

Cabinet	 TOWER HAMLETS
24 May 2023	
Report of: Ann Sutcliffe – Corporate Director of Place Caroline Holland – Interim Corporate Director of Resources	Classification: Unrestricted
Housing Capital Strategy 2023-26	

Lead Member	Councillor Kabir Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housebuilding
Originating Officer(s)	Rupert Brandon, Head of Housing Supply
Wards affected	All wards
Key Decision?	Yes
Forward Plan Notice Published	25 April 2023
Reason for Key Decision	To set out the alternative delivery approaches for increasing the supply of homes in the borough which will incur expenditure in excess of £1,000,000.
Strategic Plan Priority / Outcome	2. Providing homes for the future

Reasons for Urgency

This report was unavailable for publication within the statutory 5 working day timescale as officers were unable to consult with all necessary consultees in time. The report must be presented to this Cabinet meeting to ensure timely delivery of the Mayor’s priorities for house building.

Executive Summary

In November 2022, the Approved Capital Programme was refreshed to reflect the priorities of the new administration. On 1st March 2023, Full Council approved the HRA Capital Programme of **£389.625m** for 2023-26, including **£311.357m** for the delivery of 1,080 new homes, with an increased number of family-sized homes to help tackle overcrowding and **£94.611m** for capital works on the council’s existing stock.

There remains an unfunded pipeline of schemes, which currently cannot be accommodated within the existing approved HRA capital budgets. Of those sites and including those in this report, up to 1,000 new homes could be delivered towards the Council’s target of 4,000) . As stated in the November 2022 Cabinet report, alternative

delivery routes that limit the use of HRA funding have been explored to maximise the development of additional social homes for rent. The suggested approach to increasing delivery and the resources required to ensure its success is presented in this report.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Note the alternative delivery approaches set out in this report
2. Approve the Heads of Terms of the final agreements for each development package for the Joint Venture (JV) Development Agreements , following consultation with the Corporate Director of Place and the interim Corporate Director of Resources.
3. Approve a revenue-funded budget allocation of £1.1m from the HRA to cover the professional fees for legal, and consultancy advice and any de-risking activity to potential sites being delivered through the JV Development Agreement approach to enable the alternative delivery route to be established and progressed to the issue of the tender prospectus
4. Authorise the Corporate Director of Place, in consultation with the Mayor and the interim Corporate Director of Resources, to substitute schemes within the Approved HRA Capital Programme.
5. After prior consultation with the Corporate Director of Place and the interim Corporate Director of Resources, the Mayor will authorise them to take all necessary steps to deliver the approved capital programme, including but not limited to going out to tender, appointing consultants and contractors in accordance with the Procurement Procedures, acquiring land interests, appropriating land from the General Fund to the Housing Revenue Account (HRA) for the delivery of new council homes and exercising other rights of appropriation, subject to approved budget.
6. Note the Equalities Impact Assessment and specific equalities considerations as set out in Section 4.

1. REASONS FOR THE DECISIONS

- 1.1 The available budget of **£311.357m** for the delivery of the new homes programme is insufficient, within the affordability constraints of the current 30-year HRA Business Plan, to fund the development of new homes on identified sites in the pipeline programme. To enable additional homes to be delivered on council-owned sites, alternative delivery models which minimise the use of HRA funding are required to enable supply to be increased in parallel with the direct delivery route.

- 1.2 Funding required for activities which will enable the delivery of new homes through the use of JV Development Agreements will be funded by HRA revenue, subject to funding availability. The estimated cost of these activities is £1.1m, of which £0.700m is for site de-risking/preparatory works, £0.300m is for legal advice and £0.100m for consultancy advice from Local Partnerships LLP and Judith Atkinson MRICS. Legal services will be procured through a competitive RFQ process.

2. ALTERNATIVE OPTIONS

- 2.1 The council is unable to approve a capital programme which it cannot fund. The capital programme approved in March 2023 allocated the funding available from each source, meaning that if new homes are to be developed on any of the further sites identified for development, these would have to be funded by a new source, without drawing on capital funding from the HRA.

3. DETAILS OF THE REPORT

3.1 BACKGROUND

In March 2023, Full Council approved the HRA Capital Programme of **£389.625m** for 2023-26, including **£311.357m** for the direct delivery of 1,080 new homes, with an increased number of family-sized homes to help tackle overcrowding. The budget of **£311.357m** is insufficient to fund the development of new homes on identified sites in the pipeline programme, because this is the maximum that the 30-year HRA Business Plan demonstrates can be afforded. In order to enable the delivery of additional homes on council-owned sites, alternative delivery models which minimise the use of HRA funding are required to enable supply to be increased in parallel with the direct delivery route.

The council considered a number of alternative delivery routes, including Investment Partnerships, **Joint Venture Development Agreements (JVDA)**s and leaseback arrangements. The delivery route considered the most appropriate for the council-owned sites in the pipeline programme was the JVDA, where the council enters into an agreement with a private sector development partner (PSP) to undertake development work, sharing the risks and obligations.

4 DELIVERY MODEL: JOINT VENTURE DEVELOPMENT AGREEMENT (JVDA)

JVDAs are contracts that bring together a landowning Local Authority with a selected **private sector delivery partner (PSP)**. They are a tried and tested delivery mechanism used in local government which are familiar to many potential partners and where precedent documents exist. Risks and obligations are shared between the parties and the council is proposing to utilise a passive model where the council's share of risk is limited to its land value and where most of the executive actions needed to generate and implement schemes are an obligation of the PSP.

The key features of the JVDA that will be used to secure delivery of the new homes on the unfunded pipeline are:

- The sites to be included in the JVDA will be specified in a prospectus that will be used to formally procure the PSP. JVDAs can incorporate packages of multiple sites or single site programmes. Both packages and single site JVDAs will be used for this pipeline.
- The council will set out its expectations, especially its objective of securing larger affordable homes of 3 and 4 bed units.
- The JVDAs are not an exclusive right to acquire council land. The freehold interest in the sites will be retained by the council and the details of the agreed arrangement will take place at construction completion. This enables the council to preserve control over the performance of its partner PSP.
- The council's obligation to obtain best consideration for its land is protected as any land interest transferred to the PSP will be at market value reflecting consented schemes. The council will appoint an independent valuer.
- The council will have the right but not the obligation to acquire affordable homes, above the value of the land interest. This control mechanism will enable the council to take decisions site by site on whether it is able to fund such acquisitions.
- All development finance will be provided at risk by the PSP. This includes the costs of appointing a design team, making planning applications, obtaining all regulatory approvals and employing building contractors.

It is proposed to select delivery partners via a Public Contracts Regulations compliant route, the Competitive Procedure with Negotiation (CPN). This route has been found to be proportionate and appropriate to be used by councils in seeking to appoint delivery partners for housing development land. Furthermore, this process enables the council to satisfy the requirements of Subsidy Control.

Private sector partners will require a profit margin in recognition of the commercial risks and costs they are investing. The level of profit will be established in the competitive selection process. The realisation of this profit margin will be at the risk of the Private Sector Partner.

4.1 JVDA Heads of Terms

Where the JVDA encompasses multiple sites, it will comprise two separate contracts: an Overarching Development Agreement (ODA) and a Phase Residential Agreement (PRA). The ODA will set out the terms that apply to all sites within the package. The PRA deals with terms for each specific site.

As part of the compliant procurement process, bidders will submit a concept scheme and financial appraisal for one site (the same site in each multiple site package). This case study will be used to evaluate bids from quality and price perspectives (which takes into account community benefits). The case study

submission from winning bids will be used to finalise the commercial terms of the JVDA.

The **Overarching Development Agreement (ODA)** includes terms for:

- Conditionality
- Reporting and meetings
- Mechanism for calling down a site
- Disputes and termination
- Package programme with target dates
- Template financial appraisal
- Template PRA.

The **Phase Residential Agreement (PRA)** includes terms for:

- Sale and purchase
- Risk and insurance
- Vacant possession
- Title guarantee
- Development obligations
- Termination for breach.

Templates for these contracts will be drafted in advance of the CPN tender process. Bidders will be expected to submit a mark-up of these documents as part of their bid submission and bid evaluation scoring will take these responses into account.

4.2 Delivering the unfunded sites pipeline through a JVDA

All sites in the pipeline have been assessed from a delivery perspective. This assessment has recognised the need to increase the quantity of new homes being delivered in the borough over the next four years and that additional delivery will rely on the investment of private finance.

Multiple site packages aim to include a blend of attractive, larger flagship schemes, smaller infill projects, sites that can come forward in an immediate time frame and others that may need some commercially creative pre-development work to release their potential.

Single sites which will utilise stand-alone JVDAs have unique characteristics that mean their potential is best released by niche market specialist developers and/or where a site involves a third-party interest.

A series of investable propositions has been defined which are:

Package 1: John Onslow House, land at Frimley Way & Globe Road, Strout's Place, 33-37 The Oval.

Package 2: Car pound Commercial Road, Bromley Street, 20 Three Colt Street, Tent Street.

Single site: Jack Dash House. A long lease to a charity means dialogue to agree the terms for any development, which may eventually become a tripartite JVDA.

Two sites: Southern Grove and Waterloo Gardens. The combination of historic building refurbishment with new build at Southern Grove means that specialist development and design skills are required which may not be realised by inclusion in a package which is otherwise all new build.

Single site: Bromley Hall School/Lochnagar Street. A historic building with unique architectural features which could appeal to niche developers, along with adjoining land.

Once the route map to utilisation of JVDAs and the CPN process is mainstreamed in the council, it can be reused if other pieces of council land come to light that cannot otherwise be incorporated into the direct build programme.

4.3 Resources required to implement delivery through the JVDA approach

The council has insufficient internal capacity and the specific skill set required to implement a series of compliant tenders leading to several JVDAs, especially if delivery of the unfunded pipeline is to be accelerated at pace, in parallel to the direct delivery programme. The following external resources have been identified and the costs relating thereto are set out in this report:

- Specialist sector expertise to be provided by Judith Atkinson FRICS who has an established track record in establishing public private joint ventures for councils. She was until recently the Strategic Director for Housing and Regeneration at Local Partnerships (LP) and is now a freelance advisor to local government. Judith will strengthen the council's client-side role.
- Local Partnerships will provide both programme management/administrative support to multiple strands of work and produce outputs including a financial appraisal template, pricing scorecard and advice relating to the financial aspects of bidder submissions.
- External lawyers to draft template contracts in line with commercial heads of terms and advice on procurement and Subsidy Control.
- This report includes a recommendation for £0.400m for the consultancy activities listed above.
- There are expected to be some revenue costs, associated with de-risking sites to enable accelerated delivery, for example, the cost of demolishing the empty office building on the Southern Grove site and buildings at Waterloo Gardens. This report includes a recommendation for £0.700m for these activities.

5 DELIVERY TIMETABLE

An indicative timetable for the implementation of the JVDA process is:

Date	Activity
April – May 2023	Title and utility reports, topographical surveys, desk top SIs, base scheme concept plans/capacity studies for unfunded pipeline schemes being updated
24 May 2023	Report to Cabinet setting out alternative approach to delivery for unfunded pipeline schemes, including Heads of Terms for Development Agreement
End May 2023	Appointment of external commercial support to prepare tender documentation
Mid-June 2023	Appointment of external legal advisor to draft Development Agreements
May – Sept 2023	Preparation of technical packs, prospectus, draft JVDA's etc. for procurement of development partner for agreed packages. Informal market engagement with potential delivery partners
Early Sept 2023	Tender/s launched
Late October	First stage submissions received
Nov 2023	First stage submissions evaluated, and full tender packs issued to shortlist/s
January - February 2024	Full tenders evaluated and approvals sought
Jan – April 2024	Development of scheme designs for early phase planning applications
May – Sept 2024	Planning determination process
Late 2024	First schemes start on site: new build programmes will vary depending on size of site from 12 – 36 months
Late 2025	First completions

Adherence to this indicative timetable will be reliant on both external and internal resources and the appetite of potential delivery partners. The Government's Outsourcing Playbook recommends market testing prior to tender launch to gauge this appetite. This exercise will be undertaken during the summer of 2023.

6 EQUALITIES IMPLICATIONS

- 6.1 The Equality Act 2010 requires the Council, in the exercise of its functions to have due regard to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

- 6.2 With the diversity and rapid growth of the borough, ensuring equality is embedded throughout Council plans, services and activities is a key priority and at the heart of all decision making. To help meet its duty under the Equality Act the Council undertakes equality impact assessments to analyse a proposed change to assess whether it has a disproportionate impact on persons who share a protected characteristic.
- 6.3 As part of the process of establishing a housing capital programme, an equality impact assessment checklist is carried out on all new proposals and schemes to determine if a full equality impact assessment needs to be carried out. Full equality impact assessments are carried out for each new build scheme as part of the governance process. This process prevents any proposal which amounts to discrimination from being implemented and any project which is likely to lead to a differential impact is varied to mitigate the differential impact.
- 6.4 It is intended that the housing capital programme, as a whole, reduces inequality, fosters cohesion and has a positive impact for residents and organisations in the borough.

7 OTHER STATUTORY IMPLICATIONS

- 7.1 Under Section 17 of the Crime and Disorder Act 1998, the council is under a legal duty when exercising its various duties to have due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area, including anti-social behaviour adversely affecting the local environment and quality of life of residents; the misuse of drugs, alcohol and other substances and re-offending. It is anticipated that a number of the capital schemes proposed will have beneficial consequences for crime and disorder in the borough through providing new and improved homes, enhancing the public realm and improving life chances for children and young people.
- 7.2 Any safeguarding implications of individual proposals in the budget are set out in the papers relating to those proposals.

8 COMMENTS OF THE CHIEF FINANCE OFFICER

- 8.1 This report seeks approval for a revenue budget allocation of £1.1m from the HRA to cover the professional fees for legal, and consultancy advice and any de-risking activity to potential sites being delivered through a JV Development Agreement approach to enable the alternative delivery route to be established and progressed to the issue of the tender prospectus
- 8.2 Further details of the nature of the works are detailed in section 4.3 of the report, 'Resources required to implement delivery through the JVDA approach'.

- 8.3 The revenue budget allocation will need to be funded and contained within existing approved HRA revenue budgets and/or reserves to ensure the overall affordability of the HRA

9 COMMENTS OF LEGAL SERVICES

- 9.1 The Council has the legal power to enter into the arrangements described in this report.
- 9.2 The Council has the legal duty to achieve Best Value in terms of economy efficiency and effectiveness. The Council will be appointing a development partner following a tender exercise with the winning bidder being the most economically advantageous tenderer based on a preadvertised blend of quality and price. This will assist in the demonstration of compliance with this duty.
- 9.3 The Council has a legal duty to comply with the Public Contracts Regulations 2015. The Council will run a tender and appointment process in accordance with these regulations. The report highlights the use of the Competitive Procedure With Negotiation. The Council may use this route as the report demonstrates that the contract *“cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them”*.
- 9.4 Section 123 of the Local Government Act 1972 enables a local authority to dispose of land provided it achieves the best consideration reasonably obtainable. Each proposed disposal will be considered to ensure this obligation is attained and the joint venture will seek to ensure that the commercial arrangements take into account the proper commercial value of the land. In the case of HRA land, the Council will need to comply with the requirements of section 32 of the Housing Act 1985 and obtain the consent of the Secretary of State as appropriate. With regards to appropriation, where land is no longer required for the purposes for which it is held, a local authority may appropriate it for any purpose for which the authority is authorised to acquire land. Where the land consists of or forms part of an open space, the proposed appropriation must be advertised for two consecutive weeks in a newspaper circulating in the area in which the open space land is situated.

Linked Reports, Appendices and Background Documents

Appendices

- None

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

- None