

	<p style="text-align: center;">Assets, Regeneration and Growth Committee</p> <p style="text-align: center;">9th July 2014</p>
<p style="text-align: right;">Title</p>	<p>Stonegrove and Spur Road regeneration Scheme: Cost Recovery</p>
<p style="text-align: right;">Report of</p>	<p>Director of Place (Re:), Stephen McDonald</p>
<p style="text-align: right;">Wards</p>	<p>Edgware</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Enclosures</p>	<p>N/A</p>
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<h2>Summary</h2>
<p>The Development Agreement governing the Stonegrove and Spur Road Regeneration scheme allows for certain development costs incurred by the Council to be recovered from development partner, Barratt Homes.</p> <p>The cost recovery mechanisms within the Development Agreement have proved difficult to utilise in practice. In particular, Barratt Homes have disputed recovery of certain LB Barnet staff costs going back over the five years of the scheme to date.</p> <p>This report seeks authority for the Strategic Director, Growth & Environment to;</p> <ul style="list-style-type: none"> • Agree a settlement of the outstanding historic costs owed to the Council • Negotiate variations to the Development Agreement relating to the scheme in order to establish simplified cost-recovery mechanisms for the final years of the scheme. This will ensure that the costs of the staff team going forward are covered. • Negotiate variations of the Development Agreement to address anomalies with regard to the mechanism for cost recovery and allow for the possibility of an early

'overage' payment from Barratt Homes to the Council.

Agreeing the recommendations in this report will allow the authority to negotiate settlement of outstanding historic costs, secure resources to support the staffing of the Re: team going forward and allow for the possibility of an early overage payment from Barratt Homes.

Recommendations

- 1. That the Committee approve that to negotiate and agree a settlement of outstanding historic costs associated with the Stonegrove and Spur Road Regeneration Scheme be delegated to the Strategic Director, Growth & Environment in consultation with the Chair of the Assets, Regeneration & Growth Committee.**
- 2. That authority to negotiate the commercial terms/ costs recovery mechanism associated with the variation of the Principal development Agreement (PDA) for the scheme be delegated to the Strategic Director, Growth & Environment in consultation with the Chair of the Assets, Regeneration & Growth Committee.**

1. WHY THIS REPORT IS NEEDED

- 1.1 This report seeks authority for the Strategic Director, Growth and Environment to agree, through negotiation with Barratt Homes, a settlement of outstanding historic costs owed to the Council and variations to the Principal Development Agreement (PDA) relating to the Stonegrove and Spur Road (SGSR) Regeneration scheme. This will:
 - a) Resolve long-standing issues relating to the recovery of certain historic development costs from the developer;
 - b) Establish simplified cost-recovery mechanisms for the final years of the scheme and;
 - c) Address anomalies within the PDA with regard to the mechanism for cost recovery and allow for the possibility of an 'advanced overage' payment from Barratts to the Council.
- 1.2 The SGSR Principal Development Agreement (PDA) allows for certain development costs incurred by the Council to be recovered. However, the cost recovery mechanisms within the PDA have proved difficult to utilise in practice. In particular, Barratt Homes have disputed recovery of certain LB Barnet staff costs.
- 1.3 **Historic Staff Costs**
 - 1.3.1 In mid-2013 LB Barnet invoiced and received in payment from Barratt Homes £1,239,422 to cover costs incurred in the delivery of the Stonegrove and Spur

Road scheme. However, there remain outstanding sums relating particularly to staff costs.

- 1.3.2 Given the uncertainty of the PDA with regard to recovery of staff costs, Officers have entered into negotiation with Barratt Homes. Given the precedent set by agreement with Barratts of the more recently concluded West Hendon Development Agreement, Officers are recommending that £100,000 per annum should be paid by Barratt Homes in order to cover staff costs over the past 5 years of the programme. This would see Barratt Homes pay the Council £500,000 in settlement of the outstanding costs.
- 1.3.3 Barratt Homes are currently considering this proposal. They will also be testing the impact of paying this sum on the Financial Viability Model for the scheme. Depending on the outcome of the viability testing, it is possible that there will be further negotiation with regard to the final settlement sum.
- 1.3.4 Any agreement reached with Barratt Homes is likely to be on a 'full and final', settlement basis with a commitment from the Council that no further claims for historic costs will be forthcoming. Whilst the Council has expended costs beyond what has been recovered so far over the lifetime of the scheme, it was always understood by the Authority that a contribution to the cost of the scheme may be necessary in order to progress a project in, what were at the outset of the project, challenging economic circumstances. The complicated mechanisms and imprecise financial definitions within the PDA together with incomplete cost records would also hamper attempts to recover further historic costs. Officers therefore believe that the figure of circa £500,000 being negotiated with Barratt Homes in full and final settlement of the historic costs owed is reasonable in the circumstances.

1.4 Simplified Cost-Recovery Mechanisms

- 1.4.1 In order to clarify the position with regard to staff costs going forward, officers are negotiating with Barratt Homes with a view to varying the PDA. This will make future cost settlements more straightforward.
- 1.4.2 Specifically, Officers are seeking commitment from Barratt Homes in line with the more recently agreed West Hendon PDA. This allows for recovery of staff costs expended in legitimate support of the project upto £100,000 per annum and as evidenced by timesheets. This will provide a greater degree of certainty with regard to recoverable costs during the final years of the scheme.
- 1.4.3 Barratt Homes have indicated that they are 'in-principle' open to discussion on these matters. However, they have indicated that, as the scheme is at an advanced stage, a 'taper' may be appropriate for the level at which staff costs are capped. This will be the subject of negotiation between the parties.

1.5 Overage Payments

- 1.5.1 The PDA makes it clear that outstanding Council costs should be recovered from Barratt funds held on account by the Council. However, this has proved impossible to put into practice as the funds are held in a capital account

whereas the costs are a revenue item. Variation of the PDA is required to address this anomaly. In amending the agreement, officers will seek to ensure that the funds held on account can potentially be taken instead as overage payments.

- 1.5.2 The PDA includes provision for overage payments to the Council, once Barratt Homes have received their reasonable return from the scheme. Given rising property prices and the attractiveness of the development, the Council is already showing overage in the viability model.
- 1.5.3 Barratt Homes have indicated that there is a possibility of converting money held on account by Barnet Council (see 1.5.1) into an advanced overage payment to the Council. This would require amendment of the PDA as there is no provision within the existing agreement for this to happen.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The negotiated approach set out above is recommended as it will settle outstanding historic cost issues and provide greater certainty with regard to recovery of future staff costs during the final four (estimated) years of the Stonegrove and Spur Road Regeneration programme.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 *Take legal action against Barratt Homes to recover costs* – very unlikely to be successful as the Principal Development Agreement does not specify ‘staff costs’ as recoverable. Instead, it uses generic descriptions such as ‘project monitoring’ which are not defined clearly. This would also damage a positive relationship established over six years of collaborative working.
- 3.2 *‘Write off’ outstanding staff costs* – whilst the Council accepted at the outset that costs were likely to be incurred in support of the scheme, it did not anticipate having to cover the full cost of staff who have participated in developing the regeneration programme.

4 POST DECISION IMPLEMENTATION

- 4.1 Officers will seek to conclude negotiations with Barratt Homes as quickly as possible in order to give certainty going forward.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Stonegrove and Spur Road Estates (SGSR) regeneration project contributes to the delivery of the Corporate Plan 2013-2016. A strategic objective under the above priority is: To maintain the right environment for a strong and diverse local economy.
- 5.1.2 A Sustainable Community Strategy for Barnet (2010-2020) – Growing Successfully – the Stonegrove and Spur Road Regeneration Scheme will

provide 937 new homes designed to a high standard as well as quality open spaces, improved parking provision, a community hall and employment opportunities. The scheme will establish a new and sustainable neighbourhood in which people want to live, work and prosper within a growing, mixed strong community.

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

- 5.2.1 Successful conclusion of negotiations with Barratt Homes will result in a £500,000 payment from Barratts to the Council to cover outstanding historic staff costs over the past 5 years. Given the precedent set by other regeneration schemes, several of which allow the Council to recover up to £100,000 per annum in 'Council costs', this represents a reasonable sum.
- 5.2.2 Successful conclusion of negotiations with Barratt Homes will result in certainty with regard to the Council / Re's ability to cover staff costs over the final four years of the programme.
- 5.2.3 Variation of the PDA will ensure regularisation of the way in which costs are recovered 'direct' from Barratt Homes rather than from an 'on account' payment.

5.3 Legal and Constitutional References

- 5.3.1 The Council has a general power of competence under Section 1 of the Localism Act 2011. The recommendations in this report fall within the Council's general power.
- 5.3.2 Constitution, Responsibility for Functions, Annex A – Membership and Terms of reference of Committees includes overseeing regeneration strategy and asset management i.e. all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

5.4 Risk Management

- 5.4.1 Failure to agree settlement with Barratts with regard to historic costs will result in the scheme costing LB Barnet more than originally anticipated. Given that the costs have already been expended by the Council there will be no direct impact on the authority.
- 5.4.2 Failure to successfully agree a mechanism for recovering staff costs will result in the Council / Re: having to continue funding the staffing of the project. The cost-centre for the Stonegrove and Spur Road project could potentially show a loss of up to £100,000 per annum over the final four years of the programme. In order to mitigate the loss, Re: may be forced to reduce staff resources on the project. This could particularly impact on the regeneration and monitoring activities that the team undertake e.g. support for vulnerable residents, liaison with local residents, support of the Partnership Board, Community Trust,

general community engagement, etc.

5.5 Equalities and Diversity

- 5.5.1 SGSR will deliver a mix of 937 affordable, intermediate and private sale flats and houses which should assist in fostering community cohesion in an area with a highly diverse population. Delivery of the regeneration scheme is being conducted in consultation with the Stonegrove and Spur Road Partnership Board which represents the interests of all residents of the Stonegrove and Spur Road Estates. The Partnership Board is consulted on all aspects of delivery including the planning process, scheme design, and decanting and estate management issues.

5.6 Consultation and Engagement

- 5.6.1 Discussion and negotiation has taken place with the Councils development partner Barratts.
- 5.6.2 Amendments to the PDA will need to be formally agreed with Family Mosaic, the Registered Social Landlord partner on the scheme.

6 BACKGROUND PAPERS

- 6.1 Cabinet, 18 June 2007 (Decision item 17), approval, amongst other matters, of the Masterplan and terms of the PDA. Subject to successful planning approval and signing of the PDA, approval to make a Compulsory Purchase Order (CPO) for the acquisition of all non-Council property and other propriety interests in the Stonegrove and Spur Road Regeneration Area and to take all necessary action to secure the confirmation and implementation of the CPO.
- 6.2 Planning and Environment Committee, 3 March 2008 (Decision item 7), approval of the outline planning application for the redevelopment of the Stonegrove and Spur Road Estates.
- 6.3 Cabinet Resources Committee, 25 March 2008 (Decision item 15), approval, amongst other matters, of the financial terms of the PDA.
- 6.4 Cabinet Resources Committee, 24 May 2011 (Decision item 11), approval to vary the PDA.