

Notice of KEY Executive Decision containing exempt information.

This Executive Decision contains appendices which comprise exempt information which is 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:	Proposed Loans to Mercury Land Holdings Limited company number: 09878652 (the Company) for the development at Quarles Campus and development at Roneo Corner
Cabinet Member:	Cllr Damian White Leader of the Council
SLT Lead:	Neil Stubbings Director of Regeneration
Report Author and contact details:	Paul Walker Assistant Director - Regeneration 01708 434282 paul.walker@havering.gov.uk
Policy context:	The establishment of Mercury Land Holdings was agreed in May 2015. Its key objectives were to generate a financial return to the Council, contribute to the delivery of housing supply, ensure the right mix of housing for the borough and support the growth and regeneration needs of the Council.

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Financial summary:	Costs, funding and associated risks/issues are set out in the exempt financial implications and exempt MLH Business Cases.
Reason decision is Key	The decision involves: (a) Expenditure or saving (including anticipated income) of £500,000 or more, and (b) Significant effect on two or more Wards
Date notice given of intended decision:	July 2021
Relevant OSC:	Overview & Scrutiny Board Towns & Communities OSC
Is it an urgent decision?	Yes
Is this decision exempt from being called-in?	No

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

This report seeks the agreement of the Leader of the Council, in consultation with the Director of Legal and Governance and the s151 Officer, as delegated under the recommendations of the September 2019 Cabinet decision, to approve a state subsidy control compliant loan facility and provision of equity to Mercury Land Holdings Limited (the “Company”) to develop 120 units at Quarles Campus, Harold Hill and to acquire 48 units at Roneo Corner, Romford.

Subject to the appropriate due diligence, for such loans and injection of equity being carried out, to approve 20 units at Quarles Campus and 48 units at Roneo Corner for the Company’s PRS portfolio. The remaining 100 units at Quarles comprise 53 outright sale properties and 47 affordable units.

This report and exempt appendices detail the outcome of extensive negotiations on two sites, Roneo Corner, Romford and Quarles Campus, Harold Hill and recommends that the Company purchases the respective sites and associated developments and seeks approval of all necessary steps to complete the purchase, addressing any conditions at both.

Recommendations

For the reasons stated in this report and its exempt appendices, the Leader in consultation with the Director of Legal and Governance and the s151 Officer is recommended to agree the following recommendations in respect of the relevant sites:

Roneo Corner

1. Approve the Business Case for the Company, relating to Roneo Corner, provided at Exempt Appendix B.
2. Subject to Recommendation 1, approve the provision of a state subsidy control compliant loan and equity by the Council including approval to enter into the relevant loan facility agreements enabling the acquisition of 48 units by the Company to use as additional private-rented accommodation.
3. Approve a second charge on the development site in favour of Hollybrook Homes ahead of practical completion.

Quarles Campus

4. Approve the Business Case for the Company, relating to Quarles Campus, provided at Exempt Appendix C.
5. Note that the Council is required to dispose of the land at Quarles Campus (Title Numbers EGL381186 & EGL 442119) to the Company under the terms of a previously approved Option Agreement and in line with the independent Red Book valuation at Exempt Appendix H, including entering into the related agreements following service by the Company to exercise the Option.

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6. Approve the proposed development of land at Quarles Campus by MLH Limited via a contractual joint venture arrangement with a national house builder, Bellway Homes, comprising 120 residential units on the terms set out at Exempt Appendix I.
7. Subject to recommendations above, to approve the provision of a state subsidy control compliant loan and equity by the Council including approval to enter into the relevant PRS and Sale loan facility agreements, to develop 120 units for sale, of which the Company will acquire 20 units for use as additional private-rented accommodation.
8. That the Director of Regeneration, acting in consultation with the Director of Legal and Governance and the Section 151 Officer, be authorised to extend the existing Options Agreement between the Council and the Company for a period of up to 3 months from the 30th September 2021.
9. That the Director of Regeneration, acting in consultation with the Director of Legal and Governance and the Section 151 Officer, be authorised to enter into all necessary legal agreements to bring into effect the proposed arrangements in these Recommendations for both sites.

AUTHORITY UNDER WHICH DECISION IS MADE

The decisions relating to Roneo Corner are made by The Leader of The Council under part 2 of the Council's Constitution.

The decisions under Quarles Campus are made by The Leader of the Council under the delegations approved by Cabinet in November 2019 where it was decided to:

1. **Approve** the Mercury Land Holdings Limited Business Plan 2020/21
2. **Agree** to delegate authority to the Leader of the Council, after consultation with the s151 Officer, the Director of Regeneration Programme Delivery and the Director of Legal and Governance, to approve the detailed business cases, related viability assessments and funding requirement for the individual schemes noted within the Business Plan as they may be presented during the business plan period in order to enable them to proceed.
3. **Agree** in principle to provide additional gross investment of £92.6m capital funding to MLH up to a maximum of £228 million (effective from 2020/21) in respect of projects contained in Exempt Agenda through a combination of equity investment and state aid compliant loans subject to detailed approved business cases made under delegated authority in recommendation 2 above.
4. **Agree** to delegate authority to the S151 Officer to agree, after consultation with the Director of Legal and Governance, the completion of all relevant agreements and appointments of relevant professionals relating to the provision of debt finance by the Council to MLH.

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5. **Agree** to delegate to the S151 Officer, following consultation with the Director of Asset Management, and the Director of Legal and Governance, the authority to determine the principles and processes by which any assets shall be disposed of and the terms of disposal to MLH.

STATEMENT OF THE REASONS FOR THE DECISION

This report arises from the outcome of extensive negotiations on two sites:

Roneo Corner, Romford

Mercury Land Holdings Limited (MLH), the wholly owned subsidiary of the Council has successfully agreed terms for an “off plan” purchase from the freehold development at Roneo Corner from Hollybrook Homes, comprising 48 flatted units. These units would be added to the Private Rented Sector (PRS) portfolio of MLH and thus provide a revenue benefit to the Council.

This development comprises:

- 8 x 1 bed 2 person flats
- 40 x 2 bed 3 person flats.

A Plan showing the location of the properties to be acquired by MLH is shown at exempt Appendix F.

Quarles Campus, Harold Hill

Working with an established national house builder, Bellway Homes, it is proposed that MLH will, in a contractual joint venture, develop 120 homes at Quarles Campus, Harold Hill (Heads of Terms provided at Exempt Appendix I).

From the development of 120 units MLH will subsequently acquire from the proposed Joint Venture, 20 units for its PRS portfolio. The Company would seek to sell the affordable units to a registered social landlord or there is scope for the London Borough of Havering to consider acquiring the affordable provision of 47 units generated on the site, subject to negotiation and additional approvals being obtained. These affordable units which include a large number of 3-bed houses would assist with the identified need in the borough for family homes.

The development breakdown here comprises the following:

Private

- 53 houses

Affordable

- 19 houses

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- 28 flats

PRS

- 6 houses
- 14 flats

The units provided by bedroom size are as detailed below:

Private

- 44 x 3 bed houses
- 9 x 2 bed houses

Affordable

- 8 x 1 bed flat
- 20 x 2 bed flat
- 18 x 3 bed houses
- 1 x 2 bed house

PRS

- 4 x 1 bed flats
- 10 x 2 bed flats
- 6 x 2 bed houses

A Plan showing the properties to be acquired by MLH is shown at exempt Appendix G.

The site will be acquired by the Company from the London Borough of Havering (Valuation provided at Exempt Appendix H).

The parties jointly instructed a Red Book valuation which was undertaken by an independent RICS valuer in accordance with the RICS Global valuation standards. The valuation at exempt Appendix H certified the market value of the Property which was agreed by both parties. The Council's Head of Property has confirmed that the market value represents the best consideration reasonably obtainable by the Council in compliance with s233 of the Town and Country Planning Act 1990.

OTHER OPTIONS CONSIDERED AND REJECTED

MLH needs to increase the size of its portfolio to improve its long term viability. This will in turn increase financial returns to the Council. Given this, the option of not proceeding with the purchases and proposed development was **rejected**.

Development by MLH Limited on its own at Quarles was **rejected** due to the efficiencies in project management, construction and sales expertise offered by the proposed Joint Venture Partnership with Bellway.

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Allowing the Quarles scheme to be purchased by a third party, or individuals, was **rejected** as it would not accord with the terms of a previously agreed Option Agreement between the Council and MLH Limited.

PRE-DECISION CONSULTATION

None

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

Name: Paul Walker

Designation: Interim Assistant Director - Regeneration

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

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 exercise its powers under Section 24 LGA 88 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 which provides local authorities with the power to do anything that 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 88 together with Section 1 Localism Act 2011. The Council could rely on these powers to provide the company with loans and other support such as providing staff and the use of premises. Any support provided must be state subsidy control compliant and will be the subject of agreements between the Council and MLH.

State Subsidy Control

The Trade and Cooperation Agreement between the European Union and the UK (TCA) sets out the parameters for giving financial assistance or offering guarantees to 'economic actors' from public resources being generally prohibited if it is selective, confers an economic advantage and has or could have an effect on trade or investment between the UK and EU. TCA therefore requires the United Kingdom to adopt a subsidy control system in order to prevent grantors, that is governments and public bodies, from providing harmful subsidies to businesses.

It is important that any loans/credit/guarantee or other support provided to MLH are UK subsidy control compliant. Loans/credit/guarantees which the Council generally makes available to MLH for market housing must be made on commercial terms and at a

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commercial interest rate or where the Council is acting like any usual 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 including taking usual securities over land/assets under usual market conditions.

Disposal of Land and Related Arrangements

The Council and MLH Limited previously entered into an Option Agreement which provided for MLH to acquire land at Quarles Campus subject to specified conditions; amongst other things this provides the Council with a minimum disposal price and requires that the final option price be set via an independent Red Book valuation. This agreement was completed in November 2019. The notice for the ascertaining the purchase price was served by MLH on the Council under the Options Agreement and this report confirms that the price has been determined in accordance with the terms of the agreement by an independent valuer. The land is held by the Council for planning purposes and therefore disposal of the property is under Section 233 of the Town and Country Planning Act 1990 (TCPA1990). Section 233 requires that where land has been acquired by a local authority for planning purposes and is held by them for those purposes then the local authority may dispose of the land subject to such conditions as appear expedient in order to secure the best use of that land and any buildings/works to be constructed or carried out on it as needed for the proper planning of the authority's area.

As the property is being disposed of with the benefit of the planning permission these requirements have been satisfied.

This Report also confirms that the price has been set by reference to an independent Red Book valuation and that the disposal is for the best consideration reasonably obtainable in compliance with section 233 of the 1990 Act. The Council therefore has the power to dispose of the Quarles Campus on the terms set out in the Option Agreement. Upon service of the option notice by MLH on the Council in accordance with the Option Agreement, the Council is required to sell the land at the disposal price as determined by the independent valuer.

The prudent extension of time sought in the recommendations is to enable the transactions to proceed should the existing time limit of 30th September 2021 on the Options Agreement be reached.

The future potential acquisition of affordable units is deemed to fall outside of the Public Contract Regulations 2015 (as amended) as per Regulation 10 and subject to the Council taking relevant decisions.

Fiduciary Duties

The Council's fiduciary duties could be briefly summarised as it 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 decisions concerning MLH, the Council considers whether making investment and/or extending loans to that body (and similar activities) should give proper

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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 the Company were to become insolvent and/or defaulted on its loan(s).

Consideration should also be given to whether the Council's involvement in this arrangement is proportionate and properly balanced against the anticipated benefit as well as the wider interest of its local business rate and council tax payers. On a practical basis this means that Members should consider whether the monies that they are requested to approve for 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 the Company 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 included in the exempt appendices to this report and in particular in Exempt Appendix A.

A number of risks have been considered in the evaluation of the business cases relating to the proposed funding of the development proposals at Roneo Corner and Quarles Campus. These include looking at the PWLB borrowing rates and on-lending; assessment of development risk; letting and management risks; public subsidy control and transfer pricing. These risks can be appropriately managed across both schemes.

Exempt Appendices B & C comprise the MLH Business Cases for Roneo Corner and Quarles Campus. Exempt Appendices D and E provide the Council's Commercial Review for Quarles Campus and Roneo Corner.

In summary, this information demonstrates that it would be appropriate for the Council to provide the loan support requested by MLH provided that it is regulated by Loan Facility Agreements between the Council and MLH. The funding requested by MLH, as set out in the exempt appendices, should not therefore be advanced unless and until such an agreement(s) has been legally completed.

The decision will, amongst other things, require the utilisation of Council Officers to assist in the development of the Loan Facility Agreement(s), the release of funds to Mercury Land Holding and the associated on-going financial monitoring.

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

There are no direct implications arising from the proposed provision of funding to MLH.

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 provision of funding to MLH there would appear to be no risks or implications associated with the Council's statutory duty.

Beyond the narrow decision itself, the new homes to be acquired will all conform to the appropriate Building Regulations, including those for access, and with planning requirements.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

There are no direct implications arising from the proposed provision of funding to MLH.

Indirectly, the proposed provision of funding will have a positive impact by enabling new housing to be produced which will help to address the overall need for new housing in Havering as set out in the Council's Published Local Plan. Some of this will be affordable housing as set out in this report.

All new housing will be built having regard to extant planning policy and building control standards. Amongst other things, flood prevention and mitigation measures have been considered, as appropriate, through the planning application process. The new homes will be warm, well-ventilated and conform to appropriate space standards, all of which will help to support individual health and well-being.

The provision of new homes generally can help to support the local economy by providing homes near to employment areas as well as supporting the economy through the operation of the construction sector and associated supply chain.

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BACKGROUND PAPERS

Exempt Information: Option Agreement in relation to Quarles Campus. November 2019.

APPENDICIES

Appendix A	Financial Implications and Risks	Exempt
Appendix B	MLH Business Case – Roneo Corner	Exempt
Appendix C	MLH Business Case – Quarles Campus	Exempt
Appendix D	Quarles Commercial Review	Exempt
Appendix E	Roneo Corner Commercial Review	Exempt
Appendix F	Plan of Units to be acquired by MLH at Roneo Corner	Exempt
Appendix G	Plan of Units to be acquired by MLH at Quarles	Exempt
Appendix H	Red Book valuation of Quarles	Exempt
Appendix I	Joint Venture Heads of Terms MLH and Bellway	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

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed 

Name: Councillor Damian White

Cabinet Portfolio held: Leader of the Council

CMT Member title:

Head of Service title

Other manager title:

Date: 4th October 2021.

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 _____