

REQUEST FOR MAYORAL DECISION – MD1400

Title: Barking Riverside – Contingent Liability

Executive Summary:

Barking Riverside Limited (BRL) is a joint venture company (JV) between GLA Land & Property Ltd (GLAP) and Bellway Homes plc (Bellway), each owning 49% and 51% of the shares respectively. In order to guarantee the early delivery of a secondary school at Barking Riverside, BRL has agreed to prepare the development platform for the school in advance of the requirement under the S106 agreement. On this basis London Borough of Barking and Dagenham (LBBD) have agreed to lend BRL the funds required to cover the cost of the works until the trigger under the S106 agreement is met. LBBD require a Parent Company Guarantee (PGC) in respect of BRL's obligations under the loan which Bellway are prepared to provide but only on the basis that the GLAP will meet 49% of any liability incurred under the guarantee. This will create a contingent liability for GLAP.

Decision:

The Mayor approves GLA Land & Property Limited's provision (in its capacity as a shareholder in Barking Riverside Limited (BRL)) to Bellway Homes plc of an indemnity in respect of up to 49% of liabilities that Bellway Homes plc incur under the parent company guarantee it provides to the London Borough of Barking and Dagenham as security for the latter's loan to BRL.

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: 23 September 2014

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

Decision required – supporting report

1. Introduction and background

Barking Riverside Limited (BRL) is a joint venture company (JV) between the GLAP and Bellway Homes plc, each owning 49% and 51% of the shares respectively. The purpose of the JV is fundamentally to prepare the site, providing serviced development plots for house builders and to provide the essential physical infrastructure including highways, utilities and the wider public realm and community facilities. It is the JV that owns the site, prepared and submitted the outline and reserved matters planning applications for the entire site and first two stages respectively, and is the signatory to the section 106 agreement. Finance is provided by the shareholders to BRL in the form of loan stock accruing interest.

Development of the site is ongoing with 357 homes completed and a further 329 currently on site and due to complete by the end of March 15. In addition the Rivergate Centre which includes the first primary school and community centre for the development opened in September 2012. The Riverside Secondary School (part of the Free School programme occupied several classrooms in the Rivergate Centre and subsequently moved to a new temporary site from September 2013.

The main site for the secondary school is situated in Stage 2 of the development which as yet has not been opened up for development while the question of how a rail solution is funded for the site is addressed. Given the time limit on the availability of the free school funding secured for the site, BRL have been in discussion with LBBD on the timing for meeting BRL's obligation to provide a development platform for the secondary school. Under the terms of the S106 agreement this is not until the occupation of 1,500 homes and this milestone remains sometime in the future. It has been agreed therefore, that LBBD will give a loan to BRL to meet the costs of the works which will be repaid to LBBD at the time of the trigger under the S106 agreement.

As a condition of the loan LBBD require a parent company guarantee (PGC) to protect its position should BRL default and the loan or part thereof is not repaid. Bellway Homes plc have agreed to provide the PGC on the basis that the GLAP provide an indemnity of 49% (representing GLAP's shareholding in BRL) of any sum payable to the Council BY Bellway Homes plc under the PGC. This will create a contingent liability for GLAP until the Loan is repaid on the trigger of the S106 agreement.

2. Objectives and expected outcomes

The main outcome of this arrangement is to ensure the early delivery of the secondary and special education needs schools and utilising the available funding from the Education Funding Agency. This will ensure the opening of both schools for the September 2016 term. In addition this will greatly enhance the local facilities as GLAP seeks to accelerate housing delivery through the funding package for the Gospel Oak to Barking Line Extension. It is expected that housing delivery will ramp up to 500 to 600 units per annum which will significantly reduce the build out period of the development compared to the current baseline.

3. Equality comments

In entering into this indemnity there are no equality issues for the GLA. However the early provision of the school platform will enable early delivery of the secondary school and also a special education needs school (both funded) and provide much needed school places.

4. Other considerations

The current programme of development is focussed on Stage 1 of the scheme. There are, as previously mentioned, 688 homes either completed or on site and a planning application is to be made for a further 320 homes. The balance of the Stage 1 site cannot be developed until a number of power cables have been placed underground therefore allowing UK Power Networks to remove the associated pylons. This will allow the development of homes to start in 2016/17. The maximum amount of homes for which BRL has planning consent in Stage1 is 1450 homes therefore the trigger for the secondary school is unlikely to be met until Stage 2 is opened up and this is only likely to happen with a commitment to the rail extension. The more likely scenario is that BRL will repay the loan on the s.106 agreement trigger date for the occupation of the 1,500th home and this will be built into its business plan and repaid through plot receipts. However, should the project be stalled the loan plus interest will need to be repaid by 1 April 2020 and Bellway and GLAP (as shareholders of BRL) will have to resolve how to fund this at the time. The circumstances for a default of the loan are non-payment and the insolvency of BRL. LBBB has requested the PGC to deal with these circumstances and Bellway are prepared to offer this with the aforementioned indemnity from GLAP.

5. Financial comments

- 5.1 The agreement between GLAP and Bellway requires each to meet its proportionate obligations under the joint venture. As Bellway have provided the guarantee to LBBB in their names, this indemnity will ensure that GLAP complies with its obligations should a liability arise.
- 5.2 It is not considered likely that any additional costs will arise as a consequence.

6. Legal comments

- 6.1 The foregoing sections of this report indicate that:
 - 6.1.1 the decisions requested of the Mayor fall within the discharge of the GLA's housing and regeneration functions contained in Part 7A of the Greater London Authority Act 1999 ("GLA Act") and section 30 and 34 GLA Act powers to do such things to promote or which may be considered are facilitative of or conducive or incidental to the promotion of economic development and wealth creation in Greater London; and
 - 6.1.2 in formulating the proposals in respect of which a decision is sought officers have complied with the Authority's related statutory duties to:
 - (a) pay due regard to the principle that there should be equality of opportunity for all people;
 - (b) consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom; and
 - (c) consider consulting with appropriate bodies.
- 6.2 Officers should ensure, working with TfL Legal in this regard, that appropriate documentation is put in place between and executed by GLAP and Bellway Homes plc to formalise the indemnity and protect the interests of GLAP including requiring Bellway:
 - (a) to notify GLAP immediately in writing upon becoming aware of any matter which might be considered reasonably likely to entitle the Council to seek to make any claim under the Guarantee, providing GLAP with all related details it requires;
 - (b) upon receiving any claim under the Guarantee from the Council or any third party acting

upon the Council's behalf Bellway to provide GLAP with all details of the claim as are known to it;

- (c) to agree with GLAP in advance the approach to be taken to any settlement of liability or related communication with any third party making a claim under the guarantee.

7. Investment & Performance Board

The project approval for this is historic and dates back to October 2003. The basis of the original approval from DCLG was to limit exposure of the project to the public sector to **£41m** plus interest. To date **£34,564,359** has been expended on the project. The liability could be for up to £2,695,000 plus costs and interest. At present there is scope within the budget to cover this Contingent Liability.

8. Planned delivery approach and next steps

The works to create the school platform commenced in April 14 and are ongoing to enable the handover of the site to LBBD in early autumn to start the construction of the schools. It is intended for BRL to enter into the Loan Agreement and for Bellway to enter into the PGC once the GLA has an approval for the indemnity.

Appendices and supporting papers: None

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) 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 approval 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: The indemnity is required to enable entry into the proposed loan arrangements between the London Borough of Barking and BRL. Publication of this report at this point might prejudice timely execution of the loan and therefore, delivery of the project which is not in the public interest.

Until what date: 12 October 2014

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Fiona Duncan has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

Assistant Director/Head of Service:

Fiona Duncan has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Sponsoring Director:

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

✓

Mayoral Adviser:

Richard Blakeway has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

Date

CHIEF OF STAFF:

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

Signature

Date