

**CABINET
24 MARCH 2020**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: APPROVAL OF A NEW DEVELOPMENT AGREEMENT FOR THE JOHN BARKER PLACE AREA OF HITCHIN

REPORT OF: THE SERVICE DIRECTOR REGULATORY

EXECUTIVE MEMBER: COUNCILLOR GARY GRINDAL

CURRENT COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

NEW COUNCIL PRIORITIES: BUILD THRIVING AND RESILIENT COMMUNITIES / SUPPORT THE DELIVERY OF GOOD QUALITY AND AFFORDABLE HOMES

1. EXECUTIVE SUMMARY

- 1.1 The Westmill area of Hitchin, in which John Barker Place is located, is the third most deprived in the district.
- 1.2 North Hertfordshire Homes (or 'settle Group' as they are now known) and the Council committed to a Development Agreement in 2013, with the aim of regenerating John Barker Place.
- 1.3 Against a backdrop of progressive austerity measures and reduced access to capital funding for registered providers, delivery of the affordable homes and new shops stalled.
- 1.4 settle has recently gained planning consent for a new regeneration scheme at John Barker Place that includes 129 homes, two new shops and a new play area. settle will project manage the scheme on a day-to-day basis.
- 1.5 The regeneration scheme features as a priority in the Council Plan 2020-2025 and this report recommends the Council enters in to a new Development Agreement with settle to support their delivery of the new scheme.

2. RECOMMENDATIONS

- 2.1. That notice is served on settle to terminate the Development Agreement that was signed in 2013, with immediate effect.
- 2.2. That the newly proposed Development Agreement, at Appendix B, be approved.
- 2.3. That authority is delegated to the Executive Member for Housing and Environmental Health, in conjunction with the Service Director - Regulatory, to agree minor changes to the new Development Agreement.

- 2.4. That a lease on the identified Council owned land at Swinburne Avenue, Hitchin, is granted to settle on the lease heads of terms attached to this report (please see Appendix C).

3. REASONS FOR RECOMMENDATIONS

- 3.1 The newly proposed Development Agreement (DA) includes a package of measures that support settle's regeneration scheme for John Barker Place (JBP), which is situated in one of the most deprived areas of the district.
- 3.2 The existing DA is not considered to be fit for purpose as it relates to historic planning approvals and former Council priorities. This view is supported by settle.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could decide against agreeing the new DA, or not participating at all in any JBP regeneration scheme with settle. Either of these actions would lead to a risk of the project stalling further. This action would also be inconsistent with the Council's commitment to support the JBP regeneration scheme, as set out in the recently published Council Plan 2020-2025.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Cllr Gary Grindal, the Executive Member for Housing and Environmental Health, has been consulted and is supportive of the recommendations contained in this report.
- 5.2 As a local housing partner and party to the proposed DA, settle is supportive of the recommendations contained in this report.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a Key Executive decision that was first notified to the public in the Forward Plan on the 1 July 2019.

7. BACKGROUND

- 7.1 The recently published 2019 English Indices of Deprivation (the official measure of relative deprivation in England) indicate the Westmill area, in which JBP is located, is the third most deprived in the district. In a county context, it is amongst the most deprived 10% of neighbourhoods in Hertfordshire.
- 7.2 The Council agreed to support settle's JBP regeneration project in both January 2013 and July 2013 (please see Appendix A for the resolutions from both Cabinet meetings).
- 7.3 A DA for the regeneration project was produced to protect and support the interests of both parties; since this was agreed in 2013, settle has delivered its commitments for a new Westmill Community Centre and a relocated Multi-Use Games Area. Against a backdrop of progressive austerity measures and reduced access to capital funding for regeneration, delivery of the affordable homes and new shops stalled.

- 7.4 settle has now come forward with plans and capacity to deliver a new regeneration scheme at JBP and the DA signed in 2013 is no longer fit for purpose. The Cabinet recommended on 30 July 2019:

That officers be authorised to assess the suitability of the existing DA and review if an alternative agreement is required for settle's new scheme.

Should a new DA be required, officers should negotiate its terms with settle and return to the Cabinet for it to be considered and decided.

- 7.5 settle's newly proposed development now consists of 129 homes, to be delivered over three phases; the first comprising 37 units, the second phase totalling 46 units and the third also 46 units. Alongside the homes and replacement shops, a new fully equipped play area is being brought forward in phase three.
- 7.6 The first two phases include 49 units of retirement living accommodation to enable existing tenants from the adjacent existing Westmill Lawns Scheme to relocate, as there are longer-term remedial works required that could not be undertaken whilst the building is occupied. This also applies to 12 of the tenants in general needs flats in Freemans Close, who will also be relocated under phase two of the project.
- 7.7 settle submitted a full planning application that detailed the delivery of phases one and two, whilst outlining phase three (planning reference: 19/01416/HYA). A second application was also submitted by settle for an additional play area, located on Council owned land in Swinburne Avenue, Westmill to ensure continuity of provision throughout the duration of the works (planning reference: 19/01748/FP). The Council's Planning Control Committee subsequently approved both applications on 23 January 2020.
- 7.8 Within North Hertfordshire, the Common Housing Register demonstrates a high demand for affordable housing, including retirement living accommodation. With an ageing population across the district, there is an identified need for retirement accommodation in new housing supply, alongside affordable homes.
- 7.9 The project features specifically as a priority in the Council Plan 2020-2025, under the objective "Support the delivery of good quality and affordable homes". The regeneration scheme has also been included in a partnership plan between settle and the Council that identifies how both parties may work together to meet housing local needs.

8. RELEVANT CONSIDERATIONS

- 8.1. Following extensive negotiations with settle, the following provisions are proposed in the newly drafted DA:
- a) Subject to the grant of a new lease of the site by the Council to settle, settle shall deliver a new play area on Swinburne Avenue Hitchin, before the existing play area on the Site is decommissioned**

This will ensure continuity of provision (which the planning permission cannot do) for the local community throughout the duration of the building works. Phase three of the project includes a further play area on-site, so there will be two equipped play areas on completion. The up-front and ongoing costs of both play areas will be funded by settle, in line with the arrangements for the existing play area.

- b) settle will use all reasonable endeavours to deliver a regeneration scheme on the Site with 100% affordable housing, totalling 129 residential units across the three phases of development referred to in Annex A within 10 years from the date of this Agreement**

The new homes will provide modern, fit for purpose retirement accommodation for rent. They will also replace existing bedsit provision with self-contained apartments and enable a wider range of housing choice in the neighbourhood, with additional rented and shared ownership homes. The existing 49 units at Westmill Lawns will still be retained (although not necessarily in use) pending the review described in (g) below.

The existing 12 units at Freemans Close will be demolished to allow the phase three building to take place. The first two phases deliver 83 units; although 22 of these have been designated as open market housing in settle's planning application, they have confirmed they are planning to convert these to affordable housing, most likely shared ownership.

In addition, settle has confirmed their intention to deliver a further 46 affordable units in phase three, reaching an overall total of 129 units.

- c) Should less than 100% affordable housing be delivered (subject as mentioned in Annex A) and/or the three phases are not completed within 10 years of the date of this agreement, settle agree to pay the Council within 14 days of demand a premium equivalent to the sum of £133.2k (index linked in accordance with the Retail Prices Index from the date of the grant of the lease to the date of service of the Council's demand) as consideration for the grant of the lease of the play area at Swinburne Avenue**

It is proposed for the lease to have a contractual term of 20 years at a peppercorn rent on the delivery of 129 new and improved affordable housing units. This will have a positive impact in helping the Council meet local housing need.

- d) settle agree to discharge a previous condition for redevelopment of the St Andrews House, Hitchin site on the Site (condition 3 of planning permission 12/01271/1)**

This is a separate condition that formed part of the previous DA and it concerns delivery of 4 x two-bedroom houses as part of the scheme.

- e) settle have agreed an 'open book' approach to the Project and have shared relevant financial information with the Council and commit to doing so on an ongoing basis**

settle has confirmed that as a mixed-use scheme with extensive communal spaces, the development carries high costs. With many of the homes being delivered at genuinely affordable social rents, long term revenue receipts are low. settle plan to part fund the project through limited Homes England grants and private sector borrowing. Accounting for this, settle have demonstrated that the project would not meet usual investment criteria. In agreeing to the DA, they have committed to sustaining the regeneration costs over the long term through the charitable housing association's surpluses, recognising the strong local need and wider community benefits identified in the original project objectives. settle have agreed to continue to regularly share financial information in confidence with the Council as the development goes forward.

Funding by the Council would be capped at the amount detailed below, in section (f), and settle would take on all the risk associated with any cost increases. The provision of this open book information would provide indications on how phase three could be delivered (e.g. the percentage of affordable units). Given the significant regeneration involved and the associated costs, it is difficult to envisage any scenario where settle would not be able to justify they require the contribution from the Council.

f) The Council will pay settle a capital contribution of £1.096m upon practical completion of the dwellings within phases 1 and 2 (as referred to in Annex A) of the Project, practical completion to be evidenced by the issue of a certificate to that effect by the employer's agent or architect (or other relevant consultant appointed for that purpose) appointed by settle in connection with the Project

The Council originally agreed this capital contribution to bridge a known funding gap in 2013, on the basis of bringing forward the regeneration scheme including community facilities and affordable housing, which may not have occurred otherwise.

It has been held in the Council's budget since, including that for 2020/21. Whilst the regeneration scheme's funding gap has grown significantly, negotiations with settle have continued with the same sum. To further incentivise performance from settle, the payment would only be made when the homes detailed in phases one and two are completed and handed over.

The units in Phase 2B are designated market sale under the planning permission, however settle has confirmed all 22 units will be affordable units, most likely shared ownership. This means that 83 affordable housing units would be delivered in the first two phases, a significant increase on the 39 agreed in 2013.

The Council receives commuted sum payments from developers for affordable housing in the event these units cannot be provided on site. The capital budget for 2020/21 assumes that £270k of the £1.096m will be funded from commuted sums. Indications are that this could be higher, potentially around £480k. This would reduce the amount the Council would need to fund from its own capital reserves.

g) The vacated Westmill Lawns site will be jointly reviewed in order to assess the viability of any shared commercial and/or accommodation opportunities

Westmill Lawns, the existing retirement scheme, will be vacated upon completion of the new homes without the need to otherwise relocate the residents. This is due to major works which cannot be achieved with residents in situ. settle have agreed to review immediate options for the vacant site and buildings with the Council, including possible joint future commercial opportunities that would enable wider housing choice in Westmill, or even another form of affordable housing.

h) With reference to both settle and the Council's ambitions regarding climate change, settle agree to incorporate reasonable carbon reduction and efficiency measures in to the detailed design for the Project

settle is committed to incorporate measures including EV charging points, energy efficient heating and fabric systems, along with tree planting for broader ecological and aesthetic benefit.

- 8.2 The DA has a proposed duration of ten years. This provides focus for delivery of the project within a reasonable timeframe. This also allows for the sequencing of certain aspects of the project in order to allow tenants to stay in their existing homes while construction work is completed on the new homes and to support the existing shops to remain open to serve the neighbourhood
- 8.3 The DA has been prepared with settle colleagues and they are progressing to approval, subject to the Council's confirmation of its decision, simultaneously with this report.

9. LEGAL IMPLICATIONS

- 9.1 Cabinet's terms of reference include (at paragraph 5.6.15 of the Council's Constitution) "To oversee the provision of all the Council's services other than those functions reserved to the Council". The recommendations contained in this report are Executive functions and are therefore not matters reserved to Council.
- 9.2 The DA that was agreed in 2013 can be terminated by either party giving at least three-months' notice. settle have confirmed their agreement to the waiving of this notice period for the new DA to take effect as soon as possible.
- 9.3 The Council entered in to a Deed of Covenant with North Hertfordshire Homes Limited (as settle were then) in 2003. This determined that the Council would be entitled to a 'clawback' where North Hertfordshire Homes sold any land or housing that was part of the stock transfer. This allowed clawback to be suspended where that funding was to be used for the future provision of social housing or community benefit. The detailed provisions of this were further clarified in a protocol that followed the creation of Rowan Homes in 2011. There is no restriction on how much funding can be applied to each unit as long as more than the amount applied is spent.
- 9.4 Since the land at Swinburne Avenue, Hitchin is held as public open space, the Council has advertised the proposed lease of part of its land at Swinburne Avenue, Hitchin in the local newspaper in accordance with section 123(2A) of the Local Government Act 1972.

- 9.5 “Paragraph 14.6.7 of the Council Constitution grants the Service Director: Commercial delegated authority in relation to granting, negotiating and settling terms of leases where the premium does not exceed £500,000 provided that in respect of any matter where the premium exceeds £50,000 the decision shall be made in consultation with the Executive Member for Finance and IT.
- 9.6 The lease proposed by the heads of terms shown in Appendix C contains a proposal to charge a premium of £133,200 (subject to indexing) to the tenant. The lease terms could therefore be approved in accordance with paragraph 14.6.7 of the Constitution rather than by Cabinet. However, this report recommends Cabinet approves the lease heads of terms instead. The rationale is that the lease forms a component of the wider regeneration scheme and programme at JBP. It is considered sensible and prudent for the lease to be considered for approval by Cabinet alongside the wider regeneration scheme in order to provide better understanding of the lease’s context, rather than being considered in isolation and separate from the wider scheme

10. FINANCIAL IMPLICATIONS

- 10.1 The Council’s potential capital contribution of £1.096m is available in the approved budget for 2020/21. The budget assumes that £270k of this is funded via commuted sums, but this could be higher at around £480k. The Council’s Investment Strategy determines that it will seek to make use of third-party funding (including commuted sums) before using its own capital reserves. As the funding has been in the capital programme for some time, it will be funded from capital receipts. However, that still means that other capital spend will need to be funded from borrowing. Therefore, the notional revenue cost (i.e. the interest and minimum revenue provision that will be incurred on other schemes) is around £50k per year (based on £270k funded from commuted sums).
- 10.2 The current balance of suspended clawback that can be applied to this scheme is £2.21m. Whilst there is notionally an element of re-provision within the scheme, the Westmill Lawns site will remain at the end of phase three (pending a subsequent review). It is therefore considered that the additional units at that point would justify the use of suspended clawback in line with the deed of covenant and protocol.
- 10.3 The Council can choose to use its capital reserves to fund capital spend on assets owned by another party. The Council should consider the value for money that it gets from the funding it provides. The majority of the spend on phases one and two potentially relates to an element of the re-provision of existing housing and improvements to the general environment. This has benefits to the residents directly affected as well as more widely, but it is impossible to evaluate. Upon settle delivering phases one and two as 100% affordable housing, that would equate to 22 additional units (6 one-bedroom and 16 two-bed). A contribution of £1.096m would equate to an average of £50k per additional unit. If settle delivered all three phases as affordable, that would equate to £16k per additional unit. Any ongoing provision or redevelopment on the Westmill Lawns site would be in addition to this and add further to the value for money.
- 10.4 settle will pay the Council £133.2k (index linked as set out in the lease heads of terms) for the lease on the Swinburne Avenue land in the event the scheme does not deliver 129 units of affordable housing within 10 years of the date of the signing of the lease.

- 10.5 The base premium figure outlined in paragraph 10.4 of this report represents a figure agreed between the Council and settle in relation to the specific context of the JBP regeneration scheme. The base premium figure does not therefore have universal or market-wide application and does not necessarily represent the market value of the Council's land off Swinburne Avenue, Hitchin which is proposed to be leased
- 10.6 settle will provide two play areas as part of the regeneration scheme and will also take responsibility for the associated maintenance. This will meet a known need (as per current Green Space Management Strategy) that the Council is currently unable to meet without external funding.

11. RISK IMPLICATIONS

- 11.1 As the 2013 DA is still in place, it technically commits both parties to a scheme that is no longer viable. This is misleading and could result in reputational damage for the Council.
- 11.2 If the existing DA is not reviewed or replaced, it may lead to a risk of the project stalling further, losing the additional affordable housing and the improvements to the neighbourhood.
- 11.3 There is a risk the regeneration project does not progress to completion or does not deliver 100% affordable housing. These risks are mitigated by:
- the conditional payment of the capital contribution of £1.096m to settle upon completion of phases one and two
 - The lease incorporating a condition obliging settle (as tenant) to pay a premium to the Council (as landlord) for the lease of the land off Swinburne Avenue if settle does not deliver 129 units of affordable housing within 10 years of the date of the lease.
 - The Stock Transfer Agreement from 2003, with reference to disposals.
- 11.4 settle has confirmed the potential £1.096m capital contribution from the Council is a vital component in the funding package for the whole regeneration scheme. There is a risk the scheme may not be delivered as proposed, or in its entirety, if this funding is not provided.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. The proposed regeneration of the JBP area of Westmill, including the delivery of 129 affordable housing units, has the potential to advance the equality of opportunity of all current and prospective residents. Paragraph 7.8 notes a specific need to support the growing needs of residents, including older people.

13. SOCIAL VALUE IMPLICATIONS

13.1. The Social Value Act and “go local” requirements do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

14.2 There are no anticipated staffing implications arising as a result of the recommendations contained in this report.

15. APPENDICES

15.1 Appendix A – JBP Cabinet resolutions from 2013

15.2 Appendix B – Proposed Development Agreement for John Barker Place

15.3 Appendix C – Lease heads of terms for land at Swinburne Avenue, Hitchin

16. CONTACT OFFICERS

16.1 Ian Fullstone, ext 4480
Service Director - Regulatory
ian.fullstone@north-herts.gov.uk

16.2 Martin Lawrence, ext 4250
Strategic Housing Manager
martin.lawrence@north-herts.gov.uk

16.3 Ian Couper, ext 4243
Service Director - Resources
ian.couper@north-herts.gov.uk

16.4 Chris Robson, ext 4252
Senior Estates Surveyor
Christopher.robson@north-herts.gov.uk

16.5 Isabelle Alajooz, ext 4346
Contracts and Property Solicitor
Isabelle.alajooz@north-herts.gov.uk

16.6 Reuben Ayavoo, ext 4212
Policy and Community Engagement Manager
reuben.ayavoo@north-herts.gov.uk

16.7 Jeanette Thompson, ext 4370
Service Director – Legal and Community
Jeanette.Thompson@north-herts.gov.uk

17. BACKGROUND PAPERS

- 17.1. English Indices of Deprivation: <https://www.gov.uk/government/statistics/english-indices-of-deprivation-2019>
- 17.2. Decisions from 23 Jan 2020 Planning Control Committee (items 87 and 88):
<https://democracy.north-herts.gov.uk/ieListDocuments.aspx?CId=151&MId=2247&Ver=4>