

	CHIEF OFFICER IN CONSULTATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT
Title	Authority to seal Grahame Park Principal Development Agreement (PDA) Deed of Variation
Report of	Cllr Richard Cornelius
Wards	Colindale
Status	Public
Enclosures	
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Summary

This DPR updates the 25th March 2019 Assets, Regeneration and Growth Committee and the 26th November 2019 Housing and Growth Committee which gave the Deputy Chief Executive, in consultation with the Chair of the Committee the authority to agree the final Deed of Variation. This Deed of Variation covers two main new important variations which are a revised profit share agreement, and an “underwrite” of the demolition costs.

Decisions

1. To authorise the sealing of the Deed of Variation to the Grahame Park Principal Development Agreement.

1. WHY THIS REPORT IS NEEDED

- 1.1 Since its formal adoption in 2007 the Grahame Park PDA has been varied by the agreement of both parties. To minimise the risk to both parties, significant changes to the scheme need to be recorded in the PDA

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Grahame Park estate was built in the 1960s and 1970s by the Greater London Council, with 1777 homes built around a central “concourse”. In 2007 the Council signed a development agreement with Choices for Grahame Park (CfGP) and Paddington Churches Housing Association (PCHA) for the redevelopment of the estate to provide 3,400 homes in two stages. Genesis Housing Association (GHA) later succeeded PCHA and have since merged with Notting Hill Housing Trust to form Notting Hill Genesis (NHG). In keeping with common practise at the time, the development agreement sought to replace a mono-tenure estate with mixed tenure development, enabling a broader social mix and the use of profits from market sale housing to fund affordable housing and community facilities.
- 2.2 Following formal agreement of the PDA in 2007 both parties have periodically agreed amendments to the PDA to enable the scheme to continue in a changing financial and legislative climate.
- 2.3 The new merged NHG are more financially stable and have Strategic Partner status for development with the GLA which means that NHG has agreed to re-cycle surpluses and grant receipts across its development programme to fund the Grahame Park programme. NHG have put in a planning application providing 2088 new homes (of which 50% are affordable) as well as new community facilities and the re-alignment of Lanacre Avenue to provide new transport links. This scheme means a commitment from NHG to invest in Stage B, including an investment subsidy allocated under NHG’s Strategic Partnering agreement with the GLA. Under the current agreement NHG meets all the considerable upfront risks of buybacks and the rehousing costs of the secure tenants. As this is not now a sustainable position NHG are having to put in a substantial internal subsidy to replace government grant for social rented homes. Estate regeneration projects rely on the cross-subsidy of profit from sales of private homes to pay for the affordable homes, especially social rented homes which pay back far less than their cost of provision.
- 2.4 The proposed amendment to the profit share agreement between LBB and NHG changes the current PDA which provided for any phase-by-phase profits to be rolled over, and any residual distributed at the end of the scheme. NHG are seeking instead to account for the project on phase-by-phase basis. Each phase will be subject to a viability test with a hurdle rate of profit on the private residential and commercial unit development (only). Meeting the hurdle rate is a precondition to commencing the phase unless NHG waive the pre-condition. Surpluses more than the agreed rate would be shared between NHG and the Council. To facilitate viability, particularly given the significant proportion of the affordable housing required for each phase, considering GLA, NHG will underwrite the cost of affordable tenures.
- 2.5 NHG believe this is the only way that it can take forward the regeneration of Grahame Park and meet its corporate commitments and commitment to lenders. Further to the March ARG report when NHG were bringing into the scheme the sum of around £20M from their own resources, this has now been upped to around £35M. Stage B has

always struggled with viability due to substantial up-front capital costs and without this additional funding from NHG the scheme will fail to meet the viability requirements and as such will be unable to proceed. Therefore, by accepting a reduction in potential profits LBB is ensuring the progress of the scheme as a whole, and the delivery of massive and long-lasting change in Grahame Park.

- 2.6 The second variation to the PDA relates to the demolition of Plot 10. Under the terms of the new phasing plan of the recently submitted planning application this will be the first major intervention in Stage B. It is proposed that seven residential blocks comprising around 200 residential homes; Nisbet, Napier, Nimrod, Nicolson, Nighthawk and Noel and around 30 garages are to be demolished initially. There are no leaseholders or tenants left in these blocks, only a very small number of guardians. Taking forward the demolition prior to planning permission and the viability testing presents a risk to NHG. For this reason, NHG have requested that LBB underwrite the full demolition costs in the event of a failure to meet the PDA conditions precedents the Council would repay NHG for the cost of demolition.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 There is not a “do nothing” option. For the scheme to proceed in an orderly fashion the PDA must be updated to reflect historic and anticipated changes. If the profit share is not agreed NHG will be unable to release internal subsidy of around £35M which will render the scheme unviable.

4. POST DECISION IMPLEMENTATION

- 4.1 Meet regularly with the GLA to make sure the scheme achieves planning permission.
- 4.2 NHG to procure main contractor to build out Phase A
- 4.3 NHG to appoint demolition contractor once the Plot 10 blocks are vacant so that demolition can take place.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The vision for 2020 expressed within the Council’s corporate plan 2015-2020 expresses the principles of fairness, responsibility and opportunity and the following strategic objectives:-

The Council, working with local, regional and national partners, will strive to ensure that Barnet is the place of opportunity, where people can further their quality of life

Where people are helped to help themselves

Where responsibility is shared, fairly

Where services are delivered efficiently to get value for money for the taxpayer.

5.1.2 The plan proposes several achievements. Those particularly relevant to this initiative as follows:-

More involved and resilient communities, with residents taking on greater responsibility for their local areas.

There will be a broad offer to skills and employment programmes for all ages.

A clean and attractive environment, with well-maintained roads and pavements, flowing traffic, increased recycling.

A responsible approach to regeneration, with thousands of new homes built and job opportunities created.

Customer services will be intuitive and flexible.

5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The first variation changes the profit share arrangements between LBB and NHG

5.2.2 The second variation is for LBB to underwrite the NHG's demolition costs in the event of a failure of condition precedents.

5.3 **Social Value**

5.3.1 The re-development of Grahame Park brings with it a range of social value:-

Enhancement including new retail and leisure opportunities within an area already designated as a local hub.

Environmental and highway improvements

The creation of large scale local employment and training opportunities in a disadvantaged neighbourhood with disproportionately high levels of unemployment

Major new housing (50% affordable), education, health, childcare and other key infrastructure developments.

5.4 **Legal and Constitutional References**

5.4.1 Article 7 of the Council's Constitution, section 7.5 Responsibility for Functions states that the Assets, Regeneration and Growth Committee terms of reference includes; Responsibility for regeneration strategy and oversee major regeneration schemes, asset management, employment strategy, business support and engagement.

5.4.2 Clause 33 of the PDA sets out the detailed "Stage B Review" indicating that both the Council and CfGP were aware that changes would be required to ensure that the Grahame Park regeneration project was delivered in its entirety. The clause permits a comprehensive review of implementing Stage B. Any changes are by the agreement of all parties.

- 5.4.3 The Public Contracts Regulations 2015 permit modifications to be made to existing contracts on several grounds including where the modifications are in accordance with existing review clauses in the agreement (Regulation 71(1)(a)); where note of the grounds of substantiality in Regulation 72(8) apply (Regulation 72(1)(e)); and where the value of the modification is less than 15% of the overall works value and less than the works threshold (currently £4,551,413) (Regulation 72(1)(f)).
- 5.4.4 To ensure the additional Developer return is State Aid compliant the Council will satisfy itself that it is acting as a market operator would (meaning the terms it agrees are those which private sector would agree in the same circumstances) either by seeking evidence from its commercial adviser as to their opinion and/or by looking at comparable development schemes as to whether they have agreed comparable terms. The terms when settled will need to comply with this.

The Assets Regeneration & Growth Committee in March 2019 gave authority to the Deputy Chief Executive to agree the proposed variation, in consultation with the Chair of the Committee.

5.5 Risk Management

- 5.5.1 There are two main risks associated with the two main variations:-

Firstly, because the demolition will be completed ahead of the concourse regeneration proposals receiving full consent and proceeding a major scheme failure such as a second mayoral refusal or a sudden harsh recession may half for completely de-rail the planning application effectively triggering a requirement that LBB repays the demolition costs. This is unlikely but the appropriate mitigation is to ensure that there is adequate capital allocation in the Council's capital housing account and to have checks on whether the cost incurred by NHG is reasonable and whether the work is property executed.

Secondly, there is a risk that even with the profit share for reasons outlined above and elsewhere the proposed concourse development cannot achieve viability and NHG seek further financial assistance from LBB, which LBB is not obliged to agree. The mitigation in this instance is for LBB to develop an understanding of all aspects of the scheme's viability.

5.6 Equalities and Diversity

- 5.6.1 The Equality Act 2010 places a duty on the Council as follows:-

A public authority must, in the exercise of its functions, have due regard to the need to:-

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are-

Age;
Disability;
Gender reassignment;
Pregnancy and maternity;
Race;
Religion or belief;
Sex;
Sexual orientation

This report has considered the Equality Act 2010 and how its proposals are designed to reduce the inequalities of outcome which result from socio-economic disadvantage. The Council is committed to improving the quality of life and wider participation for all the economic, educational, cultural, and social and community life within the borough. This is achieved by pursuing successful regeneration of the borough's regeneration areas, in this instance Colindale and more specifically Grahame Park. This benefits all sections of society by directly addressing the shortage of housing in the borough across all tenure.

5.7 Corporate Parenting

5.7.1 There are no direct or indirect impacts on looked after children and care leavers arising from this report.

5.8 Consultation and Engagement

5.8.1 The Council and its partners NHG are engaged in a wide range of consultations which are required at every stage of the regeneration programme.

5.8.2 The Council and NHG and their appointed planning consultants HGH have recently engaged in a planning consultation which was the central element in their preparation of detailed planning application which was submitted at the beginning of October 2019. This included public consultation events in March and July 2019.

5.9 Insight

5.9.1 There are no data sources available that are applicable to this proposal

6. BACKGROUND PAPERS

6.1 25th March 2019 Assets, Regeneration and Growth Committee

<https://barnet.moderngov.co.uk/documents/g9484/Public%20reports%20pack%2025th-Mar-2019%2019.00%20Assets%20Regeneration%20and%20Growth%20Committee.pdf?T=10>


Chairman:
Has been consulted
Signed

Date

Chief Officer:
Decision maker having taken into account the views of the Chairman

Signed 

Date 21.11.19


27.11.19