

REQUEST FOR MAYORAL DECISION – MD 1338

Title: Offley Works

Executive Summary:

The development agreement with Offley Works Ltd requires variation to facilitate the funding and delivery of the project. This paper sets out the rationale and steps needed to ensure the project is completed.

Decision:

That the Mayor approves the variations to the development agreement with Offley Works Ltd & Matching Green Ltd as set out in this MD and that the sale of the site is brought forward.

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: 30 May 2014

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

Decision required – supporting report

1. Introduction and background

- 1.1. In 2007 the London Development Agency (LDA) purchased Offley Works from Lambeth Borough Council with the aim of securing a development partner who would turn the site into a hub for creative industries. The GLA inherited this project from the LDA in 2012 and has continued to monitor its progression. For a site location plan see Appendix 1.
- 1.2. Following a period of marketing Matching Green (MG) were selected by the LDA in an open tender process and the development agreement was signed in April 2010 (for key terms please see Appendix 3). Offley Works Ltd (OWL) is the SPV company set up to develop the scheme.
- 1.3. The project aims to facilitate the refurbishment and upgrade of the site for employment uses (circa 65,000 sqft), the conversion of one building into residential for 7 units and the construction of 2 new residential units above the commercial space. The development agreement sets out the obligation for the developer to seek and gain planning permission and carry out these redevelopment and refurbishment works.
- 1.4. At the time the development agreement was signed the buildings were let to a number of tenants and the LDA agreed to secure vacant possession. This took far longer than expected as one of the tenants would not vacate and court action was required to secure vacant possession.
- 1.5. The buildings are in poor condition, with major works required just to keep them from deteriorating any further. Most parts are not up to safe lettable standards, however OWL have commenced upgrade works at risk. It is understood that they have spent circa £1m to date on these works.
- 1.6. The site is let to OWL on a short term lease, due to expire in 2015 and under this lease GLAP is obliged to pay a reverse premium to OWL in return for covering the holding costs of the site – such as business rates, security & insurance), up to a maximum on £150k p.a. A combination of the delay in the LDA securing vacant possession and the slow processing of the planning application have meant that the project has been delayed and technically OWL are in breach of the development agreement for not meeting the required deadlines relating to planning permission and start on site. They have however been progressing works on the property at risk and have demonstrated a clear commitment to delivering the project.
- 1.7. On this basis OWL requested that a time extension be granted and on 28th January 2013 HIG endorsed an extension of time to 31st August 2013 to allow the developer to satisfy the conditions precedent (these conditions are listed in Appendix 3), on the basis of OWL not claiming the holding costs payable by GLAP under the lease. However, as other matters such as the potential requirement to restructure the Development Agreement became apparent, this has not been progressed to a Mayoral Decision until the current time. OWL have confirmed that they will not make any claim for this amount beyond the 28th January 2013 and this will be formally documented as part of the variation. The obligation to pay this holding charge will be removed as part of the variation.
- 1.8. Planning permission was granted by Lambeth in November 2013 and the s106 has now been signed.
- 1.9. On the 18th December 2013 HIG endorsed the proposals set out in this Mayoral Decision.
Proposal – Variation to the development agreement
- 1.10. Currently the development agreement is structured to allow conversion of Block F into residential under licence (7 residential units), with a drawdown of the freehold of this element at the end of construction. The remainder of the site is drawn down upon practical completion of the refurbishment of the commercial element. This structure is inhibiting OWLs ability to raise finance on the residential element, which in turn allows the refurbishment of the commercial space.

- 1.11. To address this barrier it is proposed that the development agreement is varied by deed of variation to allow for early purchase of the land by OWL whilst keeping the main obligations in the development agreement in place and adding in some safeguards to protect GLAPs position. It will also enable the land payment to be received earlier.
- 1.12. To protect the GLAs position the obligations in the development agreement still relevant will be included in the transfer and be registered on the title – binding future owners of the site.
- 1.13. Whilst the sale of the land upfront arguably weakens GLAPs position in terms of enforceability of the development agreement, it adds in additional protection against further change of use, which is not currently part of the development agreement. It is a pragmatic way forward which will facilitate delivery.
- 1.14. It should be noted that there is a variation between the proposals set out in this paper and the paper endorsed by HIG. This relates to the way the proposed change of use overage is calculated. This has been varied to allow GLAP a percentage of any change in value from existing use to that proposed as opposed to a share in profit. This achieves the similar aims in terms of restriction of use but will make any calculation much more straightforward as it will be payable once planning permission has been implemented rather than profit realised. This provision is an additional protection compared to those within the current development agreement.
- 1.15. Full details of the proposed variations are set out in Appendix 4 and commercially sensitive details in Part 2. They can be summarised as follows:
 - GLAP can terminate the development agreement if OWL has not supplied GLAP with an agreed (but not let) building contract and a build out programme within 3 months of exchange of the deed of variation.
 - OWL has the ability to terminate the development agreement if GLAP has not removed the Lambeth title restriction within 3 months of exchange of the deed of variation.
 - Land to be sold to OWL prior to completion of works to facilitate the financing of the works, once certain conditions precedents have been met.
 - Buyback provision in favour of GLAP to be put in place in the form of an option registered on the title to ensure commencement of works.
 - OWLs development obligations to be transferred onto title.
 - Insertion of a new change of use overage to reduce likelihood of an application for a change of use in the short /medium term. This obligation was not included in the original development agreement.
 - Documentation of removal of GLAPs responsibility to reimburse OWLs holding costs for the property.
 - OWL to pay GLAPs reasonable legal costs relating to variations.

Key Issues & Risks

- 1.16. Loss of control - The aim of this paper is to allow the development agreement to be varied to allow the developer to raise finance for the project to complete the work. Whilst sale of the land upfront means GLAP arguably loses some element of control, viewed in the round with the additional protections proposed and the development agreement still in place it is recommended that this is an appropriate action to allow the project to be delivered.

2. Objectives and expected outcomes

2.1. The suggested variations should allow finance to be raised and the project to be completed. The outputs will be:

- 9 new residential units
- Refurbishment of circa 65,000 sqft of employment space
- Land payment will come in earlier than anticipated
- New overage provision provides greater protection against change of use in short to medium term

3. **Planned approach**

3.1. The required amendments to the legal documents are currently being prepared. Once ready they will be signed by a GLAP Director.

3.2. The General Delegation under the Mayoral Scheme of Delegation gives the Executive Director of Housing & Land and the Executive Director of Resources the power to approve any minor or additional amendments thought necessary or appropriate.

3.3. Below is an indicative timetable that sets out the next steps.

| Activity | Timeline |
|--|-----------------|
| Secure an Mayoral Decision to support the proposal within this paper | May 2014 |
| Vary development agreement to reflect proposal | May 2014 |
| Sell site | May 2014 |
| Delivery End Date | Jan 2016 |
| Project Closure | March 2016 |

4. **Other considerations**

4.1. N/A

5. **Financial comments**

5.1. The asset in question is a development stock asset last valued at 31st March 2013.

5.2. The proposed variation to the original development agreement changes this asset's disposal from a disposal via lease drawdown to a freehold disposal. This has no effect on the sales price which also meets the requirements of best consideration in that the consideration for disposal exceeds the unrestricted value of the land.

5.3. The current occupational lease requires a contribution from GLAP of £150k towards tenant holding costs which will be waived by the developer upon the variation. This will be documented in the variation.

5.4. The Offley Works project has a budget of £5,000 in 2014-15 to cover disposal costs.

5.5. See Part 2 for further comments.

6. Legal Comments

- 6.1. GLAP has been advised by Eversheds in relation to the variation of the existing development agreement.
- 6.2. 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 as set out in section 30(2) which are:
 - 6.2.1. Promoting economic development and wealth creation in Greater London;
 - 6.2.2. Promoting social development in Greater London; and
 - 6.2.3. Promoting the improvement of the environment in Greater London.
- 6.3. Sections 1,2 and 3 of this report indicate that the Mayor has the power to agree to the Decisions set out above.
- 6.4. The Mayor may, under Section 38 of the GLA Act, delegate the exercise of the GLA's functions to the Executive Directors of Housing and Land and Resources as proposed.
- 6.5. It should be noted that as GLAP will be a party to the legal documentation, GLAP will also need to approve the proposed agreement in accordance with its constitution.

7. Investment & Performance Board

- 7.1. On the 18th December 2013 HIG endorsed the proposals set out in this Mayoral Decision.

Appendices and supporting papers:

1. Site location plan
2. Programme
3. Summary of principal development agreement obligation
4. Details of proposed variations
5. Part 2 - Reserved

Public access to information

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

Part 1 deferral: any fact or information whose release before a specific date would compromise the implementation of the decision may be included in Part 1, with Part 1 being deferred until after that date. Deferral periods should be kept to the shortest length strictly necessary.

Is the publication of this approval to be deferred? No

If YES, for what reason:

Until what date:

Part 2 confidentiality: any fact and advice that should not be automatically made public should be in the separate Part 2 form, together with the rationale for confidentiality.

Is there a part 2 form – Yes**ORIGINATING OFFICER DECLARATION:**

Tick to indicate approval (✓)

Drafting officer:

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

Assistant Director/Head of Service:

Simon Powell 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

Date

CHIEF OF STAFF:

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

Signature

Date