

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2514

### Title: Barking Fire Response

#### Executive Summary:

Following the fire at De Pass Gardens in June 2019, Bellway Homes Ltd (Bellway), Southern Housing Association (Southern) and Mace Developments Ltd (Mace) have commissioned independent fire assessments of all homes (both flats and houses) with similar timber materials within this phase of the Barking Riverside Development. This work remains ongoing and further review is being coordinated to validate the findings including liaison with the National House Building Council (NHBC), the original approving authority. At this stage, NHBC has advised that all buildings remain compliant as per the original approval and initial findings suggest there are no significant works required, however there is an opportunity to improve fire safety to some house types on the estate.

Bellway and Southern have taken the view that whilst the cedar cladding material is compliant with relevant regulations, had they been aware of the issues and complexities involved with the materials in this unique circumstance, they would not have commissioned the materials. They are proposing to undertake works to the properties they developed to reduce the amount of timber material on the exterior of buildings.

Ninety-nine of the properties on this phase of the estate were originally commissioned by London Thames Gateway Development Corporation (LTGDC) through Barking Riverside Limited (BRL) and Mace. Thirty-three properties were sold on the open market, and as a result, should it have taken the same view as Southern and Bellway, LTGDC would have been responsible for commissioning any similar works to the properties.

As LTGDC was wound down in 2012 and incorporated into GLA Land & Property Ltd (GLAP), it is proposed that GLAP funds these works on the basis that LTGDC would likely not have commissioned this form of exterior cladding if it had been aware of the issues, and therefore as the successor body GLAP should remedy this

As set out in the report, given the unique circumstances of the situation, this is not a process that GLAP will follow in any of the rest of its stock.

#### Decision:

That the Mayor approves:

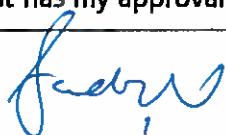
GLA Land and Property Limited providing grant funding (in line with amounts detailed in Part Two of this report) to Barking Riverside Limited to undertake works to former LTGDC properties at Barking Riverside.

#### 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:

19/8/19

## **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 wider Barking Riverside development. The freehold to all properties is owned by Barking Riverside Limited (BRL), of which London and Quadrant New Homes owns 51 per cent and the Mayor owns 49 per cent through GLA Land & Property Ltd (GLAP).
- 1.2. Bellway Homes Ltd (Bellway) completed the flats at Samuel Garside House and an accompanying nearby block, Ernest Websdale House in 2012. They are currently undertaking works to remove non-essential wooden cladding from both buildings and designing alternative solutions for permanent replacement of all exterior timber.
- 1.3. The remainder of this phase of the development is made up of houses constructed by Bellway Homes Ltd, or by Mace Developments Ltd (Mace) on behalf of London Thames Gateway Development Corporation (LTGDC) and Southern Housing Association (Southern). When LTGDC ceased to exist in 2012, GLA inherited LTGDC's obligations and responsibilities – which are discharged through GLAP.
- 1.4. Fire engineers have undertaken an initial review of the house types on the estate and made a series of recommendations on the introduction of fire breaks where there are continuous elements of timber between houses to help reduce the potential risk of fire spread. At the same time the NHBC has been engaged to validate its original sign off.
- 1.5. Both Southern and Bellway decided to look at either directly undertaking, or in the instance of private leaseholders, offering to undertake, more extensive works to properties over and above those recommended within the fire engineers' reports. Likewise, BRL and GLAP have assessed the findings and feel more might be done (above the minimum) to improve the fire protection at the relevant properties.

#### *GLAP Contractual Position*

- 1.6. The freehold to all land on the estate is owned by BRL. In 2009/10 BRL was owned by Bellway and 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.
- 1.7. Sixty-six of these 99 homes were affordable houses transferred to Southern, and the remaining 33 were to be sold back to private individuals on the open market in order to recoup the original land investment.
- 1.8. 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 units 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 units, undertaking "direct delivery" rather than through third party development agreements, which is 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, the LTGDC took a long leasehold of the relevant properties and accepted handover of the developed properties from Mace.

- 1.9. 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.
- 1.10. On 31 March 2012 LTGDC and the Homes and Communities Agency ceased to operate in London, and the Homes and Communities Agency's interest in Barking Riverside Ltd transferred to GLAP, as did LTGDC's leasehold interest in these homes as well as the obligations under the development contract. Because 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 they were".
- 1.11. The homes were due to complete before March 2012 when the HCA and LTGDC ceased to exist. 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 former 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.
- 1.12. 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 similar 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.
- 1.13. As GLAP sold/assigned its 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*

- 1.14. The Mayor has been consistently clear that any works to properties relating to fire safety – both required, and as in this instance, cosmetic – should be paid for by the "responsible party", which he sees as the original developer of any property, not the private individual.
- 1.15. In this instance, both Bellway and Southern have responded to this and taken action 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.
- 1.16. It is now for GLAP to decide if it should take a similar approach (as successor to the Homes and Communities Agency, English Partnerships and LTGDC) in respect of the 33 private properties originally commissioned by LTGDC.
- 1.17. It is the view of GLAP that (knowing what it knows now – 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 (irrespective of its compliance with building regulations at that time) if it had been aware of the risks highlighted by the recent fire. Further, GLAP believes that LTGDC would not have sold the units with the timber in situ.
- 1.18. It is also right that GLAP – as a shareholder in BRL – has a keen interest in the success of that organisation and its construction of affordable accommodation to deliver the Mayor's ambitions in Barking. GLAP is concerned that fears about the timber used in this scheme may have a negative impact on its ability to achieve its objectives in that area by influencing the market perception and community confidence in the wider scheme.

- 1.19. The Mayor has worked with Bellway and Southern to find solutions for residents of properties they respectively originally commissioned and are responsible for. If LTGDC still existed, the Mayor would be pushing for that entity to take a leadership role and resolve these issues.
- 1.20. This decision is proposed in recognition of GLAP being the successor body to LTGDC, and not in its capacity as a minority shareholder in BRL. Costs associated with work on leased buildings are not the responsibility of the freeholder.

## **2. Objectives and expected outcomes**

- 2.1. Taking the above into account, as GLAP is inheritor of the unique decisions taken by LTGDC at the time and in this instance, it is proposed that funding be made available to BRL to undertake these works so that a comprehensive resolution can be offered to all residents on the same terms.
- 2.2. GLAP is, in effect, electing to take corrective works that the LTGDC might have undertaken itself at the time of the development and sale of these properties.
- 2.3. It is proposed that GLAP works with Bellway and Southern, with support from BRL and Mace to agree a proposed single package of works to be offered to residents – so that all residents regardless of tenure or ownership are offered the same solutions to ensure consistency.
- 2.4. This package of works would be offered on a time limited basis, to be completed within 12 months of the initial offer (unless under exceptional circumstances, for example where there are issues of probate), in order to ensure that works can be undertaken on a comprehensive basis and a resolution for all residents is in place as soon as possible.

## **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-assignment, 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 (both currently and in the future development scheme), any development activity will look to minimise disadvantages to all protected characteristic groups 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 as a result 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. There are a number of key issues posed by undertaking these works, as detailed below:

Risk	Mitigation
Private leaseholders choose not to have any work undertaken	The communication between BRL, its partners and the owners and occupiers must be managed as inclusively as possible – explaining to those concerned the benefits of putting in place a more modern cladding option with greater fire safety attributes.
Works are undertaken but there are issues with the installation / quality of works	A contractual arrangement will be put in place with BRL, and between BRL and its third-party agents, and if there are issues with the scope or quality of these works action will then be taken through sanctioning clauses within these agreements.
There is a legal challenge by third parties who want similar work undertaken to their properties elsewhere in London	There are, to the best of all records, no other instances of this model for the development and funding of private residential houses having been planned or adopted by GLAP. This situation is unique, and the decision to assist with re-cladding is only necessary to correct a legacy issue inherited from LTGDC.
Bellway and / or Southern decide not to proceed with their respective works	If either party decides not to proceed with the works, which is highly unlikely, then GLAP will need to reflect on whether it proceeds.

##### Other Considerations

4.2. As detailed in the Mayoral Decision Making document (published May 2019) and accompanying Mayoral Decision MD2472, 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.

4.3. The Chief of Staff, the Deputy Mayor for Housing and Residential Development, and the Executive Director for Housing and Land are Directors of GLAP and responsible for financial decision making for this company.

4.4. In parallel, the Deputy Mayor for Housing and Residential Development, the Executive Director for Housing and Land and the Head of Area – North East London (within the Housing & Land Directorate) are appointed Directors of Barking Riverside Ltd (BRL).

4.5. As this Mayoral Decision proposes the passing of funding from GLAP to BRL, there is a potential overlap of responsibilities for the Deputy Mayor for Residential Development and the Executive Director for Housing and Land acting between the two companies.

4.6. 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 relating to this issue in order that they can draft this Mayoral Decision and provide advice and information to GLAP and the GLA;
- The Executive Director for Housing and Land and the Deputy Mayor for Housing and Residential Development are not involved in the drafting of or decision making for this Mayoral Decision in order that they can continue to act on the BRL Board. Neither have had sight of the report through its drafting, nor of the advice received by GLAP in its preparation. The report has been agreed by the Interim Deputy Executive Director for Housing and Land and the Chief of Staff, who are able to act in the interests of both the GLA and GLAP.

## 5. Financial Comments

5.1. This decision requests approval for funding to enable Barking Riverside Limited to employ third party agents to carry out remedial cladding work on 33 privately held units on the Barking Riverside Development. The estimated total costs are commercially confidential, but the major items covered are:

- Direct replacement costs.
- Project management costs.
- Community liaison centre.
- Community project manager.
- Legal, professional and engagement fees.

5.2. The costs arising will be met by GLAP.

5.3. 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.

- 6.3. The grant of funding to a commercial entity (BRL) requires consideration of the rules on state aid. Officers consider that in these circumstances, GLAP is behaving as a prudent private sector investor would do – as described above and demonstrated in the conduct of Bellway and Southern. That being the case, the market economy operator principle applies and the proposed arrangements do not entail state aid.
- 6.4. As this is a grant to BRL it will be for BRL, together with the other developers on site, to settle the terms of appointment of any contractors.

## 7. Planned Delivery Approach and Next Steps

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

Key Milestone	Expected Date
Scope of works agreed	September 2019
BRL writes to residents with proposals	September 2019
Meetings held with residents	Oct – Dec 2019
Designs for schemes developed	Q4 2019/20
Planning Permission sought	Q4 2019/20
Works commence	Q4 2019/20

### 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: *Publication delayed until BRL has written to residents to set out the proposed route forward, so that residents are the first to know about the proposed scheme and solutions, rather than finding out through any third-party coverage.*

Until what date: (a date is required if deferring) **23<sup>rd</sup> September 2019 (or two working days following the issue of the letter to residents, whichever is first)**

**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:**

Neil Hook 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 12 August 2019

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature

*M. Clarke*  
Tom Middleton on behalf of Martin Clarke

Date

13.08.19

**CHIEF OF STAFF:**

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

Signature

*D. Bellamy*

Date

13/8/2019