

## London Borough of Enfield

### Operational Report

Report of **Joanne Drew**

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**Subject: Alma Estate Regeneration Section 73 Related Approvals to Development Agreement Variations**

**Executive Director: Sarah Cary, Executive Director Place**

**Ward Ponders End**

**Key Decision: 5116**

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### Purpose of Report

- 1 Countryside Properties (UK) Limited (CPUK) was selected as the development partner for the Alma project by Cabinet in September 2013 (KD3769) and a Development Agreement (DA) was entered into on 13<sup>th</sup> November 2014.
- 2 The principal outcomes of the project included the delivery of 885 new homes on the Alma estate, with 200 replacement Council owned social rented homes for existing Alma tenants, 199 affordable housing units (comprising 40% affordable housing overall), a medical centre, a youth centre and a new community hall. A variation to the development agreement entered into on 18<sup>th</sup> August 2017 increased the number of residential units to be delivered on the scheme from 885 to 993 apportioned as 594 for private sale, 200 replacement Council homes and 199 affordable housing units. However, it became clear that the existing Phase 2a consent did not provide sufficient accommodation to allow for the decant mix that was necessary and required by the Local Lettings Plan, due to increase in family households since the development commenced.
- 3 Following a review of the decant needs, negotiations commenced with CPUK to redesign Phase 2A and Phase 4 and prepare a Section 73 application to improve the social rented housing offer for existing council tenants, who have remained on the estate and due to be rehoused in later years of the project. To fully address all the critical decant needs and accelerate the pace of development the Council (acting as Landowner) approved CPUK's submission of the S73 application in March 2021 (19/03624/VAR). This application was approved by planning committee on 22 July 2021 (subject to a referral to the Greater London Authority and the completion of a Deed of Variation to the Section 106 Agreement) and will increase the total number of homes from 993 to 1080, comprising 636 private sale units, 200 replacement Council units that better suit the Council tenants' decant needs, than the previous consent, and 244 affordable housing units. There is also

increased commercial space from 866sq.m to 913sq.m. Subject to agreement of s106 and GLA approval of CPUK's planning application, this report seeks approval for variations to the Development Agreement relevant to the changes brought about by that approval.

### **Proposal(s)**

- 4 Subject to a satisfactory planning consent with no onerous conditions to the Council, to approve entry into a Supplemental Deed which varies the terms of the Development Agreement as summarised in this report, including but not limited to an increase in the number of homes from 993 to 1080.

### **Reason for Proposal(s)**

- 5 Following a review of the remaining decant needs and provision of new replacement homes as consented, officers assessed that the mix was not sufficient for existing tenants to be rehoused successfully. To remedy this and improve the overall family accommodation, the Council worked with CPUK to develop proposals which better met council tenants' housing needs. That exercise has informed the commercial terms pursuant to the Supplemental Deed.
- 6 The changes to the Development Agreement contained within the Supplemental Deed can be summarised as (i) increasing the number of units by 88, (ii) changes to the timing of payments (30% on drawdown of lease) related to the Council Consideration Fixed Replacement Homes and (iii) acceleration of council replacement homes by bringing forward provision of housing for social rent on Phase 4. Detail on the commercial terms is set out in Confidential Appendix 1.
- 7 The changes to Phase 2A and 4 include 2-bedroom homes with dining rooms and 13 x 3 and 4-bedroom houses with gardens, which has resulted in better and improved accommodation delivered earlier than anticipated in the Development Agreement. The proposals are also being delivered within existing budgets and agreed subsidy assumed within the HRA Business Plan.
- 8 There are a further 22 social rented homes outside of the 200, in future phases (Phase 2B and Phase 3) for which there is a pre-emption in the Supplemental Deed, to allow the Council to acquire these at market value before they are offered to a Housing Association. This will be subject to a further authority if the Council chooses to invoke that clause.
- 9 The variations and "Council Consideration" have been reviewed and validated by the Council's Employers Agent (Martin Arnold). The report notes that if the Council were to follow the DA, the required excess floor area would be equivalent to the build cost of those units. The Employer's Agent notes that this would not be viable for the Council because units for social rent tenure are delivered on the market for a value less than their construction cost. Therefore, the commercial terms which arise from the S73 and contained in the Supplemental Deed represent value for money and the Council benefits from larger units needed for decant purposes, which helps

to unlock the remaining Phases 2b and 3. The Employer's Agent report is provided as Confidential Appendix 2.

- 10 The revised proposals as varied by the Supplemental Deed provide for:
  - Overall 88 additional units which is a 10% uplift on the previously consented scheme.
  - Better decant accommodation for the 69 remaining Alma households with a greater amount of affordable housing floorspace and revised phase plan for earlier delivery.
  - 13 large family houses on Phase 4 (Fairfield Road) not originally proposed within the phasing plan in the current Development Agreement
  - Maintaining 40% affordable housing overall.
- 11 Other than the variations set out, the substantive terms of the Development Agreement on land receipt, overage and lease obligations are unchanged through the Supplemental Deed.
- 12 The table below shows that overall the accommodation for the remaining 69 existing council secure tenants will be met from Phases 2A and 4 :

<b>LBE UNIT TYPE</b>	<b>Phase 2A</b>	<b>Phase 4</b>
1b2p Flat	8	0
2b3p Flat	4	0
2b3p Flat WCH - with g/floor garden	1	0
2b3p Flat WCH - without g/floor garden	7	0
2b4p Flat - with separate dining room	16	0
3b4p Flat WCH - with g/floor garden	4	0
3b5p Flat - upper/floor	9	0
3b5p Houses	0	9
4b6p Maisonette - with g/floor garden	7	0
4b7p Houses	0	4
<b>Totals</b>	<b>56</b>	<b>13</b>

- 13 Due to the larger family sized homes the overall floor area for Phase 2A has increased from the previous consented 3,618 sqm and is now 4,239 sqm for new consent and for Phase 4 the overall floor area has risen from 0 sqm and is now 1,370 sqm for the new consent.

### **Relevance to the Council Plan**

- 14 This proposal is in line with the Council's ambition for good homes in well-connected neighbourhoods. This is through delivering the right mix of homes required to decant existing residents in line with commitments made in the Local Lettings Plan. The planning consent results in 22 additional social rented homes overall, maintains existing budgets and income expectations for land receipt and overage assumptions in the Development Agreement.

## **Background**

- 15 Countryside Properties (CPUK) entered into a Development Agreement (DA) with the Council on 13 November 2014. The DA contained a “Council’s Fixed Replacement Homes Consideration” (Council Consideration) which set out how much the Council paid for the affordable homes (based around a square meterage assumption) it would receive in each phase. These prices were fixed but subject to indexation.
- 16 Phase 1 has now been delivered, providing 228 homes, of which 97 were social rent (owned by the Council) and 35 shared ownership (owned by Newlon Housing Trust). Commercial space for a café and a gym (currently operating as a marketing suite) was also included.
- 17 Work is complete on a new youth centre which completed on 24<sup>th</sup> May 2021 and was opened on 21<sup>st</sup> July 2021. The medical centre was opened on 14<sup>th</sup> June 2021. Work has begun on a new “Welcome Point” community centre, on the site of the old youth centre. A new energy centre, as part of the Energetik heat network, providing individually controlled decentralised heat to all homes in the development has also now started operating.

## **Main Considerations for the Council**

- 18 The Supplemental Deed sets out the council consideration for construction costs and the timing of those works to align with the reprofiling of budgets from 2020/2021 to 2021/2022, as planning had not been achieved last year and therefore payment terms had not been met. Given negotiations on commercial terms were underway on the planning scheme and mix, CPUK progressed works on site at risk, including demolition of the existing Cormorant and Merlin House which relate to the developable land for Phase 2A. The Supplemental Deed proposes to make payments in line with the agreed commercial terms as outlined in paragraph 6 and detailed in Confidential Appendix 1. This brings expenditure in line with the works costs and on the basis that that Phase 4 will commence earlier, groundworks are completed for Phase 2A and piling to achieve above ground works start in September. These payments are within approved budgets and spend forecasts for 2021-2025.
- 19 To offset capital costs to the Council, additional grant has been secured for the HRA Business Plan totalling £1.52m for Alma Phase 2A and Phase 4. This income improves the overall budget commitment for Alma. GLA grant is paid to the Council in two tranches with 50% paid at start on site and the final 50% is due on completion, according to forecasts agreed with the GLA and in line with the current build programme.

## **Safeguarding Implications**

- 20 The development of new affordable housing provides appropriately sized, safe housing for those in housing need whether rehoused from a home on the original estate or from temporary accommodation. This includes vulnerable children and adults.

## **Public Health Implications**

- 21 Suitable housing is a key determinant in enabling physical and mental wellbeing. The recommendation in this report will ensure that residents on the Alma estate who remain in old properties (many of which are in poor condition) are able to move into a new home. The proposal also sees 22 additional social rented homes delivered which will be available for Enfield residents, helping to tackle overcrowding and unsuitable accommodation.

## **Equalities Impact of the Proposal**

- 22 The proposal set out in this report will enable the decanting of all remaining residents on the Alma estate, many of whom are currently living in unsuitable accommodation. The additional 22 social rented homes delivered will provide additional accommodation for those on the Council waiting list. The Council's allocations policy allocates points according to need, with many of the most vulnerable in receipt of the highest points total. A high proportion of these households are made up of people with one or more protected characteristic.
- 23 An Enfield Council Equalities Impact Assessment was carried out in June 2017 and the intention is to update it to account for the change in the house type and tenure mix which allows for a greater diversity of housing options.

## **Environmental and Climate Change Considerations**

- 24 The project is replacing Council homes that were already on the same site so in terms of delivering a service this has not changed and if any traffic travelling to the site should be reduced as the new homes are replacing homes that have become high maintenance requiring more journeys to carry out repairs and possible major structural works to make them safe and more energy efficient in future. The better quality of housing should mean less journeys by maintenance services. Estate management services are being delivered by a separate management company also serving the external areas for private homes as well as the Council homes. There may be some increased visits to site by regeneration staff during the construction stages but over the longer term there should be a net decrease.
- 25 The energy efficiency of the buildings has been assessed and minimum carbon emission targets set (minimum 35% CO2 emission reductions on 2013 Building Regulations Part L levels) resulting in highly insulated structures assisted by the highly efficient heat network and communal solar PV arrays to contribute to communal electricity. The effect of climate change warming in hotter months has been considered according to the latest CIBSE design guidance so that the dwellings do not overheat and minimise any need to run electric fans in hotter months.
- 26 Due to their responsible on-site practices the site operations managed by Countryside will aim to achieve a high score out of a maximum 9 for 'Protect

the Environment' performance on the Considerate Constructors Scheme provided by a qualified assessor. An environmental assessment has been completed and an environmental risk register is in place with weekly in-house audits. Regular environmental 'Toolbox Talks' are given for site operatives to advise on environmental best practice and in-house environmental awareness training is provided to staff. The environmental procedures are also ISO certified and there is a Sustainability Plan for the site which is also audited. A Site Waste Management Plan has been prepared with specific targets and waste recycling reports are issued and reviewed to check on-going performance. Environmental achievements are regularly promoted in newsletters. Water / energy saving measures are installed in the energy efficient site cabins and the sites carbon footprint is measured. Countryside is currently investigating a carbon offsetting policy and they are reviewing measures to reduce the use of packaging and plastics.

- 27 In terms of transport the S73 consent means a reduction in the car parking provision ratio but this is in the context of changing car use needs as we transition to greener options to meet national policy targets along with anticipated less car ownership and more car club and leasing as and when needed. A Controlled Parking Zone is being scheduled in order to deal with unwanted commuter and parking taking spaces available for local residents. The estate is well served by good public transport options with the provision of increased electric vehicle charging points, alongside active travel improvements such as increased cycle storage and a contribution to walking and cycling route improvements, including along Alma Road. There is also a net increase in trees on the site and a significant contribution to improving the nearby green space at Ponders End Park.

#### **Risks that may arise if the proposed decision and related work is not taken**

- 28 If the recommendation to vary the DA is not approved the S73 consent is not implementable and therefore the Council will not receive the right mix of housing required to meet existing council tenant decant needs. This will slow or halt the delivery of remaining phases, leave existing council tenants dissatisfied and result in extra costs incurred by the Council to rectify. It would also see 22 less social rented homes and 22 less shared ownership homes delivered by the scheme, making it harder to address the significant housing challenges facing many of Enfield's residents.

#### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

- 29 The S73 approval and variations pursuant to the Supplemental Deed have been set out below to illustrate limited risks and impacts:

	<b>Nature of change</b>	<b>Risk/Reward Impact</b>
1.	Affordable Housing acceleration	Neutral financial impact overall but positive for residents as prevents decant delays and consequential costs with original consent and agreement
2.	Council Affordable Units specification	Positive impact due to greater floorspace and fire safety improvements in line with Council requirements in Employers Requirements.
3.	Payment profile change	Low risk high reward. Increases pace of delivery as supports cashflow and mitigates further delay. Payments for construction works were suspended in 2020/2021 whilst negotiations were underway on the decant mix which would have been payable under the Development Agreement as CPUK had continued demolition and groundworks at risk.
4.	Risks due to GLA grant conditions	Low risk due to long stop date for completion in line with approved forecasts by the GLA. Also offset by agreement to withhold payments from any retention money should it be necessary.
5.	Revised Phasing Plan	Positive impact as delays averted by improved decanting solution.
6.	Rights to Light	Positive benefit to existing residents as reduced height in relation to Phase 4
7.	S106 apportionment	Positive impact as benefits for residents have improved.
8.	Ground rents removal	Minor impact but required by change in Government policy and legislation
9.	Added pre-emption clause for Phase 3	Positive impact as strengthened extra clause allows the Council first refusal and greater opportunity to acquire 22 additional units as funds allow in future.

- 30 The projected overage delivered by the scheme may not be achieved if the level of regeneration uplift after post planning appraisal is not sufficient to trigger overage payments. The Employer's Agent has advised the proposals for Phase 2A and 4, while caveated, should reasonably generate overage. This risk also applies to the consented scheme, with a receipt comparatively less likely due to the risk of delay cited above and the lower amount of private sale homes contributing towards cross subsidy.
- 31 There are grant conditions which must be adhered to primarily in terms of completion within an expected milestone. However, the risk is relatively low due to the long stop date in the Supplemental Deed informed by the approved forecast for practical completion. To mitigate this risk, the Supplemental Deed sets out obligations upon CPUK in relation to the final valuation to ensure that the Council only pays for works and delivery in accordance with the agreed construction programme.

## **Financial Implications**

- 32 The proposal in this report is for the approval of changes through a Supplemental Deed to the Development Agreement related to the Section 73 application submitted by Countryside Properties UK to increase the total number of homes on the Alma Estate from 993 to 1080.
- 33 The changes to the agreement will result in the Council receiving 13 larger units compared to the original agreement. In the DA the expanded units would have been delivered in future years and the cost attached to those units would be subject to indexation. The cost of having larger units is £800k to the Council.
- 34 This additional consideration and 30% payment of the approved construction costs on drawdown of lease for the acceleration of Replacement Homes, has been negotiated between the Council and CPUK. Under the provisions of the DA, the Council Consideration would have been significantly higher for the same number of units due to the Council. This would have impacted the HRA budget.
- 35 The changes to the DA will result in 25 units being delivered sooner, which includes the 13 larger sized units mentioned above. As a result of early delivery there is a saving on indexation which is estimated to be £670k.
- 36 The construction works expenditure is within the overall approved project budget.
- 37 The Council has also secured additional grant from the GLA for units on the Alma development. £720k has been secured for 12 units (£60k per unit), and a further £800k for the 13 larger homes (£63k per unit). In total the Council will receive £1.52m of income from the GLA which will reduce the overall borrowing for the project.

## **Legal Implications**

- 38 The Council has the power under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. There is no express prohibition, restriction or limitation contained in a statute against use of the power in manner proposed in this report. In addition, section 111 of the Local Government Act 1972 gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The recommendations are in accordance with these powers.
- 39 As a consequence of the planning approval of the revised scheme, it is proposed that the Council agree various amendments to the Development Agreement with CPUK, the details of which are summarised in this report. The Development Agreement is a public works contract under the Public Contracts Regulations 2015 (PCR 2015) and the value is above the threshold for public works. The Council must therefore ensure that the



variations to the Development Agreement are permitted under regulation 72 of the PCR 2015. Legal Services have obtained the advice of Browne Jacobson in this regard. It is considered that the proposed variation is not a substantial modification as none of the criteria under regulation 72 (8) PCR 2015 apply. Therefore the modifications are permitted under Regulation 72 and because this is not a substantial modification and comes under regulation 72 (1) (e) there is no requirement for the Council to publish a notice to inform the market of this proposed variation.

- 40 Public law principles apply to the decisions made by the Council including the Council's duty to take account of its fiduciary duty and to act prudently with public monies entrusted to it. The Council is also under a general duty to act reasonably and show that its decisions are made after having given due and proper consideration to all relevant factors (disregarding irrelevant factors). Throughout the engagement of Countryside UK as developer the Council must comply with its obligations of obtaining best value under the Local Government Act 1999.
- 41 It is proposed that the Council's additional consideration is met (at least in part) through GLA grant funding. The Council must comply with the terms and conditions of the grant funding agreement which contains clawback and withholding mechanisms in the event of default or non-performance of obligations (including meeting milestones for delivery).
- 42 This report references a s106 agreement to be entered into by the Council in its capacity as landowner. This has not been reviewed by Legal Services. Under the terms of the Development Agreement the Council (as landowner) must be satisfied that the planning permission granted and any planning agreement to be entered into is acceptable.
- 43 All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by Legal Services on behalf of the Director of Law and Governance.

MD 6<sup>th</sup> September 2021

### **Workforce Implications**

- 44 There are no workforce implications.

### **Property Implications**

- 45 The Council receives the same number of homes overall as currently consented and agreed under the existing Development Agreement. The housing mix will be an improvement and delivered pursuant to the Supplemental Deed and HRA budget.

### **Other Implications**

- 46 There are no other considerations relating to this decision.

## **Options Considered**

- 47 The alternative would be to the scheme achieved through the S73 proposals and revert to the consented scheme. However, the consented scheme would result in a mix of Council homes that do not provide the decant options required to vacate Curlew House, Scotland Green Road and South Street and allow commencement of Phase 2b. This would not be a beneficial outcome for the existing community or the Council.
- 48 CPUK could be asked to prepare another proposal but given that the current agreed proposal is the result of a long negotiation process and has been verified by an independent assessment provided by Martin Arnold Associates as the best deal for the Council, it is unlikely that such an approach would provide any additionality. Given the time that would be required for this approach it would more likely result in extra expense for the Council given that work cannot commence on Phase 2A or 4 until an approach has been agreed.

## **Conclusions**

- 49 In order to continue delivery of the Alma estate renewal scheme and build council rented homes at pace, the proposals contained within the S73 and subject to variations to the existing Development Agreement, present the Council and its tenants a positive outcome with limited financial liability.

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## **Appendices**

Appendix 1 – Confidential

Appendix 2 – CONFIDENTIAL – Martin Arnold report “Review of proposal for Phase 2A and 4”.

## **Background Papers**

**The following documents have been relied on in the preparation of this report:**

None