

	MAYOR AND CABINET		Item no.
<b>Report Titles</b>	RE-DEVELOPMENT OF EXCALIBUR: UPDATE AND LAND APPROPRIATION		
<b>Key Decision</b>	YES		
<b>Ward</b>	WHITEFOOT		
<b>Contributors</b>	EXECUTIVE DIRECTOR FOR CUSTOMER SERVICES, EXECUTIVE DIRECTOR FOR RESOURCES AND REGENERATION, EXECUTIVE DIRECTOR FOR COMMUNITY SERVICES, HEAD OF LAW		
<b>Class</b>	PART 1	Date	5 December 2012

## 1. Summary

- 1.1 On 17th September 2010, Mayor and Cabinet agreed that the Council proceed with the regeneration of Excalibur in partnership with L&Q. This followed on from the positive ballot of residents that took place in July 2010 and also following the subsequent statutory Section 105 consultation that was carried out in September 2010. Progress since then has been on re-housing tenants and buying back freeholders in Phases 1 and 2, steps which were approved by Mayor and Cabinet on 17<sup>th</sup> November 2010 and 23<sup>rd</sup> February 2011. The latter of these reports saw Phases 1 and 2 rolled together and these Phases now together constitute the current decant phase.
- 1.2 Since this time, the planning permission has been formally issued and as agreed by Mayor and Cabinet on the 18<sup>th</sup> January 2012, the Council has added three properties to the current decant Phase and now has a Compulsory Purchase Order (CPO) confirmed for Phases 1 and 2. L&Q and the Council have begun the process of jointly procuring the contractor that will demolish the existing site and build the new homes. All these elements will be working together towards an expected start on site of March 2013.
- 1.3 The next stage is for the Council and L&Q to agree the detailed terms of the development agreement, Phase 1 and 2 land disposal and financial model. These elements are dealt with in Part 2 of this report.
- 1.4 In order to implement the redevelopment proposals for Phase 1 and 2, L&Q have requested that the Council appropriate the Council owned land within Phases 1 and 2 for planning purposes.

## 2. Purpose

- 2.1 To update Mayor and Cabinet on scheme progress.
- 2.1 To seek the necessary authority for the appropriation, for planning purposes, of the Council owned land within Phases 1 and 2 of the scheme, shown in bold edging on the attached plan in order to enable the powers in Section 237 of the Town and Country Planning Act (T&CPA) 1990 to be used to ensure that any restrictive covenants or other rights affecting the land can be overridden in the interests of the proper planning of the area, thereby allowing the redevelopment of the land to proceed.

### **3 Policy Context**

- 3.1 The re-development of the Excalibur estate contributes to key national objectives, particularly in meeting the decent homes standard and increasing the supply of affordable housing.
- 3.2 The scheme supports Lewisham's Sustainable Community Strategy by setting out a framework for improving residents quality of life. This approach is borne out in the innovative design proposals of this scheme, especially towards the 'Clean green and liveable' priorities to increase the supply of high quality housing to accommodate the diverse needs of the population.
- 3.3 The Council has outlined ten corporate priorities which enables the delivery of the Sustainable Community strategy. The proposals for the re-development of the Excalibur Estate addresses the corporate priorities to provide decent homes for all, to invest in social housing and affordable housing in order to increase the overall supply of new housing. The scheme would also develop opportunities for the active participation and engagement of people in the life of the community.
- 3.4 The scheme supports the aims of Lewisham's Housing Strategy 2009-2014 'Homes for the future, raising aspirations, creating choice and meeting need' and would deliver on its main themes of 'People, homes and places and Quality and sustainability'
- 3.5 The scheme would increase local housing supply and by introducing a range of housing types and tenures for a range of income households, the scheme would help to widen housing choice. By obtaining funding from the HCA and using Council owned land for the purposes set out here, the Council is engaging with delivery partners and making the best use of available resources. The current proposals would deliver 61% affordable units and 40% family sized units (including 2 bed 4 person houses) across the scheme. A key principle of the scheme is to make the new development a desirable place to live, supporting the strategic objectives around design quality and safety, accessibility and improving environmental performance.

## 4. Recommendations

4.1 The Mayor is recommended to :

4.1.1 subject to the consent of the Secretary of State being obtained under Section 19 of the Housing Act 1985, agree to the appropriation of the Council owned land within Phases 1 and 2 of the Excalibur Estate re-development scheme, shown in bold edging on the attached plan, from housing purposes to planning purposes under Section 122 of the Local Government Act 1972; and

4.1.2 approve the making of an application to the Secretary of State under Section 19 of the Housing Act 1985 for consent to the appropriation, as referred to in recommendation 4.1.1

## 5. Background and Resident Involvement

5.1 There is a long history of the Council working with the Tenant Management Organisation and other groups of Excalibur residents on the future of the prefab estate. This has included consultation groups and events, surveys and working with independent tenant advisors as detailed below.

- March 2002 – Council workers start to meet with Excalibur TMO and its Transfer of Ownership committee, pursuing a Stock Transfer option
- September 2003 PPCR survey undertaken to explore views on future ownership of the estate
- December 2003 Options Appraisal Steering Group established by LBL to ensure residents were at the heart of the process
- January 2004 Savills Stock condition survey said that 100% LBL homes non-decent
- July 2004 weekly meetings take place and open day planned. Meeting with PPCR held
- In November 2004, Minutes of the Stock Appraisal Steering Group record that Excalibur was keen to get on the ODPM's stock transfer list for January 2005.
- December 2004 visit to Family HA, Presentation HA, Hyde HA and Aragon HA. Letter sent to Adams Consulting re: tests on the prefabs of wall, floor and roof content. Signed off framework application for ODPM programme.
- January 2005, LBL submit application for the ODPM Housing Transfer Programme
- March 2005 residents group accepted Adams Consulting tests costs needed to bring homes up to DHS.
- April 2005 ITAs interviewed – Solon appointed
- June 2005 – Report to Mayor & Cabinet about Lewisham's Decent Homes Strategy recommended M&C to note the transfer programme bid highlighting that members of the co-op had been exploring

alternative ownership and management models for over two years and they fully backed the bid.

- Autumn 2005 - Tenants against proposals hold Special General Meeting, Freeholders subcommittee held. Special general meeting held. Way Forward Group set up and meeting held. Management Committee minutes say Transfer of Ownership group to continue. Way Forward Group meeting. Open day held.
- November 2005 Report to Mayor and Cabinet – Lewisham Decent Homes Strategy recommending M&C to agree contingency for the Excalibur Co-op. Reports that Surveyors reports have made it clear that refurbishment of existing properties does not represent value for money. The ODPM has made it clear to the authority that they will not provide gap funding for any scheme that does not represent value for money. Residents, working closely with their independent tenants' advisors and technical advisor, have concluded that redevelopment of the estate is the only option remaining in order to meet the Decent Homes standard. A new group of resident, comprised of TMO committee, freeholders and non-committee residents has been established to progress this proposal.
- December 2005 – TMO sacks Solon as ITA
- January 2006 – Bungalow Estate Newsletter goes out introducing Way Forward Group and reiterating to residents refurbishment not an option
- February and March 2006 visits to HA's
- April 2006 RSL selection due to take place but Way Forward Group unable to make a decision
- May 2006 Way Forward Group meeting held with LBL to discuss 'breakdown' of relations with WFG, TMO, Solon and how will affect deadlines
- June 2006 TMO commission TPAS to do survey of estate
- October 2006 Council made aware of a residents Vision Panel
- November 2006 meeting held with TMO, Vision Panel and LBL Officers and councillors to discuss re-engaging
- December 2006 new project officer starts work with Vision Panel on RSL selection
- February 2007 – PWC presentation to Excalibur TMO Working Party about the principles of gap funding.
- April 2007 – L&Q recommended by residents as preferred RSL partner for redevelopment and appointed by M&C.
- July & August 2008 – stage 1 consultation on offer document takes place.
- October 2008 – Ballot deferred following imminent listing decision.
- March 2009 – DCMS list 6 properties
- April 2009 – February 2010 - scheme redesign in order to accommodate listed properties and economic downturn, funding sought to make revised scheme deliverable.
- February 2010 – HCA confirm that funding could not be made available to a stock transfer, only a regeneration scheme. Residents are consulted, results of which are fed back in a report to Mayor and Cabinet.

- 5.2 At the Mayor & Cabinet meeting on March 24 2010, the unprecedented decision was taken to offer residents a ballot on the regeneration proposals. Residents were informed that, in the event of a 'yes' vote, the Council and L&Q would work together to deliver the regeneration of Excalibur. In the event of a 'no' vote, residents were informed the regeneration proposals put forward by L&Q would not go ahead.
- 5.3 In July 2010 Lewisham Council, through the independent Electoral Reform Services Ltd, conducted a confidential Ballot of residents. The Ballot was offered to resident tenants and freeholders whose primary home would be demolished in the proposals. In total, 224 Ballot papers were sent out.
- 5.4 Residents eligible to vote were asked 'Are you in favour of the regeneration of the Excalibur estate as proposed by L&Q?' Residents were given two options to answer. Out of the 224 possible votes, 203 (90.6%) were returned. A total of 56.2% of residents supported the re-development of the Excalibur estate as proposed by L&Q. This meant that if the 21 who did not vote, had voted 'No', there still would have been more residents that wanted the re-development to go ahead.
- 5.5 Following this, the Authority was required to carry out statutory Section 105 consultation with secure tenants affected by proposals. At the closing of the consultation period a total of 38 responses had been received from secure tenants, which represented a 21% response rate. 23 of the responses were classified as opposed to the development while 4 were in favour and 11 were neutral. The responses to the Section 105 consultation were reported to Mayor & Cabinet on 17 November 2010 and, having considered the responses and the Equalities Impact Assessment, the Mayor agreed that the Council should seek to achieve the redevelopment of the Excalibur estate in partnership with L&Q.
- 5.6 On the 18<sup>th</sup> January 2012 Mayor and Cabinet agreed a change to the phasing of the scheme. 3 prefabs from later phases are now in the current decant phase so that the sites of these properties can be included in the Phase 1 build site. Mayor and Cabinet agreed this on the basis of a second Section 105 consultation that took place with residents. A total of 4 responses were received in time to be included. The 4 responses represent a 6% response rate (of the total 140 secure tenants remaining on the estate). 3 were in favour of the proposed change and 1 was neutral, there were no objections.
- 5.7 Given the importance of the Council obtaining vacant possession of the Phase 1 and 2 site, on 7<sup>th</sup> March 2012 Mayor and Cabinet agreed that Officer begin the process of obtaining a CPO for the current decant Phase.

## 6 Project Progress

### 6.1 Summary of the principles of this project and progress to date:

- L&Q working with the Council as our partner since 2007;
- The regeneration scheme is to take place in 5 Phases as set out in Appendix A (with Phases 1 & 2 rolled together).
- Ongoing consultation with residents since 2002 that continues today with monthly meetings with the Resident Steering Group;
- 26 tenants re-housed to date in Phases 1 and 2;
- 30 void prefabs in Phases 1 and 2 with no squatters;
- 5 freehold interests bought back (1 is being re-housed as a tenant);
- The process of re-housing the remaining 6 tenants is ongoing;
- The negotiations with the 2 remaining freeholders at 2 Wentland Road and 7 Baudwin Road are ongoing however the CPO has been confirmed by the Secretary of State. Officers have informed the households that the Council intends to use the General Vesting Declaration to obtain possession of their homes. The Council remains committed to re-housing freeholders as tenants as was set out in the proposals document to freeholders in 2010 and these communications are underway;
- L&Q have been granted Planning Permission. This is detailed approval for the Phases 1, 2 and 3 and outline approval for the whole scheme;
- L&Q have obtained funding from the Homes and Communities Agency for the Phase 1 build and the funding requirement is that homes are to be complete by March 2015;
- The Council and L&Q have been negotiating the detailed terms of the Development Agreement and Financial Model and these are set out in Part 2 of this report.
- The Council continues to work with the TMO and Resident Regeneration Steering Group.

## 7. Appropriating the Land

- 7.1 The Council owns the freehold interest of the Phase 1 and 2 site shown on the attached plan, currently excluding 2 Wentland Road and 7 Baudwin Road which the Council is in negotiation to purchase by agreement or otherwise acquire under the CPO. There are 39 prefabs within Phase 1 and 2, including 7 freehold properties and 22 used to house tenants. These tenants are being re-housed and freeholders bought back as detailed in section 6 of this report.
- 7.2 Land is held by the Council subject to any existing interests and rights belonging to third parties and the land will be sold subject to any such interests and rights on disposal. However, under Section 237 of the Town and Country Planning Act 1990, the development of land which has been acquired or appropriated for planning purposes in

accordance with planning permission is authorised even if that development would interfere with any interests or rights affecting the land. The effect of the appropriation is to extinguish any such interests or rights.

- 7.3 Where rights are extinguished, the owners of any such interests are entitled to compensation calculated under the compulsory purchase compensation rules for injurious affection. However, appropriation removes the potential for excessive compensation claims and the ability for owners to obtain injunctions preventing the redevelopment or claim damages.
- 7.4 The estate roads and footpaths within the estate are subject to vehicular and pedestrian rights of way which have been granted in the transfers of freehold properties sold under the Right to Buy. These rights could therefore potentially adversely affect the redevelopment of the Phase 1 and 2 sites.
- 7.4 This report is proposing that land in the Council's ownership within the Phase 1 and 2 site is appropriated from housing purposes to planning purposes which would extinguish the rights of freeholders over this land. Officers are satisfied that the loss of these rights within the Phase 1 and 2 site will not have any impact on the use and enjoyment of any properties who technically benefit from them. It is considered that there will be no adverse implications for freeholders because as part of the development, access will remain for all residents across neighbouring streets and this has been taken into account in the scheme design. In addition, freeholders will enjoy full access across the new estate roads as they are built. Although the Council does not currently own 2 Wentland Road and 7 Baudwin Road (shown hatched black on the attached plan) and therefore the appropriation will not apply to this land, there are not considered to be any rights over these properties which would affect the carrying out of the development in accordance with the planning permission. It is therefore proposed to appropriate the Council owned land within the Phase 1 and 2 site now, subject to Secretary of State's consent under Section 19 of the Housing Act 1985 being obtained.
- 7.5 Assessment of compensation for the loss of rights would be calculated on the basis of the before and after market value of the properties. It will be for the owners to demonstrate that that the loss is likely to cause inconvenience to them and affect the enjoyment of their properties and to substantiate any claim for compensation. Any claim for compensation will be made against the developer in the first instance. However, as the Council has a residual liability for compensation, an indemnity agreement will be entered into under which L&Q will agree to indemnify the Council against any claim for compensation. The development agreement with L&Q will provide for this indemnity to be entered into.

## **8. Head of Planning's Comments**

- 8.1 On 21 April 2011, Lewisham's Planning Committee resolved to grant detailed planning permission for Phases 1, 2 and 3 of the scheme and outline planning permission for the remaining phases, subject to completion of a Section 106 agreement. The Section 106 agreement was completed on 30 March 2012. The GLA have approved the scheme.
- 8.2 The development proposals will deliver a new residential development on the site which will also provide new public realm and publicly accessible open space and other community benefits inherent in the scheme.

## **9. Legal Implications**

- 9.1 The Council has power under the Local Government Act 1972 to appropriate land which is no longer required for the purpose for which it was acquired to use for any other purpose for which it has power to acquire land. In the case of land held for housing purposes, that power is subject to Section 19 of the Housing Act 1985. Under Section 19(1), an authority may not appropriate housing land with dwellings on it for other purposes without the consent of the Secretary of State. In this case, Section 19(1) is therefore engaged as there are dwellings within the Phase 1 and 2 site and the appropriation is therefore subject to Secretary of State's consent being obtained. The legal implications associated with the appropriation of the site to planning purposes and the effect of Section 237 of the Town and Country Planning Act 1990 are set out in full in Section 5 of this report.
- 9.2 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 5 April 2011.

The duty consists of the 'general equality duty' which is the overarching requirement or substance of the duty, and the 'specific duties' which are intended to help performance of the general equality duty.

The duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 9.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:



- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

These are often referred to as the three aims of the general equality duty.

- 9.4 As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 9.5 The Equality and Human Rights Commission (EHRC) have issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
  2. Equality objectives and the equality duty
  3. Equality information and the equality duty
  4. Meeting the equality duty in policy and decision-making
  5. Engagement and the equality duty

All the guides have now been revised and are up to date. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

- 9.6 The EHRC guidance does not have legal standing. Unlike the statutory Code of Practice on the public sector equality duty which was due to be produced by the EHRC under the Act. However, the Government has now stated that no further statutory codes under the Act will be approved. The EHRC has indicated that it will issue the draft code on the PSED as a non statutory code following further review and consultation but, like the guidance, the non statutory code will not have legal standing.<sup>10</sup> Financial Implications

- 10.1 There are no financial implications arising from this report.

## Human Rights Act 1998 Implications

- 11.1 The Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions Members therefore need to have regard to the Convention.
  - 12.2 The rights that are of particular significance to the Mayor's decision in this matter are those contained in Articles 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).
  - 12.3 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic well-being of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1<sup>st</sup> Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
  - 12.4 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.
  - 12.5 Therefore, in reaching his decision, the Mayor needs to consider the extent to which the decision may impact upon the Human Rights of estate residents and to balance this against the overall benefits to the community which the redevelopment of the Excalibur Estate will bring. The Mayor will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.
  - 12.6 The effect of the extinguishment of the rights is set out at paragraph 7.4 above and is not considered to be adverse. It is also relevant to the consideration of this issue, that affected owners will be entitled to compensation for any diminution in the value of their properties resulting from the extinguishment of these rights.
13. Environmental Implications

13.1 The proposed new homes to be built by London & Quadrant would exceed the requirements of the Decent Homes Standard; this means greater energy efficiency, reduced maintenance costs and lower fuel bills for residents. This would also reduce the environmental impact of the new homes.

13.2 As new landlord L&Q would develop minimum standards that tenants can expect from their home. A key part of that would be the affordability and sustainability of the energy usage. The homes are designed using principles of passive solar design and have been modelled by energy consultants to ensure high thermal comfort whilst keeping heat loss to a minimum. This includes making the home air tight through construction detailing and incorporating a heat recovery ventilation system to further reduce energy loss and provide homes with fresh air. The Greater London Authority requires this scheme to achieve 20% renewable energy and a Code for Sustainable Homes level 3-4, as a minimum; both pieces of legislation necessitate an energy efficient home.

#### 14. Crime and Disorder Implications

14.1 One of the key priorities of the TMO Resident Selection Committee in selecting a preferred RSL was how it tackles crime and anti social behaviour issues. L&Q has a strong track record in dealing with crime and anti-social behaviour (ASB) and they are committed to adopting a robust approach at Excalibur if needed. L&Q plays its part as a member of Lewisham's Crime Reduction Partnership in meeting targets and actions in the Local Community Plan and the Crime Disorder Strategy. They would work in partnership with the police and other agencies to tackle crime and ensure that safety at Excalibur is maintained and improved.

14.2 The Regeneration Proposals document outlined the proposed physical improvements, enhanced estate management and the diversionary opportunities which L&Q would implement to help reduce crime and anti-social behaviour. Under stock transfer, the Offer Document also demonstrated L&Q's commitment to tackling race and hate crime, domestic violence and improving child protection, which the residents of Excalibur seek. These principles would be unaffected by the change from a stock transfer to a regeneration scheme.

#### 15. Equality Implications

15.1 Officers carried out an Equalities Impact Assessment in October 2010. This has been updated to reflect the new public sector equality duty contained in the Equality Act 2010 and a copy of the updated Equalities Analysis Assessment was agreed by Mayor and Cabinet on 7<sup>th</sup> March 2012.

- 15.2 There are equalities implications in the decanting and re-building process and equalities benefits would accrue from the completed scheme.

#### Equalities implications: during the process

- 15.3 From extensive door knocking, L&Q staff have begun to build up a database of households that have English as a second language and as a result key information would be translated for them, if needed. In addition, a number of residents have also been identified who suffer from a visual impairment, so literature for them is routinely produced in larger print. These are exercises that would continue to be monitored and repeated.
- 15.4 The decant process involves the provision of an individual service, where decant officers visit tenants at home and get to know them and their needs on an individual basis. Any special requirements are identified and taken into account in planning the move, factors such as language, mobility and other support needs often need to be considered. It is recognised that decanting is a very stressful time and decant officers offer as much support as required to minimise the anxiety to residents.

#### Equalities implications: the completed development

- 15.5 The scheme would provide thermal and security improvements, with all new properties more than meeting the decent homes standard.
- 15.6 All new affordable units in the development would meet lifetime homes standards. A Lifetime Home incorporates 16 design features that together create a flexible blueprint for accessible and adaptable housing in any setting, so that the unit can be adapted when required to suit residents changing needs.
- 15.7 In line with GLA and Council policy, more than 10% of units across the development would be wheelchair accessible or easily adapted for those using a wheelchair.

#### 16. Conclusion

- 16.1 The Mayor is required to note the current stage of the scheme and to approve that the Phase 1 and 2 sites can be appropriated for planning purposes.

#### 17. Background Documents and Report Author

- 17.1 If you require any further information about this report, please contact Rachel George on 020 8314 8146

Title Document	Date	Location
Excalibur: Demolition notice & future lettings	Mayor and Cabinet June 2012	5th Floor Laurence House
Excalibur: CPO	Mayor and Cabinet March 2012	5th Floor Laurence House
Excalibur: Update	Mayor and Cabinet February 2011	5th Floor Laurence House
Excalibur: S105 consultation & Phase 1 decant	Mayor and Cabinet November 2010	5th Floor Laurence House
Excalibur: Ballot results & way forward	Mayor and Cabinet September 2010	5th Floor Laurence House

#### Summary of human rights most relevant to local authorities

Article 2 - The right to life

Article 3 - The right not to be subjected to torture or to inhuman or degrading treatment or punishment

Article 5 - The right to liberty and security

Article 6 - The right to a fair trial

Article 8 - The right to respect for private and family life, the home and correspondence

Article 9 - The right to freedom of thought, conscience and religion

Article 10 - The right to freedom of expression

Article 11 - The right to freedom of peaceful assembly and to freedom of association with others

Article 14 - The right to freedom from discrimination on any ground such as sex, race, colour, language, religion, or political opinion

Article 1 of Protocol 1 - The right for every person to be entitled to the peaceful enjoyment of their possessions

Article 2 of Protocol 1 - The right to education