

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD1511

### Title: Cane Hill – Deed of Variation to Agreement to Lease and Build Lease

This Mayoral Decision approves entry by GLA Land and Property Limited into a Deed of Variation to the Agreement for Lease, including the form of Build Lease, for the Cane Hill site and confirms approval of the terms of the Agreement for Lease and subsequent amendments, including the entry by GLA Land and Property Limited (GLAP) into a Section 106 Agreement as contemplated by the Agreement for Lease.

#### Decision:

The Mayor approves:

- Entry by GLA Land and Property Limited (GLAP) into the Deed of Variation to the Agreement for Lease dated 16 July 2012 entered into between GLAP, BDW Trading Limited and Barratt Developments Plc and the form of Build Lease contained therein.
- The terms of the Agreement for Lease and subsequent amendments including the entry by GLAP into a Section 106 Agreement as expected by the Agreement for Lease.
- Entry by GLAP into any legal agreements, transfers, leases, easements, wayleaves, licences, non-material amendments to the Agreement for Lease and Build Lease and any other ancillary agreements required to deliver the Cane Hill development.

#### Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

9.6.2015

## **PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1. The 83 hectare Cane Hill site, previously occupied by a hospital complex (12.5ha) and surrounded by 70ha of agricultural land, occupies a prominent position adjacent to Coulsdon Town Centre, to the west of the A23 in the London Borough of Croydon. The site is a 10 minute walk from Coulsdon South Station and is a key component of Croydon Council's aspiration to revitalise Coulsdon Town Centre. The hospital complex was almost entirely demolished by the HCA in 2010-2011, save for the three buildings which have been locally listed.
- 1.2. The site was acquired by English Partnerships ('EP') from the Department of Health in 2005 as part of the Hospital Sites Programme. The site was transferred to GLA Land and Property Limited ('GLAP') from the HCA (as EP's successor) as part of the devolution of power to the Mayor under the Localism Act 2011.
- 1.3. Following a procurement process to select a development partner and the subsequent approval in December 2011 by the HCA London Board of Barratt as the preferred bidder, in July 2012, an Agreement for Lease ('the Development Agreement') between GLAP, BDW Trading Ltd ('Barratt Homes') and Barratt Developments Plc was entered into. On satisfaction of the conditions under the Development Agreement, Barratt Homes will be granted a Build Lease by GLAP.

#### Planning

- 1.4. In July 2013, Barratt Homes submitted a planning application for up to 675 new homes, of which 25% are affordable and 60% are larger homes. The application also included provision for: 3,000 sq. m. of office development; flexible planning use within the three locally-listed buildings to allow the most viable use to come forward; new access and connections with Coulsdon Town Centre; and new public open space.
- 1.5. On 3 April 2014 Croydon Council granted planning permission subject to referral to the Mayor and Secretary of State and the resolution of the Section 106 agreement.
- 1.6. As freeholder, GLAP will be party to any planning agreement required by Croydon Council. Under the Development Agreement Barratt is required to indemnify GLAP in respect of liability under such planning agreement. The S106 agreement was signed in October 2014 and a separate Deed of Indemnity was entered into by Barratt to safeguard GLAP's interests.
- 1.7. On 21 October 2014, Croydon Council granted planning permission for the redevelopment of the former Cane Hill Hospital Site to accommodate up to 677 residential units (net increase of 675 units and 2 existing units on the site).
- 1.8. On 24 November 2014, a judicial review for the Cane Hill Hospital Site was initiated by a local resident. This was dismissed on 18 March 2015 at a high court hearing allowing for the implementation of the existing planning permission.

#### Contract status, proposed Deed of Variation and legal agreements

- 1.9. Under the Development Agreement, Barratt Homes have assumed control of the site and is wholly responsible for securing planning (and all other necessary consents), construction and sales. The

Development Agreement set out a number of conditions precedent, which Barratt are required to fulfil prior to the Build Lease being signed, allowing Barratt to commence works.

- 1.10. Barratt have proposed some minor variations to the conditions precedent and the form of Build Lease. The key variations, to be set out in a Deed of Variation to the Development Agreement (which contains the form of Build Lease), are described in paragraphs 1.11 to 1.15 below and in Part 2. This Mayoral Decision approves entry by GLAP into the Deed of Variation.
- 1.11. It is proposed that the Build Lease is amended so that GLAP's freehold interest in the land which will be developed for affordable housing will be transferred by GLAP to a registered provider of social housing, approved by GLAP, at "Golden Brick" stage rather than upon completion of an affordable housing dwelling. Golden Brick is achieved on completion of the foundations plus one brick course above ground level. This is a typical requirement to enable a registered provider of social housing to effect a VAT saving, enabling them to reinvest this saving into further affordable housing. Barratt Homes will also be a party to the freehold transfer to surrender its interest in the Build Lease in respect of the land transferred. Barratts will enter into a Golden Brick Agreement with Hyde Housing Association for the development of the first Affordable Dwellings (32 units) and a copy of the proposed agreement with Hyde has been provided to GLAP so that it can be verified that the agreement contains provisions ensuring that the affordable dwellings are built out to the appropriate standards.
- 1.12. Under the Development Agreement, GLAP has retained the freehold of the site but will transfer its freehold interest of the individual units to the purchasers as the units are sold and the freehold of the remaining common areas and agricultural land will be transferred to an estate management company at the end of the development. Under the proposed varied form of Build Lease, the forms of transfer will be agreed between the parties, acting reasonably, at a later date. This will enable flexibility to complete the development as required without further deed of variations. It is proposed that these forms are agreed pursuant to the Mayoral Scheme of Delegation.
- 1.13. This Mayoral Decision also authorises GLAP to enter into the relevant legal agreements, transfers, leases, easements, wayleaves, licences, non-material amendments to the Agreement for Lease and Build Lease and any other ancillary agreements relating to the wider Cane Hill development as contemplated under the Development Agreement. It is proposed that the forms of any such agreement will be dealt with pursuant to the Mayoral Scheme of Delegation.
- 1.14. As anticipated in the Development Agreement, the transfer of a small piece of land to TfL is required to allow them full access to their drainage tanks/replacement attenuation ponds beneath the Cane Hill site. The Transfer covers an easement over part of the site to be leased to Barratt Homes allowing TfL to construct a drainage system on that part and for access for maintenance. It also covers land to be transferred to TfL comprising land on which the A23 has been built.
- 1.15. Further comments are set out in Part 2 of this decision form.

## **2. Objectives and expected outcomes**

- 2.1. The Cane Hill development will deliver up to 675 new homes in London, including 25% affordable housing which will contribute to achieving the Mayoral housing objectives. The successful refurbishment of the three locally-listed buildings on the site is important to creating a sense of place and community for the wider development.

- 2.2. The development will release public sector land for wider regeneration activities, stimulate economic growth and promote job creation. On the assumption that for every home built two jobs are created, the redevelopment of the site is expected to create circa 1,300 construction jobs.
- 2.3. The development will also deliver a land receipt which will contribute to supporting Mayoral objectives for growth.

### **3. Equality comments**

- 3.1 Positive contributions to equality have been considered through the design process of the wider Cane Hill project and the proposed development will increase physical accessibility to the site and all residential units have been designed in line with Lifetime Homes Principles.
- 3.2 The needs of those with protected characteristics, who are most likely to be in housing need, will be helped through this scheme. The scheme is expected to produce 675 homes including 163 affordable homes which contain a large number of three and four bed family homes, including 16 homes suitable for wheelchair users, which will have a positive impact on people with disabilities.

### **4. Other considerations**

#### *a) Key risks and issues*

- 4.1 In the event of Barratts insolvency, material breach or failure to carry out works, the Build Lease provisions relating to 'Forfeiture' are clear on GLAP's remedies on breach and termination of the lease with GLAP's powers and rights specified including the right to seek a suitable substitute to complete the development.

#### *b) Links to Mayoral strategies and priorities*

- 4.2 The disposal of the former Cane Hill hospital site, including the buildings, will contribute to the wider Mayoral priorities for bringing publicly owned assets into use, enabling housing regeneration, growth and job creation, as set out in the Mayor's London Housing Strategy and Economic Development Strategy.

#### *c) Impact assessments and consultations.*

- 4.3 LB Croydon and the local community have been consulted throughout the planning process on the application for the redevelopment of Cane Hill.

### **5. Financial comments**

- 5.1 The Golden Brick transaction referred to paragraph 1.11 above is between Barratt and Hyde and does not impact on GLAP's VAT accounting. GLAP will transfer the freehold of the affordable housing phases to Hyde for a nominal sum and should have no adverse VAT accounting issues for GLAP.

### **6. Legal comments**

- 6.1 Section 30 of the Greater London Authority Act 1999 (as amended) ("GLA Act") gives the Mayor a general power to do anything which he considers will further one or more of the principal purposes of the GLA. The principal purposes, as set out in section 30(2) of the GLA Act are:

(1) promoting economic development and wealth creation in Greater London;

- (2) promoting social development in Greater London; and
- (3) promoting the improvement of the environment in Greater London.

- 6.2 Given the above and section 34 of the GLA Act, which allows the Mayor to do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of his functions, the foregoing sections of this report indicate that the Mayor has the power to make the requested decisions.
- 6.3 Dentons have been appointed by Legal to provide advice to GLAP as to the Deed of Variation to the Development Agreement, including the form of Build Lease, the Tfl Transfer and other arrangements including preparation of the required documents.

**7. Investment & Performance Board**

- 7.1 On 10<sup>th</sup> September 2014, the Housing Investment Group considered the proposal and the commercial terms related to the disposal of the retained buildings (comprising the Water Tower, Administration Building, and Chapel) and endorsed the recommendation for the disposal to proceed. Members requested a robust legal and contract management arrangement to be put in place to ensure the timing, quality and delivery of the proposal. To address members’ requests, the lease for the Admin Building and Chapel would be granted first and the lease for the Water Tower would be conditional on the previous buildings having been delivered. The proposed transaction structure is that Barratt will drawdown the Build Lease with GLAP and then sub-contract the works at the Heritage Buildings Site to Haxted which is as good a deal as when GLAP considered disposing direct to Haxted. The disposal will be governed by the existing terms of the Development Agreement with overage provisions ensuring that GLAP receives its share of the proceeds once the retained buildings have been redeveloped.

**8. Planned delivery approach and next steps**

<b>Activity</b>	<b>Timeline</b>
Mayoral Decision	May 2015
Build lease signed	End of May 2015
Initial receipt (on signing of build lease)	End of May 2015
Start on Site development	Middle of June 2015

**Appendices and supporting papers:**

- Appendix One: Map of Wider Area
- Appendix Two: Site Plan
- Appendix Three: Aerial photo

**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: June 2015 until the Lease has been signed

Until what date: 30 June 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:**

Marvin Mileham has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

**Head of Area - South:**

Heather Juman has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

**Sponsoring Director:**

David Lunts has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

Richard Blakeway has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature

*M. J. Alle*

Date

3.6.15

**CHIEF OF STAFF:**

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

*Edward Hill*

Date

4:06:2015