

SMALL SITES

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SMALL BUILDERS

SUMMARY OF CONTRACTS

This note summarises how the following contracts work. Interested parties should have full regard to the documents.

A successful bidder has the ability to acquire a 250-year lease of the site after obtaining planning permission and securing development finance.

The note is broken down into two sections; the contract (which is a 'conditional agreement for lease'), and the lease itself.

Contract (Agreement for Lease)

The site is available for residential development on a conditional sale basis. When selected as preferred bidder, the developer and landowner will enter into contract. The contract is personal to the developer.

For the purchase of the site to proceed to completion and grant of the 250-year lease, the developer must obtain a planning consent which is satisfactory to them and which reflects the landowner's requirements for affordable and/or community-led housing, set out at the bidding stage. It must also reflect the scheme they originally outlined as part of their successful bid proposal. In addition, they will also have to obtain an offer of development finance which is satisfactory to both the developer and the landowner.

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 payment of a deposit and commit the developer to making the planning application and having it validated by the relevant Local Planning Authority.
- The developer will need the landowner's approval of their planning application; the application is expected to reflect the scheme they originally outlined as part of their successful bid proposal. TfL will advise of any restrictions where the proposed development could impact on transport infrastructure, for example due to foundation depths or types.
- The contract will include a target date by which a satisfactory planning permission is to 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 landowner 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 landowner will return to the developer any deposit paid and the developer will need to use reasonable endeavours to procure letters of reliance for the landowner in relation to any surveys, ground investigations or planning related reports they have obtained.
- The bid submission proforma requires developers 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 sqft (NIA) achieved.

Lease

Following satisfaction of the planning and finance conditions, a lease will be granted by the landowner to the developer subject to the developer paying the balance of the purchase price of the site (less any deposit already paid). That lease will be for a term of 250 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 contracts incentivise, but do not require, the build out of the consented scheme. For this reason, there are provisions which allow the landowner 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 developer's control development cannot lawfully commence in that period.

The landowner may choose not to terminate the lease in these circumstances but if they do, then on termination the landowner will have to repay the purchase price to the developer. 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 others or underlet the whole site is subject to landowner approval. This should discourage those with no intention to build.

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 lease gives the landowner the ability if they do not wish to retain the freehold title to the site after the development has been completed to call on the developer to purchase the freehold reversion for £1.