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## CABINET

### Subject Heading:

### Cabinet Member:

### ELT Lead:

### Report Author and contact details:

### Policy context:

### Financial summary:

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## PUBLIC AGENDA

### Mercury Land Holdings (MLH) Business Plan and Budget Update 2026/27

Councillor Ray Morgon, Leader of the Council.

Neil Stubbings, Strategic Director Place.

Mark Butler

Assistant Director of Regeneration & Place Shaping

Tel No: 01708 432947

E-mail: [mark.butler@havering.gov.uk](mailto:mark.butler@havering.gov.uk)

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 2025/26.

This report seeks Cabinet approval to the Business Plan Update proposed by Mercury Land Holding Limited (MLH), 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?**

February 2027

**Reviewing OSC:**

Places Overview & Scrutiny Sub-Committee

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

People - Supporting our residents to stay safe and well	x
Place - A great place to live, work and enjoy	x
Resources - Enabling a resident-focused and resilient Council	x

<b>SUMMARY</b>
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This report seeks Cabinet approval for the updated MLH Business Plan 2026/27 and its associated financial commitments. The Business Plan includes an update to the development programme and re-profiles the existing approved funding envelope, which was previously provided by the Council, to projects set out in the Exempt Report & Appendices. The updated Business Plan does not seek any additional funding commitment from the previously agreed funding envelope.

Cabinet should note that the updated MLH Business Plan 2026/27 will, if approved, provide a funding envelope within which MLH can operate. Proposals for individual scheme funding are supported by the production of a satisfactory business case at the appropriate time, which is then subject to further examination and additional governance, 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. Several schemes within the Business Plan already benefit from approved Business Cases.

MLH was formed as 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. It has also developed and sold properties for private sale and affordable rent.

The MLH Business Plan seeks to reaffirm MLH's commitment to significant schemes that are critical for the long-term success of the company including sale and rental opportunities that would support the continued growth of the company.

Sites within the company's programme include those where the Council has disposed of assets (land/buildings) to MLH at market value. Subject to satisfying appropriate financial criteria the Council will provide finance to MLH through a combination of equity investment and loans for their future development. 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 regulations, 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.

<b>RECOMMENDATIONS</b>
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Cabinet is asked to:

1. **Approve** the Mercury Land Holdings Limited Business Plan Update (see Exempt Appendix 3).
2. **Agree** to delegate authority to the Cabinet Member for Regeneration & Development, in consultation with the Strategic Director of Resources, 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 Feb 2025/26 Business Plan to MLH, up to a maximum of £270.1 million, is re-profiled to projects as updated in the Exempt Agenda, through a combination of equity investment and Subsidy Control compliant loans.
4. **Agree** to increase the MLH Working Capital Facility by £900,000 and to extend the term for a period of up to 5 years, as appropriate, commencing February 2026, and to delegate authority to the Strategic Director of Resources, in consultation with the Strategic Director of Place and the Deputy Director of Legal & Governance to enter into the relevant agreements to give effect to this decision.
5. **Agree** to delegate authority to the Strategic Director of Resources to agree, after consultation with the Director of Legal and Governance, the completion of all relevant agreements and appointments of relevant professionals relating to the provision of debt finance by the Council to MLH
6. **Note** that the individual schemes are subject to detailed business cases to be approved under delegated authority, as set out in Recommendation 2.
7. **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.

<b>REPORT DETAIL</b>
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**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 alongside properties for sale.
- 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 (PRS).
- 1.4** It is becoming increasingly difficult for Havering residents to find good quality rental homes. Living in a good standard of home, that is reasonably priced and well maintained is a key determinant of good health and wellbeing. A quality rented sector helps address this lack of provision allowing residents more choice in housing options within the Borough. Affordability, coupled with improved connectivity through Crossrail, makes towns such as Romford more attractive for tenants who are being priced out of more central London boroughs and increasingly some mid-zone locations – but also creates an improved offer to existing residents.
- 1.5** There remains an opportunity for the Council to take advantage of this anticipated 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.

- 1.6** The Council is seeking to make 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 when developing PRS schemes 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 2026/27 Business Plan Update shows that the focus of MLH will be to develop sites within the Council's disposal programme alongside those it has acquired from the open market.
- 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 shorthold tenancies and subject to any changes by central government, will not be subject to Right to Buy, or to the allocations provisions of Part VI of the Housing Act 1996.
- 2.4** Any units developed by the Company for sale will be sold on the open market
- 2.5** Any 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**

- 2.6** 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 continues to operate 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.

### **MLH Director Roles**

**3.3** 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 has continued to support MLH's board through the involvement of the Council's Chief Executive as a member of the MLH Board. In accordance with CIPFA recommendations, two other director positions will be filled and there will be a handover between the Chief Executive and new directors, to ensure an orderly transition. 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.

**3.4** 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**

**3.5** 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).

**3.6** 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).

**3.7** 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 Update for 2026/27 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 would enable the company to continue to grow and to meet the objectives of the Company 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 previous and updated MLH Business Plan are included in Appendix 2. These are summarised in paragraphs 6.3 & 6.4 below.
- 6.3** The July 2025/26 Cabinet Report sought a funding commitment of £228.4m including the £20m reactive acquisition fund. The 2026/27 Cabinet report requests the previously agreed funding commitment be recommitted and reprofiled to previously agreed projects.
- 6.4** The previously approved Business Plan, and those preceding it, have outlined the Company's objective of achieving 400 PRS units in its portfolio which will



allow it to service its fixed overheads. Rental growth and sale receipts in the interim suggest that MLH may still reach a break-even at 250 units. Nonetheless MLH retains the long-term ambition to achieve 400 units over time.

- 6.5** Further information is set out within Exempt Agenda Report attached as Appendix 1.

**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 taxpayers.
- 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 taxpayers. 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 taxpayers. This should include considering the impact on the Council (and therefore its local taxpayers) if MLH became insolvent or otherwise defaulted on loans it had taken from the Council.

### **Subsidy Control**

- 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 it 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.

**ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

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

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

These will be addressed as individual schemes are brought forward for further approval

**BACKGROUND PAPERS**

**MLH Business Plan Update 2025/26 (agreed at February 2025 Cabinet)**

**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 Update 2026/27**