relates to the Unit.

If the Council or MLH dispose of the Common Parts (or any of the Common Parts) then the Council or MLH (where appropriate) shall procure that the purchaser of the Common Parts provides a deed of covenant to the owners (as defined in Clause 1) to be responsible for ensuring that the Estate Services are provided in accordance with the terms of the Management Deed and the related Services Agreement.

The appointment of the Estate Services Provider matter will be led and reviewed as necessary and appropriate, by MLH and the Council (Housing Department). This will be regulated by a separate Services Agreement in the form set out at exempt Appendix 2.

These arrangements should help to keep the overall development in good order over time.

AUTHORITY UNDER WHICH DECISION IS MADE

Decision of the Leader as delegated to the Director of Regeneration on 20th Feb 2020.

STATEMENT OF THE REASONS FOR THE DECISION

The Council and MLH Limited acting in collaboration purchased land and property at Crow Lane/Sandgate Close, Romford.

Some 82 units of accommodation and associated works are now nearing practical completion. The development comprises:

- 34 flats
- 48 houses.

Non-key Executive Decision

The Council has purchased the following for use as affordable housing to be managed through the Housing Revenue Account:

- Three bed homes x 5
- Four bed homes x 33.

The land that is currently jointly held will eventually be held in two separate ownerships at or around practical completion, but before that transfer happens it will necessary for the Council and MLH to enter into an Estate Management Deed as this will help to ensure that the common parts which include open space and highways are appropriately and continuously maintained over time. A separate but related Services Agreement will regulate the relationship between the Council, MLH and the Estates Services Provider (when appointed).

The estate management arrangements set out in the proposed Estate Management Deed and the Services Agreement are of importance to both parties because any purchaser or future occupier of any of the properties would require a robust management scheme to be in place and this would also be a pre-requisite of any mortgagee providing finance to any party that wished to purchase any of the properties on the Estate.

OTHER OPTIONS CONSIDERED AND REJECTED

Given that the provisions contained within the Collaboration Agreement, which have been incorporated into the proposed Estate Management Deed (see exempt Appendix A), the consideration of other options is not appropriate here.

PRE-DECISION CONSULTATION

- Director of Housing
- Monitoring Officer
- S151 Officer.


Non-key Executive Decision

NAME AND JOB TITLE OF STAFF MEMBERS ADVISING THE DECISION-MAKER

Name: Paul Walker

Designation: Assistant Director - Regeneration

Signature:



Date: 29th October 2020.

Name: Garry Knights

Designation: Assistant Director - Housing

Signature



Date: October 2020.

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The legal implications follow from those stated in the original key decision taken by the Leader on 20th February 2020.

The Collaboration Agreement between the Council and MLH refers, amongst other things, to the transfer of land, where after practical completion, it is envisaged that as a condition of rights granted that MLH will be made responsible for the reimbursement to the Council of a fair and reasonable proportion of the costs of maintaining the Councils retained land (in particular the roads and services under them).

It is also provided that MLH will be responsible for open space (to the west of Granite Court and to the north of Quartz Court), but insofar as this is a common area for open use by all residents on the estate, the Council will be responsible for the reimbursement to MLH of a fair and reasonable proportion of the costs of maintaining the same.

The proposed Estate Management Deed and Services Agreement provided in the exempt appendices, have been directly informed by the provisions of the Collaboration Agreement.

A decision made under delegation is permissible under s101 Local Government Act 1972.

The Council is permitted to make a direct award of the services arrangement for the below threshold agreement under Regulation 12 Public Contracts Regulations 2015 to Mercury Land Holdings Limited.

FINANCIAL IMPLICATIONS AND RISKS

As set out in the report an Estate Management Deed between the Council and MLH will provide for the future maintenance of common parts, including open space and highways. A separate Services Agreement will be made which will give effect to the actual maintenance itself.

Housing and MLH will subsequently agree an apportionment and level of costs. The Council will pay for its share of the estate management costs from the Housing Revenue Account.

The procurement of the estate services will take place in due course. The annual costs to the Council for such arrangements have been estimated to be approximately £8500 in 20/21 and approximately £12,000 from 21/22.

Amongst other things this charge would cover gardening and landscaping, repairs and maintenance, health and safety assessment of the play area, lighting, pest control, contribution to a sinking fund and a modest management fee.

Non-key Executive Decision

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

None.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Equalities and Social Inclusion implications and risks detailed in the Leaders Executive Decision still apply.

A well maintained estate, including highways and amenity space, will be beneficial for all occupants and visitors to the development, including those who may have disabilities, the elderly, children or parents using pushchairs or prams.

BACKGROUND PAPERS

None.

Non-key Executive Decision

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: Neil Stubbings – Director of Regeneration

Date: October 2020

In consultation with:

Signed *Patrick Odling-Smee*

Name: Patrick Odling-Smee – Director of Housing

Date: ~~October 2020~~ 2nd November 2020

Non-key Executive Decision

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 _____

Signed _____