

Notice of Non-key Executive Decision

Subject Heading:	Solar Serena and Sunrise Forward Funding Agreement
Cabinet Member:	Councillor Damian White Leader of the Council
Report for :	Neil Stubbings Director of Regeneration
Report Author and contact details:	Martin Fahy Martin.Fahy@havering.gov.uk
Policy context:	Havering Housing Strategy 2014-2017 HRA Business Plan 2017-2047 National Planning Policy Framework 2012 Draft London Plan 2017 Havering Local Development Framework and Romford Area Action Plan 2008 Romford Development Framework 2015 Havering Proposed Submission Local Plan 2017

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Financial summary:	Approval to enter into a Funding Agreement to release £17.5 million of forward funding to bring forward the development of the Solar, Serena Sunrise site. The decision to forward fund, and the budget for the same was approved by Cabinet on 17 February 2021 for inclusion in the HRA Capital budget and subsequently ratified by Full Council on 3 March 2021.
Relevant OSC:	Towns and Communities
Is this decision exempt from being called-in?	Yes - It is a non-key decision

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

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval of the Director of Regeneration to approve the entering into of a grant funding agreement in the form attached at Appendix 1 with HWR Phase 1 Stage 2 LLP, to give effect to the Cabinet decision to forward fund the Solar, Serena and Sunrise Estate in the sum of £17.5 million.

AUTHORITY UNDER WHICH DECISION IS MADE

At its meeting of 17 March 2021, in consideration of the report Havering and Wates Regeneration LLP Business Plan and Budget 2021/2022, the Cabinet resolved to forward fund the development of Solar, Serena and Sunrise Courts (£17.5 million) and authorised the Director of Regeneration to enter into the necessary forward funding agreement.

A budget of £17.5 million set aside for the Solar Serena estate was incorporated into the HRA capital budget, agreed by Cabinet on 17 February 2021 and approved by Full Council on 3 March 2021.

STATEMENT OF THE REASONS FOR THE DECISION

Background

On 27 April 2018, London Borough of Havering (“the Council”) entered into a contract for a partner to form a long-term corporate joint venture (“JV”) property vehicle to secure investment and expertise to deliver Havering’s housing led regeneration strategy (“the Contract”).

Due to the quantum of development across the programme, the 12 individual sites have been grouped to create four works packages for development. Each work package has been bundled to produce a viable development package; with more profitable sites being used to cross-subsidise the cost of delivering otherwise unviable and undeliverable sites.

Forward Funding of Solar Serena and Sunrise

For the purposes of delivering a viable development package, the profits forecasted to be generated from the development of the Waterloo Estate were to be used to cross-subsidise the cost of the Solar Serena and Sunrise development.

Due to the splitting of work package one and effective removal of the cross-subsidy from Waterloo Estate, Solar Serena and Sunrise will require forward funding to enable its

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development. The Council is essentially providing a grant to the LLP to bring forward the development of the affordable housing on the scheme.

The forward funding agreement will be contracted in the form of a grant agreement between the Council and HWR Phase 1 Stage 2 LLP (the Stage 2 LLP) for the amount of £17.5 million. The Stage 2 LLP is a subsidiary LLP which has been set up pursuant to the JV Members Agreement to deliver the Solar, Serena and Sunrise development. The grant will be delivered in staged payments, certified by Ikon (the Council's Employers Agent) and can only be used to deliver the development as per the planning permission and London Design Guide and Specifications. The Stage 2 LLP will be required to monitor the development costs on a quarterly basis as part of the agreement.

More details of the Funding Agreement terms is provided in the summary of Exempt Appendix 2.

OTHER OPTIONS CONSIDERED AND REJECTED

Rejected – **Do nothing**. The Council may choose to not provide the forward funding for the Solar, Serena and Sunrise development. This would delay the delivery of 175 new homes for later living in the Borough. As all residents have been rehoused away from the site, the Council would also incur security costs of securing the sites. In addition, this would add to existing pressures to rehouse homeless households.

Rejected – **Provide less affordable housing**. In order to make the scheme financially viable, more open market sale properties would be required to generate the revenue to cover the cost to develop the site. This would result in fewer homes for affordable housing being provided on site.

PRE-DECISION CONSULTATION

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

Name: Martin Fahy

Designation: Financial Analyst (Regeneration Finance)

Signature:

Date: 28/04/2021

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The report seeks approval from the Director of Regeneration to enter into the forward funding agreement to facilitate the provision of up to £17.5 million of funding to progress the regeneration of the Solar, Serena and Sunrise Estate.

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The Council has entered into the joint venture LLP with Wates pursuant to a number of powers including the Housing Act 1985, the Housing and Regeneration Act 2008, the Local Government Act 1972 and the general power of competence in section 1 Localism Act 2011. The general power of competence will enable the Council to enter into the Funding Agreement with the Stage 2 LLP.

The Funding Agreement both passes through funding provided to the Council by the GLA and provides additional funding from Council resources. The Funding Agreement has been drafted so that it enforces the State Aid requirements imposed on the Council pursuant to the borough intervention agreement and requires the Stage 2 LLP to comply with the new subsidy control regime.

State aid rules prohibit State resources being used to provide selective financial support to third parties that could distort competition and affect trade between Member States. The Council will be receiving funding from the GLA under a borough intervention agreement for the reimbursement of eligible project costs. The provision of such funding is subject to the State aid rules but it will not breach the rules if the Council relies on the exemption for services of general economic interest (**SGEI**). These are services which can be identified as being of particular importance to the public, and which are generally delivered pursuant to public service obligations. Member States have discretion as to which services they classify as being SGEIs, but the SGEI Commission Decision (2012/21/EU) expressly includes the provision of social housing for disadvantaged citizens or socially less advantaged groups.

The Funding Agreement has been drafted to incorporate and enforce the requirements of the European Commission decision on services of General Economic Importance (2012/21) so the funding will be compliant with the state aid rules.

The Subsidy Control regime provides that subsidies to economic actors from state resources which may affect trade or investment in between the UK and the EU are caught, and there is a currently incomplete regime which is due to be amplified following a consultation launched 3 February 2021. The base rules in force at the moment incorporate a similar exemption to the EU rules for SGEI. These are now known as Services of Public Economic Interest (SPEI), but the exemption is less clear. The basic principle is that subsidies within the definition need to be considered by grantors as to whether or not they are consistent with 6 principles, although where compliance with those principles would obstruct the performance of the relevant service an SPEI is exempt.

As detailed in the report to Cabinet on 17 March 2021, these principles have been considered and the funding is consistent with these principles therefore the funding will fall within the Services of Public Economic Interest exemption.

Funding will be delivered in staged payments and the Stage 2 LLP will be required to monitor the development costs on a quarterly basis as part of the agreement. The Stage 2 LLP must use the Grant to deliver the Development only as per the Development Delivery Timetable, Planning Permission, the London Housing Design Guide and the Specifications

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The risks to the Council of forward funding were advised to the Cabinet in the report of 17^h February 2021. It is confirmed that the risk profile has not changed and therefore, the recommendations within this report are in accordance with the authority delegated to the Director of Regeneration by the Cabinet on 17 March 2021 and the budget allocated by Full Council on 3 March 2021.

A copy of the final form of the Funding Agreement and a summary of the Funding Agreement are attached at Exempt Appendix 1 and 2 respectively.

FINANCIAL IMPLICATIONS AND RISKS

This report seeks approval from the Director of Regeneration to enter into a funding agreement to facilitate the provision of up to £17.489 million of funding to progress the regeneration of the Solar, Serena and Sunrise development [SSS]. The funding would be made by way of a grant agreement between the Council and the Stage 2 LLP.

The grant funding forms part of the overall consideration to be provided by the Council to fund the development of SSS, £31.249 million. The remaining £13.760 million coming from the Council budget set aside to acquire the affordable housing on the 12 Estates £271.942 million approved by Full Council on 3 March 2021.

Embedded within the overall development cost budget for SSS, £60.125 million is a developer contingency of £0.916 million. Any amount unused at the completion of the development would be repaid to the Council via the Forward Funding agreement.

The grant funding along with the impact of the decoupling of the Phase 1 sites was incorporated into the HWR Business Plan, approved by Cabinet on 17 March 2021.

Financial Risks

The grant funding is necessary as the agreed consideration £13.760 million is insufficient to bring forward the development of the affordable housing. Without the release of the grant, it would not be possible to proceed with the development. This would have the impact of delaying the scheme, with costs continuing to accrue. In addition, this would delay the receipt of rents linked to the affordable housing which would have been delivered by the scheme and add to pressure on the demand for existing low-cost housing in the borough.

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

None.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

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The public sector equality duty under section 149 of the Equality Act 2010 (“PSED”) requires the Council when exercising its functions to have due regard to:

The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between those who have protected characteristics and those who do not. ‘

Protected characteristics’ include: gender, race and disability, sexual orientation, age, religion or belief, pregnancy and maternity and gender reassignment. The Council is committed to improving the quality of life for all, and supports wider social and economic growth through social and physical regeneration.

The wider implications associated with the project are addressed in the January 2018 Cabinet report - 12 HRA Sites JV Procurement – Entering into a Limited Liability Partnership. Consequently all matters associated as a result of entering this agreement are addressed.

BACKGROUND PAPERS

None.

APPENDICES

Appendix 1 – Funding Agreement (exempt)

Appendix 2 - Funding Agreement Summary Document (exempt)

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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: Neil Stubbings

CMT Member title: Director of Regeneration Programme Delivery

Date: 29.04.21

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 _____