

EXTRAORDINARY POLICY AND RESOURCES COMMITTEE

2 NOVEMBER 2015

PART II – DELEGATED

1. SOUTH OXHEY INITIATIVE (DCES)

This report is NOT FOR PUBLICATION because it deals with information relating to the financial or business affairs of any particular person (including the authority holding that information) – being paragraph 3 of Schedule 12A.

1. Summary

- 1.1 Further to the debate at the 13 October Policy & Resources Committee, which noted the commercial terms of the arrangement that TRDC will enter into with Countryside Properties (CP), the project team and the Council's Solicitors, Clarke Willmott (CW), have been finalising the detailed contract terms.

2. Details

- 2.1 Attached to this report is a summary, prepared by CW, of the principal terms of the Development Agreement which is proposed between the parties. The full document, which is complex, is available for inspection if required. Members are requested to confirm they are content with the proposed arrangements and consent to giving the Council's Chief Executive, in consultation with Group Leaders, authority to exchange the contract with the other parties at the appropriate time.
- 2.2 Members will recall that the Council are required to provide CP with phased vacant possession of the site and will need to secure a Compulsory Purchase Order in order to achieve this. In return CP will make land payments to the Council when granted long leases of the relevant sections of land.
- 2.3 It was agreed at the October P&R Committee that provision should be made to allow sufficient of the residual land value to be utilised in the first instance to achieve a "no net cost" to the Council, by way of investment in revenue generating opportunities. The Development Agreement provides for the Council to purchase elements of the commercial content to satisfy this requirement.
- 2.4 Additionally, other sources of funding are to be pursued by Officers in order to enable the affordable housing content be increased to at least 25%. Appropriate arrangements have been made in the legal documentation to allow additional blocks of properties to be purchased to satisfy that increased affordable housing provision.

3. Reasons for Recommendations

- 3.1 It is necessary to approve the basis of the proposed legal terms between TRDC and Countryside Properties in order that the contract can be exchanged. This allows the project to be progressed to a planning application and the establishment of a compulsory purchase process.

4. Policy Reference and Implications

- 4.1 The recommendations in this report are within the Council's agreed policy.

5 **Financial Implications**

5.1 The funding mechanism and the costs arising remain to be identified and must be clarified shortly. The preferred bidder's proposal informs the Council's project cost and funding requirements.

6 **Legal, Equal Opportunities, Staffing, Environmental, Community Safety, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications**

6.1 Legal implications of the Development Agreement are contained in the Clarke Willmott summary report as attached.

7 **Recommendations**

7.1 That this Committee approves the proposed legal arrangements set out in the Development Agreement and authorises officers, subject to up to date advice from Clarke Willmott, to conclude that agreement with Countryside Properties.

7.2 That this Committee delegates authority to exchange contracts when appropriate to the Chief Executive, in consultation with the three Group Leaders.

7.3 **Committee Decision on Public Access:-**

1. Public access to report – denied until issue resolved (see future agenda)
2. Public access to decision – immediate or Council agenda publication.

Report prepared by: Alan Head
Head of Major Projects

APPENDICES - Clarke Willmott Report on the Principal Terms of the Development Agreement

Appendix 1 – Structure Chart

Redacted Summary of Principal Terms of the Development Agreement For South Oxhey regeneration between Three Rivers District Council (“Council”) Countryside Properties (UK) Limited (“Developer”) Copthorn Holdings Limited (“Guarantor”) Home Group Limited (“HGL Registered Provider”) and Home Group Developments Limited (“HGDL”)

Executive Summary

- 1.1 Whilst the Development Agreement is between all of the parties listed in the heading to this Summary, HGL, (the Registered Provider) and HGDL are only parties to the Development Agreement for certain limited reasons (which we explain in more detail below). Countryside Properties (UK) Limited takes on the principal role of the Developer for the entire project, with its obligations guaranteed by Copthorn Holdings Limited, the current holding company of the Countryside Group. Countryside proposes to float on the stock exchange early in 2016, but this should not dilute its financial covenant strength nor its ability to carry out the development.
- 1.2 Note that this is a high level summary of the principal terms of what is a complex agreement and we would advise that the Project Director and Solicitor to the Council are familiar with the Development Agreement and Lease in full. A glossary of the defined terms used, can be found at the end of this document.
- 1.3 Countryside made clear during the bidding process, that whilst it did not submit a joint bid with HGDL (the Home Group private development arm), it would be carrying out the development jointly with HGDL on a 50/50 basis. HGDL is providing 50% of the funding for the private development and will benefit from 50% of the profit from the private development. Home Group Limited (the Registered Provider) will fund and take over all the affordable/ social rented units on the scheme.
- 1.4 For information purposes we annex at Appendix 1 a structure chart and explanatory note provided by the Developer’s solicitors setting out the joint venture arrangements between Countryside and Home Group. Note that once each Phase of the development has been completed, the intention is for Countryside to assign its head lease to HGDL, who will then assume the long term responsibility for estate management of the completed scheme.
- 1.5 The development is to comprise the Key Requirements. The Enabling Development comprising the construction of 48 of the social rented units and the construction of 8 private housing units will be delivered on the three Satellite Sites. The remaining social rented units and the balance of the private housing, food store and retail will be carried out on the Core Site in phases.
- 1.6 The parties have agreed that the Council will have the right to request the Developer to convert Private Housing Units in one or more of Blocks J, K and L, of the final Phase, to Affordable Housing Units subject to a reduction in the Price to reflect this. This is now dealt with in the Development Agreement.

- 1.7 The Satellite Sites will be developed first, together with (if the relevant conditions precedent are satisfied) Phase 1A (currently comprising the garages and surface car park adjacent to Henbury Way) and possibly Phase 1B (currently Station Approach). Phase 1B may be drawn down and built out in sub phases, subject to the availability of vacant possession of the existing properties. Whilst taken in isolation, Phase 1B has a negative land value, the Developer would like to bring this part of the development forward because of its proximity to the Station and its potential for increasing the 'pull' to the rest of the scheme.
- 1.8 In order to enable the development of Phase 1A, it will be necessary to provide a temporary car park for local businesses and the public to use until permanent replacement car parking has been delivered as a later phase of the scheme. An undeveloped site on Henbury Way has been identified for a temporary car park. The Development Agreement provides for Countryside to enter this land under licence to lay out a temporary car park, which the Council will have responsibility for managing it. Following completion of the permanent public car parking in the scheme, the Developer will be required to reinstate the Henbury Way site as a reshaped area of public space.
- 1.9 **CPO information redacted**
- 1.10 The Enabling Development for the 48 social rented homes will be built on the Hallowes Crescent and Maylands Road Satellite Sites and must be Practically Complete by March 2018 so as not to lose the HCA grant funding of £2,830,000.
- 1.11 The Council's and the Developer's obligation to enter into a Lease of a Phase (and for the Developer to then pay for the Phase and carry out the building works) is subject to the various Lease Drawdown Conditions first being satisfied before the various End Dates. We discuss the conditions precedent in more detail below but if the relevant conditions precedent have not been satisfied by the relevant Longstop Dates, then the Council (and in some circumstances) the Developer can terminate the Development Agreement.
- 1.12 The Price to be paid by the Developer over the course of the development is **X** by way of the Phase Prices. The Price could be reduced by up to **X** depending on the cost of the Thames Water works. There would be a further reduction to the price if any additional Affordable Housing is requested. The Price is also subject to a post planning viability test, as described below.
- 1.13 Deloitte Real Estate (DRE) have indicated in an earlier report to Committee the current estimated cost to the Council of buying in the interests required to procure Vacant Possession of the Core Site, and the Council's estimated legal, professional and other costs in the scheme. Currently there is a projected surplus, or residual land value, of **X** (taking into account the costs associated with the Thames Water Works but before any increased Affordable Housing provision). The Development Agreement will allow the Council a right of first refusal to purchase commercial elements of the Scheme subject to agreeing the price and other commercial terms with the Developer within a specified

period of time, before the Developer offers the relevant commercial elements on the open market.

- 1.14 Whilst the instalments of the Price are linked to draw down of Leases of the Phases, only **X** is payable when a Lease is drawn down, with the balance paid either **X** months later. The Council will be given a first legal charge over the Lease as security for the deferred payment. If the Developer has not satisfied the Lease Drawdown Conditions Precedent for which it is responsible (principally obtaining approval of reserved matters) by agreed Payment Long Stop Date, then the instalment of the price payable for the Phase in question becomes payable in full, save where the Council has not by the relevant Payment Long Stop procured Vacant Possession and exercised its Powers Of Appropriation. If these latter circumstances apply, then the Payment Long Stop Date is extended by a further 12 months, and if the Council has not obtained Vacant Possession during this extended period, then both parties can terminate the Development Agreement in relation to the Phase where Vacant Possession has not been obtained.
- 1.15 In addition to the Price payable for land, the Developer is also to pay the Council **X** of its gross private proceeds of sale, after exceeding a threshold, (subject to increase in line with increases to the BCIS Index from the date of the Agreement to the date of payment and an adjustment for sales incentives). These payments become due on the sale of each private dwelling following this threshold being reached. Restrictions will be registered against the Developer's title preventing completion of house sales without a certificate from the Council or its lawyers that any overage due has been paid.
- 1.16 The Lease also imposes an obligation on the Developer (as tenant) to pay ground rent throughout the Lease term equal to **X** per private dwelling per annum over the entire development. When fully occupied, this generates revenue to the Council of about **X** per annum. The ground rent is subject to review in line with the retail price index every 10 years.
- 1.17 If the Developer makes a saving on what are known as 'abnormal costs' (currently budgeted at **X**), any such saving will be added to the Price
- 1.18 If the Developer is in material breach of the Development Agreement or the Lease, the Council can then terminate both the Development Agreement (in relation to the relevant Phase) and the Lease of that Phase (hence recover its land), subject to neither the Developer's lending bank nor HGDL "stepping in" to take over the Developer's obligations.
- 1.19 The Lease of each Phase will be for a term of 250 years. The Developer's construction obligations compel it to build out the Phase and achieve Practical Completion by the Anticipated Completion Dates shown in the Programme, subject to extension for reasons of delay caused by force majeure and Adverse Market Conditions. However, neither of these delaying factors will extend the Payment Long Stop Dates, nor extend a Phase End

Date. Failure to have achieved Practical Completion by the Phase's End Date would amount to a material breach entitling the Council to terminate the Development Agreement.

- 1.20 Once buildings on a Phase have reached Wind and Watertight, and only internal fit out is required, the more conventional tenant covenants one would expect to see in a fully repairing and insuring investment lease come into force, including the obligation to pay the ground rent and the construction obligations fall away. This enables the Developer to sell dwellings out of the Lease, without the need for the grant of a further 'vanilla' lease, greatly simplifying the structure.
- 1.21 Once the Development has been built out in its entirety, Countryside proposes to transfer their Lease to HGL, who will be responsible for the long term management of the scheme, to include external common parts. However, if HGL persistently fail in their estate management obligations, we have reserved for the Council the ability to step in and carry out the external estate management obligations and recover the cost from HGL or the occupational tenants direct. This could be a useful tool in the future if external areas, particularly public realm, fall into disrepair.

Conditionality

- 2.1 The Developer's obligations in relation to carrying out the Enabling Development on the Satellite Sites, and the Council's obligation to grant Leases of the Satellite Sites, are conditional upon all the Satellite Sites Conditions being satisfied (or waived where permitted) prior to 1 September 2016.
- 2.2 The Developer's obligations in relation to carrying out the development of each Phase of the Core Site and to pay the instalment of the Price for the relevant Phase, and the Council's obligation to grant the lease of the relevant Phase, are conditional upon all of the Lease Drawdown Conditions in respect of that Phase being satisfied (or waived where permitted) before the relevant Lease Drawdown Longstop Date.

Satellite Sites Conditions

- 3.1 The Satellite Sites Conditions are set out in the attached glossary. Whilst the Developer and the Council will commence the process of satisfying the conditions for which they are responsible from exchange of the Development Agreement, the Developer will also take steps to satisfy the Thames Water Condition as soon as possible. Thames Water have indicated that the sewerage and foul water infrastructure may need to be upgraded to accommodate the Development. The extent of the works required is not yet known, but the cost of the works, if required, is likely to be in the region of **X**.
- 3.2 As this is an issue relating to the Property, the Council have agreed to pay up to the first **X** of the cost of the Thames Water Works, which contribution will come off the instalment of the Price for the Phase in which the Thames Water Works are to be carried out. The Developer will be responsible for the next **X**. If the Thames Water Works cost more than **X** either party can terminate the Development Agreement or pay the excess. In addition, if

the Thames Water Works would delay the Programme by more than a year, either party can terminate.

- 3.3 In relation to the Planning Condition, the Developer is under an obligation to use its reasonable endeavours to submit the draft Planning Application to the Project Director by 30 November 2015 for approval (such approval not to be unreasonably withheld where the Planning Application is consistent with previously approved plans, the Developers tender, the Sustainability Standards and the Key Requirements).
- 3.4 Subject to receipt of the prior approval of the Project Director, the Developer is then obliged to submit the Planning Application to the local planning authority by 24 December 2015.
- 3.5 The Council (as landowner and not in its statutory capacity as local planning authority), covenants to cooperate with the Developer and to take such reasonable steps reasonably requested by the Developer to achieve the grant of the Planning Permission. The Project Director is to use his reasonable endeavours to procure (where the Planning Application has been submitted before 31 December 2015) that it is registered within the first seven Working Days of 2016 and considered at the planning committee meeting scheduled for 17 March 2016. If the Planning Application is submitted later, then the Project Director must use his reasonable endeavours to procure it is registered within 7 Working Days of its receipt and heard at the next planning committee meeting which is targeted as being within 13 weeks of the date of registration of the Planning Application.
- 3.6 The intention is to settle the section 106 agreement and any Section 278/38 agreement at the same time as the Planning Application is being processed and considered by the local planning authority, so that at the relevant planning committee meeting the section 106 agreement will be dated and the actual decision notice issued.
- 3.7 **Planning appeal information redacted**
- 3.8 Note that if the Developer fails to submit the Planning Application by 14 March 2016, then, following the service of written notice to this effect, by the Council on the Developer, the Council can terminate the Development Agreement.
- 3.9 On satisfaction of the Planning Condition, the Developer is to pay the Council X as the first instalment of the Price, which is refundable, without interest, if the balance of the Satellite Site Conditions are not satisfied by 1st September 2016.
- 3.10 In relation to the conditions requiring the Council to pass a resolution to use CPO powers and its Powers of Appropriation, the intention is that the Council will seek such resolution for the CPO at a Committee meeting which follows shortly after the planning committee date. At that same Committee meeting the Council will be asked to resolve to use its Powers of Appropriation in relation to Satellite Sites.
- 3.11 **Appropriation information redacted**
- 3.12 The Council can also require the Funding Condition to be satisfied in respect of the build out of the Satellite Sites, although it may choose to waive this condition as there are

only 8 private units and social housing is part funded by the HCA Grant Funding with the balance being funded by the Registered Provider.

- 3.13 Within 10 working days of a written resolution to grant a planning permission setting out all of the contributions required under a Planning Agreement, the parties will then apply the Viability Test to see if the Viability Condition is satisfied. In essence, the Viability Condition will be satisfied if the Section 106 Agreement and the Planning Permission do not require more than 96 social rented units; do not reduce the gross build area of private housing to below a threshold; do not require any further affordable housing above the 96 social rented units; do not require section 106 contributions in excess of X; and do not require Commercial Units space less than 58,354 square feet gross internal area (to include a convenience food store).
- 3.14 If any of the elements referred to in paragraph 3.13 are varied by the Section 106 Agreement and or the Planning Permission, provided the Price payable by the Developer does not fall beneath X the Viability Condition will be satisfied.
- 3.15 If the Viability Condition is not satisfied, the Developer and the Council are to seek ways in which to make the scheme 'viable', but if they have not managed to do this by the Satellite Sites Long Stop Date (1st September 2016), then either party can terminate the Development Agreement by service of written notice on the other.
- 3.16 Provided all the Satellite Site's conditions are satisfied by the Satellite Sites Longstop Date, the Council will then grant Leases of each of the Satellite Sites in which the social housing is to be constructed direct to the Registered Provider. At the same time, it will grant a Lease of the Satellite Site on which private housing is to be built to the Developer. Countryside will then grant an under lease of 50% of this site to HGDL.
- 3.17 Note that if all of the Satellite Site Conditions have not been satisfied by 1 July 2016 then the Developer is entitled to call for early access to Hallowes Crescent under licence to carry out demolition, decommissioning of services and site clearance works. The Council would be required to reimburse the Developer's costs of so doing (up to a cap of £55,000) if all of the Satellite Site Conditions are not subsequently satisfied by the Satellite Sites Longstop Date and either party terminate the Development Agreement.
- 3.18 If all of the Satellite Sites Conditions have not been satisfied by 1 September 2016, then within 20 working days thereafter the Developer may (but is not obliged to) terminate the Development Agreement.
- 3.19 If all the Satellite Site Conditions have not been satisfied or waived by 1 December 2016, then either the Council or the Developer may terminate the Development Agreement by service of notice on the other. If the Developer has paid the Council X (which it is obliged to pay on the satisfaction of the Planning Conditions) the Council must return this sum (without interest) to the Developer.
- 3.20 Whilst not a condition precedent, the Registered Provider and the Council are to use their respective reasonable endeavours to procure the transfer of the HCA Grant Funding allocation as soon as possible following exchange of the Development Agreement. If all of

the Satellite Site Conditions are not satisfied and either party terminates the Development Agreement, then the Registered Provider and the Council are to take such steps as they can to arrange for the transfer back of the HGA Grant allocation to the Council. The Council has agreed to start the process of transferring the HCA Grant Funding prior to exchange, once all the documentation is agreed, to reduce the risk of it not being transferred, the consequence of which would be the Price reducing by the amount of the HCA Grant Funding (£2,830,000).

Lease Drawdown Conditions on Core Site

- 4.1 Other than in respect of Phases 1A and 1B, none of the Leases on the Core Site can be drawn down until the Enabling Development has been Practically Completed and the Funding Condition satisfied.
- 4.2 To satisfy the Funding Condition, the Council is to be satisfied that the Developer has sufficient finances (to include Development finance from its lending bank and finance coming from HGDL and HGL) to complete the entire development on the Core Site.
- 4.3 The Lease Drawdown Conditions to be satisfied by the Developer are:
 - (a) the obtaining of approval of reserved matters for the relevant Phase; and
 - (b) obtaining any road closure order required for a Phase.
- 4.4 The Lease Drawdown Conditions to be satisfied by the Council are:
 - (a) the Site Assembly Condition;
 - (b) exercising its Powers of Appropriation in respect of the Core Site.
- 4.5 The Site Assembly Condition involves the Council obtaining confirmation of its resolution to use its CPO Powers Order, and then obtaining Vacant Possession of the relevant Phase. Bond Dickinson will provide a more detailed report on the CPO process. There will be an agreed Land Acquisition Strategy and Decant Strategy attached to the Development Agreement, which both parties will follow in order to obtain Vacant Possession, but ultimately the obligation to procure a Vacant Possession rests with the Council and at its sole cost.
- 4.6 Bond Dickinson will also advise on the process involved for the Council to exercise its Powers of Appropriation.
- 4.7 Note that whilst William Morris Hall and Kingdom Hall no longer form part of the scheme, the Council and the Developer have agreed that they may, at some date in the future, bring these areas into the scheme (with or without other land), subject to the Developer paying the higher of X and the open market value of the land appraised on an open book basis. If this area is not included in the scheme, then the Council may promote the area for development for any purposes, other than (for a period of five years from the date of the Agreement) exclusively residential purposes.

Termination for Developer Default

- 5.1 The Council may serve notice on the Developer, the Registered Provider, HGDL (and any mortgagee whose details have been previously notified in writing to the Council), stating that it intends to terminate the Development Agreement, setting out the breach complained of and giving the Developer a reasonable period of time to remedy the breach if any of the following events occur:-
- 5.1.1 If the Developer has committed a material breach of the Development Agreement, or four minor breaches in a period of 12 months which if taken together would amount to a material breach, and fails to remedy such breach within 30 Working Days of receiving a notice from the Council specifying the breach; or
 - 5.1.2 If the Developer fails to pay an instalment of the Price and or Overage when the same come due for payment; or
 - 5.1.3 If the Developer or the Guarantor become insolvent; or
 - 5.1.4 If the Developer or the Guarantor permits a change of control (other than the Developer being floated on the stock exchange) without the prior consent of the Council; or
 - 5.1.5 If a material breach occurs under the Lease which results in its termination; or
 - 5.1.6 If Substantial Commencement has not occurred on a Phase within three months of the Lease being granted in respect of the Satellite Sites or within 6 months of the Lease being granted in respect of a Phase on the Core Site; or
 - 5.1.7 If The Enabling Development has not been Practically Completed within 36 months from the date of grant of the Satellite Sites Lease; or
 - 5.1.8 If the works within a Phase have not achieved Wind and Watertight Date within six months after the Anticipated Completion Date for that Phase; or
 - 5.1.9 If all the works on the Core Site have not achieved Wind and Watertight Date by the End Date; or
 - 5.1.10 If the Developer fails to submit applications for approval of reserved matters or (where relevant) road closure orders by the Lease Drawdown Target Unconditional Date for the relevant Phase
- 5.2 If having served the first notice of termination, the Developer does not remedy the breach, both its mortgagee and HGDL have a period of time (50 Working Days) from the Council's notice of breach to notify the Council whether either of them intends to step in and novate the obligations of the Developer under the Development Agreement and the Leases which have been granted. If both the mortgagee and HGDL say that they wish to 'step in', the mortgagee will take priority.
- 5.3 The party that steps in ("Replacement Party") must first pay off any damages that have accrued and procure that itself or an approved nominee (in the case of the mortgagee)

enters into a deed of novation with the Council within 20 Working Days, under which it assumes all the obligations of the Developer. If HGDL is the Replacement Party, then it will enter into the Deed of Novation and in either case the Replacement Party will take an assignment of any Lease which has been granted.

- 5.4 If neither Replacement Party steps in as above, the Council may terminate the Development Agreement and any Leases which have been granted and take back control of the Phase where the Lease has been terminated.
- 5.5 In respect of works which have achieved Wind and Watertight at the time of termination, these would be retained by the Developer (or more likely) it's mortgagee for the purposes of fitting out and sale. Any works that have not reached Wind and Watertight will be valued and either the value agreed between the parties or, in default of agreement, determined by a third party expert. Subject to having sufficient surplus funds after finding another developer to complete the works, and deducting all its associated costs, the Council is then obliged to pay to the Developer and HGDL (in equal shares) 80% of the agreed or determined value of the retained works in progress, 20 working days after the later of either:-
 - 5.5.1 the disposal of the incomplete work to another Developer or
 - 5.5.2 Practical Completion and disposal of all the Units on the Phase in which the incomplete works are situated
- 5.6 If the Council notifies the Developer that it does not intend to retain incomplete works in progress, the Developer is then under an obligation to remove the same as soon as practicable and if it fails to do so, it is responsible (on an indemnity basis) to refund the Council's reasonable costs incurred in the removal of the incomplete works.
- 5.7 Whilst it is highly unlikely that there will be any surplus funds available, whenever a third party bank is involved in a development, it always requires the above "mortgagee protection provisions" to guard against a land owner terminating a Development Agreement vexatiously to obtain a "windfall" in respect of works in progress. In reality, if the Developer were in material breach to the extent the Council felt it had no alternative but to terminate the Development Agreement, it is far more likely that the funding bank or HGDL would step in and complete the development in order to realise their funds invested in the scheme.
- 5.8 As the Leases are to be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954, they should automatically terminate on service of a valid termination notice in accordance with the terms of the Development Agreement. We should point out however that this technic may not be sufficient to exclude the Court's equitable power to award relief from forfeiture, in the unlikely event that the Developer applies for such relief, as the point has never come to court. We do however consider the risk of the Developer applying for relief, or the Courts granting relief from forfeiture to be extremely low if the provisions referred to above are observed

Conclusion

The Development Agreement is structured to minimise risk to the Council and to transfer development and sales and marketing risk to the Developer, whilst reserving sufficient rights and controls to the Council to ensure appropriate progress is being made, and to be aware of problems as they arise. The principal risks to the Council are:

- 6.1 Problems in obtaining the CPO Order and thereafter obtaining Vacant Possession

How addressed: Bond Dickinson will speak to this at the meeting.

- 6.2 Once the Development Agreement has gone unconditional Adverse Market Conditions resulting in the Developer slowing down or ceasing development, in circumstances where the Council could be committed to buying in third party interests under the CPO process

How addressed: Bond Dickinson will speak to this at the meeting.

- 6.3 Developer Insolvency part way through the Development

How addressed: In satisfying the Funding Condition, the Developer and HGDL will provide comfort to the Council that they have access to sufficient funding to carry out the Development. The PQQ has also provided information satisfactory to the Council on the Developer's covenant strength. The Developer has indicated it is likely to float on the Stock Exchange early in 2016, and whilst this could be a distraction to members of the Developer's team, the financial covenant strength of the Developer should not be diluted. If the Developer does become insolvent, the lending bank and or HGDL would be likely to step in to complete the Development, but if this does not happen, there is a mechanism in the Development Agreement by which the Council can terminate the Development Agreement and the relevant Leases and bring in an alternative developer

- 6.4 Developer failing to pay the Phase Prices

How addressed: The payments are secured by a legal charge over each Lease so the Council could enforce its legal charge and take control of the development of the relevant Phase in the unlikely event that the funding bank did not make the payment itself in order to save the project and protect its investment. Note that unless a Lease has been granted in relation to a Phase Payment, the obligation to pay the Phase Price on the Payment Longstop Dates is not, and cannot be secured.

The project is complex and regardless of the protections the Development Agreement seeks to provide, there are likely to be unforeseen issues that confront the parties during the life of the project from time to time. The success with which the parties overcome these issues, and the success of the scheme, will depend very much on the nature of the working relationship between the Council's core team and the Developer, which should develop into one of partnership and co-operation once the Development Agreement has been entered into.

Glossary of Terms Used

“Adverse Market Conditions”

means where the Developer has had to reduce its published prices and has demonstrated:-

- (a) a negative movement of 20% in the Halifax Housing Price Index “Index” in the preceding quarter; and
- (b) a negative movement of 3% in the Index during the preceding 6 month period.

Adverse Market Conditions will end once the Index rises above the level it was at when the Developer notified the Council of Adverse Market Conditions.

"Anticipated Completion Date"

means the date which is indicated or otherwise established in accordance with the Programme (by the parties acting reasonably) and allowing for Force Majeure and Adverse Market Conditions as the date by which Practical Completion is to be achieved of eh Affordable Housing on the Satellite Sites and the Wind and Water Tight Date is to be achieved in respect of each Phase on the Core Site. The Anticipated Completion Date can not be extended beyond the relevant Enabling Development End Date and or the End Date for each Phase, which is twice anticipated build period plus 6 months.

“Certificate of Practical Completion and Practical Completion”

means:-

- a) in relation to the Enabling Development that no less than 48 Social Rented Units and associated external common parts have been Practically Completed and the Employer’s Representative has certified that each Social Rented Unit has been built in accordance with the Social Housing Standards and the relevant requirements of the HCA Grant Funding;
- b) in relation to Private Housing Units on each of the Phases on the Core Sites and the Private Housing Units on the Satellite Sites, the Employer’s Representative has certified that the Phase Works are ready for beneficial use and occupation and the NHBC certificate has been issued in respect of each Private Housing Unit within the Phase;
- c) in relation to each Affordable Housing Unit within any Phase, the Employer’s Representative has certified that such Unit is ready for beneficial use and occupation and has been built in accordance with the Social Housing Standards; and

- d) In relation to any Commercial Units within a Phase that the main structural elements of the accommodation have been provided to shell and core with shop front, screed floor and capped services.

NOTE: The Employer's Representative will be an external consultant appointed by the Developer who will give a collateral warranty to the Council, hence he will owe a duty of care to the Council not to issue a Certificate of Practical Completion until the accommodation is properly completed and ready for beneficial occupation, save for the Commercial Units where it is customary for the tenant to deal with fit out.

"Core Site"	means the land and buildings shown [edged red] on the Phase Plan. We attach a plan to this Summary at Appendix 5 showing the extent of the Core Site edged red.
"Enabling Development"	means the re-provision on the Satellite Sites of not less than forty eight (48) Social Rented Units currently located on the Core Site in the mix set out in the Key Requirements
"Enabling Development Condition"	means the date of Practical Completion of the Enabling Development
"Enabling Development End Date"	means 36 months from the Satellite Sites Unconditional Date
"End Date"	For each Phase means a period equal to twice the agreed Programme plus 6 months
"Funding Condition"	means the Developer and HDL and HGDL providing evidence satisfactory to the Council (acting reasonably) that they have access to funding to carry out the entire Development. This condition needs to be satisfied prior to draw down of the Satellite Sites (unless waived by the Council) and then again before draw down of the first Lease on the Core Site
"HCA Grant Funding"	the existing HCA Grant Funding allocation in the sum of £2,830,000 in favour of the Council for the delivery of the Enabling Development, which is available for draw down until 30 March 2018 subject to a Certificate of Practical Completion being issued in respect of the 48 Social Rented Units to be built on the Satellite Sites
"Highways Condition"	means the requirement for the making of Road Closure Orders and the completion of a Highways Agreement and any relevant Statutory Agreements. NOTE: We understand this Condition is

only relevant to one Phase

"Key Requirements"

means the delivery of the Enabling Development on the Satellite Sites and the high quality regeneration of the Core Site on a comprehensive basis with a high quality scheme which will provide the following:

- (a) A minimum of ninety six (96) Social Rented Units of which a minimum of 48 Social Rented Units must be provided on the Satellite Sites and the remainder of which must be provided on the Core Site;
- (b) The Social Rented Units to be provided on the Satellite Sites to be Practically Completed and delivered before the Council can be required to re-locate the Existing Thrive Homes' Tenants from the Core Site
- (c) Affordable Housing Units on a phased basis across the entire Development comprising a minimum of ninety six (96) Social Rented Units and any additional units provided for either Affordable Rent or Affordable Shared Ownership or as specified in the Agreed Residential Scheme Mix
- (d) The assumed mix and minimum floor areas of the Social Rented Units to be provided on (i) the Satellite Sites shall comprise twenty seven (27) one bed two person flats each of a minimum of forty seven (47) square metres; nine (9) two bed four person flats each of a minimum of sixty nine (69) square metres; ten (10) three bed five person flats each of a minimum of eighty four (84) square metres and two (2) four bed six person flats each of a minimum of ninety seven (97) square metres and (ii) on the Core Sites shall be fourteen (14) one bed two person flats; twenty eight (28) two bedroom four person flats; six (6) three bed five person flats or houses or (in the case of the mix on the Core Site only) such other mix as may be agreed between the Council and the Registered Provider (each acting reasonably);
- (e) A minimum of ▼ new Private Residential Units in accordance with the Agreed Residential Scheme Mix
- (f) The aggregate Gross Internal Area of the individual Private Housing Units in each Phase of the Core Site shall be at least:

▼ sq ft	Phase 1A
▼ sq ft	Phase 1B

▼ sq ft	Phase 2
▼ sq ft	Phase £
▼ sq ft	Phase 4
▼ sq ft	Phase 5

- (g) A food store of not less than 18,000 sq ft Gross Internal Area and complementary retail space comprising at least X sq ft Gross Internal Area ensuring that an appropriate level of retail provision is available to local residents throughout the carrying out of the Development;
- (h) A minimum of ▼ sq ft of Additional Public Realm
- (i) A minimum of X sq ft of multifunctional square and public car park spaces at Station Approach
- (j) All Affordable Housing Unit to meet the Social Housing Standards relevant at the time of delivery and to be delivered in accordance with the relevant policies of the local planning authority

"Lease"

means a lease for a term of 250 years contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954 to be entered into between the Council and the Developer or (in relation to the relevant Satellite Sites for social rented housing) HGL, for the carrying out of the Enabling Development or the relevant Phase Works (as the case may be)

"Lease Drawdown Conditions Longstop Date"

(unless the parties otherwise agreed in accordance with clause 21.4) of the Agreement) means in respect of each Phase of the Core Site the date which is one year from the Lease Drawdown Target Unconditional Date in respect of the relevant Phase pursuant to the terms of this Agreement subject as follows:

- (a) where on such date the Acceptable Planning Condition would otherwise have been satisfied but the period of seven weeks has not elapsed since the Acceptable Planning Permission was granted the relevant Lease Drawdown Conditions Longstop Date shall be extended to the end of such seven week period or
- (b) where on such date there are Proceedings or an Appeal on foot the relevant Lease Drawdown Conditions Longstop Date shall be extended to the date of the Final Determination of

such Proceedings or Appeal or

- (c) where on such date the Council has not procured Vacant Possession of the relevant Phase or exercised its Powers of Appropriation the relevant Lease Drawdown Conditions Longstop Date shall be extended for a further year or such longer period as the Council and the Developer agree

"Lease Drawdown Conditions"

means

- (a) prior to drawdown of the Lease for the first Phase on the Core Site (but in relation to (a)(i) and (a)(ii) subject always to clause 21.2.3):

- (i) satisfaction of the Funding Condition in respect of all the Phase Works on the Core Site; and
- (ii) the Developer securing planning permission to lay out no less than 55 temporary car park spaces on Henbury Way Land and no less than a further 20 temporary car park spaces on land owned by the Council and in locations approved by the Council and
- (iii) satisfaction of the Enabling Development Condition
- (iv) the Council having exercised its Powers of Appropriation in respect of the Core Site provided that the provisions of clause 21.2.3 shall apply in respect of phases 1A and 1B.

- (b) prior to drawdown of the Lease for the first Phase and all subsequent Phases:

- (i) satisfaction of the Acceptable Planning Condition for the relevant Phase
- (ii) satisfaction of the Funding Condition in respect of the relevant Phase
- (iii) satisfaction of the Highways Condition (where required)
- (iv) satisfaction of the Site Assembly Condition and Vacant Possession being provided of the relevant Phase Provided That the provisions of clause 21.2.3 shall apply in the case of Phases 1A and 1B.

"Lease Drawdown Target Unconditional Dates"

Means

- Satellite Sites 30 September 2016
- Phase 1A 30 January 2017

Phase 1B	30 January 2017
Phase 2	30 March 2018
Phase 3	30 March 2020
Phase 4	30 November 2018
Phase 5	30 July 2020

"Lease Drawdown Unconditional Date" means the date on which all the Lease Drawdown Conditions are satisfied in respect of a relevant Phase

"Overage" Means **X** of gross private sales income over and above an agreed threshold payable in accordance with the provisions set out in Schedule [6] of the Development Agreement

"Phase Plan" means the plan showing each of the Phases attached at Appendix 5 to this Summary

"Phase" means phase of the Core Site identified on the Phase Plan and the expression "the relevant Phase" shall mean any one of those phases as the context may require and "Phase" shall be construed accordingly

"Phase Price"	"Phase 1A Price"	means X
	"Phase 1B Price"	means X
	"Phase 2 Price"	means X
	"Phase 3 Price"	means X
	"Phase 4 Price"	means X
	"Phase 5 Price"	means X

"Payment Long Stop Dates"	"Phase 1A Payment Longstop Date"	means 31 January 2018
	"Phase 2 Payment Longstop Date"	means 31 March 2019
	"Phase 3 Payment Longstop Date"	means 31 March 2021
	"Phase 4 Payment Longstop Date"	means 30 November 2019
	"Phase 5 Payment Longstop Date"	means 31 July 2021

And **"Payment Longstop Date(s)"** shall refer collectively

or separately to the Price payable for each Lease

"Planning Application"	means an application under the Planning Act for Planning Permission incorporating the Satellite Sites Planning Application and applying for Outline Consent in respect of the Core Site to be made by/on behalf of the Developer in accordance with the Key Requirements (where applicable) and the Planning Strategy and upon which the Developer will consult with the Council in accordance with the terms of this Agreement)
"Planning Condition"	means the Planning Permission Date occurring
"Planning Permission"	means a planning permission (or planning permissions if appropriate) granted in determination of the Planning Application
"Planning Permission Date"	means the date the Planning Permission is agreed or determined to be a Satisfactory Permission or an Acceptable Permission and the period of 7 weeks having expired without any Proceedings having been initiated or (if Proceedings have been initiated), those proceedings have been disposed of leaving in place a Satisfactory Permission
"Price"	means X
"Private Housing Units"	means the Units to be constructed and/or provided as part of the Development as private residential dwellings
"Proceedings"	means any one or more of the following: (a) call-in proceedings consequent upon a direction by the Secretary of State that the Application be referred to him for determination under section 77 of the Planning Act (b) an application to the court for judicial review or for leave to apply for judicial review (c) an application or appeal to the court pursuant to section 288 of the Planning Act and (d) legal challenge against any Road Closure Order
"Programme"	means the programme for the delivery of the Development (annexed at Appendix [2] to this Summary) as varied, amended and updated in accordance with this Agreement
"Project Director"	means Alan Head being the officer of the Council with responsibility for the Development or their successor or appointed

representative or such other person as may be appointed by the Council from time to time and notified to the Developer

"Reserved Matters"

means any one or more of the following matters in respect of which approval has not been sought in the Planning Application:

- (a) siting
- (b) design
- (c) external appearance
- (d) means of access and
- (e) landscaping

"Satellite Sites"

means the freehold land and buildings shown edged red on the Satellite Sites Plans annexed at Appendix 5 forming part of the land comprised in Title Numbers HD473948, HD473950 and HD474423

"Satellite Sites Conditions"

means collectively:-

- (a) the satisfaction of the Planning Condition;
- (b) the making of the resolution for the CPO and a period of 6 weeks having elapsed with no related Proceedings having been initiated, or if Proceedings have been initiated they have been finally determined leaving in place the CPO;
- (c) the satisfaction of the Viability Condition in respect of the carrying out of all of the Phase Works on the Core Site and the Enabling Development on the Satellite Sites
- (d) The Council having exercised its Power of Appropriation in accordance with clause 9 in relation to the Satellite Sites
- (e) satisfaction of the Statutory Consents Condition in respect of the Open Space Land (being the play area adjacent to Maylands Road.
- (f) the Funding Condition in respect of the Private Housing Units and Social Housing Units to be built on the Satellite Sites being satisfied
- (g) The satisfaction of the Thames Water Condition

"Satellite Sites"

means 1st September 2016

Longstop Date"

**"Satellite Sites
Planning Application"**

means the application as part of the Planning Application (or as may otherwise be agreed by the Council) for the grant of detailed planning permission under the Planning Act for the Enabling Development on the Satellite Sites

**"Site Assembly
Condition"**

means in respect of the relevant Phase on the Core Site,, the entry into agreements for the acquisition of the relevant Third Party Interests by private treaty and or the confirmation of a Satisfactory CPO the Core Site

**"Social Housing
Standards"**

means the construction of the Social Housing as shall comply with the following standards as are relevant from time to time:

- (a) Buildmark Choice
- (b) NHBC Contamination Cover and
- (c) the specifications of the Registered Provider(s)
- (d) Building Regulations
- (e) Planning Permission (or any alternative planning permission that may be agreed to by the Council) together with any associated Planning Agreement
- (f) the latest version of the HCA (East Region) Design and Quality Standards (or such other standards as may be agreed between the HCA and the Developer)

or such guidance or requirements that might supersede or replace the above or as may be agreed between the parties.

**"Substantial
Commencement"**

means the date on which any material operation (as defined in section 56(4) of the Planning Act) forming part of the Development begins to be carried out other than operations consisting of site clearance, demolition, archaeological investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and **"Substantially Commence"** shall be construed accordingly

**"Statutory Consents
Condition"**

means the written confirmation by the Council to the Developer that it has exercised its Powers of Appropriation and performed is

statutory obligations appropriately for the disposal of the Open Space Land

“Thames Water Condition”	<p>Means the Council and the developer (both acting reasonably) being satisfied that the Thames Water Works (if any) will not result in either:</p> <ul style="list-style-type: none">(i) Additional costs to the Development exceeding X(ii) A delay to the Programme exceeding 12 months
“Thames Water Works”	<p>Means the potential upgrading of the sewerage infrastructure required to serve (inter alia) the Development to include on site attenuation works, pump upgrades and off site capacity</p>
"Thrive Homes"	<p>means Thrive Homes Limited or such other owner from time to time of the Existing Thrive Homes accommodation</p>
"Units"	<p>means each building or part of a building which is designed or constructed for separate beneficial occupation and use and shall include all the Affordable Housing Units Commercial Units and Private Housing Units</p>
"Vacant Possession"	<p>means that the Council has in respect of the relevant Phase, procured physical vacant possession of every Unit on the Phase so that all occupants have vacated the Unit but with no obligation to clear the contents of the Unit nor decommission meters</p>
"Viability Condition"	<p>Means the Viability Test being satisfied as provided for in Schedule 4 of the Development Agreement</p>
“Wind and Watertight Date”	<p>means the date that all buildings on a section are externally complete with the roof on, all cladding is complete, windows installed and permanently glazed and rain water pipes connected scaffolding removed any boundary fencing constructed so that all the buildings are visually complete from the exterior and all relevant access roads and pedestrian access ways and external common areas serving the buildings within a phase have been built to base course levels</p>
"Working Day"	<p>means any day other than Saturday or Sunday or public or bank holidays when clearing banks in the United Kingdom are open to the public for the transaction of business.</p>

SOUTH OXHEY INITIATIVE
STRUCTURE CHART FOR REGENERATION BY COUNTRYSIDE PROPERTIES

