

MAYOR AND CABINET		
Report Title	Lewisham Gateway – Affordable Housing contribution	
Key Decision	yes	Item No.
Ward	Lewisham Central and Blackheath	
Contributors	EXECUTIVE DIRECTOR FOR RESOURCES AND REGENERATION	
Class	Part 1	Date: 14 February 2018

1. Purpose

- 1.1 To seek approval for the use of £9,558,850 (£9.6m) of off-site affordable housing section 106 contributions to match-fund a Housing Infrastructure Fund (HIF) contribution of £10m in order to provide 20% (106 units) of affordable London Living Rent units as part of the Lewisham Gateway development.

2. Recommendations

The Mayor is recommended to:

- 2.1 accept the HIF contribution of £10m on the basis set out in this report;
- 2.2 approve the contribution of £9.6m of section 106 (s106) funds to match fund the HIF funding and support the delivery of additional affordable housing on the Lewisham Gateway scheme, subject to planning permission for the scheme being approved and the signing of a section 106 agreement to provide a long-term commitment to retaining the units as affordable housing; and
- 2.2 delegate authority to the Executive Director for Resources and Regeneration, in consultation with the Head of Planning and the Head of Law, to finalise the terms of the funding allocation and any associated documentation and to enter into the associated funding agreement.

3. Policy Context

- 3.1 The content of this report is consistent with the Council's policy framework, namely the Core Strategy and the Sustainable Community Strategy (SCS). The Core Strategy is closely related to the SCS, as it sets out the physical implementation of the SCS.

3.2 The proposed recommendation supports the achievements of the Sustainable Community Strategy policy objectives:

- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
- Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
- Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

3.3 The proposed recommendation is also in line with the Council policy priorities:

- Strengthening the local economy – gaining resources to regenerate key localities, strengthen employment skills and promote public transport.
- Clean, green and liveable – improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment.

3.4 It would also help meet the Council's Housing Strategy in which the Council commits to the following key objectives:

- Helping residents at times of severe and urgent housing need
- Building the homes our residents need

4. Background

4.1 Lewisham Gateway is a strategic urban regeneration project on a town centre site previously occupied by a bus interchange and roundabout located between the main line rail and DLR station and the existing shopping area. The site is seen as a catalyst for the regeneration of the borough's most important town centre and has the potential to deliver £250 million of public and private investment. The regeneration of central Lewisham seeks to solve the problem of the town centre being separated from its rail and bus stations, at the same time as creating a new public space (focused on an opened up Ravensbourne and Quaggy rivers) and facilitating a substantial amount of new commercial, retail and residential development. One of the key aims in developing the Lewisham Gateway site is to create easier and better pedestrian routes between the Lewisham DLR and train stations and the high street and the rest of the town centre, and a sense of arrival.

4.2 The infrastructure works to the road were promoted by LB Lewisham following a successful Single Regeneration Budget (SRB) bid to look at options for "a landmark new interchange ... an improved urban landscape and significant sites created by the realignment of the road junction will attract new investment to enhance the retail, commercial and residential offer of this

strategic location". The 'Low H' layout was agreed by the SRB Board as the preferred option and was incorporated into a Planning Brief. The Brief was reported to and agreed by the SRB Board in December 2002, LB Lewisham Strategic Planning Committee also in December 2002 and Mayor & Cabinet in July 2003. The scheme has been promoted by the public sector with a partnership between LBL, the GLA and TfL. A development partner was subsequently selected by the public sector to deliver the scheme.

Lewisham Gateway Planning history

- 4.3 On 8 May 2009 planning permission was granted subject to conditions and a s.106 agreement for the comprehensive mixed use redevelopment of the Lewisham Gateway Site for up to 100,000 m² comprising retail (A1, A2, A3, A4 and A5), offices (B1), hotel (C1), residential (C3), education/health (D1) and leisure (D2) with parking and associated infrastructure, as well as open space and water features. The permission was in outline with all matters reserved other than works comprising the realignment of the public highway and diversion of the existing Ravensbourne and Quaggy rivers that were approved in detail.
- 4.4 At that time the Lewisham Gateway developer proposed affordable housing provision ranging from 0 up to a maximum of 20% of units to be affordable in the form of shared ownership, subject to financial viability. The actual amount within that was dependent on the viability of the scheme and the figure of 20% proposed relied on grant funding. The Council had lengthy discussions with the applicant with a view to improving the affordable housing offer at that time. The conclusion of this was that a 'risk sharing mechanism' was agreed that ring-fenced a proportion of any residual land value above specified levels to be directed towards improving the affordable housing offer on the site. Conversely should values decrease/costs increase then the amount and/or affordability of the units would fall. This mechanism was secured as part of the s106 as was the type of affordable housing (shared ownership) and was considered to be a reasonable approach given the wider regenerative benefits of the scheme and the substantial costs of the infrastructure works required to this part of the town centre.
- 4.5 Applications for reserved matters for the Phase 1A and 1B buildings were approved in May 2013 and September 2014 respectively. These comprise buildings of 25 storeys and 15 storeys providing a total of 362 residential units and 1089m² of retail/restaurant/cafe floorspace. Details of the open space within Phase 1 (including 'Confluence Place') have also been approved.
- 4.6 As part of the Phase 1 Reserved Matters submission, the applicant submitted confidential financial information to demonstrate that it was not viable to provide affordable housing in the first phase of the development. This was mainly due to the upfront costs of providing the infrastructure works associated with the removal of the roundabout and movement of rivers to deliver the low-H road layout as well as the loss of grant funding. The viability statement was independently assessed and the advice was that the financial

model is robust and the inputs and outputs can be verified as reasonable and accurate.

- 4.7 In addition, approval has been given for non-material amendments to the original planning permission. These have allowed for the variation to the detailed river works and amendments to the highway layout including alterations to crossings, the introduction of new cycle advanced stop lines, cycle lanes, modification of traffic islands and the widening of Rennell Street, alterations to the Thurston Road bus stand internal layout and changes to the length of bus stops.
- 4.8 In 2016, an application under s.73 of the Town and Country Planning Act 1990 for amendments to the Parameter Plans approved under the 2009 planning permission and consequential changes to the approved Development Specification was submitted. This application was also accompanied by a viability statement which determined that the costs associated with the upfront delivery of the significant infrastructure works meant that the scheme was still unable to support the delivery of any affordable housing. This was despite an uplift in the number of units proposed. The scheme was refused in 2017, in part due to the lack of affordable housing.
- 4.9 Since that time, the Council have submitted a bid on behalf of the developer to secure HIF funding to offset some of the high infrastructure costs of the development and to therefore enable the delivery of some on site affordable housing in the form of London Living Rent units. An announcement on this funding was made on 1 February 2018 confirming that £10m had been made available to the project to enable the delivery of affordable housing. A new planning application under s.73 of the Town and Country Planning Act was submitted in January 2018 which is seeking to provide 10% affordable housing in the form of London Living Rent which is achievable due to the HIF contribution.

Loampit Vale 'Renaissance' Planning History

- 4.10 The land to the south of Loampit Vale either side of Elmira Street is in the freehold ownership of the Council, with part being subject to a lease in favour of the London City Mission. In July 2006, Mayor and Cabinet agreed in principle to the redevelopment of the Loampit Vale site and to undertake public consultation. It was also agreed in principle to declare the Council's landholdings at Loampit Vale surplus to requirements and to begin the process of appointing a development partner to deliver the redevelopment. In October 2007, following an extensive negotiated tendering process, the Council selected Barratt Homes as its preferred developer.
- 4.11 In 2009, a planning application was submitted for the comprehensive redevelopment of the site to provide 788 homes in a series of building of which up to 186 were proposed to be affordable in a mix of social rented and shared ownership. It was proposed that 19% would be available as social

rented accommodation (146) that would be a mix of one, two, three and four bedroom units. Up to 40 units were proposed as intermediate housing, the final number of which was to be determined by the level of housing grant received from the HCA. It was proposed that if 100% of the grant was not provided, the number of intermediate flats would be reduced accordingly. Following changes to funding, no HCA funds were made available and the scheme therefore delivered 146 social rented units only.

- 4.12 The applicant submitted a confidential viability to the Council as Local Planning Authority at the time and this was independently assessed and concluded that the proposed amount of affordable housing was the maximum reasonably achievable at that time if the scheme is to remain viable. However, as part of the Section 106 Agreement, the Council secured a review mechanism so that if the viability of the scheme improved, a financial contribution towards additional affordable housing would be necessary.
- 4.12 This review was undertaken and as a result, a payment of £9.6m was made to the Council in 2017 which is ringfenced to provide affordable housing in the Borough.

5. Section 106 Reserves

- 5.1 Currently, there is £14.9 million in unallocated s106 money available which has been secured towards the provision of affordable housing within the borough. Approximately £9.6 million is from the review mechanism at Loampit Vale, with the remainder of funds coming from another 22 sites which secured s106 off-site contributions via review mechanism or in rare occasions, payments in lieu towards the provision of affordable housing within the borough.
- 5.2 It is expected that approximately £6.5 million in further overage payments for affordable housing will be received in the summer of 2018. This is from the development at the former Catford Stadium.
- 5.3 To date, the Council has currently spent approximately £3.1 million of affordable housing s106 funds on a variety of schemes, with a further approximately £1.5 million allocated to future projects. Given the large receipts which have recently become available, officers are reviewing the approach to spending what are now sizeable sums of money to support additional affordable housing in the Borough.
- 5.4 As part of this review, officers have considered a range of ways to spend the available funds, including the purchasing of units in the Borough, construction of new affordable homes and via a Borough led 'grant' to help deliver homes on schemes.

6.0 Proposed use of funds

- 6.1 The opportunity now arises to use some of the Council's ring-fenced affordable housing funds to provide an additional 10% affordable housing in the form of pepper-potted London Living Rent within phase 2 of the Lewisham Gateway development. The Loampit Vale site and the Lewisham Gateway site are located next to each other in Lewisham Town Centre and both have been promoted by the Council as landowner. Whilst the Council prefer to secure on site affordable housing, given the proximity of the sites to each other, the opportunity to provide for affordable housing on a neighbouring development site is considered to provide a solution that would meet the Council's overall aspiration to provide mixed and balanced communities with a mix of housing tenures. It is proposed that the £9.6m s106 contribution would be used match fund the £10m contribution from the HIF to enable the provision of an additional 10% of London Living Rent units in the development, thereby increasing the overall level to 20% on site.
- 6.2 It is recognised that 20% onsite affordable housing is below the Council's and indeed, London's target for affordable housing. However, when considering the context of the extant planning permission and a scheme which due to the delivery of much needed new infrastructure, is unable to provide on-site affordable homes, the opportunity to use some existing funding to provide additional affordable units in an area of need should be considered appropriate.
- 6.3 By enabling 20% affordable on site, along with the programmed infrastructure works, the Council would be contributing to both its initial and current objective; improving infrastructure around the Gateway and delivering genuinely affordable homes for local residents.
- 6.4 The exact details of the affordable housing component would be secured via s106 if planning permission were granted. However, at this stage, it is envisaged that this will be London Living Rent (LLR), pepper-potted across the site.
- 6.5 Evidence collected by the Council suggests that, apart from Social Rent, London Living Rent is the only affordable product that Borough residents earning the median salary (around £38,000) can afford.
- 6.6 This would be targeted, per GLA, guidance, towards those who would not normally be able to afford to live in an area of high accessibility such as this. The Council is supportive of LLR as a product that will deliver homes at a price point that Lewisham residents can afford and would want to see the re-letting of units as LLR secured as part of the s106.
- 6.7 Whilst negotiations with the applicant suggest that there is a long term commitment to maintain the LLR for the long term, the typical timescale for LLR units is only 15 years; after which point the building reverts to private housing.

- 6.8 To ensure the Council's investment is not eroded after this period, the s106 would need to include clauses to maintain the units as LLR in perpetuity and to enable the clawback of the £9.6m investment, plus interest, should the units be sold or rented privately after this point in time.
- 6.9 Subject to this long-term commitment from the applicant (via the s106) being signed, the Mayor is requested to approve for the use of £9.6m of s106 funds to be released to match fund the HIF contribution and allow for 20% affordable housing to form part of the Gateway application.

7. Financial Implications

- 7.1 As covered in section 6, the Council is proposing to spend £9.6m of ring-fenced affordable housing s106 funds to support the delivery of an additional 10% of affordable housing on the Lewisham Gateway scheme.

8. Legal Implications

- 8.1 Paragraph 4.12 of this report confirms that the review mechanism contained within the Section 106 legal agreement relating to the Loampit Vale development secured the sum of £9.6m as an affordable housing contribution. The agreement requires that the Council applies this money for the provision of Affordable Housing within the Council's Area. That term is defined in the Agreement as "residential accommodation where the rent or price is reduced directly or indirectly by means of public or private subsidies such that it can be afforded by persons or families on low incomes or in low paid employment".
- 8.2 Therefore if the Council provides the money to a third party to provide the Affordable Housing, a legal agreement with that third party will be required, so as to ensure that the money is applied for that purpose and that the Council fulfils its obligations pursuant to the S106 Agreement.
- 8.3 The Council has a wide general power of competence under Section 1 of the Localism Act 2011 to do anything that individuals generally may do. The existence of the general power is not limited by the existence of any other power of the Council which (to any extent) overlaps the general power. The Council can therefore rely on this power to enter into a funding agreement with the Lewisham Gateway developer in respect of the HIF funding and the S106 funding and to pay the funding to them.
- 8.4 The precise terms upon which the Council's funding is to be provided, including the timing of payments, are still to be agreed with the Lewisham Gateway developer. The Council will also need to be satisfied that it has reasonable security for its funding and that any conditions attached to the HIF funding form part of the funding agreement and are binding on the Lewisham Gateway developer. It is proposed that these matters will be agreed by officers under the authority delegated by this report.

- 8.5 The HIF and S106 funding meet the definition of State aid. However the funding is considered to be "compatible" within the State aid rules, and exempt from any requirement for notification to the European Commission for clearance, because it falls within a 2011 Commission Decision which exempts certain aid for social housing. However this is subject to officers being satisfied that the requirements of the Decision are met. In the meantime the Lewisham Gateway developer has confirmed that they consider the requirements of the Decision to be met and that they will provide all necessary information to demonstrate this. This will be subject to further due diligence which will be carried out before any funding agreement is entered into.
- 8.6 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.7 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.
- 8.8 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 7.7 above.
- 8.9 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 8.10 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to

do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

9. Crime and disorder implications

9.1 There are no specific crime and disorder implications arising from this report.

10. Equalities Implications

10.1 The use of S106 funds to support the delivery of additional affordable housing would benefit those households in the Borough with lower incomes and help their access to suitable housing.

11. Environmental Implications

11.1 There are no specific Environmental implications arising from this report.

12. Conclusion

12.1 The Council is in a position to realise both its previous and current ambitions for Lewisham Gateway. It has successfully improved the public realm in the area exponentially and has facilitated genuine playmaking at the heart of the Borough.

12.2 Now there is an opportunity to use some of the funds that have been raised on nearby developments, all of which have helped to transform the wider Gateway.

12.3 The use of these funds in this location, near the original donor site, provide the best possible opportunity for the borough to deliver affordable housing units in a highly accessible location where it has previously proven unviable to do so.

12.4 A 10% contribution marks an improvement on the applicant's previous offer but to double this would be a significant sign of the Council's intention to deliver a range of units to meet the needs of all residents and providing much more balance to the housing mix in the proposed development.

12.5 The Mayor is therefore recommended to approve the contribution of £9,558,850 of section 106 funds to support the delivery of additional affordable housing on the Lewisham Gateway scheme, subject to planning permission for the scheme being approved, and the signing of a section 106 agreement to provide a long-term commitment to retaining the units as affordable housing.

If you have any queries on this report, please contact Simon Zelestis, Section 106 Planning Infrastructure Manager, 3rd floor Laurence House, 1 Catford Road, Catford, SE6 4RU – telephone 020 8314 8701.