



## OVERVIEW AND SCRUTINY BOARD

This Report is part exempt and Appendix A is not available for public inspection as it contains or relates to exempt information within the meaning of paragraph 1 of Schedule 12A to the Local Government Act 1972. It is exempt because it refers to information relating to the financial or business affairs of another party, 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 No: 09878652), for development at Former St Bernard's Day Centre, Peel Way.

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**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.

### SUMMARY

The report seeks to address the points raised within the call-in of the Key Executive Decision relating to Proposed Loans to Mercury Land Holdings, published on 19th October 2023.

The call-in requisition states as follows:

*We would like more information on the financial viability of the scheme, MLH's ability to complete and sell the units, and more information on the financial impact to Havering Council for issuing the loan, including any new borrowing.*

*Additionally, the decision refers to the possibility of the price of purchase increasing if amends are made during the planning procedure, we would like further information on whether the proposed loan would meet any increase in cost.*

## RECOMMENDATIONS

Members are asked to confirm their observations to the Lead Member for Development and Regeneration, as the Decision Maker for the Key Executive Decision

## REPORT DETAIL

### 1 Background

1.1 A Key Executive Decision was published on 19th October 2023, recommending the advance of loan funding to Mercury Land Holdings Ltd, for the purchase and subsequent development of the former St Bernards Day Centre, Peel Way, Harold Wood. The Executive Decision was accompanied by a number of exempt appendices containing commercially sensitive information.

1.2 On 2<sup>nd</sup> November, in accordance with the Council's Constitution, notification of a valid call-in relating to the Executive Decision was confirmed. This paper seeks to provide clarification regarding the specific points raised within the call-in below. Where information was originally set out within the exempt appendices, this is again provided within an exempt section of this report, which is not for publication

### 2. Matters raised within the call in

#### ***2.1 More information on the financial viability of the scheme***

Details of the viability assessment are set out within the exempt Appendix to this paper.

#### ***2.2 MLH's ability to complete and sell the units***

MLH will tender the construction contract and the viability assessment will be reviewed again prior to making the tender award to identify any variance with current construction cost estimates.

An agent will be appointed by MLH to conduct marketing and sales – sales costs are included within 'developer costs' within the viability assessment.

As confirmed at para. 4.19 of exempt Appendix A to the Key Executive Decision, all 9 properties will be sold by MLH on the open market. Sales values will be

finalised at the point of sale. The current forecast is included in the exempt part of this report, which form part of the Decision.

***2.3 More information on the financial impact to Havering Council for issuing the loan, including any new borrowing.***

Details are set out within the exempt Appendix to this paper, which forms part of the Decision

***2.4 Additionally, the decision refers to the possibility of the price of purchase increasing if amends are made during the planning procedure, we would like further information on whether the proposed loan would meet any increase in cost.***

Whilst the planning application at Peel Way has yet to be determined, the nature and scale of development was the subject of pre-app discussion with planning officers and no substantial amendment is anticipated.

In the event of the planning decision presenting any material change to unit numbers or design, the scheme viability would be re-appraised prior to agreeing the loan to MLH

**IMPLICATIONS AND RISKS**

**Financial implications and risks:**

A number of risks have been considered in the evaluation of the business case relating to the proposed funding of the development proposals at Peel Way. These include looking at the PWLB borrowing rates and on-lending; assessment of development risk; public subsidy control and transfer pricing. These risks can be appropriately managed across the scheme.

Exempt Appendix A comprises the MLH Business Case for Peel Way. Exempt Appendix B provides the Council's Commercial Review of the MLH development proposals.

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.

## **Legal implications and risks:**

### **Finance Arrangements**

In relation to entering into the financial arrangements the Council may 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. The Council could rely on these powers to provide the company with loans.

### **Public Subsidy Control**

It is important that any loans provided to MLH are UK subsidy control compliant under section 2 Subsidy Control Act 2022. Loans which the Council generally makes available to MLH for market housing must be made on commercial terms and at a commercial interest rate or where the Council is acting like any usual market investor. It may 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.

### **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 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.

### **Human Resources implications and risks:**

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

### **Equalities 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 socioeconomics 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 to be acquired will all conform to the appropriate Building Regulations, including those for access, and with planning requirements.

### **Environmental and Climate Change implications and risks:**

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

The proposed new housing will be built having regard to extant planning policy and building control standards. Amongst other things, flood prevention and mitigation measures will be considered, as appropriate, through the planning application process. The new homes will be warm, well-ventilated and energy efficient.

## BACKGROUND PAPERS

**Key Executive Decision:** Proposed Loans to Mercury Land Holdings Limited (Company No: 09878652), for development at Former St Bernard's Day Centre, Peel Way. Issued 19th October 2023

<b>Exempt Appendix A</b>	Business Case - Financial Implications & Risks
<b>Exempt Appendix B</b>	Council Commercial Review
<b>Exempt Appendix C</b>	Heads of Terms
<b>Public Appendix D</b>	Site Location Plan
<b>Exempt Appendix E</b>	Draft Design & Access Statement
<b>Exempt Appendix F</b>	External Valuation Report
<b>Exempt Appendix G</b>	

**Mercury Land Holdings – Update to Business Plan 2023** presented to Cabinet – 19<sup>th</sup> July 2023.