


Commissioner Decision Report 16 December 2015	 TOWER HAMLETS
Report of: Corporate Director Development & Renewal	Classification: Unrestricted
Blackwall Reach Regeneration Project – Phase 1b 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 a Principal Development Agreement (PDA) earlier than envisaged.

Entering into the leases will complete the land transfer of Phase 1b of the Blackwall Reach Regeneration Scheme to Swan Housing Association (Swan), its developer partner, in order to enable Swan to complete the development without the need for LBTH and the Greater London Authority (GLA) to enter into negotiations or agreements with third parties.

The purpose of the proposal is to streamline the delivery of the scheme and avoid significant time and cost impacts on the authority.

Recommendations:

The Commissioners are recommended to:

1. Provide their prior written agreement that the Council may enter into three Block Leases with Swan Housing Association, for nil (or a peppercorn) consideration, in respect to the three blocks that fall within Phase 1b of the Blackwall Reach Regeneration Scheme; and
2. Provide their prior written agreement that the Council may enter into a Phase Lease, with Swan Housing Association, for a lease premium of £1, in respect to the area that forms Phase 1b of the Blackwall Reach Regeneration Scheme as shown in Appendix 1.

1. REASONS FOR THE DECISION

- 1.1 The PDA contractually requires the Council to enter into both the Phase and Block Leases.
- 1.2 Granting the leases early (with the addition of a forfeiture clause) will significantly reduce the risk of the project being delayed by the joint clients as well as significant officer time and cost in conducting negotiations with third parties.

2. ALTERNATIVE OPTIONS

- 2.1 Continue strictly in accordance with the PDA and grant the leases only when the trigger events have occurred, with the inherent risk of delay.

3. DETAILS OF REPORT

- 3.1 The Council, with the 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, 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 been granted government funding assistance of around £50 million to accelerate delivery.
- 3.3 Cabinet took a decision in February 2011 (CAB081/101) to award the PDA 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.
- 3.4 Under the terms of the PDA, the joint clients are under an obligation to grant leases to Swan for the various elements of the scheme.
- 3.5 The construction of the scheme itself is carried out under a building licence.
- 3.6 The need for leases arise in two tranches: Block leases when residential and ancillary buildings are complete and a Phase lease when all blocks in a phase and the external areas are complete.
- 3.7 Under the PDA, the requirement to enter into block leases is triggered by the issue of the certificate of 'Wind and Watertight'. The requirement to enter into a phase lease is triggered by the issue of the 'Approved Stage Certificate'.
- 3.8 This structure protects the land ownership in the event of the developer not completing the development (whereupon the licence falls away) and ensures leases are only let on completion. The structure does however require the

clients to be fully engaged in negotiations and agreements with all third parties including, in particular, TfL and statutory services providers. As was the case on Phase 1a, conducting negotiations and entering into agreements with these third parties will have the effect of delaying the scheme.

- 3.9 The proposal to enter into the leases prior to the “trigger events” as set out in the PDA is recommended in order to prevent a similar delay on Phase 1b. The leases proposed would be in the agreed form, with minor changes for practical purposes as allowed for in the PDA. Additionally the leases would have a forfeiture or termination clause to replicate the PDA freehold protection of the licence, thus mitigating the risk that the Council might dispose of the land without any recourse in the event that the blocks or phases do not complete.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks Commissioners’ 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 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 leases for the three blocks within Phase 1B, and the phase lease for Phase 1B to Swan Housing Association in accordance with the terms of the PDA as set out in paragraphs 3.6 to 3.9. The Council’s interests will be protected through the inclusion of forfeiture and termination clauses within the lease agreements.
- 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 paragraph 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 into a building agreement. The building agreement contains an obligation to grant the Block Leases and the Phase Lease.
- 5.3 The Direction issued by the Minister on 17th December 2014 requires the Council, until 31st March 2017, to “..... *obtain the prior written agreement of the Commissioners **before** [emphasis added] 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.*” This report involves the disposal of land through the granting of leases and therefore consent is required.
- 5.4 By virtue of section 123 of the Local Government Act 1972 (‘the 1972 Act’), the Council may dispose of its land in any manner that it may wish. However, except in the case of a short tenancy (i.e. leases of less than 7 years), the consideration for such disposal must be the best that can reasonably be obtained. Otherwise the Council requires consent of the Secretary of State for the disposal.
- 5.5 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
- 5.6 All the dwellings in Phase 1B comprise affordable housing but the Council considers that the question of whether the disposal of Phase 1B achieves best value should be assessed within the context of the proposed development as a whole.
- 5.7 The public sector equality duty under Section 149 Equality Act 2010 arises where the Council is exercising its functions. The Council, for this Phase1B, 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, contributing towards the Community Plan theme of a Great Place to Live.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The project was procured in the open market and, due to its value and nature, 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, thereby discharging the Council's best value duties.
- 7.2 Entering into the leases as set out in the body of the report will reduce the amount of officer time and the expense involved in discussions and negotiations with third parties, such as TfL, as it will be for the developer to conduct these discussions.

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

- Cabinet Report – 9th February 2011 – Blackwall Reach Regeneration Procurement and Scheme Development (CAB 081/101).

Appendices

- None.

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

- None.

Officer contact details for documents:

Ann Sutcliffe, Service Head, Corporate Property & Capital Delivery, x4077