

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DD2269

Title: Grant funding for Rural Urban Synthesis Society (RUSS) Community Land Trust

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

The information below is not for publication until the stated date, because:

It contains commercially sensitive information, the disclosure of which might prejudice the commercial and business interests of the GLA and RUSS.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed: **June 2021**

Legal recommendation on the grounds of keeping the information confidential:

Under section 43 of the Freedom of Information Act information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the GLA). This is a qualified exemption, meaning that information captured under section 43, can only be withheld if the public interest in withholding it outweighs the public interest in releasing it.

The information below relates to bespoke commercial arrangements negotiated for this particular project including the timing of payments of GLA funding, the amount of each tranche of funding, and an ability for RUSS to novate the grant funding agreement to its funder in certain circumstances, which the GLA would not consider appropriate for all funding agreements. This is all commercially sensitive information, the disclosure of which would, or would be likely to, prejudice the commercial interests of the GLA in relation to its negotiations on other potential housing funding projects. Disclosure of the funding tranches and details of the indicative development finance offers that RUSS has received may also prejudice RUSS in relation to any negotiations with third parties to provide the CLT with works/services or funding in relation to the Church Grove project. Whilst there is a public interest in understanding the circumstances in which public money is provided to other bodies, it is considered that in these circumstances the public interest lies in maintaining the exemption and withholding the information.

If this information is considered for release pursuant to the provisions of the Environmental Information Regulations 2004, this information should be considered exempt information under regulation 12(5)(e) – where disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

Legal Adviser - I make the above recommendations that this information should be considered confidential at this time

Name Gemma Jackson

Date 8 August 2018

Once this form is fully authorised, this should be circulated with the Part 1 form.

Confidential decision and/or advice:

1. Funding

1.1 As stated in Part 1 of this Director's Decision, £988,000 of grant funding will be used to deliver 33 high quality homes that are permanently affordable.

1.2 To accelerate the delivery of homes and assist project cashflow the GLA has agreed non-standard payment tranches.

Funding Milestones and Funding Milestone Dates

Payment Tranche 1	
Tranche Amount	£138,320
Funding Milestone	Submission of satisfactory Planning Application (as agreed with the London Borough of Lewisham) in relation to the Site.
Funding Milestone Date	7 June 2018
Agreed Expenditure	Site investigations – geotechnical and land contamination, associated project management and technical consultants' fees and associated contingency.
Agreed Outcome	De-risking of project through detailed assessment of ground conditions, substructure solution, remediation requirements and access arrangements.

Payment Tranche 2	
Tranche Amount	£187,720
Funding Milestone	Planning Permission achieved.
Funding Milestone Date	30 September 2018
Agreed Expenditure	Technical consultants' fees, self-build enabling fees, project management fees, legal and financial costs and associated contingency.
Agreed Outcome	Scheme design progressed in technical detail ready for Building Contractor review, leaseholding, 'affordability in perpetuity' and other strategic aspects legally reviewed.

Payment Tranche 3	
Tranche Amount	£227,240
Funding Milestone	1. Preferred Building Contractor appointed; and 2. The forms of Fixed Equity Lease and Shared Ownership Lease have been approved by mortgage providers.
Funding Milestone Date	31 January 2019
Agreed Expenditure	Technical consultants' fees, self-build training, project management fees, main contractor advisory fees, legal and financial costs and associated contingency.

Agreed Outcome	Scheme design progressed to works tendering stage, works tendering carried out, main contract sum and terms agreed.
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Payment Tranche 4	
Tranche Amount	£177,840
Funding Milestone	Grant of Secure Legal Interest in the Site in the form of the Lease.
Funding Milestone Date	31 March 2019
Agreed Expenditure	Early works construction package – contractor mobilisation, site setup, site enabling and land remediation, associated project management, cost consultancy, design and contract administration fees and contingency.
Agreed Outcome	Preparation of Site permitting Works to commence.

Payment Tranche 5	
Tranche Amount	£256,880
Funding Milestone	Start on Site
Funding Milestone Date	30 June 2019
Agreed Expenditure	Start on Site as defined within the Grant Fund Agreement in relation to the Church Grove Community Self-Build Housing Development between the Greater London Authority and Rural Urban Synthesis Society Ltd.
Agreed Outcome	Start on Site

1.3 Development Finance and Delivery

To ensure the project does not stall and to accelerate the delivery of affordable homes the above non-standard payment tranches have been agreed. The early injection of GLA grant assists the project cashflow and allows project momentum to continue before the development finance (£7.6m) is drawn down. GLA grant funding progresses the project to start on site, development finance is required for the construction phase to ensure delivery of the project.

RUSS's professional team and advisors Triodos Corporate Finance have shared indicative offer letters from Triodos Bank and CAF Bank who are willing to provide senior bank debt for the construction finance and a syndicate of unsecured/ second charge social investors (Big Issue Invest) who are supportive to invest should a junior funder be required.

1.4 Development Appraisal

A full development appraisal has been provided by RUSS and been reviewed by the GLA. The current development finance requirement is £7.6m. The financial model includes a £1m contingency (representing 18% of projected build costs) to cover project cost overruns (whether construction or on-costs), revenue shortfalls and self-build savings shortfalls. RUSS has carried out sensitivity analysis on the financial model to demonstrate that the project is still economically viable (i.e. that the loan payments can still be serviced) even if the contingency is fully utilised. Repayment of the development finance is anticipated to be enabled through the sale of 80% equity of 14 fixed equity

units (1 bed and 2 bed) – forecast to deliver £3.7m of sales in 2020 and the sale of between 25-71% equity (average of 39%) of 12 shared ownership units (1 - 4 bed) – forecast to deliver £2.5m of sales in 2020. The balance of the development finance loan will be serviced by way of a Long-term mortgage - indicative offer letters for this mortgage have been secured from Triodos Bank and CAF Bank. The long-term mortgage will be repayable over 25 years and serviced by future rental income from social and affordable rental units as well as rent charged on retained equity in relation to shared ownership units

1.5 Senior Bank Debt – Triodos Bank and CAF Bank – Indicative Development Finance Offers

Triodos Bank and CAF Bank – Indicative Development Finance Offers	
Key Terms	Offer Conditionality
4-5% above base	Valuation report
Redemption - c. 2 years from drawdown	Satisfaction with build contract, step-in rights, professional warranties (potential assignment of these items)
Drawdown – in tranches against certification	Satisfaction with build cashflows
1% combined arrangement and commitment fee	Satisfaction with planning permission, leases and other legal instruments linked to acquisition of land and building of units
First legal charge over the site and formalisation of mortgagee in possession clause	Appointment of bank approved Quantity Surveyor
	Agreement of drawdown mechanism including certification

1.6 GLA Grant Funding Risk and Mitigation

The risk associated with early tranche payments of GLA grant relates to the possibility of RUSS becoming insolvent before the project starts and having no assets to repay GLA grant for the initial preparatory work. The risk profile associated with GLA investment is greatest in advance of development finance having been drawdown and the project having started-on-site.

The GLA has therefore agreed in principle with Lewisham Council, subject to formal Mayor & Cabinet approval, that if RUSS becomes insolvent while they are drawing down up to £750,000 grant (pre start on site payment tranches), then the land reverts back to the Council, the Development Agreement is terminated with RUSS and the Council will ensure the subsequent development of the site provides affordable housing equivalent to the £750,000 of grant (or equivalent drawdown amount) which has been expended. The affordable housing equivalent is provided based on:

- 1 social rent/London Affordable Rent home per £100k of GLA grant drawn down by RUSS;
- 1 London Living Rent, London Shared Ownership or other genuinely affordable intermediate homes:
 - £38,000 per home started in 2018-19 or 2019-20;
 - £28,000 per home started in 2020-21 or 2021-22

This proposal is being presented to Lewisham’s Mayor & Cabinet on the 19 September 2018.

To maintain momentum with the project it is proposed that the GLA will advance the first payment tranche (£138,320) in advance of the formal Mayor & Cabinet decision (subject to RUSS entering into the grant agreement with the GLA). The GLA has written confirmation from Lewisham Council of their in principle assurance regarding the above mechanism and a condition precedent is included within the GLA grant agreement which states that a satisfactory Mayor and Cabinet decision is required, followed by a letter to the GLA from the Local Authority Accounting Officer detailing the Council’s assurance that it will ensure the delivery of the requisite number of social rent/London

Affordable Rent/London Living Rent/ London Shared Ownership or other genuinely affordable intermediate homes in the event of RUSS's insolvency, before any further grant will be advanced to RUSS.

Should an insolvency event occur during the construction period, the principal funder has the option to step-in and deliver the project. During this period the GLA would continue to work with the Council, Funder and delivery partner.

The commercial risk associated with the minimal unsecured nature of GLA grant is therefore deemed proportionate and acceptable to support innovative forms of delivery.

1.7 Funder Step-in Rights

Permitted Novation: To ensure the project continues to be delivered in a situation where the principal funder has stepped into the development and is building out the scheme the GLA has agreed that the Grant Funding Agreement can be novated to the Funder.

“Permitted Novation” means a novation of all or part of this Agreement by the Grant Recipient to a Funder provided that:

- (a) *the GLA has provided prior written approval of the proposed assignee (such approval not to be unreasonably withheld where the proposed assignee has taken a novation of this Agreement and the Conditional Development Agreement and an assignment of the Lease); and*
- (b) *the proposed assignee, in the reasonable opinion of GLA, is able to deliver the Named Project Outputs in accordance with this Agreement.*

In allowing for funder step-in rights, the GLA has implemented measures to safeguard delivery.

1.8 Review, Monitoring and Reporting

To maintain oversight of project delivery, as part of the GLA grant funding agreement, RUSS must promptly advise the GLA when any circumstances occurs which may impact adversely on their ability to deliver the project. Moreover, the GLA has the right to attend monthly project meetings and be provided with written details of the matters discussed. The GLA intends to attend these meetings monthly, particularly whilst its grant is most exposed and the secure legal interest in the site has yet to be transferred to ascertain early any signs of delivery difficulties. In addition, RUSS is also required to attend a review meeting when required to do so by the GLA and at least on a quarterly basis.

1.9 Project Management/ Client Capacity-Capability

To ensure RUSS has the project management and client capacity/ capability to take the scheme through to completion the GLA has required resourcing of the project is maintained at a minimum satisfactory level to deliver the project. The GLA grant funding agreement specifies a requirement regarding *“Named Project Resourcing.”*

The Grant Recipient must ensure that:

- 17.1 (a) *the number of consultants at Local Agenda responsible for managing the Named Project at any given time is no less than two; and*
- 17.2 (b) *the amount of time spent by the consultants at Local Agenda in managing the Named Project is no less than two days per week.*

If required by the GLA (acting reasonably), the Grant Recipient shall provide written confirmation from Local Agenda confirming that neither of the requirements in

Clause 17.1(a) and Clause 17.1(b) are below the minimum levels required by Local Agenda.

Russ has also appointed a salaried Operations Director, to lead on the delivery of the Project

1.9.1 Rented Homes

As set out in Part 1 of this Directors Decision (section 2.3) the GLA is not providing funding for the 7 rented units, as the landlord is not a registered provider. The Development and Sale Agreement sets out through a Nominations Agreements with the Council how the social rented homes will be allocated. The current intention is the rented units will be owned by RUSS in perpetuity but, a disposal of the rental units to a Registered Provider is allowed for within the Development and Sale Agreement and GLA grant agreement. RUSS is currently discussing a management and maintenance service level agreement with the following Register Providers; Hexagon, CDA Co-operatives and CHISEL a neighbourhood housing association to provide for a period of years from completion the management and maintenance of the rental homes whilst RUSS gears up to provide this service in-house.