

## MUNICIPAL YEAR 2018/2019 REPORT NO.

### ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:  
Executive Director – Place

Agenda – Part: 1	KD Num: KD 4842
Subject: Highmead Development Agreement - repayment of part of overage	
Wards: Upper Edmonton	

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### 1. EXECUTIVE SUMMARY

- 1.1. This is a historic development known as “Highmead”, Silver Point, now known as Prowse Court and Lord Graham Mews, within Upper Edmonton Ward. The Council sold, under a development agreement, it’s freehold of the site to a Developer in 2015. The Developer decided the doubling of ground rent and leaseholder terms and sold on the freehold to a Ground Rent Investor to maximise income as per the development agreement. The Council benefited from this by way of the profit sharing (overage) arrangement at the time.
- 1.2. This report seeks to rectify the situation by seeking approval for repayment of part of the profit sharing payment received by the Council from the Developer, Countryside Plc. The repayment would be in good faith to ultimately help the leaseholder residents rectify their onerous leases.
- 1.3. The Council are also working with this Development Partner on other strategic housing renewal sites, known as New Avenue and Alma Estate. The Council have retained the freehold at New Avenue, and have first refusal of the freehold at Alma, so the situation at Highmead should not arise.

### 2. RECOMMENDATIONS

Agree to repay the amount stated in the Part 2 Report of the overage received back to the Developer, Countryside Properties (UK) Ltd.

### **3. BACKGROUND**

- 3.1 The Council carried out the Development known as Highmead, Silver Point, now known as Prowse Court and Lord Graham Mews, Fore Street, Upper Edmonton N18, as a mixed use (residential and commercial) development with the Developer under a Development Agreement dated 30th March 2012. The Council selected Countryside Properties, working with Newlon Housing Trust, as developer for the 0.6 hectare development site.
- 3.2 The development provided 118 new residential properties, 22 houses for affordable rent, 25 flats for intermediate rent and 71 flats for private sale to leaseholders. In addition, 4 shops, a GP health centre and community building were developed.
- 3.3 The affordable housing is developed and managed by Newlon Housing Trust.
- 3.4 This historic development was completed in 2015, and the Council agreed to transfer the freehold to the Developer under the development agreement on practical completion. The Developer then sold on the new residential units by way of long leases, which the Developer decided the terms of, and the Developer sold on the freehold of the development to a Ground Rent Investor. The Council did not retain any control over the freehold of the residential or commercial development, except the car park.
- 3.5 Since purchasing the leases, leaseholders of the privately owned properties have had difficulties with raising finance and selling their flats due to the onerous doubling ground rent terms contained in the leases they entered into. They have been lobbying the Government, the Council and Countryside to find a solution.
- 3.6 Under the Development Agreement with Countryside, the overage arrangements were structured such that the Developer was entitled to a fixed percentage of sales income (from the sale of plots and ground rents), above which surplus income was to be shared with the Council by way of an overage payment. Therefore, the Council profited from the situation.
- 3.7 See part 2
- 3.8 Since that time, due to adverse media coverage on the subject of leaseholders suffering from unfair ground rents (such as the doubling of ground rents) the Government has tabled proposals for new legislation on Leasehold Reform to provide better protection to leaseholders.
- 3.9 See part 2.

- 3.10 See Part 2.
- 3.11 Since this case, Countryside have changed their policy on the sale of freeholds to Ground Rent Investors. They now say they offer the freehold to residents', and only sell onto a Ground Rent Investor if they are unable transfer to the residents' management company. Also, Countryside say they have also changed their policy on the terms of leases they offer to purchasers, so they are fairer to leaseholders and are compliant with the Government's best practise guidelines on leases set out in the proposed Leasehold Reform legislation.
- 3.12 Highmead is a historic, one off case for the Council. In the case of New Avenue and Alma Schemes, where Countryside are a development partner, the Council has retained full control (or the ability to have full control) over any new lease terms. In the case of New Avenue the Council are retaining the freehold and proposed leases terms comply with best practise. In the case of Alma the Council has first opportunity to purchase the freehold, before Countryside go to the market. In both these cases, the Development Agreements have allowed for lease terms to be best practise by complying with proposed Leasehold Reform legislation being introduced by the Government and to comply with the Council of Mortgage Lender's recommendations. Any new developments will also need to follow these best practise guidelines. Therefore, the situation at Highmead should not arise.
- 3.13 By way of background, the current legal interests in the development are set out below:
- 3.14 **Ownerships**
- 3.15 **Ownership of Trafalgar Place Car Park**
- 3.16 This car park is on land nearby to Highmead and the freehold is owned by the Council. It provides parking facilities in connection with the flats at Highmead. On practical completion of the development in December 2014 the Council granted a Lease to the Developer for 125 years at a peppercorn rent. The Council still owns the freehold, subject to that lease.
- 3.17 Clause 7.38 of the Lease states that the Council (as freeholder/Landlord of the Car Park only) cannot unreasonably withhold or delay consent to vary the Lease or the Underleases of the residential blocks, and a consequence of this clause the Council agreed that the onerous Leases should be varied.
- 3.18 Countryside transferred their interest in 2015 to the Ground Rent Investor known Long Harbour who own the Lease via their company Adriatic Land 4 Ltd (Tenant)

**3.19 Ownership of remainder of site.**

3.20 On practical completion of the residential and commercial units, the rest of the Highmead land, which includes the tower block known as Silverpoint, was disposed of freehold by the Council on 10th April 2015 to Countryside. Countryside then transferred their freehold interest to the Ground Rent Investor known Long Harbour who own the Lease via their company Adriatic Land 4 Ltd (Tenant). Their solicitors are known as "HomeGround".

3.21 The Council does not now own this part of the site and has no interest in the flats or commercial units, and therefore its involvement is limited apart from statutory enforcement matters.

**3.22 Ground Rent variation from doubling ground rents to RPI**

3.23 See Part 2.

3.24 See Part 2.

3.25 See Part 2.

3.26 See Part 2.

3.27 See Part 2.

3.28 See Part 2.

3.29 See Part 2.

**3.30 Overage Repayment.**

3.31 See Part 2.

3.32 See Part 2.

3.33 Countryside have been advised that any payment is subject to internal Council approvals.

**3.34 Partnership working**

3.35 The Council and Countryside have been working in partnership on a number of projects in the Borough. A few of the key achievements that have made as partners which demonstrates the strong working partnership are outlined below. These items demonstrate Countryside's commitment to the Borough and go beyond the contractual obligations.

**New Avenue**

3.36 Increasing density to future phases and optimising land value, this in turn will generate additional affordable homes as well.

3.37 Looking at options to transfer private homes to the Council for use as affordable housing

3.38 Connection to the LVHN network and upgrading the network on site to be compatible post bid

- 3.39 Working at risk by investing in significant design and construction costs ahead of drawing down any land interest

**Highmead**

- 3.40 Delivered ahead of programme

**Alma**

- 3.41 Free Commercial lettings advice, including facilitating finding prospective tenants on behalf of the Council
- 3.42 Acceleration of Council rented units ahead of proposed programme
- 3.43 Minimum land value commitment that was not part of the original contracted deal
- 3.44 Assistance and participation in the Public Inquiry which resulted in confirmation of the Compulsory Purchase Order made by the Council
- 3.45 Negotiation of deals for acquisition of land associated with the CPO (Silver Birch Court)

**4. ALTERNATIVE OPTIONS CONSIDERED**

A. Not to repay part of the overage payment.

B. To offset the repayment against another Council project liability with Countryside. This has not been possible as there is no other liability to offset the cost against.

**5. REASONS FOR RECOMMENDATIONS**

To act in the spirit of the partnership, where the Developer has gone beyond their contractual obligations as shown in the examples in this report, and shown their commitment to the Borough.

Acting in fairness in returning part of the monies received for overage from the Developer.

This decision will help to maintain reasonable partnership working with the Developer, as both parties are working on other key strategic housing renewal sites.

**6. COMMENTS FROM OTHER DEPARTMENTS**

**6.1 Financial Implications**

See Part 2

**6.2 Legal Implications**

- 6.2.1 The terms of the Development Agreement entitled the Council to an additional payment, known as overage, based on the financial return ultimately achieved by Countryside on the completed development. Such payment was duly received.
- 6.2.2 Ground rents which are now, or capable of being in future above a nominal level are not acceptable to mortgage lenders. As a consequence, leaseholders are effectively prevented from selling their flats due to the inability of buyers to obtain mortgage finance.
- 6.2.3 Parliament has now committed to enacting legislation to restrict the amount of ground rent which can be charged on new leases. Although at the moment it is not certain exactly how this will affect existing leases it is likely (for reasons of public policy and to avoid stagnation in the housing market) that Parliament will restrict the mechanism by which ground rents in existing leases can be increased.
- 6.2.4 Although the Development Agreement did not envisage a scenario where part of the overage payment would need to be repaid it is nevertheless equitable and lawful for the amount received by the Council to be retrospectively adjusted and a partial refund to be made to Countryside in order to reflect the end position in financial terms.

## **7. Property Implications**

The property implications are effectively embedded in the report already. This report refers to a historic Development Agreement and mixed use development that has been completed in 2015, and where the Developer is seeking a repayment of part of an overage payment. External Valuers GVA have been advising the Council on the repayment amount that the report is recommending.

## **8. KEY RISKS**

- The financial risk is low, as the money is budgeted for as outlined in the financial implications sections of this report.
- In addition, there is no risk of any comeback for further funds from the Council by the Developer. This will be tied up contractually when the payment is made.
- The legal implications of making the payment are outlined in the report.
- The repayment figure has been assessed by External Valuers GVA, who are specialists in this advising on matters such as this.

## **9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD**

### **9.1 Good homes in well-connected neighbourhoods**

The residents on the estate have complained that the original leasehold terms are unfair. The offer made by the Developer to address the terms will help to contribute to financial stability for the residents.

## **9.2 Sustain strong and healthy communities**

The development contributes to this aim by tackling inequality and access to social housing by providing affordable homes.

## **9.3 Build our local economy to create a thriving place**

Growth and sustainability are central to the scheme. The development has boosted growth in terms of increasing the supply of quality residential housing and retail space in the area. Furthermore, the development prioritises environmental sustainability, including improving the energy efficiency of the residential buildings and promoting recycling and sustainable transport.

## **10. EQUALITIES IMPACT IMPLICATIONS**

Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report to agree the repayment of part of overage

## **11. PERFORMANCE AND DATA IMPLICATIONS**

This report does not recommend a change of service or implementation of new practices and therefore performance and data implications are not applicable.

## **12. HEALTH AND SAFETY IMPLICATIONS**

There are no health and safety implications to consider.

## **13. HR IMPLICATIONS**

None

## **14. PUBLIC HEALTH IMPLICATIONS**

None

## **Background Papers**

None

