

## BACKGROUND TO CONTRACT, APPOINTMENT & LEASE

This note summarises some of the objectives of the Contract, Appointment and the Lease in order to provide bidders with some further background to the proposed development. Interested parties should have full regard to the documents, undertake their own due diligence in regard to the site and should take their own independent legal advice.

A successful bidder is required to secure funding and planning permission, following which it will be granted a 125-year lease for the property. The note is broken down into three sections; the agreement for lease (the “Contract”), the appointment relating to the development management consultancy services available (the “Appointment”) and the lease for the developed site (the “Lease”).

### Contract (Agreement for Lease)

The site is available for residential development on a conditional agreement basis. When selected as preferred bidder, the community led housing group (“CLH”) and Croydon Council (the “Council”) will enter into Contract. The Contract is personal to CLH.

The Contract provides that CLH must obtain an acceptable planning consent which is satisfactory to them and which reflects the landowner’s requirements for affordable and community-led housing, as set out at the bidding stage. It must also reflect the scheme they originally outlined as part of their successful bid proposal. Brick by Brick Croydon Limited (“BxB”) shall work with CLH in an advisory capacity to assist in obtaining planning permission.

CLH shall also have to obtain an offer of development finance which is satisfactory to both BxB and the Council. These conditions need to be satisfied for the Lease to be granted. The following important provisions in the Contract should also be noted:

- The Contract will require a deposit payment of a percentage of the land value to be agreed which will commit the developer to making the planning application and having it validated by the relevant Local Planning Authority.
- CLH will need the Council’s approval of their planning application (as landowner); the application is expected to reflect the scheme they originally outlined as part of their successful bid proposal.
- The Contract will include a target date by which a satisfactory planning permission must be obtained. The target date can extend to a long stop date where there is an outstanding application or pending appeal at the original target date.
- If the planning and finance conditions have not been satisfied by the target date, then the Council can terminate the Contract. If the planning application has not been made by an agreed date, then either party can terminate the Contract.
- If the Contract is terminated the Council will return to CLH any deposit paid.

- In the event that the contract is terminated, BxB will retain ownership of any surveys, ground investigations or planning related reports they have obtained.
- The Bid Pack Guidance document requires community groups to submit a price for the site which will be adjusted upwards on a square footage basis, where the floorspace consented is greater than that envisaged in the original bid. The contract documents this overage requirement and sets out how much the developer will pay to the landowner for every extra sq. ft. (NIA) achieved.
- The successful bidder should comply to the terms set out in the Bid Pack Guidance document

### **Appointment (Development Management Services)**

At the time that CLH enters into Contract, it will simultaneously enter into a professional consultancy appointment with BxB.

The appointment will govern the relationship between CLH and BxB with regards to the services BxB will provide. It is expected that CLH will avail itself of the services offered by BxB including full project management support throughout the development process up to receipt of planning consent. The project management service will include the coordination of the other members of the professional team working on the project.

The project management consultancy services will be charged at 1.5% of the assumed total construction cost.

In addition, the appointment will provide for additional services CLH is expected to utilise, including:

1. Architectural services for:

- a. *RIBA Stage 1 Design* – initial feasibility and design work undertaken by BxB's inhouse/associate architectural team, provided to CLH free of charge.
- b. *RIBA Stage 2 Design* – design development work to include scheme layouts, massing and unit mix; preparation of drawings and physical or digital models as required; preparation for and attendance at up to three community workshops and a public consultation; preparation for and attendance at a pre-application meeting; refinement of design based on client, planning department and community feedback; preparation of planning application, including statutorily-required drawings and Design and Access Statement. This work will be undertaken by BxB's inhouse/associate architectural team, and the fee for such services will be 3.6% of the assumed totalled net build cost, preliminaries and overheads and profit costs, payable by CLH.

Such architectural services will be provided under the form of appointment based on the RIBA Standard Professional Services Contract 2018: Architectural Services.

2. Unfettered access to BxB's inhouse cost consultant up to receipt of planning consent.
3. Unfettered access to BxB's established network of consultants and economies of scale. CLH will be able to instruct an experienced consultant team and benefit from cheaper consultancy costs passed on to it at cost.

Following CLH's receipt of satisfactory planning permission, CLH may opt to enter into a further appointment with BxB, in respect of post-planning project management services.

In the event CLH wishes to continue its relationship with BxB's architectural team, it will inform BxB that additional services are required, and any such services shall be provided under the form of appointment based on the RIBA Standard Professional Services Contract 2018: Architectural Services previously entered into by CLH.

#### **Lease**

Following satisfaction of the planning and finance conditions in the Contract, the Lease will be granted by the Council to the CLH subject to the CLH paying the balance of the purchase of the site (less any deposit already paid). That lease will be for a term of 125 years at a peppercorn rent. The permitted use of the site will be restricted to that permitted under the satisfactory planning consent which has been obtained.

The Contract incentivise, but do not require, the build out of the consented scheme. For this reason, there are provisions which allow the Council to terminate the Lease if development does not lawfully commence within an agreed period, meaning that all pre-commencement conditions and technical consents need to have been discharged/obtained, a new build warranty (e.g. NHBC) registration obtained for the homes and the build started by an agreed date. This period can extend where under certain circumstances outside of the CLH's control development cannot lawfully commence in that period.

The Council may choose not to terminate the Lease in these circumstances but if they do, then on termination the Council will have to repay the purchase price to CLH. The Lease contains lender step in provisions to allow lenders to take the development forward if they wish to do so.

The right to assign the Lease to another organisation that meets the Community-led Housing definition is subject to the landowner's written consent or in the absence of such organisation, the site can revert to the relevant local authority. The Community-led Housing organisation will be free to let the housing units as per the terms agreed at bidding stage without formal landlord's consent, however the Council retains a right to review letting/sales decisions and make representations if deemed necessary.

The Lease also contains a land sale overage. Where the landowner consents to an assignment (sale) prior to full occupancy, 50% of any increase beyond the original purchase price is owed to the landowner. The Lease also contains a further planning overage to revalue further permissions.

The CLH will set up a management committee, on which the Council reserves the right to be an executive member. This committee will enter into a management agreement and appoint a managing agent for the site.

The Council will have the right to step in if the management committee is not carrying out its duties as stipulate in the management agreement. In the event of dispute between the Council and the management committee, each party will have the right to make representations to an independent expert acting as an Arbitrator or Mediator.

Property Address: A parcel of land shown on the attached plan at The Lawns, Upper Norwood, London SE19 3TS

Landlord: The Mayor and Burgess of the London Borough of Croydon  
Bernard Weatherill House  
8 Mint Walk  
Croydon  
CR0 1EA

Contact Name:  
Email Address:  
Telephone: [@croydon.gov.uk  
020 8726 6000 \(Ext: \)](mailto:@croydon.gov.uk)

Tenant:

Contact Name:  
Email Address:  
Telephone:  
Mobile:

Guarantor:

Contact Name:  
Email Address:  
Telephone:  
Mobile:

Rent: £1 per annum (if demanded)

Rent Free Period: N/A

Landlords Initial Works: N/A

Tenant's Initial Works: Tenant to submit full costed development plan with Risk Assessment Method Statement development program for the landlord's prior written approval.

The initial works are to be overseen by Brick by Brick to planning approval.

Deposit: N/A

Lease Length and Start Date: An Agreement for lease is to be for the development period is to be entered into with the agreed lease to be attached.

The agreement for lease is to be valid for a period of 3 years. The lease which will commence once planning has been secured and development finance arranged, for a term of 125 years.

**Determination:** The agreement for lease can be determined by the landlord if agreed parameters have not been completed at fixed dates.

If the landlord has evidence that the tenant fails to enforce the covenants of the lease and or does not fulfil the community led housing policies, Equality policies or any other anti-discrimination policies of the London borough of Croydon or its successors the landlord has the right to terminate this lease and take over management itself or select another community led organisation or housing association.

The parties will have the right to make representations to an independent expert acting as an Arbitrator or Mediator

**Rights:** Full Access over the site

e.g. Car parking, satellite dish, air conditioning platforms, remote storage areas. Any rights of access, servicing or other matters inc. fire escape.  
For car parking – state number and attach plan if relevant.

**Rent Reviews:** None.

**Assignment and Subletting:** The right to assign the lease to another organisation that meets the Community-led Housing definition is subject to the landowner's written consent or in the absence of such organisation, the site can revert to the relevant local authority. The Community-led Housing organisation will be free to let the housing units as per the terms agreed at bidding stage without formal landlord's consent, however the landlord retains a right to review letting/sales decisions and make representations if deemed necessary.

**Services and Service Charge:** None

**Repairing Obligations:** Full Repairing Obligation

**Trees:** The tenant is to be responsible for carrying out a tree audit on all trees on the site and employing a tree surgeon to remove any unsafe branches etc. in accordance with any tree preservation order. This area must be maintained over the period of the lease.

**Schedule of Condition:** N/A

Alterations:	After the initial development  Structural alterations permitted with landlords consent.  Non-structural alterations are permitted without Landlord's consent as long as they do not affect public highways or land. All such alterations should be carried out to a good and workman like standard and should be done in accordance to an accompanying set of RAMS which should be made available to the landlord if requested.
Permitted Use:	The land is to be used for residential units and common areas [UPDATE ONCE WINNING BID SELECTED], design and construction of which is to be approved by the landlord with ancillary amenity land.
Insurance:	The Tenant will insure the property and recover the cost from the occupiers.  The occupiers are to be responsible for insuring contents and for any plate glass which may be on the property.
Dilapidations:	The tenant is to leave the property in good repair and yield up.
Other Issues:	None
Rates and Utilities:	Tenant and occupiers are to be responsible.
Legal Costs:	Payment for Landlord legal costs to be agreed with bidder
Conditions:	<ol style="list-style-type: none"><li>1. Planning</li><li>2. Local authority consents (eg building regs)</li><li>3. References.</li><li>4. Survey/Schedule of Condition</li><li>5. All agreements are to be excluded from Right to Buy entitlements</li></ol>
General:	<ol style="list-style-type: none"><li>1. Equality Act 2010 adjustments</li><li>2. Asbestos register</li><li>3. Environmental issues?</li><li>4. Health &amp; safety file and other issues</li><li>6. Restrictions on Landlord's title</li></ol>
Landlord's Solicitors:	The London Borough of Croydon Commercial & Property Law Bernard Weatherill House 8 Mint Walk Croydon CR0 1EA

Contact Name:  
Email Address:  
Telephone:  
DX:

@croydon.gov.uk  
020 8726 6000 (Ext: )  
136016 CROYDON 17

Tenant's Solicitors:

Contact Name:  
Email Address:  
Telephone:  
Mobile:  
DX:

Timing and Other Matters: The lease is to be completed 6 weeks from the date of this document

No Contract: These Heads of Terms are subject to contract.

Landlord's Agent:

Contact Name:  
Email Address:  
Telephone:  
Mobile:

Tenant's Agent:

Contact Name:  
Email Address:  
Telephone:  
Mobile:

Signed on behalf of the Tenant:

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Print Name:

.....

Date: .....

Signed on behalf of the Landlord: .....

Print Name: .....

Date: .....

DRAFT