



# Havering

LONDON BOROUGH

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## CABINET

**Subject Heading:**

**Cabinet Member:**

**SLT Lead:**

**Report Author and contact details:**

## PUBLIC AGENDA

19<sup>th</sup> July 2023

**Mercury Land Holdings (MLH)  
Business Plan and Budget Update  
2023-2026.**

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**Policy context:** London Plan 2021  
National Planning Policy Framework 2021  
Havering Housing Strategy 2014-2017  
Havering Local Plan 2016-2031  
Havering Climate Change Action Plan 2021  
Asset Disposal Programme 2022-2028  
Medium Term Financial Strategy  
MLH Business Plan 2019.

**Financial summary:** This report seeks Cabinet approval to the Business Plan proposed by Mercury Land Holding Limited (MLH) for the period 2023 to 2026, including an updated funding request; this will be considered by the Council as part of the budget setting process.

**Is this a Key Decision?** Yes - Significant effect on two or more Wards, Expenditure or saving of £500,000 or more.

**When should this matter be reviewed?** Autumn 2024.

**Reviewing OSC:** Places Overview & Scrutiny Committee.

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

People:	Things that matter to residents	x
Place:	A great place to live work and enjoy	x
Resources:	A well run Council that delivers for People and Place	x

**SUMMARY**

Cabinet should note that the proposed MLH Business Plan 2023-2026 will, if approved, only provide a revised funding envelope within which MLH can work. This is because every individual proposal for scheme funding must be supported by the production of a satisfactory business case, which is then subject to further examination and additional governance, at the appropriate time, before the Council can place MLH in funds. This, in turn, is regulated by legally binding funding agreements between the Council as lender and MLH as borrower. No scheme funding is advanced by the Council until these agreements have been legally completed.

For those not familiar with MLH, and why it was formed, Cabinet resolved to establish a commercially focused company that would deliver housing for private rent and sale in May 2015. Mercury Land Holdings Limited (MLH) was subsequently incorporated in November 2015. MLH is wholly owned by the Council. Since its formation, MLH has established and manages a portfolio of private rented sector (PRS) homes.

This report seeks Cabinet approval for the MLH Business Plan 2023-2026 and its associated financial commitments. The Business Plan looks to reallocate existing funding, which was previously provided by the Council, to projects set out in the Exempt Report & Appendices. It also seeks some additional funding. This would be needed in later years to enable the MLH Business Plan 2023-2026 to be fully delivered. Should this report be approved, then this request for additional funding would need to be considered through the Council's normal budget setting process for 2024/25.

The MLH Business Plan 2023-2026 seeks to reaffirm MLH's commitment to significant schemes that are critical for the long term success of the company such as Como Street, but also to new schemes which would deliver additional PRS and sale opportunities that would enable the continued growth of the company.

It is proposed, as has always been the case, that the Council will dispose of assets (land/buildings) to MLH at market value and that the Council will provide finance to MLH through a combination of equity investment and loans. This will constitute capital expenditure for the Council within its approved Capital Programme, to be financed through Council reserves and/or borrowing. The overall financing arrangements will be subject to an assessment of Subsidy Control (State Aid), long term affordability, risk and return on investment by the Council.

The reallocated funds have been modelled and their impact on the Medium Term Financial Strategy (MTFS) is addressed in the exempt part of this report. This seeks to inform Cabinet of the expected outputs from MLH, as well as advising of any changes in the financial position of MLH and the Council's financial commitments to MLH as an investor.

**RECOMMENDATIONS**

For the reasons set out in this report and its exempt appendices Cabinet:

1. **Approves** the Mercury Land Holdings Limited Business Plan 2023 to 2026 (see Exempt Appendix 3).
2. **Agrees** to delegate authority to the Cabinet Member for Development & Regeneration, in consultation with the S151 Officer, the Strategic Director of Place and the Deputy Director of Legal and Governance, to approve the detailed business cases, related viability assessments and funding requirements for the individual schemes noted within the Business Plan as they may be presented during the business plan period, including the authority to enter into all relevant agreements to give effect to the schemes.
3. **Agrees** that the previously allocated funding in the November 2019 Business Plan to MLH, up to a maximum of £228.4 million, is reallocated to updated projects in the Exempt Agenda, through a combination of equity investment and Subsidy Control compliant loans. Note that the individual schemes are subject to detailed business cases to be approved under delegated authority, as set out in Recommendation 2.
4. **Authorises** additional capital funding of £42.7million for Mercury Land Holdings Limited, via the 2024/25 budget cycle, in order to fully fund the MLH Business Plan.
5. **Agrees** to delegate to the S151 Officer, in consultation with the Director of Asset Management, and the Deputy 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.
6. **Agrees** to increase the MLH Working Capital Facility by £2m and to extend the term for a period of up to 5 years, as appropriate, commencing January 2024, and to delegate authority to the S151 Officer, in consultation with the Strategic Director Place and the Deputy Director of Legal & Governance to enter into the relevant agreements to give effect to this decision.
7. **Agrees** that the Cabinet Member for Development & Regeneration will replace the Leader at MLH shareholder meetings, including the MLH AGM, as appropriate.

**REPORT DETAIL**

**1. Background**

- 1.1** In May 2015, Cabinet resolved to establish a commercially focused company that would deliver housing for private rent and sale. Mercury Land Holdings (MLH) was duly incorporated in November 2015. MLH is wholly owned by the Council. Since that time, MLH has established and manages a portfolio of private sector rented homes.
- 1.2** The Council's main objectives for entering into the private sector housing market are to:
- Contribute to, and where possible accelerate the provision of housing supply in the borough, noting the potential adverse effect that an absence of sufficient housing may have on the economic and social well-being of residents and the local economy;
  - Ensure a mix of housing, in terms of type, size and tenure, best matched to the needs of Havering;
  - Support the Council's regeneration and growth aims, bringing forward high quality development on regeneration sites in key parts of the borough, notably though not limited to, Rainham along the A1306, and Romford Town Centre; and
  - Generate an acceptable financial return to the Council by operating a business.

**Strategic Context**

- 1.3** One of the most significant changes in the UK housing market in the past decade or so has been the rise of the private rented sector.
- 1.4** It is widely considered that the relative immaturity of the Private Rented Sector (PRS) offers institutions and larger organisations such as local authorities an opportunity to shape the sector, and the Government is encouraging this activity.
- 1.5** It is becoming increasingly difficult for Havering residents to afford homes. Living in a good standard of home, that is affordable and well maintained is a key determinant of good health and wellbeing. A quality rented sector targeting Havering residents would meet the Government's criteria. Likewise, affordability, coupled with improved connectivity through Crossrail, will undoubtedly make towns such as Romford more attractive for tenants who are being priced out of more central London boroughs and increasingly some mid- zone locations.
- 1.6** There is an opportunity for the Council to take advantage of this anticipated tenant growth and deliver good quality, well located and well managed PRS developments that will deliver a financial return to the Borough, as well as assisting in meeting its regeneration objectives.

- 1.7 Havering, like most local authorities, needs to make significant savings and generate additional income in order to meet the challenges presented by reductions in government funding and demographic growth pressures on expenditure in statutory services, to balance its General Fund budget over the medium term.
- 1.8 Given this, the Council is seeking to make a broader use of its asset base to generate long term revenue income streams. Traditionally, the Council has sold land to housing providers and developers in order to obtain capital receipts, to provide both market and affordable housing and to meet borough wide housing targets. Whilst this approach may still be used by the Council, the involvement of MLH allows the Council to invest capital resources to generate income streams and to deliver on other Council priorities such as regeneration and the provision of good quality housing. As the Council owns the Company, any assets sold to MLH ultimately remain in the ownership of the London Borough of Havering, thus providing a long-term asset base for future generations.

## **2. OPERATION OF MERCURY LAND HOLDINGS**

- 2.1 The Company will continue to develop or acquire from the market, a portfolio of homes for market rent and sale.
- 2.2 The Company will own the market rental units, and will market and manage the rental of those homes.
- 2.3 Units owned by the Company will be let on Assured Short-hold Tenancies and will not be subject to Right to Buy, or to the allocations provisions of Part VI of the Housing Act 1996.
- 2.4 Any provision of affordable housing units resulting from MLH development activity will be transferred to an appropriate housing partner, which may include the Council as a Registered Provider, but is not limited to the Council.

### **Resourcing**

- 2.5 MLH has sufficient capacity to deliver its business plan. As the company grows and its portfolio expands, its level of resourcing will be reviewed to ensure that it operates as an efficient and sustainable business.

## **3. GOVERNANCE**

### **Council as Shareholder in MLH**

- 3.1 The Cabinet acts as the shareholder, agreeing MLH's business plan.
- 3.2 In line with the recommendations in this report, the Council's rights as shareholder will continue to be exercised by the Council. Ensuring that there is a

robust and up to date Business Plan protects the Council's interests as owner of the company. This will be managed through the Council's corporate governance structure.

- 3.3** The Council sends two shareholder representatives to MLH Shareholder meetings. It is now proposed that the Cabinet Member for Development & Regeneration replaces the Leader, as one of the Council's two representatives.

### **MLH Director Roles**

- 3.4** The Company Board is only made up of Directors with specialist knowledge of the sector. MLH will continue to grow, but until MLH achieves critical mass, the Council will continue to support MLH's board through the involvement of the Council's Chief Executive as a member of the MLH Board. The Company will also continue to be supported by an external, unconnected person who has relevant experience in the house building sector as a Non-Executive Director with voting rights alongside the other MLH Directors. It is noted that all Directors must, amongst other duties, act in good faith and promote the success of the company for the benefit of the Council as its Shareholder. MLH Directors are required to declare if they have any conflicts of interest at each and every MLH Board meeting.

- 3.5** The Directors have ultimate responsibility for directing the activities of MLH, ensuring that it is well run and delivering the outcomes for which it has been established. Directors' responsibilities include the following:

- Delivering the Council approved MLH business plan;
- Setting budgets, policies, plans and monitoring performance of MLH, and setting a framework for internal controls;
- Ensuring compliance with MLH's objectives, purposes and values
- Ensuring the financial strength, solvency and good performance of the company;
- Ensuring MLH complies with all relevant legislation and regulations, as well as the requirements and policies of the Council, where appropriate;
- Dealing with the appointment and appraisal of staff;
- Procuring services necessary for the execution of MLH's objectives.

### **The Council as Funder**

- 3.6** The Council will continue to act as a bank credit committee, whose primary task will be to assess MLH's viability (as an entity) and the viability of each project, which loan funding and equity will be used and, using this analysis, to determine whether to release loan funding to MLH on appropriate business case(s).
- 3.7** The Council will regularly monitor and analyse financial information generated by MLH during the lifetime of each loan to ensure that MLH is not in breach of key financial requirements (which are stipulated as funding conditions in each loan).

**3.8** The key areas which the funder role will want satisfied prior to providing funding for a development are:

- That the financial metrics demonstrate that the loan will be repaid;
- There is confidence that the projected rental stream can be maintained and that any sales projections are realistic;
- That base level sensitivities (which will trigger warning signals) for MLH's general performance and each proposed development are properly set and that a sufficient margin is added to the base level to provide reassurance to the funder role. (This will form part of the company's obligations under each loan); and
- That evidence is provided that the terms of financing for each project (loan and equity funding), is Subsidy Control (State Aid) compliant. This advice will be acquired from an expert third party where appropriate.

## REASONS AND OPTIONS

**4. Reasons for the decision:**

**4.1** The MLH Business Plan for 2023-2026 provides the Council with the required overview of MLH and its future investment plans. It also provides an appropriate framework within which MLH must operate. The approval of the MLH Business Plan 2023-2026 would enable the company to continue to grow and to meet the objectives set out in Paragraph 1.2 above, and thus contribute to the financial objectives of the Council.

**5. Other options considered:**

**5.1** A review of the alternative option of 'do nothing' is not feasible as it would not fulfil the objective of growing the company or meeting the objectives that it was set up to achieve.

## IMPLICATIONS AND RISKS

**6. Financial implications and risks**

**6.1** The approved business plan forms part of the Council's capital programme and the capital financing implications of this plan are considered as part of the corporate monitoring, MTFs and annual budget setting process.

**6.2** The key variances between the 2020/21 and 2023/24 MLH Business Plan are included in Appendix 2. These are summarised in paragraphs 6.3 & 6.4 below.

**6.3** The 2020/21 Cabinet Report sought a funding commitment of £228.4m including the £20m reactive acquisition fund. The 2023/24 Cabinet report requests the



previously agreed funding commitment be reallocated to different projects which better reflect the prevailing market, along with an uplift of £42.7 million. The requested uplift will be considered as part of the 2024/25 budget setting process.

- 6.4** The previous 2020/21 Business Plan, and those preceding it, have sought to outline the Company's objective of achieving 400 PRS units in its portfolio which will allow it to meet its fixed overheads. This has proved difficult in the medium term as the supply of LBH sites has been constrained due to political and market conditions and changes. This is still however the long-term objective of the Company and the latest MLH Business Plan makes provision to help achieve this objective.
- 6.5** The Council has previously provided MLH with an appropriate working capital facility, which assists with the development work being undertaken by the company. This will need to be uplifted due to the additional work being undertaken by MLH in relation to potential Council disposal sites. In addition the facility will need to be renewed before it reaches the end of its current term.
- 6.6** Please see the Exempt Agenda Report for further information.

**7. Legal implications and risks:**

**General**

- 7.1** The legal implications contained herein relate to the range of projects cited in the MLH Business Plan and generally to the Council in delivering through its wholly owned company. Members established MLH, a company limited by shares and wholly owned by the Council subject to Part V Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995. The company's business is the provision of homes for market rent and for sale, and if required through compliance with planning obligations, the construction of affordable homes. Agreement in principle is sought to provide funding to MLH in the form of either equity or loans, and other support and to dispose of Council land to it. Delegations are sought to enable such decisions and finalise the various documents that will be required to facilitate the above, as detailed in the recommendations to this report.
- 7.2** S1 Localism Act 2011 provides the Council with General Power of Competence, to do anything an individual may do subject to statutory limitations. The Council may exercise this power for its own purpose, for a commercial purpose and/or for the benefit of others. Operating a business to let homes at market sale or rent with the intention of making profits is considered a commercial purpose and the Council, in compliance with s4 Localism Act 2011 undertakes that activity through its Company, MLH.
- 7.3** S4 Localism Act 2011 prohibits the Council from engaging in activities for a commercial purpose if legislation requires the Council to fulfil those functions under statutory duties.

## **Finance**

- 7.4** S24 Local Government Act 1988 provides the Council with the power to provide a wide range of financial assistance to MLH including making a grant or loan to it and as MLH is a body corporate the Council may under Section 24 (2)(d) acquire share or loan capital in it.
- 7.5** S111 Local Government Act 1972, provides Councils 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 S1 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 subsidy control compliant (see below) and will be the subject of agreements between the Council and MLH.
- 7.6** If the Council intends to borrow to lend to MLH, Reg 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"

## **Land disposal and financial assistance**

- 7.7** S32 Housing Act 1985 requires the Council to obtain the Secretary of State's (SoS) consent for the disposal of land held under the Council's HRA. The SoS has issued the General Housing Consents 2013 (the General Housing Consents) which set out circumstances in which the SoS pre-approves/pre-consents to a local authority disposing of HRA land and property. Consent A 3.2 of the General Housing Consents permits the Council to dispose of vacant land. Members should note that vacant land means land where there are no dwellings and/or where any dwellings are no longer capable of human habitation and are due to be demolished.
- 7.8** The Council is entitled to dispose of land held by its General Fund (including buildings) to a third party provided it complies with s123 Local Government Act 1972. This requires it to obtain a consideration which is not less than the best it could reasonably obtain. If the Council disposes of a property at an "under-value" it does require the consent of the SoS (except for limited circumstances such as short term leases).
- 7.9** If the Council was able to sell at an under-value (and remain Subsidy Control compliant) the Council may be able to rely on Circular 06/03 (the Local

Government Act 1972 – disposal of land for less than best consideration) which sets out circumstances in which the SoS pre-approves/pre-consents to the disposal of General Fund land at an under-value. If this consent is to apply then the “under-value” (in relation to a disposal) must not exceed £2m and the Council’s purpose in making such a disposal must be to contribute to the economic social or environmental well-being of the authority’s area and/or its residents.

- 7.10** The finance which Members are requested to approve in principle (whether on commercial terms or otherwise) constitutes 'financial assistance' under the terms of s24 Local Government Act 1988 which permits the Council to provide financial assistance to any other person for the provision of "privately let accommodation". If the Council exercises its powers under this section then under s25 it must obtain the consent of the SoS to do so. The SoS has set out pre-approved consents in the "General Consents 2010" (July 2011 updated in 2014). If the circumstances of financial assistance meet one of the criteria in the General Consents then the SoS consent is given.
- 7.11** S24 Local Government Act 1988 provides the Council with the power to provide a wide range of financial assistance to MLH including making a grant or loan to it and as MLH is a body corporate the Council may under Section 24 (2)(d) acquire share or loan capital in it. The current version of the General Consents 2011 contains Consent C. Under this consent the Council could provide financial assistance to any person.
- 7.12** When exercising its powers, the Council must, as with any other power, have regard to its own procedural rules, the Wednesbury principles of reasonableness and its fiduciary duties. It must also ensure that its powers are used for the proper purpose.

### **Fiduciary Duties**

- 7.13** 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 Council-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.
- 7.14** 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).
- 7.15** 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 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.

**Subsidy Control (State Aid)**

**7.16** The Council is required to provide funding and ensure it operates in accordance with the Subsidy Control Act 2022.

**7.17** It is important that any loans/credit or other support provided to MLH are state subsidy compliant. Loans/credit which the Council generally makes available to MLH must be made on commercial terms and at a commercial interest rate. 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.

**8. Human Resources implications and risks:**

**8.1** There are no HR implications arising for the Council relating to the recommendations in this report.

**9. Equalities implications and risks:**

**9.1** 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.

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

**9.2** An Equality Impact Assessment was undertaken on the establishment of the private sector focussed Council owned Housing Company, the results of which led the Council to believe its operation will have a positive impact on local residents, businesses and staff.

**9.3** As the Company was established by the Council, its development had to be compliant with the Public Sector Equality Duty (PSED) in the Equality Act 2010 (EA10).

**9.4** There are no adverse equalities implications directly arising from the updated MLH Business Plan. Equalities issues will need to be considered, as appropriate,

on a scheme by scheme basis, when individual development projects are being formulated as part of the design and planning process.

**10. Health and Wellbeing implications and risks:**

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

**10.2** 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 Adopted Local Plan.

**10.3** 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.

**10.4** 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.

**11. Environmental & Climate Change Implications:**

**11.1** There are no adverse environmental and climate change implications directly arising from this report, which concerns the updated MLH Business Plan.

**11.2** That said, the development of the schemes identified in the Business Plan will need to address all planning and building control requirements, which amongst other things, will include consideration of climate change, energy efficiency, means of ventilation, flood risk and building safety.

**BACKGROUND PAPERS**

Mercury Land Holdings, Report to Audit Committee, 24<sup>th</sup> January 2023 & 23<sup>rd</sup> February 2023.

**EXEMPT APPENDICIES**

**Exempt Appendix 1: Exempt Part of this Cabinet Report.**

**Exempt Appendix 2: Commercial Review of Proposed MLH Schemes.**

**Exempt Appendix 3: MLH Business Plan 2023-2026.**