

APPENDIX A

WAVERLEY BOROUGH COUNCIL

SPECIAL EXECUTIVE – 24 APRIL 2012

Title:

BRIGHTWELLS – RECTIFICATION OF DEED OF COVENANT

[Portfolio Holder: Cllr Adam Taylor-Smith]

[Wards Affected: All Farnham Wards]

Summary and purpose:

The purpose of this report is to seek authority for amendments to be made to the East Street Development Agreement and Deed of Covenant relating to the Brightwells open space provision.

How this report relates to the Council's Corporate Priorities:

The Council has a clear priority to regenerate the Brightwells/East Street Area of Farnham and has an important role to play in working to ensure an increased supply of affordable housing for rent or shared ownership. The Brightwells Development will provide 72 new, affordable housing units. The provision of shops, restaurants and leisure facilities, including a cinema, will provide attractions for all age groups within the town, and the development also makes provision for open spaces and community facilities in a convenient central location.

Equality and Diversity Implications:

There are no equality and diversity implications arising from this report.

Resource/Value for Money implications:

There are no Resource or Value for Money implications in this report.

Legal Implications:

Any amendments would be dealt with by the in-house Legal Services Section through the Borough Solicitor.

Background

1. On 22 April 2003 the Council entered into a Development Agreement with Crest Nicholson Regeneration Limited, Sainsbury's Supermarkets Limited and Crest Nicholson Operations Limited (CNS) in respect of the development of the East Street Regeneration Scheme in Farnham.

2. The Development Agreement has subsequently been amended by Deeds of Variation made on 22 December 2006, 9 September 2008, 6 August 2009 and 31 August 2010. The Development Agreement, as amended, has been made available to view on the Council's website.

The Deed of Covenant

3. Clause 19.7 of the Development Agreement obliges the Council to enter into a Deed of Covenant upon completion of the last of the Headleases in respect of the commercial and residential aspects of the development. The Deed of Covenant relates to the premises currently known as Brightwell Gardens and the adjacent former Bowling Green, and the intention of the Deed of Covenant is to secure that those areas are retained as open space as part of the development.
4. Annex 12 of the Development Agreement contains a draft Deed of Covenant in the form intended to be entered into by the Council and the parties to the Development Agreement, and a copy is provided for the Executive's ease of reference as Annexe 1 to this report.
5. The 2003 Development Agreement anticipated a number of possibilities in terms of the development scheme, but it is clear that since the scheme was granted planning permission in 2009 the situation has changed. For example, the permitted scheme is smaller than originally envisaged. Nevertheless, it has remained the intention throughout that the open space land within the development must retain its open space character.
6. The intention of the parties to the Development Agreement was and continues to be that no development will be carried out on the open space land so as to alter its essential nature and character as an area of open amenity space, and for the land to be maintained in such a manner as is appropriate to good quality town centre amenity space available to be used and enjoyed by members of the public. The Deed as currently drafted does not reflect that intention.
7. The open space secured by the Deed will be larger than the existing Gardens, with an increase from 0.25 hectares to 0.321 hectares - an increase of 28.4% - and the increased area of open space land will retain its essential character as public open space for the enjoyment of all tenants, residents, their visitors and the public at large.
8. The Borough Solicitor has recently advised that the Deed as currently drafted places obligations on the Council as covenantor to secure those matters set out in paragraph 6 above, with the Council covenanting with Crest Nicholson. However, the open space land is to be leased to Crest Nicholson under the Development Agreement and therefore the obligation not to develop the land and to maintain it as open space should be placed on Crest Nicholson as covenantor covenanting with the Council in that regard.

9. The Borough Solicitor therefore advises that the Agreement and draft Deed should be amended so as to give precise effect to the intention of the parties to the Development Agreement, in order that Crest Nicholson is under the obligations contained in the covenants not to develop on, and to maintain, the open space land.
10. The amendments would be straightforward and would see Crest Nicholson referred to as the covenantor under the Deed, covenanting with the Council as covenantee (the Council is currently stated to be the covenantor) to maintain the open space land. This then places the obligations on the developer to protect the open space in line with the intentions of the parties. Alternatively, those covenants could be moved to the main Headlease under which the open space land is leased to Crest Nicholson.
11. Crest Nicholson have confirmed that they are content with the proposed amendment and have indicated no objection to a further Deed of Variation being made. Crest Nicholson have confirmed in writing their commitment to the provision of the open space, and a copy of their letter is attached as Annexe 2.

Conclusion

12. Amendments to the Development Agreement and draft Deed of Covenant would be effected via a simple Deed of Variation to the Development Agreement that would see the Council receiving the benefit of the covenants protecting the open space land, which best serves the interests of the public in seeing the land retained as public open space.

Recommendation

That the Borough Solicitor, in consultation with the Chief Executive and East Street Portfolio Holder, be authorised to negotiate with Crest Nicholson in order to make the necessary amendments to the Development Agreement and Deed of Covenant relating to Brightwell Gardens and the former Bowling Green as outlined in the report, and enter into a Deed of Variation to the Development Agreement to that effect.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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