

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.

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| Subject Heading: | Proposed Loans to Mercury Land Holdings Limited (Company No: 09878652), for development at Former St Bernard’s Day Centre, Peel Way. |
| Cabinet Member: | Councillor Graham Williamson Cabinet Member for Development & Regeneration. |
| SLT Lead: | Neil Stubbings Strategic Director of Place. |
| Report Author and contact details: | <p>Mark Butler Assistant Director – Regeneration & Place Shaping 01708 432947 Mark.Butler@havering.gov.uk</p> <p>Martin Fahy Financial Manager 01708 434651 martin.fahy@havering.gov.uk</p> <p>Kirsty Moller Head of Programmes & Support 01708 434707 kirsty.moller@havering.gov.uk</p> |

Key Executive Decision – Part Exempt Report

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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. |
| 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: Expenditure or saving (including anticipated income) of £500,000 or more. |
| Date notice given of intended decision: | 9 th June 2023. |
| Relevant OSC: | Places Overview & Scrutiny Committee. |
| Is it an urgent decision? | No |
| Is this decision exempt from being called-in? | No. |

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

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

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval to make a public subsidy control (State Aid) compliant loan facility and provision of equity to Mercury Land Holdings Limited (the “Company”) to acquire land at Peel Way, Harold Wood and develop 9 units for private sale.

Subject to appropriate due diligence on the provision of loans and injection of equity, it is requested that the Council agree to the provision of funding being made available to the Company for the purposes of site acquisition and development of 9 residential units at the former St Bernard’s Day Centre, Peel Way, Harold Wood (See Plan at Public Appendix D).

The proposed acquisition and development of this site is contained in the Business Plan for the Company (2023-2026) that was approved by Cabinet in July 2023. It is now brought forward in view of the need to place MLH in funds, preferably before they complete the site purchase. This latter will be triggered by the grant of planning permission.

The planning application is under consideration by the Local Planning Authority. Should any changes to the proposed mix or number of units arise during this process, then they should be reflected in the purchase price.

Recommendations

For the reasons stated in this report and its exempt appendices, the Cabinet Member for Development and Regeneration in consultation with the Director of Legal and Governance and the s151 Officer is recommended to agree the following recommendations in respect of the subject site:

Peel Way

1. **Approve** the Business Case for the Company, relating to Peel Way, provided at Exempt Appendix A.
2. **Note** that the Company will acquire the land at Peel Way on the terms set out in the Exempt Appendix C.
3. **Approve** the proposed development of land at Peel Way by MLH Limited as shown at Public Appendix E.
4. **Approve**, subject to recommendations above, the provision of a Public Subsidy Control (State Aid) compliant loan and equity to the Company at the amount of £3,344,000 including approval to enter into the sale loan facility agreements, to develop 9 units for sale whilst allowing the possible option of the retention of the completed scheme within its PRS portfolio, depending on the prevailing market conditions at the time.
5. **Authorise** the Strategic Director of Place, acting in consultation with the Director of Legal and Governance and the Section 151 Officer, to enter into all necessary legal agreements to bring into effect the proposed arrangements in these Recommendations, including any changes, should they be necessary, that arise through the planning process.

Key Executive Decision – Part Exempt Report

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AUTHORITY UNDER WHICH DECISION IS MADE

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

This decision can be made by the Cabinet Member for Development & Regeneration under the delegations approved by Cabinet in July 2023 where it:

1. **Approved** the Mercury Land Holdings Limited Business Plan 2023 to 2026.
2. **Agreed** 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.

STATEMENT OF THE REASONS FOR THE DECISION

To review and approve the business case and funding for Mercury Land Holdings Limited (MLH) to acquire land at Peel Way for the development of 9 properties.

A Plan showing the land to be acquired and developed is provided at Public Appendix D.

A document showing the form of the proposed development by MLH is shown at Exempt Appendix E.

The site does not currently benefit from planning permission. An application has been submitted to the London Borough of Havering as Planning Authority, by MLH, and is under consideration.

The acquisition of the land by MLH is conditional on planning permission being granted.

Amongst other things, the proposed development will bring back into beneficial use a site that has been unused for several years.

OTHER OPTIONS CONSIDERED AND REJECTED

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In line with the Company Business Plan MLH needs to increase the size of its portfolio and sell private units to improve its long-term viability. This will in turn increase financial returns to the Council as sole shareholder. The proposal presents a good opportunity for MLH to acquire a site close to the Station, in an area where similar developments have flourished.

The acquisition and proposed housing development also aligns with the Council's regeneration objectives, and will contribute to making Havering a great place to live, work and enjoy. The site has been derelict for many years and has attracted significant anti-social behaviour. The proposed development will bring the site back into beneficial use.

Given this, the option of not proceeding with the proposed MLH scheme was **rejected**.

PRE-DECISION CONSULTATION

None

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

Name: Mark Butler

Designation: Assistant Director – Regeneration & Place Shaping

Signature: Date: 31st August 2023.

Part B - Assessment of implications and risks

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.

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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.

**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 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 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 Adopted Local Plan.

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

None.

APPENDICIES

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

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS

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.

Key Executive Decision – Part Exempt Report

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.

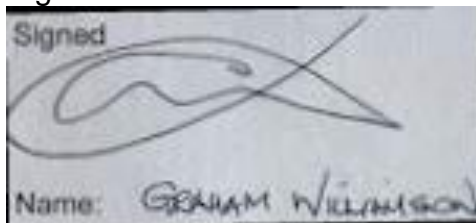
Decision

Proposal agreed

Delete as applicable

Details of decision maker

Signed



Signed
Name: GRAHAM WILLIAMSON

Name:

Cabinet Portfolio held: Development & Regeneration

CMT Member title:

Head of Service title

Other manager title:

Date: 26th October 2023

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 _____

Key Executive Decision – Part Exempt Report

Signed _____