

## Notice of NON KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendices [B and C] are not available for public inspection as they contain or relate to exempt information within the meaning of paragraph 3 of Schedule 12A to 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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|---|---|
| <b>Subject Heading:</b>                   | Equity to Mercury Land Holdings Limited company number: 09878652 (the Company) for the acquisition of the Former St Bernards Day Centre, Peel Way   |
| <b>Decision Maker:</b>                    | Cabinet Member for Regeneration & Development   |
| <b>Cabinet Member:</b>                    | Councillor Graham Williamson<br>Cabinet Member for Regeneration & Development   |
| <b>SLT Lead:</b>                          | Neil Stubbings<br>Strategic Director – Place.   |
| <b>Report Author and contact details:</b> | Mark Butler<br>Assistant Director – Regeneration and Place Making<br>01708 434282<br><a href="mailto:mark.butler@haverling.gov.uk">mark.butler@haverling.gov.uk</a><br><br>Martin Fahy<br>Financial Manager<br>01708 434651<br><a href="mailto:martin.fahy@haverling.gov.uk">martin.fahy@haverling.gov.uk</a> |

**Non-key Executive Decision**

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|--|---|
| <b>Policy context:</b>                                 | 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. |
| <b>Financial summary:</b>                              | Costs, funding and associated risks/issues are set out in the exempt appendices.  |
| <b>Relevant Overview &amp; Scrutiny Sub Committee:</b> | Places Overview & Scrutiny Committee.   |
| <b>Is this decision exempt from being called-in?</b>   | The decision will be exempt from call in as it is a Non-Key Decision  |

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**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

To approve equity funding to Mercury Land Holdings (MLH) in the sum identified within Exempt Appendix B, to enable the purchase of the former St. Bernards Day Centre at Peel Way, Harold Wood, as identified within the site plan annexed to this Decision as Appendix A.

### AUTHORITY UNDER WHICH DECISION IS MADE

The decisions relating to MLH are made by The Cabinet Member for Development and Regeneration under part 2 of the Council's Constitution.

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 (see Exempt Appendix C).
2. **Agree** to delegate authority to the Cabinet Member for Regeneration & Development, in consultation with the S151 Officer, the Strategic Director of Place and the Monitoring Officer, 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. **Agree** 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 Control 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.

And decisions approved under the July 2023 Business Case where it was agreed:

**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. 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 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 - 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.

(note – references to Appendices above are those attached to 2023 Business Case)

**STATEMENT OF THE REASONS FOR THE DECISION**

Mercury Land Holdings is wholly owned by the London Borough of Havering.

This report recommends that a public subsidy control compliant provision of equity is advanced to Mercury Land Holdings Limited for the acquisition of land at St Bernard's Way, Peel Way, Harold Wood (identified in Exempt Appendix A) aligning to the Business Case for the site approved in July 2023, and the subsequent February 2025 Business Plan, in advance of the Facility Agreement being agreed.

The previously approved July 2023 Business Case (attached as Exempt Appendix C) makes provision for both equity and loan arrangements, providing funding for the acquisition and development of the site by MLH. However, whilst a contractor is being sought it is proposed that the equity component of this agreement is advanced to allow the Company to acquire the site and source a contractor which is currently underway with facility agreement matters to follow at a point when final build costs are known, with a likely date by the autumn of 2025. As the site already has funding approval it is not proposed that further decisions are required unless the overall funding parameters change.

This Decision only seeks to advance a portion of the funding agreement within previously agreed parameters. Advancing equity to the company to acquire the site

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sits within the agreed funding envelope with the Council receiving security by the issuing of shares.

To protect the Council's interests in advance of a facility agreement being approved and equity being provided, a valuation on the site has been undertaken and provided which exceeds the equity being advanced and shows on an open market basis the equity would be recovered.

The site currently benefits from planning permission obtained by MLH.

The approved Business Case and February 2025 Business Plan make an assumption that equity would be required 4 months before any senior debt draw down is required. The net return to the council was based on this assumption. If the facility agreement is signed by Autumn 25 as expected, then this 4-month assumption still stands as do the estimated costs to the council of both equity and senior loan funding and returns from MLH via bank charges and interest payments.

It should be noted that on completion of the scheme both the equity and loan made available to MLH are repaid in full, plus interest on the loan element. Any Minimum Revenue Provision (MRP) that the council is required to make on the equity funding is also reimbursed through the repayment of the loan and equity.

Regular monthly reviews with MLH concerning progress will be undertaken to ensure detailed design is progressing and a contractor procured. This will reduce the level of compounded MRP and any associated borrowing costs of the equity being advanced are appropriately managed.

All Council costs will be repaid at the point of sale and a commercial review of this decision is included as Exempt Appendix B.

The proposed development will bring back into beneficial use a site that has been unused for several years. Its acquisition allows via MLH the ability to improve the locality, reduce ASB generated by the vacant site and deliver much needed family homes.

## **OTHER OPTIONS CONSIDERED AND REJECTED**

In order for MLH to grow as a Company, which is wholly owned by the London Borough Havering, it needs to increase the size of its operational portfolio and sell private units to improve its long-term viability. This will in turn increase financial returns to the Council. 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.

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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 of Regeneration & Place Shaping

Signature:  Date: 04.06.2025

## 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



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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.

### **Acquisition of Land and Related Arrangements**

Mercury Land Holdings have obtained valuation advice on the site and the scheme development, together with specialist construction cost advice on the development proposals and the Business Case incorporating these inputs was approved in the July 2023 Business Case.

A valuation on the site has shown that the value of the site exceeds the level of equity being provided.

### **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 consideration should be given to 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**

Further analysis in advancing the equity for MLH to acquire the site has been analysed in the commercial review (Appendix B)

In summary, this information demonstrates that it would be appropriate for the Council to provide the equity requested by MLH provided that it is regulated by the issuing of shares and a mid-year internal review to ensure the development comes forward in a timely matter with loan arrangements advanced subject to a legal agreement.

The decision will, amongst other things, require the utilisation of Council Officers to assist in the issuing of equity in advance of a loan facility agreement and 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.

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.

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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 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**

None

### **APPENDICES**

|            |  |        |
|------------|--|--------|
| Appendix A | Plan of Peel Way                           | Open   |
| Appendix B | Commercial review                          | Exempt |
| Appendix C | Previously approved Peel Way Business Case | 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 Graham Williamson

Cabinet title: Cabinet Member for Regeneration & Development

Date: 20/6/25

**Lodging this notice**

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

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_