

Innovative Sites Programme: Disposals for SMEs

DRAFT HEADS OF TERMS

To be completed with the Buyer's details and the commercial terms of its offer once the selected acquiring party has been identified through the marketing and moderation process.

PART 1

DEFINITIONS

In these Heads of Terms:

1. The Seller is: the London Borough of Barking & Dagenham (the Council)
2. The Buyer is: [Name/address]
3. Seller's Solicitors: [LBBD Legal – address and contact details]
4. Buyer's Solicitors: [Name Address and contact details]
5. The Site: comprises the site/s listed in Part 2 of these Heads of Terms
6. The Scheme: The Buyer's proposed development on the Site as agreed with the Seller [as shown in the attached plans and drawings] or as may be superseded from time to time with the prior approval of the Seller
7. The Price: The Buyer's offer of [£TBC] for the Site plus VAT if applicable
8. The Deposit: 10% of the Price payable upon exchange of the conditional Sale & Purchase Agreement with the balance of the Price being paid upon Completion of the sale
9. The Sale & Purchase Agreement (SPA): means a legally binding agreement entered into between (1) The Seller and (2) The Buyer whereby the Buyer agrees to purchase the freehold interest in the Site from the Seller subject to the Condition/s Precedent/s for the development of the proposed Scheme on the terms set out in these Heads of Terms.
10. Conditions Precedent:
 - a) The Planning Condition: means the Buyer obtaining an Acceptable Planning Consent that does not contain any Onerous Conditions and is immune from challenge for the redevelopment of the Site.
 - [b) Others TBA]
11. Onerous Conditions: A list of pre-agreed planning conditions that if contained in a Decision Notice the Developer may appeal (as detailed below) or withdraw from the SPA.

1. SALE AND PURCHASE AGREEMENT

The principal terms of the SPA are:

- 1.1 The Buyer will at its own risk and expense use all reasonable endeavours to submit and promote in a timely manner a detailed planning application for the development of the Scheme on the Site.
- 1.2 The sale will complete 10 working days of the issuance of an Acceptable Planning Consent.

1.3 If the planning application is refused or granted with Onerous Conditions, the Buyer shall have the right (but not the obligation) to appeal against such refusal provided there is at least a 50% the chance of success at appeal.

1.4 The Developer will be responsible for any Community Infrastructure Levy and meet any Section 106 or other obligations and requirements associated with the redevelopment of the Site.

1.5 The SPA will not be assignable by the Buyer (but may be charged to an approved funding institution).

1.6 It is the Buyer's responsibility before exchange of the SPA to investigate the legal title for the Site and to satisfy itself as to the title to enable the development of the Scheme to be carried out.

1.7 It is the Buyer's responsibility to carry out any additional ground investigations and make such other enquiries as it considers appropriate to satisfy itself on the Site before entering into the SPA. The Seller will not retain any responsibility for environmental matters.

1.8 The Buyer acknowledges that it is buying with knowledge and has reviewed the reports supplied by the Seller in the sale data room.

1.9 If the Condition/s Precedent is/are not satisfied within 18 months of exchange, the SPA may be terminated by either party (subject to extension if a planning appeal is underway or an Acceptable Planning Consent has been granted but is not yet immune from challenge).

1.10 The Buyer will pay the Deposit to the Seller upon exchange of the SPA. The balance of the Price will be paid upon completion.

1.11 Within 12 months from the grant of an Acceptable Planning Consent the Buyer will commence construction on Site and thereafter will diligently progress the same and achieve Practical Completion within two years of commencement on Site.

1.12 The Scheme must be built in accordance with the Acceptable Planning Consent.

1.13 The Buyer will pay a 'Planning Overage' equating to 50% of any increase in development value if a planning Consent is obtained for additional units (or on more beneficial terms) on the Site beyond that envisaged at the time the Agreement for Lease was exchanged. The Planning overage will apply for all subsequent planning applications until Practical Completion of the Scheme

1.14 The Buyer will pay a 'Sales Overage' if the Site is sold before Practical Completion of the Scheme equating to 50% of the difference between the sale price and the Price the Buyer acquired the site for from the Seller. The Sales Overages will apply for all subsequent disposals until Practical Completion of the Scheme.

1.15 Reasonable mortgagee exemption clauses will be provided.

1.16 The Transfer will contain a restrictive covenant to use the Site for C3 residential purposes only.

Where affordable units are to be provided

1.17 Where all or part of the completed Scheme is to be used and occupied only as affordable units under the management of a registered provider in accordance with a S106 requirement or otherwise, the Seller will have the option at Practical Completion of the Scheme to enter into a separate Nominations Agreement with the Buyer/the registered housing provider which will manage the units giving the Council 100% nomination rights on all affordable units in perpetuity.]

2. BUY BACK OPTION

To ensure the Site is built out and not land banked, the parties will enter into a Buyback agreement on the following terms:

2.1 Should the Buyer fail to either (i) start work within 12 months and/or (ii) achieve Practical Completion of the Scheme within two years of commencement, the Seller has the option to buy back the Site.

2.2 The price paid for the Site under the buyback agreement will be the lesser of (i) the actual Price paid for the site by the first Buyer less SDLT and professional fees or (ii) the actual market value of the site at the time of the buyback less SDLT and professional fees.

2.3 If the Site is sold by the Buyer after completion, any future Buyer will enter into a similar buyback covenant with the seller. This will be protected by way of a restriction on the legal title.

3. OTHER TERMS

3.1 The parties will each pay its own transaction costs.

3.2 The Buyer will be required to demonstrate appropriate funding to deliver the Scheme to the Seller's reasonable satisfaction.

3.3 The Seller is to provide draft documentation within four weeks of the issue of final heads of terms.

3.4 The Seller is required to seek approval to the sale from its Cabinet.

3.5 The Seller will require wording in the sale documentation to ensure compliance with its statutory obligations as a local authority including Freedom of Information requirements.

3.6 The terms of the sale will remain confidential save for any pre-agreed statements or press releases between the parties.

3.7 All communications are expressed to be 'Subject to Contract' until the SPA is exchanged.

PART 2 – THE SITE

Keir Hardie Way, Barking, IG11 9NU (Garage site)