Growth Committee
28 September 2017

Housing Regeneration– GLA Housing Zone Funding Agreements
Report by the Deputy Chief Executive

Call in deadline: 5pm on Thursday 12 October

Purpose

This report recommends that the Council enters into a Borough Intervention Agreement (BIA) and Affordable Housing Grant Agreement (AHGA) with the Greater London Authority (GLA) in order to receive £46.2m funding which will facilitate the delivery of the Cambridge Road Estate (CRE) regeneration.

Recommendation of the Deputy Leader, Portfolio Holder for Estate Regeneration

The Committee **resolves** that, on behalf of the Council, it authorises the Monitoring Officer to enter into a Borough Intervention Agreement (BIA) and Affordable Housing Grant Agreement (AHGA) with the Greater London Authority, to fund the early acquisition of property interests on the Cambridge Road Estate and contribute to the costs of building new affordable housing.

Key Points

A. As part of the Mayor’s Housing Strategy thirty Housing Zones have been designated across London, in partnership with London boroughs and their development partners. A total of £600 million in funding has been made available by the Mayor and Government for the construction of 75,000 new homes.

B. The Kingston Housing Zone includes CRE, with an anticipated delivery of circa 2,000 new homes on the Estate, including 653 social rented homes and potentially 100 shared ownership or shared equity units. The Housing Zone status will help to accelerate the delivery of housing on the Estate and the CRE regeneration programme has been given a funding allocation of £46,200,000 by the GLA comprising of:

1) a £26,625,000 recoverable loan to be made available pursuant to the terms of the BIA to fund the purchase of homes in third party freehold and leasehold interests of the part of CRE which it is anticipated will be the first phase of the regeneration project (the Buybacks) in order to facilitate the regeneration of the whole of CRE; and
2) £19,575,000 of grant funding to be made available pursuant to the terms of the AHGA to fund the building of new affordable housing on CRE.

C. The Council entered into an Overarching Borough Agreement with GLA on 20 December 2016 which confirmed the allocation of the Housing Zone funding and the anticipated outputs to be delivered by the Council as part the CRE regeneration project. The agreement also confirmed that it is a condition precedent to GLA providing any funding to the Council that the Council enters into the BIA and the AHGA.

Context

1. Since entering into the Overarching Borough Agreement, in order to secure the allocation of the Housing Zone funding, the Council has been required to provide a comprehensive pack of information to GLA setting out the Council's proposals for the regeneration of CRE, the estimated costs of delivery and the detail of the Council's proposed delivery route via a joint venture with a private sector development partner.

2. The Council has engaged BNP Paribas to advise in relation to the valuation and acquisition of the Buybacks. BNP Paribas have estimated that the cost of acquiring all third party freehold and leasehold interests across CRE will be in the region of £80m. They have prepared an Acquisitions Plan to be appended to the BIA which identifies the Buybacks which the Council is proposing to complete using the £26,625,000 recoverable loan funding from GLA. BNP Paribas are in active discussions with a number of the freehold and leasehold owners and terms have already been agreed on several of the Buybacks.

3. The GLA have confirmed that they are satisfied with the information pack provided by the Council and the form of BIA has now been agreed between the solicitors acting for the Council and GLA.

4. The key provisions in the BIA are summarised below:

a) **Agreed Intervention Sum**

The £26,625,000 interest free loan funding is to be drawn down in two tranches:

- £20,000,000 in 2017 as soon as possible following completion of the BIA; and
- £6,625,000 in 2018-19

b) **Direct Zone Outputs**

The Council commits to the delivery of 514 market sale homes by 2026 under the BIA.

The Council is obliged to provide GLA with a projected construction programme and phasing of delivery of the scheme by agreed longstop dates.

c) **Conditions Precedent**

The BIA sets out a number of conditions precedent which must be satisfied by the Council prior to any claim for funding being drawdown.

These conditions precedent include the Council providing satisfactory evidence to GLA that it will have sufficient funds to deliver the regeneration of CRE and demonstrating to GLA that all necessary consents have been obtained to enable the Buybacks to be completed.

There are also a number of subsequent obligations in the BIA that must be satisfied by the Council once the funding has been drawdown. These obligations include providing GLA with monthly progress reports in relation to the Buybacks and providing valuation and title reports addressed to GLA on the completion of each of the Buybacks.

d) **Agreed Intervention Milestones and Dates**

There are a number of milestones dates set out at Schedule 1 of the BIA which the Council is obliged to meet including:

- appointment of the development partner by 31 December 2018
- submission of the planning application for the regeneration scheme by 31 December 2019
- commencement of work on site by 31 March 2020 (Phase 1), 31 March 2022 (Phase 2) and 31 March 2024 (Phase 3)
- practical completion in relation to the 514 market sale dwellings to take place by 31 March 2022 (Phase 1), 31 March 2024 (Phase 2) and 31 March 2026 (Phase 3)

e) **Repayment Dates**

The loan funding is to be repaid in two tranches:

- £10,000,000 on 1 December 2025; and
- £16,625,000 on 1 December 2028

There is no interest paid on the loan funding, however default interest is paid at 4% above base rate on any outstanding sums not paid on the dates above.

There is an express provision in the BIA which required the Council to repay all of the loan funding to GLA within 10 business days if the private sector development partner has not been appointed by 31 December 2018.

The GLA have also included a provision which obliges the Council to notify the GLA where the development partner's profit will exceed 15% of the gross development value of the CRE scheme less development costs in order for discussions to commence between GLA and the Council to consider earlier repayment or recycling of the funding. At this stage is it not possible to confirm the partner's level of profit and as the obligation is only to notify GLA, these provisions have been accepted.

f) **Default Provisions**

The BIA set out various Events of Default including but not limited to the following:

- failure to meet the agreed milestones as set out above
- any representation or warranty made by the Council under the BIA is incorrect
- the Development Agreement to be entered into between the Council and the joint venture delivery vehicle is terminated
- the Council fails to secure ownership and vacant possession of the Buyback sites by 31 March 2021.

Where an Event of Default occurs, there are various options available to GLA depending on the nature of the default. These include suspending or altering the timing of payment of the funding, reducing the amount of funding, requiring the Council prepare a plan to remedy and/or mitigate the effects of the default and terminating the BIA and requiring repayment of the funding.

AHGA

6. As part of GLA's funding due diligence process, the Council has provided details of the proposals for the delivery of new affordable housing as part of the regeneration of CRE and small satellite sites known as the "RBK Garage Sites" to which the Housing Zone funding application also relates.

7. GLA's solicitors have confirmed that they are satisfied with the information provided by the Council and they have issued their standard form AHGA.

8. The key provisions in the AHGA are summarised below:

a. **Scheme Grant**

The £19,575,000 grant is to be drawdown in the following tranches:

- £6,675,000 in 2019-20 upon start of the works on site;
- £10,681,250 in 2021-22;
- £443,750 in 2023-24; and
- £1,775,000 in 2025 – 26 (this payment relates to the RBK Garage Sites and drawdown will be tied in to procurement and completion)

The grant is made available solely for the purpose of funding the Development Costs (the acquisition costs, works costs and professional fees for the scheme as defined in Schedule 1).

There is a prescribed list of costs at Part 2 of Schedule 1 which are not to be treated as Development Costs including capital costs incurred on land which will not be used exclusively used for housing provision directly related to the scheme.

Clause 8 of the AHGA sets out the procedures and conditions precedent for making a claim to drawdown the grant funding. For example, the Council is not permitted to drawdown the final 25% tranche of the funding until Phase 1 of the delivery of the affordable housing has reached practical completion.

All claims, provision of information and project monitoring will be dealt with via the GLA's (OPS) Open Project System.

b. Outputs

The Council commits to the delivery of 424 affordable homes comprising:

- 359 affordable or social rent dwellings (330 on CRE and 29 on the RBK Garage Sites)
- 65 flexible dwellings sold on a shared ownership or shared equity basis (52 on CRE and 13 on the RBK Garage Sites)

The AHGA provides for the delivery of the affordable units in accordance with a delivery programme which includes milestone dates for the appointment of the development partner (31 December 2018) and start on site and completion dates for the various phases of the scheme.

c. Scheme Obligations

The AHGA contains a number of obligations relating to the delivery, marketing and disposal of the affordable housing.

The Council is also obliged to provide GLA with regular updates and allow GLA's representatives to enter onto the site in order for the delivery obligations to be effectively monitored by GLA

d. Default Provisions

The AHGA sets out a number of Default Events including but not limited to the following:

- failure to progress in delivery of the affordable housing;
- failure to appoint a development partner or enter into the Development Agreement by 31 December 2018 (or where there has been a legitimate reason for any delay by an ultimate longstop date of 30 June 2019);

The GLA have various remedies on occurrence of a Default Event depending on the nature of the default, including termination of the AHGA and serving notice on the Council to remedy the default within a specified period.

The GLA may be entitled to recover the some or all of the grant funding within 10 business days in circumstances where a Default Event has occurred. The Council will also be obliged to pay interest at 4% above base rate on any part of the grant funding to be repaid.

e. **Grant Reconciliation**

The AHGA also provides for a reconciliation exercise to be undertaken where the tenure mix (split between rent to save, shared ownership and shared equity units) changes and it becomes apparent that more grant has been paid than is required to deliver the scheme. Any "Over Commitment" sum identified as part of that reconciliation exercise must be repaid to the GLA within 20 business days of notice from GLA.

Proposals and options

9. The recommendation in this report is for the Council to enter into the BIA and the AHGA to facilitate the delivery of the regeneration of CRE.

10. This project is of strategic importance to the Council offering the opportunity to increase housing delivery and deliver transformative regeneration for the residents of CRE.

11. The early completion of the Buybacks should enable the Council to deliver vacant possession of part of the regeneration site to facilitate early commencement of works.

Timescale

12. It is the Council's intention to complete the BIA and the AHGA as soon as possible assuming the officer recommendation is followed.

13. The first instalment of the loan funding under the BIA (£20,000,000) is to be drawn down on or as soon as possible after completion of the BIA as terms have been agreed on several of the Buybacks set out in the Acquisitions Plan prepared by BNP Paribas.

14. The second tranche of the loan funding under the BIA (£6,625,000) in 2018-19 to fund further Buybacks.

15. The grant funding under the AHGA will be paid to the Council when agreed milestones are met in starting and completing the construction of the affordable homes.

Resource implications

16. There are no immediate resource implication arising from the recommendation to enter into the BIA and the AHGA. However there are a number of conditions precedent to the loan and grant funding, some of which when breached may require the Council to repay the loan within 10 business days. The likelihood of this occurring has been mitigated by the on-going monitoring arrangements that will identify risks early and allow a recovery plan to be put into place to meet the agreed conditions. But in the unlikely event that the loan has to be repaid within the 10 business days then the Council may have to take out borrowing from elsewhere in order to meet the immediate obligations to repay. Whilst the Council will have the benefit of having assets acquired with the funding to fall back on, the ability to dispose of these to meet the financial obligations within the timescales will be limited, not least because they will be tied up in the delivery of the wider project.

17. The Council's legal advisors, Shoosmiths, will be assisting the CRE project team with satisfying the condition precedents to draw down the loan and grant funding and monitoring the performance of the Council's obligations under the BIA and the AHGA throughout the course of the CRE regeneration project. The cost of the legal service will be covered initially by current Council funding allocation for enabling the CRE project, and from 2020/21 directly by the Joint Venture or from the Council's financial returns from the venture.

18. The funding provided under this agreement, and assets acquired with it, can be held within either the Housing Revenue Account or the General Fund. Further work will be carried out to ensure the most appropriate accounting is applied and full implications of holding in each fund are considered before the decision is taken.

Legal Implications

19. The Council has instructed its legal advisors for the CRE regeneration project, Shoosmiths, to negotiate the terms of the BIA and AHGA with GLA's solicitors. Shoosmiths are very experienced at negotiating the terms of these types of funding agreement. Shoosmiths have liaised closely with the Council's shared legal service provider, South London Legal Partnership, in finalising the terms of the funding agreements and satisfying the conditions precedent to drawdown of the funding from GLA.

20. One of the conditions precedent to drawdown of the loan funding under the BIA is for the Council to provide a legal opinion that the funding is State Aid compliant. An opinion has been obtained from specialist counsel which confirms that the funding is State Aid compliant.

Risk Assessment

21. Failure to comply with the milestones under the BIA or to perform the Council's other obligations under the BIA could result in GLA requesting the return of all or part of the loan funding. There are however a number of provisions which provide for GLA and the Council to agree plans to remedy any default and it is

unlikely that GLA would take steps to terminate the BIA and request the return of the funding where the regeneration works are ongoing and the market sale dwellings are being delivered.

22. The milestone dates set under the BIA have been considered carefully and agreed by reference to the programme for the procurement of the joint venture development partner with headroom included to allow for delays in the procurement timetable or proposed dates for start on site.

23. In the unlikely event that the development partner has not been appointed by 31 December 2018 and GLA requests return of the loan funding, to the extent that some or all of the funding has been expended on completing the Buybacks the Council will own a valuable asset (the freehold and the ability to provide vacant possession of a large part of CRE) which could be sold as a last resort in order to help fund repayment of the loan funding.

24. Similarly under the AHGA in the event that there is a breach of the obligations under that agreement or as a result of a reconciliation exercise an overpayment of the grant is identified, GLA can require repayment of all or part of the grant funding in a very short period of time. In the event of default under the AHGA it is likely that the Council and GLA will agree plans to remedy any default and mitigate any impact on the delivery of the affordable housing.

25. The key delivery obligations in the BIA and the AHGA will be incorporated into the procurement and delivery documentation agreed with the private sector development partner and the Council's internal project team and its external professional advisors will closely monitor performance of the obligations under the BIA and the AHGA.

Equalities Impact Assessment

26. An Equalities Impact Assessment EQIA was attached to the published report to Growth Committee on 16 March 2017 which can be viewed online as Annex 6 to that report.

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Background papers held by the author of the report, Marcus Carling, Estate Regeneration Programme Director email: marcus.carling@kingston.gov.uk. Tel: 0208 5475654