

## London Borough of Enfield

### Operational Report

**Report of**                      **Joanne Drew**

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**Subject:**                      **New Avenue Approvals**

**Executive Director:**        **Sarah Cary**

**Ward**                              **Cockfosters**

**Key Decision:**                **KD5115**

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### Purpose of Report

1. To approve entry into a Deed of Variation of the New Avenue Development Agreement following s73 planning consent in November 2021 increasing the total number of units on the scheme and approving a revised tenure and housing mix.

### Proposal(s)

2. Approve entering into of a Deed of Variation to the Development Agreement for the New Avenue project.

### Reason for Proposal(s)

3. Phase 1 at New Avenue is now complete with 127 housing units in total including 78 for the Council housing the 49 decanted tenants on social rents, 7 decanted leaseholders who have bought on a shared equity basis, 22 units to be rented on London Affordable Rents for tenants from the waiting list and 49 private sale units sold by Countryside. Prior to commencement of Phases 2 & 3, the Developer submitted a revised Section 73 planning consent to increase the total number of units on the project the Council.
4. The s73 application was approved by the Local Planning Authority in November 2021. A deed of variation to the Development Agreement is required to formalise the variation to housing number, tenure and mix agreed by Planning Committee and will, regularise the land receipt calculation to take into account the increased number of private and shared ownership units to correctly deliver what is due to the Council at the end of the project, update the programme, and tighten clauses around Long Stop Dates, to enable the future phases to commence and deliver as per the agreed changes.

5. If the Council is unable to complete the Deed of Variation before the end of March 2022 this not only presents a commercial risk but also prevents any slippage in the overall construction programme due to the need to renegotiate. The DoV will secure the Council's ability to accelerate future phases of the New Avenue regeneration scheme, release land receipt payable as forecast in the HRA business plan and close out risk of the Developer seeking to reopen negotiations.

### **Relevance to the Council's Plan**

6. The revised planning consent will mean the Council will be able to develop larger affordable family homes, provide a cycle link to Southgate Station and increase the offer for first time buyers with a 30 shared ownership homes, improve upon existing housing stock in line with the Council's Plan to create a lifetime of opportunities in Enfield, providing Good Homes in well-connected Neighbourhoods, and Sustaining Strong and Healthy Communities.

### **Background**

7. Countryside Properties (CPUK) was selected as development partner for the New Avenue project by Cabinet in October 2014 (KD3793). The principal outcome of the project was the re-provision of 140 Council homes as part of a high-quality estate renewal project. The DA was signed in September 2017 based upon a planning consent to 408 homes in total including 140 affordable homes and a community hall for the Council.
8. The lower than anticipated number of homes planning permission in was obtained for November 2016 ultimately resulted in a zero land receipts payable to the Council by the developer, and therefore it was always the intention of both the Council and CPUK that a revised planning application would be made (and an obligation to make an application included in the DA). Both parties agreed that the scheme should be optimised to increase the proportion of family sized homes within the Council's supply of social housing, increase the range of affordable products and provide enhanced transport options through increased Section 106 (S106) contributions. Therefore, approval under a Record of Decision was given for Countryside to submit an approved Section 73 redesign for an increased number of units for Phases 2 and 3 in June 2021.

### **Main Considerations for the Council**

9. The successful delivery of the completed Phase 1 under the original planning consent has meant that all remaining residents from the original estate have been rehoused. The aim of negotiations with CPUK was therefore to increase the proportion of family homes it would receive in phases 2 and 3 whilst maximising the land receipt paid to the Council by an overall increase in private homes.
10. Due to the lower number of homes contained within the original consented scheme, the original consented scheme would see a negative land receipt returned (under which circumstances the Council receives no payment but is also not required to make any payment) by a significant margin. Various

deductions in line with the terms of the Development Agreement and market conditions helped exacerbate the extent to which a negative figure was returned.

11. The revised S73 approval governing Phases 2 and 3 of the project obtained in November 2021, addresses this concern to the extent that it results in a positive land receipt returned to the Council (subject to only minor change at this stage) so long as the Deed of Variation is entered into amending the land receipt calculation correctly and the basis of the deal does not change between all parties.
12. Under the old planning consent there was no shared ownership tenure. The new consent adds 30 shared ownership homes for first time buyers, to be marketed and sold by Newlon Housing Trust, but the calculation in the existing Development Agreement does not take into account the introduction of this tenure and the receipt CPUK would receive from Newlon Housing Trust for these units. Therefore, there would not be the land receipt due to the Council that there should be without it being amended and the DA amended.

### **Safeguarding Implications**

13. 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**

14. Suitable housing is a key determinant in enabling physical and mental wellbeing. The recommendation in this report will see a higher proportion of family sized homes received by the Council, helping to tackle overcrowding and unsuitable accommodation.

### **Equalities Impact of the Proposal**

15. The delivery of good-quality homes local services that promote equality and values diversity. With all decanting requirements having been met in phase 1, the additional homes received in phases 2 and 3 will be provided to households 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.
16. An Enfield Council Equalities Impact Assessment was carried out in November 2018. With all decanting requirements having been met in phase 1, the additional homes received in phases 2 and 3 will be provided to households 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.

### **Environmental and Climate Change Considerations**

17. 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. Despite the increase in dwellings the Council's overall carbon footprint will be reduced. 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 sunnier months.

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

18. Failure to enable the exchange of contracts for Deed of Variation before the end of March 2022 is a commercial risk. The DoV secures the acceleration of future phases of the New Avenue regeneration scheme, deliver larger sized family accommodation for the Council and a significant land receipt payable to the Council at the end of the project, which is necessary to support the delivery of other housing projects.

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

19. The land receipt will not be crystallised until the end of the project so there is a risk of further adjustment due to further variations to deductions under Schedule 12, although the risk and impact is low now that most variable costs open to adjustment will be confirmed at the time of signing of the Deed of Variation.

#### **Financial Implications**

20. The proposals in this report are integral to the HRA Business Plan Update (KD5342). This report is proposing to update the income position in respect to the New Avenue project. This is based on a planning application being granted to increase the overall properties developed from 408 to 502 units.

21. A land receipt was originally built into the HRA business plan at the start of the project, which represented an increased number of units in line with the original bid by CPUK based on 451 units. However, the actual planning consent approved 408 units representing a zero return in land receipt. After negotiations with CPUK Council planners and redesigns of Phase 2 and 3 for the Section 73 application the HRA Business Plan was updated based on the estimated land receipt at that time in 2020 and vetted by the Council's Employers Agent, (Ibis). This was approved in HRA Business Plan in 2020 under KD5219 then included in KD5342 in December 2021.

22. In November 2021 CPUK obtained a Section 73 amended planning consent to increase the number of units in the development to 502 in total, which in turn will produce a positive land receipt to the HRA which exceeds the current approved HRA Business Plan under KD5242. This is based on the scheme

progressing to the timeline to complete the DoV by the end of March 2022. The current calculated land receipt represents a positive outcome for the HRA Business Plan.

## **Legal Implications**

### **MD 15<sup>th</sup> March 2022**

23. 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.
24. The Council has a fiduciary duty to look after the funds entrusted to it and to ensure that its Council tax and ratepayers' money is spent appropriately. The Council must carefully consider any project it embarks upon and conduct its affairs in a business-like manner with reasonable care, skill and caution, with due regard to tax/ratepayers' interests.
25. The contract is a public works contract under the Public Contracts Regulations 2015 (PCR 2015) and the value is above the threshold for public works contracts under Part 2 of the PCR 2015. Any changes to the Development Agreement must fall within the permitted grounds for modification under regulation 72 of the PCR 2015. Legal officers (on the advice of the Council's external solicitors Sharpe Pritchard LLP) are satisfied that the proposed amendments fall within the permitted grounds for modification (namely Reg 72(1)(a) and or 72(1)(e)).
26. Given the value of the proposals in this report, the Council's Key Decision process must be followed.

## **Workforce Implications**

24. There are no workforce implications

## **Property Implications**

25. There are no property implications. The Council receives the same number of homes overall as currently consented. The mix of house size will change but will be managed in the same way and in line with all HRA managed homes.

## **Other Implications**

26. No other implications

## **Options Considered**

27. If the Deed of Variation is not entered into before the financial year end, this

will have an impact on Phases 2 and 3 starting on site and may also mean that the land receipt payable to the Council will be further delayed and will have to be renegotiated.

## **Conclusions**

28. After several months of negotiation, the Deed of Variation has been agreed by all parties and a programme has been fixed for Phases 2 and 3, which gives more levers to the Council to ensure the project is delivered to those milestones.

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## **Appendices**

### **Background Papers**

The following documents have been relied on in the preparation of this report:  
KD5342