

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2753

Title: Barking Fire Response

Executive Summary:

Following the fire at De Pass Gardens in June 2019, Mayoral Decision (MD) MD2514 approved GLA Land and Property (GLAP) to provide funding for Barking Riverside Limited (BRL) to undertake remediation works for 33 homes previously owned by London Thames Gateway Development Corporation (LTGDC). The part of the estate impacted by the fire includes homes constructed by Bellway Homes Limited (Bellway), and homes constructed by Mace Development Ltd (Mace) on behalf of Southern Housing Association (Southern) and LTGDC. When LTGDC ceased to exist in 2012, the GLA became statutory successor to LTGDC's obligations and responsibilities, which are discharged through GLAP.

BRL, Southern and Bellway have worked together to develop a proposed single package of works to be offered to all 231 impacted properties. Detailed design work setting out a robust cost estimate for the works has now been completed and an assessment on the most effective contracting mechanism has been undertaken. This decision seeks to approve a revised funding amount based on the detailed estimate. Additionally, this decision form seeks to approve GLAP undertaking the works contract directly rather than through BRL. The rationale for providing the funding has not changed and the decision to provide funding is not being reconsidered in this Decision.

This Decision form explains how this position applies uniquely to these properties given the 'direct delivery' by LTGDC rather than through third party development agreements, the approach GLAP has followed since its inception in 2012. This approach is not applicable to other properties on GLAP land.

Decision:

The Mayor approves:

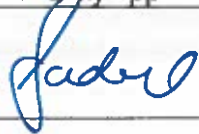
1. GLA Land and Property Limited increasing the funding available, for costs set out in Part 2 of this decision, to facilitate the works required to former LTGDC properties at Barking Riverside.
2. In respect of part of this funding, an exemption from the GLA's Contracts and Funding Code to:
 - enter into the Collaboration Agreement with Southern Housing, Bellway and BRL under which specialist consultants have been appointed without competitive procurement and costs will be shared;
 - enter into a direct contract to remove timber from the 33 properties with the successful contractor, appointed in accordance with the terms of the Collaboration Agreement; and
 - to repay costs incurred by BRL relating to the provision of services on GLAP's behalf in relation to the co-ordination of the consultant appointments and collaboration agreement,
 - for the reasons set out in Part 2 of this decision.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

2/3/21

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. In June 2019 a fire damaged Samuel Garside House at De Pass Gardens. The block of flats is part of one phase of the Barking Riverside development. The freehold to all the properties is owned by Barking Riverside Limited (BRL). BRL is a joint venture (JV) company, the shares in which are owned by GLA Land and Property Limited (GLAP) (49%) and London & Quadrant Housing Association (51%).
- 1.2. Bellway Homes Limited (Bellway) have completed cladding remediation work on Samuel Garside House and the neighbouring block, Ernest Websdale House, which were constructed by Bellway in 2012.
- 1.3. The remainder of this phase of development is made up of 89 homes constructed by Bellway, 109 homes constructed by Mace Development Ltd (Mace) on behalf of Southern Housing Association (Southern) and 33 homes constructed by Mace on behalf of London Thames Gateway Development Corporation (LTGDC). When LTGDC ceased to exist in 2012, the GLA inherited LTGDC's obligations and responsibilities, which are discharged through GLAP.
- 1.4. These homes were, at the time of their development, wholly owned by GLAP, who engaged private estate agents to dispose of the properties to individuals. This is the only instance of direct housing delivery within the GLA / GLAP.
- 1.5. An independent review by a fire engineer concluded that the use of exterior timber on the Barking Riverside Estate does not make the homes unsafe, and the properties have a valid building control certificate from the National House Building Council (NHBC). However, these reports recommended that the organisations responsible for these homes consider further remedial work to enhance the fire safety of buildings with timber cladding.
- 1.6. Bellway and Southern decided to undertake, or where there are private leaseholders offer to undertake, works to properties over and above what was recommended by the independent reviews into the fire. Bellway have confirmed they will offer each private owner the opportunity for replacement cladding. As the owning entity, Southern have confirmed they will be undertaking work to all its properties.
- 1.7. The Mayor, via MD2514, confirmed his stance that as the responsible body for the development and delivery of these 33 homes, GLAP would be responsible for the cost of removing and replacing this cladding and would, via BRL, offer all private residents the opportunity to have their cladding replaced. The GLA / GLAP is not in a position to require these works to be undertaken as the homes are now privately owned.
- 1.8. Following the approval of MD2514, the estimated cost of the project has increased. This decision form seeks approval for an increase in funding for the remediation works based on the design work that was completed in October 2020.

GLAP contractual position

- 1.9. The freehold to all land on the estate is owned by BRL. In 2009/10 BRL was owned by Bellway in partnership with the Homes and Communities Agency (itself inheriting the ownership from English Partnerships when that was amalgamated to create the Homes and Communities Agency). In 2010 BRL sold the long leasehold on one part of this phase of the development to LTGDC to deliver 99 homes and the remainder to Bellway, who delivered the remaining phase including Samuel Garside and Ernest Websdale Houses.

- 1.10. 66 of these 99 homes were affordable houses transferred to Southern, and the remaining 33 were to be sold to private individuals on the open market in order to recoup the original land investment.
- 1.11. LTGDC appointed BRL to construct the development to an agreed design which included the external timber material. In turn BRL appointed Mace, passing all obligations on to construct these homes on their behalf to the agreed specification. The contractual rights and obligations in place between Mace and BRL were later novated and assigned to LTGDC and LTGDC became (in effect) the direct client for these properties, undertaking "direct delivery" rather than through third party development agreements, the latter being the standard practice within the public sector and the approach that GLAP has followed since its inception in 2012. BRL retained the freehold to the land but stepped out of the development role it was originally appointed to undertake. As explained below, LTGDC took a long leasehold of the relevant properties and accepted handover of the developed properties from Mace.
- 1.12. The contracting arrangements required the work to be completed in line with Building Regulations as they were at the time, and LTGDC (as far as we can see from our review of the records) accepted that Mace's works were completed in line with the relevant requirements.
- 1.13. On 31 March 2012 LTGDC and the Homes and Communities Agency's interest in Barking Riverside Ltd transferred to GLAP, as did the LTGDC's leasehold interest in these homes and the obligations under the development agreement. As it did not exist prior to this date, GLAP had no direct control over the nature of these transfers, the choices of cladding or the management of the construction. GLAP took the assets as built.
- 1.14. The homes were due to complete before March 2012, when the HCA and LTGDC were still in existence. However, due to contractual delays, they completed in September 2012, and therefore the part-completed homes transferred to GLAP. A decision was taken at the time by the then Mayoral administration to continue with the business plan put in place by LTGDC for the private disposal of these homes, and they were subsequently sold by GLAP to 33 private individuals.
- 1.15. This is not a situation that has occurred before or since on this site, nor are there similar models on any other GLAP-owned asset or plans to introduce any such model. This position came in to place as a direct result of business decisions taken by LTGDC at the time to become a "direct delivery" entity for this scheme.
- 1.16. As GLAP sold the long leasehold interest in the houses to private individuals, it gave up the direct continuing contractual liability for repair and maintenance and ongoing compliance with fire safety requirements.

GLAP position

- 1.17. The Mayor has consistently been clear that any works to properties relating to fire safety should be paid for by the "responsible party", which the Mayor views as the original developer of any property, not the private individual.
- 1.18. In this instance, both Bellway and Southern have responded to this and have acted in respect of the properties which they developed. They have done this despite having taken the view that they have no technical liability or fault.
- 1.19. In MD2514, the Mayor took the decision that GLAP, as statutory successor to the LTGDC, should take a similar approach for the 33 private homes commissioned by LTGDC. This was based on the view of GLAP (with the benefit of hindsight – following the recent instances of fires involving cladding on residential buildings and the development of knowledge around this issue) that the LTGDC would not have agreed to the timber specification/design if it had been aware of the risks highlighted by the recent fire. Further, GLAP believes that LTGDC would not have sold the homes with the timber in situ.
- 1.20. It was originally envisioned that BRL would act on GLA/GLAP's behalf in undertaking the works required to the 33 properties that were developed by LTGDC, working with Bellway and Southern and

take on, on behalf of GLA/GLAP the co-ordination of the consultants' appointments and procurement of the works contractor under the collaboration agreement to ensure a consistent approach to the works was taken. However, it is now proposed that BRL continue to act on GLAP's behalf in relation to the co-ordination of the consultants' appointments/ services to be provided under the collaboration agreement up to the point of the works contract being entered into by GLAP directly for the works to the homes in the same way as Bellway and Southern. This gives GLAP a clearer contractual position in the delivery of the works to the 33 homes.

- 1.21. GLAP will enter into the collaboration agreement with BRL, Bellway and Southern to ensure it has a clear contractual position in relation to the appointment of the works contractor and oversight of co-ordination of the consultants and works generally. The split of consultants' appointment costs will be shared, and the same works contractor is anticipated to be used by each party, albeit under separate direct works contracts, to ensure economies of scale are achieved and a co-ordinated, simplified approach is taken.
- 1.22. In addition, GLAP will reimburse the proper costs incurred by BRL for the co-ordination work undertaken up to the works contract being entered into, and for the specialist site management costs incurred up to the point of entering into the collaboration agreement. These include waking watch and security costs, as well as internal costs to BRL. More detail is provided in part 2.

2. Objectives and expected outcomes

- 2.1. Taking the above into account, funding to cover the capital and revenue costs of offering cladding remediation to residents of the 33 homes was approved through MD2514. GLAP was, in effect, electing to take corrective works that the LTGDC might have undertaken at the time of the development and sale of these properties.
- 2.2. Commitment of this funding has enabled BRL to work with Southern and Bellway to develop a proposed single package of works to be offered to residents, so that all residents of the 231 impacted properties, regardless of tenure of ownership, can be offered the same solution to ensure consistency.
- 2.3. At the time of the initial approval under MD2514, no design work or assessment of replacement materials had taken place. Detailed design work was completed in June 2020, and a more robust cost estimate has indicated that the capital cost of the remediation work has increased. Revenue costs have also increased due to COVID-19 related delays to the project, extending costs including for the waking watch.
- 2.4. It is proposed that GLAP increases the funding available to reflect the new estimate, to ensure that the remediation costs of all 33 homes can be covered (note there may be some residents who do not opt for remediation). This package will be undertaken on a time limited basis, to be completed within 12 months of the deadline for the resident choosing whether to undertake the works, currently 28 February 2021.

3. Equality comments

- 3.1. Under section 149 of the Equality Act 2010 (the "Equality Act"), as a public authority, the GLA must have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. Protected characteristics under the Equality Act comprise age, disability, gender re-assigned, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage or civil partnership status.
- 3.2. When considering the needs of the existing community and those that will be affected by the proposed development works (both currently and in the future development scheme), any development activity will look to minimise disadvantages to all protected characteristics group within

society. This decision is therefore expected to have positive impacts on persons with a protected characteristic under the Equality Act, as building market confidence in the scheme and increasing the supply of housing in London through the wider development of the Barking Riverside project will help to address problems such as overcrowding and homelessness, which evidence indicates disproportionately affect specific groups, including Black, Asian, Minority Ethnic groups and women.

- 3.3. The delivery of high-quality housing will also promote improved health and wellbeing, given evidence of an association between poor housing conditions and poor health.

4. Other considerations

Risks

- 4.1. The risks associated with this funding are detailed below:

Risk	Mitigation
Works are undertaken but there are issues with the installation / quality of works	A contractual arrangement will be put in place with appointed consultants and the third-party contractor, and if there are issues with the scope or quality of these works these will provide a route for the homeowners/GLAP to enforce against the defaulting party.
Costs of the remediation works increase further	The current estimate for the works is based on detailed cost estimate including project management and contingency. Work on three pilot homes is underway to test the assumptions that the estimate is based on. The works will be competitively tendered.
Bellway and / or Southern decide not to proceed with their respective works	A Collaboration Agreement will be signed between BRL, Bellway, GLAP and Southern. In this document the four parties have agreed to work together on the offer to remove and replace timber cladding within Barking Riverside.
Private leaseholders choose not to have any work undertaken	BRL, GLAP, Southern and Bellway have hired a specialist communications consultancy under the Collaboration Agreement to support clear communications with leaseholders, including explaining the benefits of a modern cladding system to improve building safety.
This decision may be viewed as setting a precedent for properties on GLAP land	This Decision form applies uniquely to these properties given the 'direct delivery' by LTGDC rather than through third party development agreements. GLAP has followed the third-party delivery approach since its inception in 2012 and therefore this approach is not applicable to other properties on GLAP land.

Link to Mayoral strategies and priorities

- 4.2. The Mayor is determined to do everything possible improve the safety of Londoners and the buildings they live in. The Mayor does not have a statutory role in setting or reforming the Building Regulations and the Greater London Authority (GLA) does not have responsibility for Building Control. His powers are limited to administering affordable housing funding and setting planning policy through the London Plan. However, the Mayor has been clear that fire safety risks are not limited to residential buildings above 18m.
- 4.3. Chapter 5 of the London Housing Strategy 2018 sets out the Mayor's call to action on building safety for all housing. The strategy supports the ongoing Government review of the system of Building Regulations and fire safety, and radical reform of regulations and building control. It sets out the Mayor's view that individual leaseholders should not be forced to pay for remediation where safety issues have arisen through no fault of their own.

Other considerations

- 4.4. As detailed in the Mayoral Decision-Making document (published May 2020), Greater London Authority Land and Property Ltd (GLAP) is the Mayor's subsidiary company established to manage all land related transactions, including and primarily the acquisition and disposal of land.
- 4.5. The Chief of Staff, the Deputy Mayor for Housing and Residential Development, the Executive Director for Resources, the Executive Director for Housing and Land, and the Assistant Director for Strategic Projects and Property are Directors of GLAP and responsible for financial decision making for the company.
- 4.6. In parallel, the Deputy Mayor for Housing and Residential Development and the Head of Area – North East London are appointed Directors of Barking Riverside Limited (BRL).
- 4.7. As this Mayoral Decision proposes the passing of funding from the GLA or GLAP to BRL, there is a potential overlap of responsibilities for the Deputy Mayor for Housing and Residential Development.
- 4.8. On that basis, the following steps have been taken in order to ensure a clear differentiation of roles and decision-making responsibilities:
 - The Head of Area – North East London, has recorded a potential conflict of interest as part of the Barking Riverside Ltd Board proceedings, and will absent themselves from any decision making by BRL related to this issue in order that they can review this Mayoral Decision and provide advice and information to GLAP and the GLA.
 - The Deputy Mayor for Housing and Residential Development is not involved in the drafting or decision making for this Mayoral Decision in order that they can continue to act on the BRL Board.
- 4.9. There are no other conflicts of interest to declare for those involved in the drafting or clearance of this decision form.

5. Financial comments

- 5.1. This decision requests approval for additional funding to enable Barking Riverside Limited, working with Southern and Bellway, to carry out remedial cladding work on 33 privately held properties on the Barking Riverside Development. The estimated costs are commercially confidential, but the major items covered are:
 - cladding removal, and design and works costs associated with a replacement cladding system;
 - project management costs;
 - communications and stakeholder engagement costs; and

- legal, professional and engagement fees.

5.2. Note that where applicable these costs will be split between BRL, Bellway and Southern.

5.3. The costs arising will be met by GLAP and the GLA.

5.4. Further financial comments are incorporated in Part 2 of this decision.

6. Legal comments

6.1. Section 30 of the Greater London Authority Act 1999 (as amended) (GLA Act) gives the Mayor a general power to do anything which he considers will further one or more of the principal purposes of the GLA as set out in section 30 (2) which are:

- i. promoting economic development and wealth creation in Greater London;
- ii. promoting social development in Greater London; and
- iii. promoting the improvement of the environment in Greater London;

and, in formulating the proposals in respect of which a decision is sought, officers confirm they have complied with the GLA's related statutory duties to:

- pay due regard to the principle that there should be equality of opportunity for all people;
- consider how the proposals will promote the improvement of health of persons in Greater London, promote the reduction of health inequalities between persons living in Greater London, contribute towards the achievement of sustainable development in the United Kingdom and contribute towards the mitigation of or adaptation to climate change in the United Kingdom; and
- consult with appropriate bodies.

6.2. Sections 1-3 of this report indicate that the decision requested of the Mayor falls within the GLA's statutory powers. Given the above, section 34 of the GLA Act which allows the Mayor to do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of his functions, the foregoing sections of this report indicate that the GLA has the power to make the requested decision to increase the financial spend on this matter for the reasons set out in this MD.

6.3. External lawyers are advising GLAP on the collaboration agreement terms and the contractual arrangements with consultants and the works contractor. It is noted in this MD that GLAP proposes to enter into a collaboration agreement with other previous unit-owners at the site who will put in place specialist consultants one of whom will procure a works contractor for the main works on behalf of all of the landowners. Paragraph 9 (Part C) of the GLA's Contracts and Funding Code (the "Code") requires the GLA to undertake a compliant procurement process for the appointment of a consultant to perform such services. However, the Mayor may approve an exemption from this requirement under Paragraph 10.1 of the Code upon certain specified grounds.

6.4. One of these grounds is that the relevant service provider has "continuation of existing work which cannot be separated from the new project/work". The officers have set out in Part 2 of this MD how they are satisfied that the requirements of paragraph 10.1 have been met pursuant to the requirements of paragraph 10.2. Accordingly, the direct appointment of works contractor and financial contribution to cost of the consultants appointed under the Collaboration Agreement may be authorised without a prior competitive procurement and the proposed exemption approved, if the Mayor is satisfied with the content of this report. None of these works or services exceed the Public Contract Regulations 2015 thresholds.

6.5. Officers must ensure that an appropriate contract be put in place between GLAP and the works contractor and that there are appropriate warranties in place for the specialist consultants, as appointed pursuant to the collaboration agreement.

- 6.6. Similarly, in respect of any grant to be provided to BRL for security and waking watch costs, officers must ensure that a suitable funding agreement is entered into, including any provisions required to ensure state aid compliance, before committing to the same.

7. Planned delivery approach and next steps

- 7.1. The key milestones from the project are set out here

Activity	Timeline
Residents portal opens for leaseholders to opt in for the remediation of their unit	August 2020
Remediation work on pilot homes commence	January 2021
Tender for the main works	March 2021
Sign works contract	April 2021
Works commence	May 2021
Works complete	May 2022

Appendices and supporting papers:

None

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 - Deferral**Is the publication of Part 1 of this approval to be deferred? YES**

If YES, for what reason: Due to the commitment to fund the works to the homes directly and sensitive information, delay until the point at which the main works contractor is appointed.

Until what date: April 2021.

Part 2 - Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form - YES**ORIGINATING OFFICER DECLARATION:**

Drafting officer to
confirm the
following (✓)

Drafting officer:

Cathryn McCarthy has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Rickardo Hyatt has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

David Bellamy has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 22 February 2021.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

D. Gene

Date

25 February 2021

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

D. Bellamy

Date

22 February 2021

