

Appendix B – Proposed Development Agreement for John Barker Place

Dated

Development Agreement

between

NORTH HERTFORDSHIRE DISTRICT COUNCIL

and

SETTLE GROUP

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ANNEX

ANNEX A	THE PROJECT
ANNEX B	DEVELOPMENT AGREEMENT COMMITMENTS

THIS AGREEMENT is dated

The parties to this Development Agreement are:

- (1) **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices, Gernon Road, Letchworth Garden City, SG6 3JF (**The Council**).
- (2) **SETTLE GROUP** a society registered under the Co-operative and Community Benefit Societies Act 2014 with registration number 30003R whose registered office is at Blackhorse Road, Letchworth Garden City, SG6 1HA (**settle**).

BACKGROUND

1.1 The Council and settle have agreed to work together on the regeneration project detailed in Annex A to this Agreement (the Project).

1.2 The parties wish to record the basis on which they will collaborate with each other on the Project.

2. KEY OBJECTIVES FOR THE PROJECT

2.1 The parties shall work together in order to deliver the Project to achieve the key objectives set out in Annex A to this Agreement (Key Objectives).

3. PRINCIPLES OF COLLABORATION

3.1 The parties agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) Collaborate and co-operate. Establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
- (b) Be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
- (c) Be open. Communicate openly about major concerns, issues or opportunities relating to the Project;
- (d) Learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) Adopt a positive outlook. Behave in a positive, proactive manner;
- (f) Adhere to statutory requirements and best practice. Comply with applicable laws and standards including data protection and freedom of information legislation;
- (g) Act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;

- (h) Manage stakeholders effectively;
- (i) Deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement; and
- (j) Act in good faith to support achievement of the Key Objectives set out in Annex A and comply with these Principles.

4. COMMITMENTS

4.1 The individual Agreement commitments highlighted in Annex B shall be delivered by the identified party, with the conditions being met in each case

5. ESCALATION

5.1 If either party has any issues, concerns or complaints about the Project which is set out in Annex A, or any matter in this Agreement, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Head of Delivery (settle) and the Strategic Housing Manager (Council), which shall decide on the appropriate course of action to take. If the matter cannot be resolved within 30 days of referral to them, the matter may be escalated to the Development Director (settle) and Director of Regulatory Services (Council) for resolution.

5.2 If either party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Head of Delivery (settle) and the Strategic Housing Manager (Council). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, unless required as a matter of law, without the prior approval of the Development Director (settle) and Director of Regulatory Services (Council).

6. INTELLECTUAL PROPERTY

6.1 The parties intend that notwithstanding any secondment any intellectual property rights created in the course of the Project shall vest in the party whose employee or agent created them (or in the case of any intellectual property rights created jointly by employees or agent of both parties in the party that is lead party noted in clause 5 above (for the part of the Project that the intellectual property right relates to).

6.2 Where any intellectual property right vests in either party in accordance with the intention set out in clause 6. 1 above, that party shall grant an irrevocable licence to the other party to use that intellectual property for the purposes of the Project.

7. TERM AND TERMINATION

7.1 This Agreement shall commence on the date of signature by both parties and shall expire on completion of the Project or after 10 years from the date of signature, whichever is sooner.

7.2 Either party may terminate this Agreement by giving at least six months' notice in writing to the other party.

8. VARIATION

8.1 This Agreement, including the Annexes, may only be varied by written agreement by both parties.

9. STATUS AND ARBITRATION

9.1 This Agreement is intended to be legally binding. The parties enter into the Agreement intending to honour all their obligations.

9.2 Except as otherwise provided in clause 5.1, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, or the legal relationships established by this Agreement, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause.

9.3 This clause shall be without prejudice to the rights of any party to seek any injunctive or similar relief from the courts to protect its Intellectual Property, confidentiality obligations or other rights of any description.

9.4 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

9.5 Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

9.6 Nothing in this clause shall limit or exclude any liability for fraud.

10. CONFIDENTIALITY

10.1 Each party undertakes that they shall not at any time use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the Projector affairs covered by this Agreement which may have or may in future come to its knowledge and shall use his reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

11. GOVERNING LAW AND JURISDICTION

11.1 This Agreement shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 5, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed for and on behalf of
North Hertfordshire District Council

Signature:
Name:
Position:
Date:

Signed for and on behalf

settle Group

Signature:

Name:

Position:

Date:

Annex A - The Project

Project overview

The regeneration of the site owned by settle known as John Barker Place Hitchin (“the Site”), including the construction by settle of new housing units and shops.

The following Key Objectives shall be subject to minor variations that may arise as a result of the requirements of the Local Planning Authority.

The Key Objectives

- Grant of planning permission for and subsequent –construction by Settle of the following residential dwellings:

Phase 1 – 37 x 1 Bedroom Retirement Flats

Phase 2A – 12 Retirement Flats

Phase 2A – 12 Affordable Apartments

Phase 2B – 22 Open Market Apartments

Phase 3 – 46 homes, outline in planning application

- The construction by settle of two new shops (a supermarket and take-away) that will replace the existing units on the Site and be built at the corner of John Barker Place and Mattocke Road.
- Although the planning decision contains reference to market housing, settle’s objective is the scheme is 100% affordable (subject to the usual mortgagee exclusion provisions which will enable settle to charge the units on a MV-STT valuation basis).

Annex B – Development Agreement commitments

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