

DOCUMENT 15

18 FEBRUARY 2021

BASILDON BOROUGH COUNCIL

**SECTION 226(1)(A) OF THE TOWN AND COUNTRY PLANNING ACT 1990
AND THE ACQUISITION OF LAND ACT 1981**

**THE BASILDON BOROUGH COUNCIL
(FRYERNS AND CRAYLANDS) (PHASE NORTH)
COMPULSORY PURCHASE ORDER 2020**

SUMMARY OF DEVELOPMENT AGREEMENT

1. EXECUTIVE SUMMARY

- 1.1 This summary sets out the Development Agreement's key terms. It is not intended for use as anything other than as a high-level summary.

2. BACKGROUND

- 2.1 English Partnership as the leading partner led an OJEU compliant procurement process in 2007 that resulted in the selection of Swan Housing Association Limited ("**Swan**") as the development partner. Swan and Basildon District Council now Basildon Borough Council (the "**Council**") entered into a Development Agreement with Homes England (then English Partnerships) ("**HE**") on the 14 November 2008, as subsequently varied (the "**Development Agreement**").
- 2.2 The Development Agreement is the overarching agreement which provides for the redevelopment of Craylands and former Fryerns School ("**Craylands**"). The Development Agreement provides for the redevelopment of the Craylands Estate in phases. There are a number of conditions to be satisfied for each phase prior to each phase becoming unconditional.

3. PLANNING PERMISSION DEVELOPER'S OBLIGATIONS

- 3.1 Swan is obliged to obtain the necessary planning permissions
- 3.2 The Development Agreement places the risk for obtaining detailed planning approval for all phases on Swan. There are detailed provisions for making applications expeditiously, having the same approved by HE and the Council and provisions to deal with appealing the same where planning approval is not granted or is not satisfactory.

4. VARIATIONS

- 4.1 The Development Agreement can be varied. There are specific provisions that govern the type of variation sought. Consent is not to be unreasonably withheld or delayed.
- 4.2 If Swan is unable to acquire the necessary third party land within the timescales required to carry out the works in accordance with the relevant timetable, then Swan must serve a non-acquisition notice requesting that HE and the Council agree to the non-acquisition and the necessary variation to the phase plans and/or timetable.
- 4.3 Other than any land identified in the CPO strategy no other third party land is to be acquired.

5. INTERIM LICENCE TO OCCUPY PART(S) OF SITE

5.1 Licence is given to Swan to enter the site pending any land transfer. The licence allows for works to be undertaken after Swan has served notice that access is required.

6. DRAWDOWN OF SUB-PHASES AND INFRASTRUCTURE LAND FOR DEVELOPMENT

6.1 In order to drawdown land, Swan must satisfy the drawdown conditions in respect of one or more phases or sub-phases and development may commence on such a phase or sub-phase.

6.2 HE and the Council will confirm whether the drawdown notice is acceptable and if there is no response the notice will be deemed to be accepted.

6.3 Swan will be required to confirm that it has funding and that the overall scheme remains viable, known as the Watershed Condition. The Watershed Condition is a mechanism to determine viability to ensure the scheme remains viable and the redesign of a Phase or ultimately the transfer of a Phase to HE if it is not.

7. CPO STRATEGY

7.1 The Parties agree in the Development Agreement that a CPO strategy is required in order for HE to seek a resolution from their Board to make a CPO and it is agreed that HE will take into account any comments from Swan and the Council. The CPO provisions are now the Council's responsibility as per a Deed of Variation, the CPO Indemnity Agreement is now in place for Phase North.

7.2 The CPO Strategy is the process to be used by the Parties to facilitate the making and implementation of the CPO's to deliver vacant possession of the site and to facilitate the carrying out and completion of the development in accordance with the timetable.

7.3 The CPO will be made over Swan's land in Phase North and also applies to Council owned land.

7.4 The Council will make the assessment of compensation payable to the homeowners who are being bought out and Swan has entered into an indemnity agreement with the Council for these costs.

8. VACANT POSSESSION OF COUNCIL LAND

8.1 Swan and the Council will comply with their respective obligations in the Decant Strategy, which relates to the procedures for relocating tenants of Council land to facilitate the development.

9. INTERIM DEALINGS WITH SITE BY HE AND THE COUNCIL

9.1 HE and the Council are not able to dispose of any interest in land without the consent of Swan. They can enter into permitted agreements and notify the other Parties following this.

10. DEVELOPER'S OBLIGATIONS

10.1 Swan is obliged to observe and perform building obligations, rights and restrictive covenants during its execution of the works of redevelopment.

11. SWALE LAND

11.1 This is the land intended to be used for the discharge of water from the highways to be constructed on site.

11.2 There are provisions for when the water authority requests the Council to enter into the arrangement for the maintenance of the relevant parts of the SWALE land. The Council will notify Swan they must undertake the relevant maintenance obligations as notified to them by the Water Authority.

12. ISSUE OF TRANSFER STAGE AND POST TRANSFER COMPLETION CERTIFICATES

12.1 An independent certifier is to certify that the works for each sub-phase have been practically completed and to issue the transfer stage certificates and post transfer completion certificates.

12.2 The Development Agreement sets out the provisions for timescales and notices for the issue of the relevant certificates.

13. LAND TRANSFERS

13.1 Once the pre-conditions have been met and vacant possession of a phase has been obtained the land transfers may take place.

13.2 HE Land

13.2.1 Swan will pay HE for the land and this payment shall be offset against the corresponding grant payment from HE under the HGFA. The Development Agreement sets out the provisions for timescales of the transfer of the HE Land.

13.2.2 The Development Agreement was entered into by Swan Housing Association but includes the option for Swan Housing Association to

direct the transfer of any land to be drawn down to Swan New Homes Limited

13.3 The Council Land

13.3.1 The Development Agreement sets out the provisions for timescales of the transfer of the Council Land.

13.4 Common Parts and Utilities

13.4.1 The Development Agreement sets out the provisions for timescales of the transfer of the common parts and utilities.

13.4.2 The Council is not obliged to transfer any land upon which highways are to be constructed.

14. DISPOSAL OF SALE DWELLINGS

14.1 The Development Agreement sets out provisions to restrict the disposal of open market units on the Site to sales at an open market value as agreed in the financial model and so as to ensure that such open market units are primarily owner occupied.

14.2 Swan shall be entitled during any period of market slowdown to notify HE and the Council that it proposes to use certain open market units for use as affordable units or home swap units or for open market rental. If agreement cannot be reached with regards to an alternative tenure then the decision will be submitted for determination.

14.3 The Development Agreement sets out provisions which relate to the timings and notices in order to implement the sale of dwellings.

15. PAYMENT OF OVERAGE

15.1 Overage provisions are agreed between Swan and HE and the Council

15.2 Swan has confirmed that no overage is payable until the end of the development.

16. ESTATE MANAGEMENT

16.1 Swan is to submit its proposals for the estate management strategy to HE and the Council for approval and Swan will implement and maintain the estate management strategy.

17. TAX

17.1 Swan will indemnify HE in respect of any VAT which is not recoverable as a result of the disapplication up to a maximum of £120,000.00.

18. DEFAULT, TERMINATION AND COPYRIGHT

18.1 The Development Agreement sets out provisions for where a minor default (a breach of obligation in the agreement which is not a material default) or a material default (a breach by Swan of its obligations under the agreement which is not a Minor Default) occurs. This includes provision for termination of the Development Agreement following a Minor Default.

19. STEP-IN RIGHTS

19.1 HE and the Council will ensure that any material default notice will be served simultaneously on any funder of Swan and Swan New Homes Limited.

19.2 The Development Agreement sets out provisions should the funder activate the step-in provisions

19.3 Swan has confirmed that HE shall be such funder

20. DISPUTE RESOLUTION

20.1 The Development Agreement sets out provisions for dealing with a dispute should it arise.

21. PROFESSIONAL TEAM AND WARRANTIES FOR NON-RESIDENTIAL BUILDINGS

21.1 Swan is to procure deeds of warranty for HE and the Council in respect of the design and construction of all non-residential buildings comprised in the works

21.2 Swan is to appoint or procure the appointment of a professional team that is considers necessary to deliver and complete the development and the developer's obligations under the agreement.

22. GENERAL PROVISIONS

22.1 Swan is to indemnify HE and the Council in respect of any claims which may be brought against HE and the Council in connection with any buildings or works of the state of repair condition development or use of the development or in respect of any accident or injury to property or person. Subject to an obligation on HE and the Council to mitigate any claims

23. MARKET SLOWDOWN PROVISIONS

23.1 The Development Agreement sets out provisions for when Swan is entitled to implement the market slowdown provisions.

24. ORIGINAL FINANCIAL MODEL PRINCIPLES AND FUNDING WITHDRAWAL EVENT PROVISIONS

24.1 The Development Agreement sets out amendment provisions to the form of financial model template and to facilitate calculations under the HGFA.

24.2 The Development Agreement sets out funding withdrawal event provisions.

24.3 A funding withdrawal event is the funder's withdrawal of funding to Swan in respect of all or part of the development or the funder's imposition of onerous terms or terms which would render the development financially unviable.

24.4 The Parties shall work together to obtain public funding to facilitate the development.