

COMMISSIONERS' INDIVIDUAL DECISION MAKING

Wednesday, 17 June 2015


Commissioners' Decision Log No. 14

1. **BLACKWALL REACH REGENERATION PROJECT - PHASE 1A LEASES
(Pages 1 - 14)**

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: Matthew Mannion, Democratic Services
Tel: 020 7364 4651, E-mail: matthew.mannion@towerhamlets.gov.uk

This page is intentionally left blank

Agenda Item 1

Individual Commissioner Decision Proforma Decision Log No: 14	 TOWER HAMLETS
Report of: Corporate Director Development & Renewal	Classification: Unrestricted
Blackwall Reach Regeneration Project (BRRP) – Phase 1A leases	

Is this a Key Decision?	No
Decision Notice Publication Date:	N/A
General Exception or Urgency Notice published?	N/A
Restrictions:	Unrestricted

EXECUTIVE SUMMARY

This report requests the approval of commissioners to the Council entering into both Block and Phase leases as required under the Principal Development Agreement (“PDA”).

The lease will complete the land transfer of the first Phase of the BRRP to Swan in order to let these to local residents now that they are complete.

Failure to do so will put the Council and their client partner the GLA in breach of their obligations under the PDA.

Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; **and other relevant matters are set out in the attached report.**

DECISION

The Commissioners are requested to:

1. Agree that the Council may enter into the Block Leases for Blocks A and B of Phase 1A subsequent to the certification of Wind and Watertight under the PDA which imposes an obligation on the Council (and the GLA) to grant the leases within 20 working days of the issue of the Certificate of Wind and Watertight.
2. Agree that the Council may enter into the Phase lease for Phase 1A in view of the contractual obligation in the PDA to complete the Phase lease within 20 working days of the issue of the Approved Stage Certificate
3. Agree that the disposals in 1 and 2 should be supported by a Nominations Rights Deed, which pursuant to the PDA, ensures that the affordable housing in Phase 1A is made available to the Council by Swan.

APPROVALS

1. **(If applicable) Corporate Director proposing the decision or his/her deputy**

I approve the attached report and proposed decision above for submission to the Commissioners.

Signed  Date 10/6/2015

2. **Chief Finance Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 10/6/15

3. **Monitoring Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

~~(For Key Decision only — delete as applicable)~~

~~I confirm that this decision:-~~

~~(a) has been published in advance on the Council's Forward Plan OR~~

~~(b) is urgent and subject to the 'General Exception' or 'Special~~

~~Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.~~

Signed  Date 10/06/15

4. Commissioner

I agree the decision proposed in paragraph above for the reasons set out in section 1 in the attached report.

Name Max COLLIER Signed 

Date 11/6/15

Name Signed


Date

Name Signed

Date

Name Signed

Date

Commissioner Decision Report 10 June 2015	 TOWER HAMLETS
Report of: Corporate Director Development & Renewal	Classification: Unrestricted
Blackwall Reach Regeneration Project (BRRP) – Phase 1A 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 to the Council entering into both Block and Phase leases as required under the Principal Development Agreement (“PDA”).

The lease will complete the land transfer of the first Phase of the BRRP to Swan in order to let these to local residents now that they are complete.

Failure to do so will put the Council and their client partner the GLA in breach of their obligations under the PDA.

Recommendations:

The Commissioners are requested to:

1. Agree that the Council may enter into the Block Leases for Blocks A and B of Phase 1A subsequent to the certification of Wind and Watertight under the PDA which imposes an obligation on the Council (and the GLA) to grant the leases within 20 working days of the issue of the Certificate of Wind and Watertight.
2. Agree that the Council may enter into the Phase lease for Phase 1A in view of the contractual obligation in the PDA to complete the Phase lease within 20 working days of the issue of the Approved Stage Certificate

3. Agree that the disposals in 1 and 2 should be supported by a Nominations Rights Deed, which pursuant to the PDA, ensures that the affordable housing in Phase 1A is made available to the Council by Swan.

1. REASONS FOR THE DECISIONS

- 1.1 The leases are required contractually under the PDA and only once they are entered into can residents take up occupation.
- 1.2 Failure to enter into the leases will place both the Council and their development partner, the GLA, into breach of the PDA with subsequent legal action from the developer Swan Housing Association.

2. ALTERNATIVE OPTIONS

- 2.1 There are no practical alternative options. The alternative of not entering into the lease leaves the Council open to breach of the PDA and would pose a serious risk to the overall development as currently agreed under the PDA.

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 competitive 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 nearing completion and Phase 1B has recently been granted planning reserved matters approval. The scheme has recently been granted government funding assistance of around £50million to accelerate delivery.
- 3.3 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 PDA in April 2011 with the successful developer partner – Swan Housing Association (“Swan”)
- 3.4 Under the terms of the PDA, the clients (LBTH and GLA) are under an obligation to grant leases for the various elements of the scheme to Swan.
- 3.5 The leases arrive in two tranches – Block leases for completed buildings (residential and ancillary) and Phase leases when all blocks in a Phase and the external areas are complete.

- 3.6 The trigger for completion of the Block leases for Blocks 1 and 2 and the external common areas of Phase 1A is the certification that the Blocks are wind and watertight and that work to the external common areas has been completed. Such certificates were issued on 5th May 2015.

The trigger for completion of the Phase Lease is the issue of the Approved Phase Certificate under the Building Agreement. The Approved Phase Certificate for Phase 1A was issued on 8th May 2015.

- 3.7 The leases proposed are in an agreed form, with minor changes for practical purposes as explained by the clients' external lawyers, Berwin Leighton Paisner, in the note attached.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks Commissioner approval for the entering of block and phase leases with Swan Housing Association in relation to the regeneration project at Blackwall Reach.
- 4.2 The regeneration scheme is a joint partnership with the Greater London Authority, and following approval by Cabinet on 9 February 2011, the Council entered into agreements with a development consortium for the delivery of the scheme, and signed the Principle 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 Following the completion of Phase 1a of the project, this report seeks approval to grant the block leases for Blocks A and B and the phase lease for Block 1A to Swan Housing association in accordance with the terms of the PDA.
- 4.4 All costs involved with the granting of these leases will be met from within existing Council budgets.

5. LEGAL COMMENTS

- 5.1 The authority used to enter into the PDA was a cabinet resolution of 9 February 2011, the recommendation approved at para 2.2 being to:

“Authorise the Director of Development and Renewal and the Assistant Chief Executive Legal in conjunction with the HCA [now the GLA, being successors to the HCA pursuant to section 190 of the Localism Act 2011 and the HCA Transfer Scheme dated 30 March 2012] to approve and finalise the contract terms in accordance with the bid and to complete the contract once HCA approvals are obtained.”

- 5.2 The PDA which was amended and restated on 10th December 2013, contains an obligation for the Council and the GLA to enter a building agreement. The building agreement contains an obligation to grant the Block Leases and the Phase Lease.

Whilst Ministerial confirmation of the CPO is awaited, the Council has proceeded with Phase 1A of the development. If the CPO is not confirmed (in whole or part) as proposed, completion of the all the Phases planned under the PDA may be placed at risk and this could affect the amount of overage ultimately due to the Council under the PDA.

- 5.3 The purpose and effect of the Nominations Rights Deed is to ensure that the affordable housing in Phase 1A (79 units) is available to the Council. It requires Swan to notify the Council of an available unit and to accept the Council’s nomination to that unit. It is intended to complete the Nominations Rights Deed relating to Phase1A immediately prior to the grant of the leases.
- 5.3 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”).
- 5.4 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.”*
- 5.5 The Block Leases and Phase Lease are clearly disposals of real property within the terms of the Direction quoted above.
- 5.6 The Council has the power under section 123 of the Local Government Act 1972 (the “1972 Act”) to dispose of land which it holds

- 5.7 Section 123(2) of the 1972 Act requires a disposal to be for a consideration not less than the best that can reasonably be obtained, unless the Secretary of State's consent is obtained (or the disposal is a tenancy of less than seven years).

All the dwellings in Phase 1A comprise affordable housing but the Council considers that the question of whether the disposal of Phase 1A achieves best value should be assessed within the context of the proposed development as a whole and the monetary consideration received in toto.

- 5.8 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
- 5.9 The public sector equality duty under Section 149 Equality Act 2010 arises where the Council is exercising its functions. The Council, for this Phase 1A, 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. BEST VALUE IMPLICATIONS

- 6.1 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.
- 6.2 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. The value is then delivered by way of overage which was modelled on the basis 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.
- 6.3 In reality by deferring the receipt in this way the overage value has as modelled increased significantly beyond that modelled at the time of tender.
- 6.4 The Council's view has always been that the issue of best value should be considered in the context of the regeneration scheme as a whole. In the opinion of the valuers GVA, whom the Council retained to advise it on best

value, there is a realistic chance of the Council receiving significant overage on the sale prices of the private residential elements of subsequent phases.

- 6.5 The Council is aware that it awaits Ministerial confirmation of the CPO, but it has complied with its contractual obligations on this Phase 1A and now requires the consent of the Commissioners to grant the leases and fulfil its obligations to Swan.

7. ONE TOWER HAMLETS CONSIDERATIONS

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

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 There are not considered to be any significant risks 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

- Report from BLP

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

- None.

Officer contact details for documents:

Jackie Odunoye, Service Head, Strategy, Regeneration & Sustainability, 020 7364 7522

Appendix A

BLP Report on leases

To: GLA Land and Property Limited
and
The Mayor and Burgesses of the London Borough of Tower Hamlets

Phase 1A Blackwall Reach London Borough of Tower Hamlets

We will shortly be sending you underleases to be executed in respect of Blocks 1 and 2 and the external common areas of Phase 1A at Blackwall Reach. The trigger for completion of these underleases was certification that the Blocks are wind and watertight and that work to the external common areas has been completed.

The forms of the underleases follow the form of the underlease attached to the building agreement for Phase 1A which itself follows the form of building agreement attached to the principal development agreement which was amended and restated on 10 December 2013.

There are some minor differences from the form of lease attached to the building agreement and they are summarised below:

- 1 The form of lease attached to the building agreement anticipated that there would be one landlord. As was detailed in relation to the sub-station lease at phase 1A which completed recently, LBTH own most of the freehold of Phase 1A and GLAP have a long lease of most of Phase 1A. The length of the leases that are due to be given to the developer are 250 years whereas GLAP's interest is approximately 192 years. It has therefore been necessary to structure arrangements (as was done with the sub-station lease) so that GLAP demise a lease for a shorter duration than its own lease (so as to avoid deemed assignment) with LBTH then contracting to complete a new lease at the end of the term of that lease taking the overall term to 250 years. For the Block leases the developer's landlord is GLAP because the Block demises are within GLAP's own demise. The Phase lease covers areas that are owned at freehold level by both GLAP and LBTH and consequently both LBTH and GLAP need to be the landlords of the Phase lease. As was the case with the sub-station lease the leases will all contain a mechanism so that if the position between GLAP and LBTH is regularised (i.e. there is only one interest superior to the developer's interest) then you can call for a surrender of the lease with new leases being granted for the remainder of the anticipated 250 year term. These leases would of course, be granted subject to any underleases that have been granted by the developer in the meantime.
- 2 The building agreement and PDA anticipated that there would be a common estate strategy. They did not prescribe that there had to be a single estate management company that would manage the entirety of the Blackwall Reach Estate in perpetuity and, instead, offered the developer the opportunity to put forward an alternative as to how the common areas would be managed. The developer has proposed that it will manage the external common areas of Phase 1A. This will mean that if the developer does not develop out other Phases there could be more than one entity managing Blackwall Reach as a whole (i.e. Phase 1A will have a different manager from Phase 3 for example). This is not inconsistent with what was anticipated in the building agreement or principal development agreement but is worth flagging because it means that you have accepted that it is a legitimate common estate strategy to have more than one estate manager for different parts of the estate. The developer has agreed that if it disposes of its interests in Phase 1A other than to a group company of itself or another registered provider then it will establish an estate management company whose members will be the tenants of Phase 1A who have

an interest for a term commencing in excess of 50 years. This will not, though, mean that the same estate management company will run the entirety of Blackwall Reach.

- 3 The form of lease attached to the building agreement anticipated that there would be a restriction preventing any dispositions without your confirmation that they can proceed. This is primarily to protect your anticipated overage but as there is no overage for Phase 1A it has been accepted that the developer (as tenant) can, through its solicitors, self-certify that the appropriate alienation provisions and covenants have been adhered to. This deals with your right to step in and manage if the tenant is failing to and then recover payment from undertenants through a direct covenant being given by those undertenants before they acquire their underleases. This only applies to underleases for a term exceeding 50 years at commencement.
- 4 The underlease documents do not deal expressly with the Central Ppark where it is anticipated that the Blackwall Reach Trust will own title and that the developer will manage the park with a right to recover the cost of doing so from occupational tenants. Provisions relating to the park in the building agreement and the principal development agreement remain in place but it would be worth clarifying a structure for obliging the developer to manage the park during negotiation of documentation for Phase 1B.

Berwin Leighton Paisner LLP

22 May 2015