


Commissioner Decision Report 28 February 2017	 TOWER HAMLETS
Report of: Corporate Director - Place Directorate	Classification: Unrestricted
Blackwall Reach Regeneration Project – Phases 2, 3 and 4 early leases	

Originating Officer(s)	Service Head Strategy Regeneration and Sustainability
Wards affected	Blackwall and Cubitt Town
Key Decision?	No
Community Plan Theme	Great Place to Live

Executive Summary

This report requests the approval of commissioners for the Council to enter into both Block and Phase leases as required under the Principal Development Agreement (PDA) earlier than envisaged though still on a Phase by Phase basis.

Commissioners have previously approved the early grant of 250 year leases under the PDA for Phase 1b and the electrical substation in Phase 1a, and approval is now sought for the same for all subsequent phases 2, 3 and 4, subject to the provisions of the PDA.

As with Phase 1b, entering into the leases will complete the land transfer of subsequent phases of the Blackwall Regeneration Scheme to Swan Housing Association (Swan), the development partner. This will enable Swan to complete the development without the need for LBTH and the Greater London Authority (GLA) (Clients) to enter into negotiations or agreements with third parties and statutory bodies. Additionally this will enable Swan to draw down loan funding from the GLA.

The purpose and effect is to stream line the delivery of the scheme and avoid significant time and cost impacts on the authority and accelerate the delivery of the much needed affordable homes with no cost impact on the clients.

Recommendations:

The Commissioners are recommended to:

Provide their prior written agreement that the Council may enter into the Block Leases with Swan Housing Association, for nil (or a peppercorn) consideration, in respect to the blocks that fall within Phases 2, 3 and 4 of the Blackwall Reach Regeneration Scheme; and

Provide their prior written agreement that the Council may enter into 250 year Phase Leases, with Swan Housing Association, for a lease premium of £1, in respect to the area that forms a relevant Phase (2, 3 and 4) of the Blackwall Reach Regeneration Scheme.

1. REASONS FOR THE DECISION

- 1.1 The leases are required contractually under the PDA.
- 1.2 Granting the leases early (with a forfeiture clause) will significantly de risk the project being delayed by the joint clients as well as saving significant officer time and cost in negotiations with third parties.
- 1.3 Granting the leases early will enable the GLA to lend additional resources to Swan that will accelerate the delivery for the scheme and recover lost programme time.

2. ALTERNATIVE OPTIONS

- 2.1 Continue to deliver the lease as currently required with the inherent risk of delay and possible costs to the council and its partners.

3. DETAILS OF REPORT

- 3.1 The council, with the Greater London Authority (GLA) as a joint client, tendered for a delivery partner for the regeneration of the Blackwall Reach area (Robin Hood Gardens estate) via a protracted OJEU dialogue process.
- 3.2 The scheme is set to deliver 1,575 new homes over five phases and with a development cost of over £400 million. Phase 1a is complete and fully occupied with great success. Phase 1b has commenced on site under licence and Commissioners have previously agreed that Block and Phase leases can be entered into earlier than contractually required under the PDA, which will be happening shortly. The scheme has recently been given GLA Land and Property (GLAP) funding assistance of around £50 million to accelerate delivery.
- 3.3 The acceleration of the scheme will see Phases 2, 3 and 4 come forward subject to planning considerations, Swan's performance and the provisions of the PDA.
- 3.4 Cabinet took a decision in February 2011 (CAB056/101) to award the contract for the delivery of the scheme. The joint client then entered into the Principal Development Agreement (PDA) in April 2011 (subsequently amended on 10 December 2013) with the successful developer partner – Swan Housing Association.

- 3.5 Under the terms of the PDA, the clients (LBTH and GLA) are under an obligation to grant leases for various elements of the scheme to Swan.
- 3.6 The construction of the scheme itself is however carried out under licence.
- 3.7 The leases arrive in two tranches – Block lease for completed buildings (residential and ancillary) and Phase leases when all blocks in a Phase and the external areas are complete.
- 3.8 Block leases are triggered by the issue of the certificate of “Wind and Watertight.” The Phase lease is triggered by the issue of the “Approved Stage Certificate.”
- 3.9 This structure protects the land ownership in the event of the developer not completing the development (the licence falls away) and ensures leases are only let on completion. The structure does however require the Clients to be fully engaged with negotiations and agreements with all third parties and in particular TFL and statutory services providers in order to avoid delays to the scheme.
- 3.10 The leases proposed would be in the agreed form, with minor changes for practical purposes as permitted under the PDA. Additionally the leases would have a forfeiture or termination clause to replicate the PDA freehold protection of the license thus putting the council in no worse position.
- 3.11 Leases would only be granted on phases where the PDA conditions are met thus ensuring Swan have not been granted any additional security of work stream or financial benefit.
- 3.12 Granting the leases in this way will enable GLAP to lend accelerating funds to Swan delivering homes earlier than the current programme.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks the Commissioners’ approval for the entering of block and phase leases with Swan Housing Association in relation to the regeneration project at Blackwall Reach. This report relates specifically to phases 2, 3 and 4 of the programme and follows the approval of a similar report in respect of the phase 1b leases which was considered in December 2015.
- 4.2 The regeneration scheme is a joint partnership with the Greater London Authority, and following approval by Cabinet on 9th February 2011, the council entered into agreements with a development consortium for the delivery of the scheme, and signed the Principal Development Agreement (PDA) with the developer partner – Swan Housing Association. This agreement included a commitment to grant appropriate leases to Swan at various stages in the development programme.
- 4.3 In order to facilitate the delivery of the scheme and reduce the risk of time delays resulting in additional costs, this report seeks prior approval to grant the

block and phase leases for the blocks within Phases 2, 3 and 4 of the project to Swan Housing Association in accordance with the terms of the PDA as set out in paragraphs 3.7 to 3.11. The council's interests will be protected through the inclusion of forfeiture and termination clauses within the lease agreements. Approval of the lease arrangements will also enable Swan to access funding from the GLA Land and Property (GLAP) initiative.

- 4.4 As set out in the Best Value implications section of the report (paragraph 7.2) the council is entitled to a proportion of the increased values that the developer may realise from the future market sales on the redeveloped sites. It is likely that these overage payments will be significant, although the exact entitlement will not be quantifiable until sales commence in 2019.
- 4.5 All costs involved with the granting of these leases will be met from within existing council budgets.

5. LEGAL COMMENTS

- 5.1 A Development Agreement dated 10 December 2013 was entered into between the Council and GLA (as clients) and Swan Housing Association Limited on 19 April 2011 in relation to the development of the Blackwall Reach Regeneration Scheme (the "PDA"). The clients are required, on satisfaction by Swan of various obligations, to grant leases for the various blocks and phases of the scheme.
- 5.2 The Secretary of State for Communities and Local Government issued Directions dated 17 December 2014 pursuant to the powers under section 15(5) and (6) of the Local Government Act 1999 (the Directions").
- 5.3 The Directions, at paragraph 4 (i) provide that the Council must "take the actions set out in Annex A...". Paragraph 5 of Annex A requires that the Council, until 31 March 2017, to obtain the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation."
- 5.4 Consent of the Commissioners is therefore sought to grant block and phase leases earlier than would otherwise be required under the PDA. The reasons are set out above and include the ability for Swan to draw down on GLA funding, which will accelerate the scheme and the provision of housing. The granting of block and phases leases in this way is permitted under the PDA.
- 5.5 By virtue of s123 of the Local Government Act 1972 the Council has the power to dispose of land for the best consideration reasonably obtainable. Notwithstanding that the premium on the leases is for nominal consideration (a peppercorn for the block leases and £1 for the phase leases), the best consideration is evidenced by an open market tender following an OJEU competitive dialogue process, the receipt of overage from sale receipts and the proposed development as a whole.

- 5.6 The Council is obliged, as a best value authority, under section 3 of the Local Government Act 1999 to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. The granting of the leases particularised above, as contractually required by the PDA, is consistent with the discharge of this function
- 5.7 The public sector equality duty under Section 149 Equality Act 2010 arises where the Council is exercising its functions. The Council is granting leases of residential accommodation, all of which will be affordable housing, which it considers will discharge its duty in respect of this decision.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. This project provides much needed affordable homes, helping Tower Hamlets to Be a Great Place to Live.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The project was bid in the open market and due to its size and nature this was advertised via the OJEU. The project was tendered as a European compliant competitive dialogue in order to attract as much interest in the market and discussion around variant options that could be brought forward.
- 7.2 In order to ensure best value was achieved whilst ensuring that maximum interest was engaged the project was tendered with a land value for each plot of £1. To protect the interests of the Council and its partners, the value is delivered by way of overage modelled on a baseline construction cost and baseline sales values. When modelled these were then scored in such a way as to deliver the best target overage, and as a result of increasing property values, the overage value has increased significantly beyond that modelled at the time of tender.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no immediate ‘sustainable action for a greener environment’ implications arising from this report. The new homes being built on the scheme are of a substantially higher standard of energy efficiency than the homes they replace.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 It is considered that there is not any significant risk associated with these leases

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The project will provide community wide facilities to help bring the communities together with a better design in terms of orientation to maximise passive supervision of common and external areas of the estate.

11. SAFEGUARDING IMPLICATIONS

11.1 There are no immediate safeguarding implications arising from this report

Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- None.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None.

Officer contact details for documents:

Mark Baigent Service Head Strategy Regeneration and Sustainability x 7522