

	<p><b>Assets, Regeneration, and Growth</b></p> <p><b>25/03/2019</b></p>
<b>Title</b>	<b>Grahame Park: PDA variation update</b>
<b>Report of</b>	Cllr. Daniel Thomas
<b>Wards</b>	Colindale
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	Yes
<b>Enclosures</b>	<i>none</i>
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<b>Summary</b>	
<p>The Grahame Park Regeneration Programme is nearing the successful completion of stage A. Following the mayoral refusal in December 2017 of an earlier proposal, the Council and its partners, Choices for Grahame Park Ltd (CfGP) and Notting Hill Genesis Housing (NHG) are about to embark on stage B with a new planning application for the concourse (plots 10,11, and 12) being developed for submission in summer 2019. As part of this they have agreed a wide range of adaptations to the phasing, design, delivery, and funding of the programme, building on variations agreed by this committee at its meeting of April 24<sup>th</sup>, 2017.</p> <p>These amendments need to be included in the Principal Development Agreement (PDA), the agreed development contract between London Borough of Barnet (LBB), CFGP and NHG. There are three new important variations which the committee is requested to consider; a revised profit share agreement, an 'underwrite' of the demolition costs, and a 'carve-out' to permit early housing development within the existing red line by Barnet Homes.</p>	

<b>Recommendations</b>	
<p><b>1. That the Committee agrees in principle the proposed PDA variations at 2.14, 2.15 and 2.18 (with consequential and updating amendments) and authorises the Deputy</b></p>	

**Chief Executive, in consultation with the Chairman of the Committee to agree the final deed of variation.**

**2. That the Committee agrees that should it be necessary to underwrite the demolition costs at 2.15, that this is referred to the Policy and Resources Committee for approval**

## **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. Previous years have seen considerable changes within stage A, such as the construction of the council's new office and Barnet and Southgate College. The first phase of stage B is still in the early planning stages but major changes from the original masterplan are under consideration. To minimise the risk to both parties' significant changes to the scheme both retrospective and going forward need to be recorded in the PDA. The purpose of this report is to seek approval for three new and significant variations to 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 units built around a central 'concourse'. In 2007 the Council signed a development agreement with CFGP and PCHA Limited for redevelopment of the estate to provide 3,400 units in two stages. Genesis Housing Association(GHA)later succeeded PCHA Limited and GHA have since merged with another housing association (Notting Hill) to form NHG, in keeping with common practice at the time, the development agreement sought to replace a mono-tenure estate with a mixed tenure development, enabling both a broader social mix and the use of profits from market sale housing to fund affordable housing and community facilities.
- 2.2 Stage A, comprising 685 new units, was partly delivered prior to the economic downturn and substantively completed in July 2018. A review of stage B in Autumn 2013 concluded that the original master plan was no longer fit for purpose, and should be updated to reflect the demand for family housing and more traditional street layouts. It noted that the critical first step was the demolition of the concourse, to challenge the 'estate feel', create a better environment for residents, and improve sales values. The Autumn 2013 report also concluded that there were significant viability and cash flow challenges in delivering the scheme.
- 2.3 Since then the Council has agreed a revised Supplementary Planning Document (SPD) to govern the development of Stage B. The SPD was formally adopted at full Council in July 2016. The SPD doesn't affect existing Council policy about re-housing council tenants i.e. secure council tenants housed before 2003 will be re-housed in a new home in Grahame Park provided by GHA. The existing section 106 agreement, agreed in 2007 and still valid requires the provision of social rented, shared ownership and low-

cost units. On completion of stage A, NHG will have provided a total of 685 new homes of which 299 (44%) will be private sale or rent. The remainder will be affordable with 236 (35%) social rent, 38 (5%) affordable rent and 112 (16%) shared ownership

- 2.4 In addition, Plot 8, which formed part of Stage A, has become the site for the Council's new office building and plot 7 the site for the re-located Barnet and Southgate College, Colindale library, and the Centre for Independent Living
- 2.5 Following formal agreement of the Principal Development Agreement (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.
- 2.6 GHA merged with Notting Hill Housing Trust in April 2018 to create a much larger and more financially stable entity (NHG). The newly merged organisation has 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.
- 2.7 There are three significant new variations currently under consideration. The first two relate directly to the evolving plans for stage B; a proposed amendment to the profit share agreement between LBB and NHG and a commitment by LBB to underwrite the demolition costs of plot 10 in the event of a failure of the scheme to proceed. The third variation relates to proposed in-fill development, by Barnet Homes, in the retention and renewal area.
- 2.8 NHG is currently preparing a new planning application for the Concourse area (Stage B, which comprises 3 large plots), providing circa 2000 new homes (of which 50% are planned to be affordable) as well as new community facilities and the re-alignment of Lanacre Avenue to provide new transport links. They hope to make the formal planning submission in the summer of 2019
- 2.9 The proposed scheme will mean a commitment from NHG to invest in Stage B, including an investment subsidy allocated under NHG's Strategic Partnering agreement with the GLA and a further £56m of Government subsidy in the form of an infrastructure loan allocated by Homes England.
- 2.10 The financial arrangements in the PDA have not changed since 2007, despite there being a significant change in 2010 to the funding regime for affordable housing. Prior to 2010, Housing Associations received Government grant funding that covered approximately 75% of the cost of providing social rented affordable homes. In 2010 Government changes meant that housing associations were required to fund a much higher proportion of the cost of providing such homes - approximately 75% - through commercial borrowing and private investment. Therefore NHG, (like other Housing Associations) must satisfy its lenders that it is running the business responsibly, is taking full account of the development risks, and

must comply with a series of covenants from those lenders. As a result, the newly merged organisation, NHG, must set investment returns for new projects in order that the whole business can continue to operate within the lender's requirements.

- 2.11 NHG's lenders, in line with industry standard returns for development projects, therefore require new projects to achieve a minimum risk margin /profit (on the sale of private residential and commercial property only).
- 2.12 Under the PDA as currently structured, whereas LBB contributes the land element, NHG meets all the considerable upfront risk of buybacks and the rehousing costs of secure tenants. This is not now a sustainable position, especially given the significant changes in affordable housing funding since 2010 that now requires substantial internal subsidy by NHG to replace government grant for the social rented homes.
- 2.13 Estate regeneration projects rely on the cross-subsidy of profit from the sale of private homes to pay for the affordable homes, especially social rented homes which pay back far less than their cost of provision.
- 2.14 **The profit share proposal;**

NHG view the regeneration of Grahame Park as a corporate priority. They have continued to buyback leasehold properties and fund initial feasibility and design work. However, to continue with the regeneration of Grahame Park NHG is proposing that:

- Currently the PDA provides 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 a 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 affordable housing required of each phase, considering GLA grant, NHG will underwrite the cost of affordable tenures.

NHG believe this is the only way that it can take forward the regeneration of Grahame Park and meet its corporate commitments and commitments to lenders

NHG is much better resourced than GHA was (in terms of people, expertise and finance) to take on this challenging project and would hope to make rapid progress on Grahame Park in the next 12 months commencing with the demolition of plot 10.

NHG is now a major developer in London with a pipeline of almost 12,000 homes over the next 6 years. However, with increasing uncertainty in the housing market, NHG must take account of fluctuating sales market risk in terms of its longer- term business plans and commitments.

The impact of the proposed increase in NHG's profit on sales on LBB needs to be seen in the wider context of the scheme. NHG are bringing into the scheme significant additional capital funding (iro £20m) from within their own resources. Stage B of the Grahame Park scheme has always struggled with viability due to substantial up-front capital costs Without this additional funding from NHG the scheme will fail to meet 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

#### **2.15 The demolition 'underwrite' proposal**

2.16 The second variation to the PDA relates to the demolition of plot 10. Under the terms of the revised phasing plan this will be the first major intervention in Stage B. It is proposed that seven residential blocks comprising around 200 residential units; Nisbet, Napier, Nimrod, Nicholson, Nighthawk and Noel and around 30 garages are demolished initially. NHG have commenced the procurement of a demolition contractor and will award the demolition contract at their board meeting of July 25. The area to be demolished retains only one remaining leaseholder and a few guardians. Vacant possession therefore should be achieved to meet the demolition plan. Taking forward the demolition at this stage ahead of viability testing presents a risk to NHG if for any reason, the scheme failed to progress this expenditure would prove to be abortive. For this reason, NHG have requested that the PDA is amended so that LBB underwrite the full demolition costs and, in the event of a failure to meet the PDA conditions precedents the Council would repay NHG for the cost of demolition.

2.17 It should be emphasised that under the above scenario, LBB would retain full ownership of the site and that if the Council is to pay demolition costs, it is conditional on the demolition being carried out properly – if the Council must carry out any further work because the work is faulty or incomplete, the cost should be withheld by the Council. Also, the Council should have the ability to approve the cost. The existing buildings would, in any event have to be demolished as the money required to bring back the buildings into active use would make any proposed retention entirely uneconomic.

Furthermore, if in any future scenario LBB was procuring a new development partner for the site, the fact that it was cleared for development would bring an enhanced value. LBB would procure a partner to develop the site to achieve maximum outputs. The Council will seek a warranty by the company procured by NHG to carry out the demolition, so they have a remedy against them for faulty work. Therefore, it is officers' view that, should the underwrite be exercised, the Council's exposure is mitigated.

**2.18 The in-fill proposal;**

2.19 The third significant amendment to the PDA relates to a proposed in-fill development in the Little Strand area of Grahame Park

2.20 The SPD categorised large areas of the existing Grahame Park estate as renewal and retention zones. This means that they are not immediately identified for demolition and re-development for a range of spatial and economic reasons, but they might lend themselves to smaller scale, less intrusive development. In general, the council and NHG have placed these areas towards the end of the development programme i.e. 15-20 years away. However, a proposal has emerged from Barnet Homes to deliver such a development in parallel with the wider development of the Grahame Park Concourse area. This proposal will require a 'carve - out' of land from the PDA with the council retaining ownership. Similar 'carve – outs' have taken place elsewhere across the development site for the construction of Barnet and Southgate college and the Council's new offices on Bristol avenue

**3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

3.1 There isn't a 'do nothing' option. For the scheme to proceed in an orderly fashion the PDA must be updated to reflect historic and anticipated changes. NHG proceeding with Stage B was always conditional under the terms of the PDA and the redevelopment of Stage B did not satisfy the Stage B viability test under the current PDA provisions. This triggered the detailed Stage B review mechanism in the PDA which provides for a fundamental review and reconfiguration of the regeneration scheme to ensure that a deliverable Stage is implemented. NHG does not have to proceed if the scheme fails to meet viability thresholds. If the profit share isn't agreed NHG will be unable to release internal subsidy of around £20m which will render the scheme unviable. LBB are agreeing to amend the profit share to enable the scheme to proceed. IF NHG are unable to take the scheme forward the council would seek a new delivery partner to achieve their regeneration

ambitions for GP. In the current economic climate that would be extremely challenging

#### **4.0 POST DECISION IMPLEMENTATION**

**4.1** The Council and GHA will agree pre-contract Heads of Terms leading to formally signing and sealing the Deed of Variation containing the three key variations

#### **5.0 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 of 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 There is a current agreement within the PDA that the Council can reclaim up to £200,000 pa from CGFP for its PDA related regeneration costs and an unlimited sum for its CPO related costs. As part of the renegotiation of the PDA the Council and CGFP have agreed the removal of the PDA cap in favour of an annual budget which is agreed with Genesis at the start of each financial year and monitored regularly through the Project Board. The council's legal costs will be re-claimed under this arrangement.
- 5.2.2 The first variation is a proposed change to the profit share arrangements between LBB and GHA
- 5.2.3 The second proposed variation is that LBB underwrites the NHG's demolition costs in the event of a failure of condition precedents
- 5.2.4 The third variation, the infill development proposal, has no immediate financial impact as the carve out will not require a compensation payment from LBB to NHG. Further downstream there may be reduction in potential profits to NHG but given that this site wouldn't be developed ordinarily for around 20 years this is difficult to assess. Barnet Homes will bring forward a full business case for consideration to a future meeting of ARG if the proposed variation is agreed which will consider risks/issues

### **5.3 Legal and Constitutional References**

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.

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.

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 72(1)(a)); where none 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)).

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 the 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.

## **5.4 Risk Management**

There is a range of risks/issues associated with the proposals.

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 halt or 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 there is an adequate capital allocation in the Council's capital housing account and to have checks on whether the cost incurred by NHG/CfGP is reasonable and whether the work is properly 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 have developed a thorough understanding of all aspects of the scheme's viability from the earliest possible stage and that this understanding is enhanced through the engagement of an independent 3<sup>rd</sup> party analysis

Thirdly, there is a risk that the third- party infill development conflicts with the overall aims of the Grahame Park Masterplan/SPD and therefore obstructs at some future point the construction of a major arterial route. The mitigation of this risk is that Barnet Homes have a thorough understanding all the strategic interventions planned for Grahame Park and ensure through collaboration with NHG that their proposals are consistent with all the long- term plans. Furthermore, NHG have confirmed that the proposed development of the infill site is not in conflict with the proposed Masterplan at the current time.

## **5.5 Equalities and Diversity**

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

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) 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 tenures

## **5.7 Corporate Parenting**

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 GHA are engaged in a wide range of consultations which are required at every stage of the regeneration programme
- 5.8.2 The council and GHA and their appointed planning consultants HGH are currently engaged in the preparation of a planning consultation which is a central element in the preparation of the detailed planning application to be submitted in Summer 2019. This will include proposed public consultation events in March and June 2019
- 5.8.3 Further to the appointment of the new master planner architect, Patel Taylor the Council and GHA and their appointed planning consultants HGH are currently engaged in the preparation of a planning consultation which is a central element in the preparation of the detailed planning application to be submitted in Summer 2019. This will include proposed public consultation events in March and June 2019.
- 5.8.4 Whilst there is no requirement to consult widely on the proposed changes in profit share and underwriting the new infill proposals will require extensive local consultation. Barnet Homes will include this detail in their formal submission later this year.

## **5.9 Insight**

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

## 6.0 **Social Value**

- The re-development of Grahame Pak brings with it a range of social value, including;
- Enhancement including new retail and leisure opportunities within an area already designated as a local hub
- Environmental and highways improvements
- The creation of large scale local employment and training opportunities in a disadvantaged neighbourhood with disproportionately high levels of unemployment
- Major new housing, education, health, childcare and other key infrastructure developments

## 7.0 **BACKGROUND PAPERS**

7.1 None