

## **The Regeneration of West Hendon – Future Phases**

### **Proposed Heads of Terms for Deed of Variation to the Principal Development Agreement – 20/03/2013**

#### **Conditionality For Commencement of Development**

1. BM LLP will commit to the delivery of an entire Development Phase at relevant stages of the overall Master Programme.
2. Development Phase numbering shall be continuous from the phases being delivered under the existing Deed of Variation (DoV) to the Principal Development Agreement (PDA). Therefore, the next Development Phase will be Development Phase Three. The final Development Phase will be Development Phase Six, a total of four Development Phases.
3. Prior to the commencement of each Development Phase, including Development Phase Three, a viability will be prepared in a format to be agreed between LBB and BM LLP.
4. The viability for each Development Phase will be prepared by no later than the date that all relevant Conditions Precedent (CPs) (e.g. planning / RM approval, S106, consents for disposals, vacant possession, CPO, etc) have been satisfied for that Development Phase.
5. Sub Development phases shall be defined as construction phases within Development Phases. This additional definition is required where a Development Phase has CPs that do not apply to all sub Development Phases within that Development Phase. There shall therefore be three sets of CPs – scheme-wide CPs, Development Phase-specific CPs and sub Development Phase-specific CPs.
6. For the overall project to become unconditional, scheme wide CPs must be satisfied.
7. For a Development Phase to become unconditional, Development Phase-specific CPs must be satisfied and sub Development Phase CPs where appropriate.
8. If the viability determines that the Development Phase minimum return would be achievable for that Development Phase, BM LLP will commence Works on the respective Development Phase within three months, with a long stop date of six months.
9. Definition of Works to be clarified to include pre-construction works and enabling works. Definition to be agreed with LBB, agreement not to be unreasonably withheld.
10. If the viability determines that the Development Phase minimum return would not be achievable for that Development Phase, Works will not commence. The viability will be reassessed on a quarterly basis. LBB will have the right for an independent assessment of the viability.
11. BM LLP reserve the right to commence a Development Phase where the Development Phase minimum return is not met.
12. Following the commencement of Works for a Development Phase, if the viability falls below the Development Phase minimum return which shall be demonstrated on a viability reviewed quarterly, BM LLP will have the right to suspend or delay works to the development of a Development Phase in accordance with current Financial Delay provisions.
13. Commencement of Works to subsequent Development Phases can start at any point in time following the commencement of Development Phase Three subject to the viability testing as set out above, and subject to agreement with the Local Planning Authority. A minimum number of units are to be delivered on Development Phase Three before Works on future

Development Phases can be commenced but this will not prevent necessary infrastructure and enabling works in future Development Phases being delivered for the benefit of the current Development Phase. Further details to be agreed with LBB.

14. Viability testing for subsequent Development Phases must be completed no later than three months prior to the anticipated practical completion of the prior Development Phase.
15. The development will have an overall longstop date of 22 years and three months from the date that scheme-wide CPs and Development Phase and sub-Development Phase CPs for Development Phase Three. This period of time includes the five years and three months delay period as currently specified within the existing PDA which will account any delays incurred due to viability testing causing delays to commencement of Works or pausing Works already commenced. This period of time will not be considered to have commenced until scheme wide CPs have been met and Development Phase CPs and sub Development Phase CPs for Phase Three have been met.

### **Land Acquisition**

16. Where a Development Phase is split into sub Development Phases (see point 5 above), Acquisition Notices as currently defined within the PDA will be served per sub Development Phase. BM LLP wish to reserve the right to serve an Acquisition Notice on more than one sub Development Phase concurrently within a Development Phase if required, subject to appropriate notice to LBB to achieve Vacant Possession. The Development Phases and sub Development Phases will be defined through the planning process.
17. LBB is to commit to one or more CPO processes, the delivery of which is to be tied in to the overall decant strategy. The CPOs will form part of the Development Phase-specific or sub-Development Phase CPs where appropriate. This will be subject to BM LLP having a CPO Budget, programme and consultancy resources in place
18. BM LLP will require LBB to commit to the necessary processes to enable Secretary of State (SoS) consent for the disposal of a relevant Development Phase. Land may then be drawn down per sub Development Phase as set out in the Masterplan and Phasing strategy. This enables relevant Development Phases or sub Development Phases to be drawn down by BM LLP as and when they are needed with minimum referral to SoS. Any land drawn down by BM LLP which is not subsequently developed will be transferred back to LBB.
19. Land is to be set aside within the masterplan redline for the provision of a two form entry primary school. The final location for this site is to be determined through the planning process.

### **Sales Overage**

20. Overage payments are to be linked directly to levels of open market sales receipts, providing simplicity and transparency and enabling BM LLP to clearly demonstrate returns..
21. Sales overage triggers will be calculated and set per Development Phase.
22. Build cost inflation (as defined by the RICS Build Cost Information Service) will be deductible from sales overage payments. Deductions will also be made for changes to design standards and changes to other relevant legislation and standards that may occur during each Development Phase of the project.

23. All baseline costs for the Development Phase must be agreed by LBB and BM LLP as part of the viability review prior to the commencement of the Development phase
24. Sales overage will be calculated and paid within three months of the last unit sold (completed) on each Development Phase
25. Overage will be paid when the net sales receipts exceed a defined sales overage trigger per square foot, to be based on the valuation summary agreed between LBB and BM LLP prior to the commencement of each Development Phase
26. The £ per square foot at which overage is triggered will be 10% higher than the level where the Development Phase breaks even on the Development Phase minimum return as currently defined.
27. If average net sales £ per square foot then exceeds the sales overage trigger, all additional net revenue beyond this point will be shared 50/50 between LBB and BM LLP, subject to the deductions highlighted above.
28. BM LLP reserves the right to commence a Development Phase where the Development Phase minimum return is not being achieved. However, in this scenario, the sales overage trigger will be retained on the basis of the Development Phase minimum return.
29. Where BM LLP proceeds below the Development Phase minimum return, a valuation summary will be prepared prior to the commencement of that Development Phase, demonstrating the open market sales values required to achieve the Development Phase minimum return. The overage trigger will be set on the basis of this.
30. Where BM LLP proceeds below the Development Phase minimum return, they will have the opportunity to recover any shortfall in subsequent phases. In that instance, sales overage payments will not be made until any shortfall has been recovered.
31. Overage payments to LBB and BM LLP will be subject to repayment of funding as may be due to GLA/HCA/other public sector funding. These arrangements will be discussed further during further PDA contract negotiations.

### **Employment and Training**

32. The strategy and administration of any Employment and Training Initiative is undertaken by LBB, with financial contributions from BM LLP to be channelled via the S106 agreement or other legal agreement as appropriate

### **Council Costs**

33. All Council Costs except statutory costs (planning and highways) are to be included within the budget caps set out in the current PDA. If BM LLP requests additional services from LBB outside the agreed scope of costs, this cost will not be considered part of the budget and will be additional costs.
34. A schedule of costs is to be determined and agreed, in terms of scope and cost. Council Historic costs as current defined in the PDA and DOV to the PDA will still be reclaimable.
35. Payment mechanisms and timings for all Council costs are to be clearly set out for the benefit of the cashflow requirements of both LBB and BM LLP.

## **Other PDA Requirements**

36. The A5 Works will be delivered when they are technically required. However, they will be delivered earlier than this if the scheme viability allows it.
37. References to Design Framework / Guidelines / Code / Certifier are to be simplified following review by LBB and BMLLP. Design issues should be governed through the planning process as far as possible.
38. Cash positive/deemed interest – reference in PDA to removed as this does not reflect the reality of how profit will be drawn down by BMLLP
39. Service Charge Endowment Fund & Community Trust Fund – these contributions are to be reduced as far as possible whilst retaining benefit for the scheme.
40. The Neighbourhood Management Partnership and MHT's obligation to offer a site based management team are to be reviewed
41. Welsh Harp Sailing Base – reference to delivery of this to be removed from PDA. Relevant contributions to be resolved through S106/CIL
42. Reference to the "Infrastructure and Community Centre Team" to be removed
43. To ensure that the future management, maintenance, repair and upkeep of the development is delivered to an appropriately high standard of safety and quality across the whole development. A draft Estate Management Framework shall be issued by LBB for review. This may be implemented in conjunction with the Local Planning Authority and in accordance with the parameters and principles contained within the planning agreement.
44. The Estate Management Framework may include the establishment of an Estate Management Body for adopting, managing, cleansing, maintaining, repairing and/or renewing the public realm and open spaces shall have been submitted to and approved in writing by the Local Planning Authority.



