

GREATER LONDON AUTHORITY

REQUEST FOR ASSISTANT DIRECTOR DECISION – ADD307

Title: Triathlon Homes LLP

Executive Summary:

This Assistant Director Decision approves entry by the GLA into various agreements to ensure the GLA's Rentcharges in respect of the East Village site are fully effective and to vary an Intercreditor Agreement in respect of the East Village to clarify the processes thereunder for dealing with disposal receipts.

Decision:

The Head of Area North East approves:

- The entry by the Greater London Authority into Supplemental Rentcharges, Deeds of Surrender, Deeds of Consent and Deeds of Covenant as described in this decision form.
- The entry by the Greater London Authority into an agreement to vary the Intercreditor Agreement dated 19 June 2009 as described in this decision form.

AUTHORISING ASSISTANT DIRECTOR/HEAD OF UNIT:

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name: Fiona Duncan

Position: Head of Area North East

Signature: 

Date: 26 June 15

PART I - NON-CONFIDENTIAL FACTS AND ADVICE
Decision required – supporting report

1. Introduction and background

Lease rectifications

- 1.1 The land which has been developed for affordable housing at East Village, with the assistance of grant from the Homes and Communities Agency (HCA) and subsequently the GLA pursuant to a Grant Agreement dated 19 June 2009 between the HCA and Triathlon Homes LLP (Triathlon), is subject to various Rentcharges granted by Triathlon for the benefit of the HCA, and now the GLA as the HCA's successor. The Rentcharges were required to ensure that Triathlon continues to comply with the grant conditions, including the use of the properties for the intended affordable housing purposes and the applicable grant recovery provisions.
- 1.2 Triathlon acquired a long leasehold interest in the affordable housing land prior to the development of the affordable housing units under a number of leases (the Triathlon Leases). Following completion of the development an analysis has been carried out of the Ordinance Datum Newlyn (ODN) levels, ascertained from the as built drawings, as against the ODN levels set out in each of the Triathlon Leases and this has revealed that, in respect of some of the dwellings, the ODN levels referred to in the Triathlon Leases is inconsistent with the actual airspace contained within the as built dwellings.
- 1.3 In addition to discrepancies in the airspace, analysis of the as built drawings revealed that in respect of some of the Triathlon Leases the plans either incorporate too much land and/or insufficient land.
- 1.4 Counsel's Opinion was obtained in respect of the ODN levels, which concluded that the Triathlon Leases do actually demise the land from the floor to ceiling of the relevant block notwithstanding the deficiencies in the ODN level references. The GLA has the benefit of, and can rely upon, this Counsel's Opinion. However, notwithstanding the conclusion in the Counsel's Opinion, for additional comfort it is proposed that a further lease is entered into by Triathlon which demises to Triathlon all of the dwellings less such land that has already been demised by the Triathlon Leases. The form of this lease has been approved by the Land Registry.
- 1.5 With regard to the discrepancy in the plans where insufficient land has been demised to Triathlon, it is proposed that further leases will be entered into by Triathlon in respect of each of the affected Triathlon Leases. Again, the form of these leases has been approved by the Land Registry.
- 1.6 With regard to the discrepancy in the plans where too much land has been demised to Triathlon, it has been agreed by the parties that a Deed of Surrender will be entered into by Triathlon in respect of each of the affected Triathlon Leases. The GLA's consent will be required in order for Triathlon to enter into these Deeds of Surrender due to restrictions placed upon Triathlon under the GLA's Rentcharges. The Rentcharges require this consent to be given in a Deed of Consent.

GLA rentcharges

- 1.7 Triathlon granted Rentcharges to the Homes and Communities Agency (HCA) immediately after accepting the Triathlon Leases. Triathlon has also granted charges over its leases to its senior lenders (the Banks).
- 1.8 The Rentcharges (and the Banks' charges) do not currently issue out of the additional land to be demised to Triathlon in the new leases described above – and, conversely, they cover land which is

to be surrendered by Triathlon as it does not form part of the as built affordable housing development. It is therefore proposed that the GLA's existing Rentcharges remain in place but new supplemental Rentcharges are entered into to cover the additional land and Deeds of Surrender are entered into by the GLA to surrender the Rentcharges over those parts of the Triathlon Leases which are to be surrendered by Triathlon. Documents similar to these would also be entered into between Triathlon and the Banks in respect of the Banks' charges of the Triathlon Leases.

- 1.9 It should be noted that the Banks' consent will be required before the GLA enters into the Deeds of Surrender of the Rentcharges as this is a requirement of a Deed of Covenant entered into by the HCA (as the GLA's predecessor) pursuant to the Intercreditor Agreement referred to in paragraph 1.12 below.
- 1.10 The forms of the supplemental Rentcharge and the Deed of Surrender of Rentcharge have been approved by the Land Registry.
- 1.11 As Triathlon is in receipt of funding from private funders (the Banks) as well as the HCA/GLA, an Intercreditor Agreement was entered into on 19 June 2009 to regulate the priorities of the funders. Whenever a new Rentcharge is entered into, the Intercreditor Agreement requires the GLA to execute a Deed of Covenant. This document requires that there be no disposal of a Rentcharge unless the disponent enters into a Creditor Accession Undertaking, which ensures regulation of the priorities under the Intercreditor Agreement. It is anticipated that there may need to be one Deed of Covenant per new Rentcharge.

Intercreditor Agreement

- 1.12 In addition to rectification of the lease discrepancies, the Banks have requested that amendments are made to the Intercreditor Agreement to ensure that where receipts are received upon the disposal of any Triathlon dwelling (for example where a shared ownership lessee purchases a further share of their property), that the receipt is paid into the correct account as originally envisaged by the HCA, Triathlon and the Banks. The intention of the proposed amendments is not to change the commercial deal but to clarify the processes. Further non-substantive amendments have also been proposed to "tidy up" the document.
- 1.13 The GLA has received legal advice from external lawyers in relation to these proposed amendments and this is set out in Part 2 of this report.

2. Objectives and expected outcomes

- 2.1 As a result of the construction of the development a number of discrepancies have been identified in the Triathlon leases that were granted. It has also been discussed between the parties that the processes in relation to how receipts from the disposal of Triathlon dwellings are dealt with should be clarified in the relevant legal documentation. As a result the GLA will therefore need to enter into various Supplemental Rentcharges, Deeds of Surrender of Rentcharges, Deeds of Consent, Deeds of Covenant and an agreement to vary the Intercreditor Agreement, as described above.
- 2.2 The GLA is not entering into any further financial commitment to the project. The remainder of the affordable housing grant was paid out on practical completion of the development in 2013/14. The proposed restatement of the terms of the Intercreditor Agreement does not change the original arrangement. There is a process in place for the GLA to approve the level of Grant to be repaid in certain circumstances and this process will ensure that any money that it is owed under the Grant Agreement is eventually repaid to the GLA. This money is only likely to be at risk if there is a breach

by Triathlon of its banking covenants. The GLA will continue to monitor the Triathlon business plan in order to mitigate this loss.

3. Equality comments

- 3.1 There are no equality implications that have been identified in this decision. This decision is required to ensure that the GLA is in no worse position now as a result of the build out of the scheme than it would have been under the terms of the original legal Agreements.

4. Other considerations

- 4.1 See confidential Part 2 paper.

5. Financial comments

The amendments to the Supplemental Rentcharges, Deeds of Surrender, Deeds of Consent and Deeds of Covenant are to be completed with the intention to protect the GLA's financial position and therefore will maintain the original intentions as regards the East Village site.

Triathlon are covering the GLA's legal fees in respect of these amendments.

6. Legal comments

- 6.1 Legal have provided input into this paper and further legal comments are set out in the Part 2 paper.

7. Planned delivery approach and next steps

Activity	Timeline
GLA to enter into all supplemental legal agreements	July 2015

Appendices and supporting papers:

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Note: This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:**Is the publication of Part 1 of this approval to be deferred? YES**

If YES, for what reason:

Deferral is proposed until the agreements referred to in this form have been entered into in order to allow the GLA to finalise its negotiations with Triathlon and its senior lenders.

Until what date: 31 July 2015

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer
to confirm the
following (✓)

Drafting officer:

Fiona Duncan has drafted this report in accordance with GLA procedures and confirms that the Finance and Legal teams have commented on this proposal as required, and this decision reflects their comments.

✓

HEAD OF GOVERNANCE AND RESILIENCE:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature:



Date:

26.06.15

