

Please note Part 2 report is now confidential appendix.

London Borough of Enfield

Operational Report

Report of **Joanne Drew**

Subject: Ladderswood Deed of Variation to the
Development Agreement

Executive Director: Sarah Cary

Ward Southgate Green

Key Decision: KD 5444 / U240

Purpose of Report

1. To approve entering into a Deed of Variation to the Development Agreement for the Ladderswood Regeneration Project.

Proposal(s)

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

Reason for Proposal(s)

3. As Phases 1-3 are now complete, ahead of Phase 4 commencing, the Council is seeking to enter in to a Deed of Variation with the Developer as soon as possible. This will, regularise the costs and overage assumptions, update current phasing plans, programme, and tighten clauses around Long Stop Dates, to enable the future phases to commence and deliver as per the agreed changes

Relevance to the Council's Plan

4. Under the development agreement the Ladderswood Regeneration project will deliver affordable homes for existing and new residents and create a mixed tenure community. The Deed of Variation will accelerate the remaining homes on the estate to be delivered under Phases 4-6 equating to 268 homes.

Background

5. On 27th April 2011 Cabinet granted authority (KD3229) for the selection of a consortium known as the Ladderswood LLP, made up of Mulalley and One Housing

to be appointed as the preferred development partner and to enter into a Development Agreement.

6. In 2011 the Council entered into a Development Agreement (DA) with the New Ladderswood LLP, which subsequently received planning for 517 new homes with a 71%/29% private/affordable tenure mix.
7. Full Planning Consent was granted on 17th February 2014 for 514 homes. The project started on site in March 2014 and 249 homes have been delivered. Phases 4, 5 and 6 will see the remaining homes built out which is 49 affordable, 209 private sale and 10 Shared ownership.

Main Considerations for the Council

8. There have been a number of changes to the project over the last few years that require the DA to be amended by a Deed of Variation (DoV) to regularise the project for both the Council and the delivery partner. The main change originated from the Council adopting a supplementary planning document in 2015 which required sites to connect to a heat network. This resulted in the Developer redesigning the masterplan to deliver an Energy centre and satisfy the Council's requirement for Energetik as the ESCO for the project. The original costs have been independently verified by a Quantity Surveyor to confirm the adjustments to projected income are eligible for the Energy Centre, security costs and associated fees.
9. As Phases 1-3 are now complete, ahead of Phase 4 commencing the Council will be seeking to enter into a DoV. This will, regularise the costs and overage assumptions, update current phasing plans, programme and tighten clauses around Long Stop Dates, to enable the future phases to commence and deliver as per the agreed changes.
10. The Development Agreement requires overage payments on completion of each phase. However, in 2017 the Council accepted that the Phase 1 overage would offset any cost of connecting to the first heat network in the borough and an energy centre. This aspiration was introduced and stipulated by the Council after the developer had entered into contract with the Council which in effect varied the agreed financial terms.
11. As this was not formally varied, the Council is seeking to strengthen its position and ensure only those costs which were known and accepted at that time are reflected in the Development Agreement. This requires a Deed of Variation to the Development Agreement to forego the overage which was due from sales in Phase.
12. The HRA Business Plan has a minimum overage forecast which is based on the sales value projected at that point (£20m). The adjustment for costs is within approved income projections and therefore there is no impact on the HRA Business Plan as a result of entering into the Deed of Variation.
13. Costs have been verified independently on an open book basis and only items in the table are eligible expenditure. The costs which total £1.614m reflect additional specification required by the Council which the LLP had not factored into their build costs and accepted as full and final.

Safeguarding Implications

14. The recommendations in this report do not have any safeguarding implications.

Public Health Implications

15. Developing and sustaining good quality homes in areas where people desire to live will help to create and maintain strong sustainable communities. The New Ladderswood development has already delivered on 17% of its original 29% target together with an 85-bed hotel that has provided jobs for the local community, a community centre which will help strengthen community resilience to support improved health and wellbeing through better social connection. There are also 6 commercial units, where we have current offers from Local gym and Yoga usage, a Child and Adolescent Medical Unit.

Equalities Impact of the Proposal

16. The delivery of good-quality homes local services that promote equality and values diversity.

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.

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

18. The commercial risk is that the Council will be unable to enter into contracts for the Deed of Variation before the end of March 2022. The Deed of Variation secures the acceleration of future phases of the Ladderswood regeneration scheme and releases overage which is payable to the Council, 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. There are no risks in agreeing this proposal. Having it in place will better secure the Council's position with the New Ladderswood LLP both contractually and financially.

Financial Implications

20. The developer has incurred additional costs in redesigning the masterplan to deliver an Energy Centre and satisfy the Council's variation to the project. This required connection to the heat network as well as other costs not known at the time of the original development agreement. The adjustment to the overage is within the baseline forecast of £20.5m.
21. The overage forecast was included within the HRA Business Plan Update (KD5342) and this change was reflected in the Business Plan.

Legal Implications

MD 17th March 2022

22. 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.

23. 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.
24. The Council have been advised by external solicitors Sharpe Pritchard LLP in relation to the Deed of Variation which has also been reviewed by the internal Legal Team. The Deed of Variation will amend the Ladderswood development agreement as follows:
 - (i) variations to the community facility specification;
 - (ii) an alteration to the timing of the calculation of any adjustments to the Lease Premium and/or Transfer Premium payable by the Developer;
 - (iii) a prohibition on the Developer disposing more than 5 residential units to an institutional investor without the Council's consent;
 - (iv) a requirement for the Council to reimburse the Developer for costs of removing trespassers from the site; providing and installing satellite television to the affordable housing units; and upgrading the energy centre and district heating system, each such sum to be deducted from the Sales Overage due to the Council;
 - (v) agreement of each party's surveyor's costs;
 - (vi) amended decant requirements;
 - (vii) amendments to the phasing plan and programme; and
 - (viii) ancillary changes to the development agreement to correct or clarify drafting.
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 as the changes are not considered material to the contract originally procured.
26. Given the value of the proposals in this report, the Council's Key Decision process must be followed.

Workforce Implications

27. There are no workforce implications

Property Implications

28. There are no property implications arising from this decision.

Other Implications

29. There are no property implications directly arising from the contents of this report,

Options Considered

30. The existing development agreement sets out the obligations for the whole regeneration and phasing for the build out. However, the deed of variation enables the Council to secure the construction programme and timely commencement of Phase 4 and future phases.

Conclusions

31. If the Deed of Variation is not entered into before the financial year end, this will have an impact on Phase 4 starting on site and may also mean that the overage payable to the Council will be further delayed.

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Appendices

Background Papers

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