

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 No: 09878652), for development at Land at Priory Road, Harold Hill.
Cabinet Member:	Councillor Ray Morgon Leader of the Council.
SLT Lead:	Neil Stubbings Strategic Director – Place.
Decision maker:	Councillor Graham Williamson Cabinet Lead for Regeneration & Development
Report Author and contact details:	<p>Mark Butler Assistant Director of Regeneration & Place Shaping 01708 432947 mark.butler@havering.gov.uk</p> <p>Martin Fahy Strategic Financial Business Partner 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

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:	25 February 2025
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:

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 the agreement of 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, as delegated under the recommendations of the July 2023 Cabinet decision, to approve a public subsidy control (State Aid) compliant loan facility and provision of equity to Mercury Land Holdings Limited (the “Company”) to develop 5 units at Priory Road, Harold Hill for private sale.

The site has already transferred to the Company pursuant to Cabinet decisions on 8th February 2023, 9th August 2023 and Key Executive Decision in February 2024.

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 development of the site for 5 residential units at the land at Priory Road, Harold Hill (See Plan at Public Appendix D). The Company has already acquired the site utilising an equity contribution following approval of LBH to dispose of the site to MLH by Cabinet in August 2023. This report therefore does not seek funding to purchase the site which has already been funded but does seek funding to recover costs relating to the enabling works and further funding for the Company to develop the site under a facility agreement with normal equity and debt arrangements, detailed later in exempt report.

The proposed development of this site was contained in the MLH Business Plan (2023-2026).

Recommendations

For the reasons stated in this report and its exempt appendices, 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 is recommended to agree the following recommendations in respect of the subject site:

Priory Road

1. Approve the MLH Business Case, relating to Priory Road, provided at Exempt Appendix B.
2. Approve the proposed funding for development of land at Priory Road by MLH Limited as shown at Public Appendix D.
3. Subject to recommendations above, to approve the provision of a Public Subsidy Control (State Aid) compliant loan and equity by the Council including approval to enter into the sale loan facility agreements, to develop 5 units for sale.
4. Authorise the Strategic Director - 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.

AUTHORITY UNDER WHICH DECISION IS MADE

The decisions are made by under the delegations approved by Cabinet in February 2025 where it was decided to:

1. **Approve** the Mercury Land Holdings Limited Business Plan Update.
2. **Agree** 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 July 2023-2026 Business Plan to MLH, up to a maximum of 270.1 million, is reallocated to projects as updated in the Exempt Agenda, through a combination of equity investment and Subsidy compliant loans.
4. **Note** that the individual schemes are subject to detailed business cases to be approved under delegated authority, as set out in Recommendation 2.
5. **Agree** to delegate to the Strategic Director of Resources, in consultation with the Assistant Director of Regeneration and Place Shaping, 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.

STATEMENT OF THE REASONS FOR THE DECISION

To review and approve the business case and funding for Mercury Land Holdings Limited (MLH) to develop land at Priory Road for 5 residential units.

A Plan showing the land that has been acquired but that is to be developed is provided at Public Appendix C.

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

The site benefits from planning permission and enabling works which have been undertaken.

OTHER OPTIONS CONSIDERED AND REJECTED

Failure to approve the business case and facility agreement would effectively place a long-term pause on the site's redevelopment, delaying the potential benefits to both the Council and MLH. It would frustrate the delivery of the approved MLH Business Plan.

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.

Selling the site on the open market was rejected, as the Council would not have the same level of confidence in the quality of the development if it were led by a company or developer without MLH's proven track record. Furthermore, an open market sale would likely result in additional delays and offer no guarantee of a successful outcome.

Given this, the option of not proceeding with the proposed purchase and development 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:

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.

Public 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

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.

Acquisition of Land and Related Arrangements

Mercury has obtained valuation advice on the site and the scheme development, together with specialist construction cost advice on the development proposals. The business case prepared by MLH reflects the advice that they have received.

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.

FINANCIAL IMPLICATIONS AND RISKS

Several risks have been considered in the evaluation of the business case relating to the proposed funding of the development proposals at Priory Road. 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 provides the Council's Commercial Review of the MLH development proposals.

Exempt Appendix B comprises the MLH Business Case for Priory Road.

In summary, this information demonstrates that it would be appropriate for the Council to provide the loan support requested by MLH if 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.

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.

BACKGROUND PAPERS

None.

APPENDICES

Exempt Appendix A	Council Commercial Review
Exempt Appendix B	Business Case - Financial Implications & Risks
Public Appendix C	Site Location Plan
Public Appendix D	Detailed plans

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

~~Proposal NOT agreed because~~

Details of decision maker

Signed

Name: Cllr Graham Williamson

Cabinet Portfolio held: Cabinet Member for Development and Regeneration

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____